

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION**  
**SPECIAL MEETING**  
**AGENDA**

**October 8, 2015**  
**7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL**

**2. APPROVAL OF AGENDA**

**3. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)*

**4. APPROVAL OF MINUTES**

Regular meeting of September 9, 2015, and Special meeting of September 16, 2015.

**5. CHIEF OF POLICE'S REPORT**

Budget, staffing, training updates, and other items.

**6. OLD BUSINESS (discussion and action)**

a. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.

i) Continue review and approval of or changes to BPD recommendations in its report of the December 6 & 7, 2014 events.

ii) Review and approve findings.

iii) Discuss remainder of report, including discussion section, and its structure.

**7. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)**

a. Mutual Aid Pacts Subcommittee

i) Report to full commission with recommendations on Berkeley Police Department's 2015 Mutual Aid Pact Agreements. *(See 9-24 agenda packet.)*

ii) Discussion regarding obtaining SARS reports.

iii) Consider dissolution of subcommittee or schedule next meeting date.

## 8. NEW BUSINESS

- a. Commissioner's questions regarding BPD's Mid-Year Crime Report.
- b. Proposal to co-host with the Personnel Board and the BPD a community-wide anti-bias training.
- c. Whether to initiate a policy review based on the policy complaint filed by Stephen Pitcher, and what steps should be taken.

## 9. CHAIR'S REPORT

## 10. PRC OFFICER'S REPORT

Status of complaints; announcements.

## 11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

## 12. PUBLIC COMMENT

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)*

## 13. ADJOURNMENT

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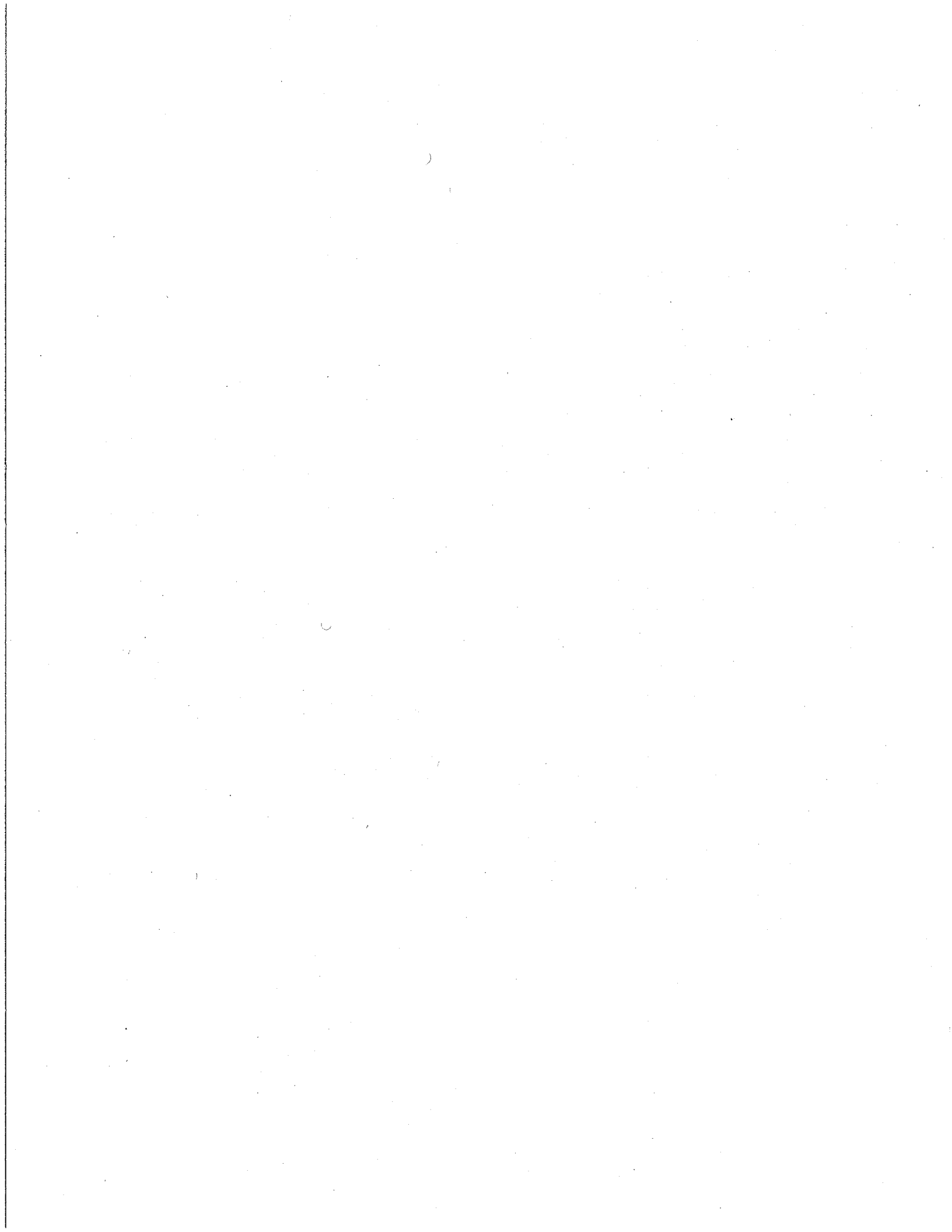
# COMMUNICATIONS FOR PRC SPECIAL MEETING October 8, 2015

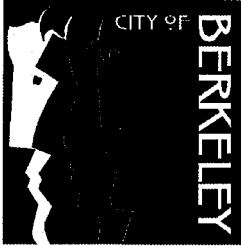
## MINUTES

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## COMMUNICATIONS

<b>Communications #4331</b> – Recommendations on media and legal observers from Commissioner Bernstein	Page 13
<b>Communications #4364</b> - Mutual Aid discussions with BPD at PRC Meetings	Page 15
<b>Communications #4331</b> – Draft title page, preface, and introduction to PRC's investigative report	Page 21
<b>Communications #4160</b> - Policy Complaint #2384 filed by Stephen Pitcher	Page 27
<b>Communications #1853</b> - Letter from Interim City Manager Dee Williams-Ridley to City Council regarding Use of Pepper Spray Incident	Page 29
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Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
MINUTES  
(unapproved)**

**September 9, 2015  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 7:07 P.M.**

Present: Commissioner Alison Bernstein (Chair)  
Commissioner Jerry Javier  
Commissioner George Lippman  
Commissioner George Perezvelez (Vice Chair)  
Commissioner Terry Roberts  
Commissioner Ann Rogers  
Commissioner Michael Sherman (left 9:30 p.m.)  
Commissioner Ari Yampolsky

Absent: Commissioner Bartlett

PRC Staff: Katherine J. Lee, PRC Officer and Beneba Thomas, PRC Investigator.

BPD Staff: Capt. Dave Frankel, Lt. Dan Montgomery (both left 8:30 p.m.), Sgt. Benjamin Cardoza, Ofc. David Bartalini (left 9:30 p.m.)

At the Chair's request, a moment of silence was observed for three law enforcement officers recently slain: Steven Vincent, Louisiana State Trooper; Deputy Sheriff Darren Goforth, Harris Co., TX; Police Lt. Charles Gliniewicz, Fox Lake, Ill.; and for Michael Tyree, an inmate beaten to death in Santa Clara County jail.

**2. APPROVAL OF AGENDA**

**The agenda was approved by general consent.**

**3. PUBLIC COMMENT**

There were 5 speakers.

**4. APPROVAL OF MINUTES**

**Motion to approve Special Meeting minutes of August 12, 2015.**

Moved/Seconded (Perezvelez/Rogers) **Motion Carried by general consent**

**5. CHIEF OF POLICE'S REPORT**

Capt. Frankel reported on the Chief's behalf that the department will be presenting its mid-year crime report to the City Council next week, and that they can make a presentation to the PRC if desired.

**6. OLD BUSINESS (discussion and action)**

a. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.

i) Continue review and approval of or changes to BPD recommendations in its report of the December 6 & 7, 2014 events.

**Motion that all votes that the PRC has already taken regarding the BPD's Recommendations will not be reconsidered.**

Moved/Seconded (Perezvelez/Roberts) **Motion Carried**

Ayes: Bernstein, Perezvelez, Roberts, Rogers, and Yampolsky.

Noes: Javier, Lippman, Sherman      Abstain: None      Absent: Bartlett

**Motion to adopt, as an alternative to BPD Recommendation #22, Commissioner Bernstein's proposal:**

**The use of CS gas on December 6 is a cause of major concern. Not only is it unclear whether the actions of the crowd warranted such use, it is unclear how decisions were made to continue to deploy CS gas, and whether the continued use was necessary. Careful review of the policies regarding both the initial use of CS gas and its continued deployment must be undertaken by the BPD in conjunction with the PRC. New policies need to be drafted more carefully delineating when and how CS gas should be used in crowd management and control situations.**

**If and when CS gas is deployed, a public announcement regarding the impending use should be made, as well as radio broadcast to all law enforcement personnel.**

Moved/Seconded (Perezvelez/Roberts) **Motion Carried**

Ayes: Bernstein, Javier, Perezvelez, Roberts, Rogers, Sherman, and Yampolsky.

Noes: None      Abstain: Lippman      Absent: Bartlett

**Motion that the PRC adopt, as an alternative to BPD Recommendation #23: The PRC recommends that an operational policy regarding the use of CS gas be established delineating a removal and transport process as well as establishing a secure triage area for the treatment of affected personnel and members of the public.**

Moved/Seconded (Perezvelez/Sherman)

**Friendly amendment that the PRC add the proposed language above to BPD's Recommendation #23.**

(Moved by Roberts; Accepted by Perezvelez)

**Motion, as amended, Carried**

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Rogers, Sherman, and Yampolsky.

Noes: None

Abstain: None

Absent: Bartlett

**Regarding Recommendation #25, the Commission, by general consent, tentatively agreed to the following, pending clarification with the BPD:**

- **Improve accountability for the deployment and use of less-lethal munitions and CS gas.**
- **PRC recommends that BPD and mutual aid responders perform an inventory of less-lethal munitions and CS gas both before and after an incident.**
- **Whenever an officer uses less-lethal force in a crowd control situation, that officer is responsible for preparing an individual report of such use.**

ii) Review and approve findings.

**By general consent, the Commission made a few changes to the staff's draft Findings and will review the next revision at the next meeting.**

iii) Discuss remainder of report and its structure.

*(Carried over to next meeting)*

b. Disclosure of full Suspicious Activity Reports by BPD.

**By general consent the Commission agreed to agendaize Mutual Aid Pacts for the September 24, 2015 meeting, and asked the PRC Officer to report back regarding the grounds claimed by BPD for not furnishing full SARs to the Commission.**

## **7. NEW BUSINESS (discussion and action)**

a. Review General Order W-1, Right to Watch

*(the Commission discussed this item after Item 7.b.)*

**By general consent, the Commission agreed to have the PRC Officer write a letter to the Chief, with copies to Capt. Harris and the City Manager,**

**expressing the PRC's concern that the BPD revised the Right to Watch policy without consulting the PRC or obtaining any other public input; and, because of the significance of the policy, request that until such time as community input is received and the PRC is consulted, the BPD revert to following the Right to Watch Training Bulletin.**

- b. Discuss proposed work plan for addressing PRC tasks, including reviving the work of the Transgender General Order Subcommittee and the possible establishment of several new subcommittees.

**By general consent, the Commission agreed to schedule Special Meetings on September 16 and October 8, 2015, to have more time to devote to the investigation, with the goal of taking final action on it by its October 21 meeting, and to cancel the Regular Meeting of October 28.**

- c. Clarification of Motions to Lay on the Table and to Postpone Indefinitely  
*(Not discussed.)*

#### **8. CHAIR'S REPORT**

None.

#### **9. PRC OFFICER'S REPORT**

A BOI was concluded last week. No individual complaints were filed in May, June, or July, but five have been filed from August to date.

#### **10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached.

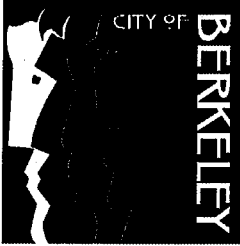
#### **11. PUBLIC COMMENT**

There was one speaker.

#### **12. ADJOURNMENT**

**Motion to adjourn the meeting carried by general consent.  
Meeting was adjourned at 10:10 p.m.**





Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
SPECIAL MEETING  
MINUTES  
(unapproved)**

**September 16, 2015  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIRPERSON BERNSTEIN AT 7:10 P.M.**

Present: Commissioner Alison Bernstein (Chair)  
Commissioner Jerry Javier  
Commissioner George Perezvelez (Vice-Chair)  
Commissioner Terry Roberts  
Commissioner Ann Rogers  
Commissioner Ari Yampolsky  
Commissioner Paul Kealoha-Blake (*temporary appointment*)

Absent: Commissioner Benjamin Bartlett  
Commissioner George Lippman  
Commissioner Michael Sherman

PRC Staff: Katherine J. Lee, PRC Officer; Beneba Thomas, PRC Investigator  
(arrived at 8:00)

BPD Staff: Capt. Dave Frankel, Lt. Dan Montgomery (left at 8:30)

**2. APPROVAL OF AGENDA**

The agenda was approved by general consent.

**3. PUBLIC COMMENT**

None

**4. CHIEF OF POLICE'S REPORT**

None.

**5. OLD BUSINESS (discussion and action)**

- a. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.
- i) Continue review and approval of or changes to BPD recommendations in its report of the December 6 & 7, 2014 events.

**By general consent, the Commission corrected an error in Recommendation #22 adopted at the September 9, 2015 meeting, by inserting "a" before the phrase "radio broadcast" in the last sentence.**

**Motion to adopt, as an alternative to BPD Recommendation #25: To improve accountability for the deployment and use of less-lethal munitions and CS gas, the PRC recommends that BPD and mutual aid responders perform an inventory of less-lethal munitions and CS gas both before and after an incident and, whenever an officer uses less-lethal force in a crowd control situation, that officer is responsible for preparing an individual report of such use.**

Moved/Seconded (Rogers/Perezvelez)

**Friendly amendment #1, to substitute, for "incident," "deployment in a crowd control situation."**

(Moved by Bernstein; Accepted by Rogers)

**Friendly amendment #2, to add, at the end of the sentence, "within 72 hours."**

(Moved by Roberts; Accepted by Rogers)

**Motion, as amended, Carried**

Ayes: Bernstein, Javier, Kealoha-Blake, Perezvelez, Roberts, Yampolsky.

Noes: None Abstain: None Absent: Bartlett, Lippman, Sherman.

**Motion to adopt, as an alternative to BPD Recommendation #31: The PRC recognizes the need for the Department to make better-informed decisions in crowd control situations. Therefore, the department needs access to real time surveillance tools. Gathering such information will require some degree of surveillance, which raises concerns regarding citizens' privacy. We recommend that the Council make a determination of what, if any, surveillance tools should be considered for use, and then refer the matter to the PRC to obtain community input and work with the BPD to establish the appropriate guidelines for such use.**

Moved/Seconded (Rogers/Yampolsky) **Motion Carried**

Ayes: Bernstein, Javier, Kealoha-Blake, Perezvelez, Roberts, Yampolsky.

Noes: None Abstain: None Absent: Bartlett, Lippman, Sherman.

**Motion to adopt BPD's Recommendation #26, and add, at the end of the second sentence: "in conjunction with the PRC, and that these trainings include de-escalation tactics.**

Moved/Seconded (Rogers/Perezvelez) **Motion Carried**

Ayes: Bernstein, Javier, Kealoha-Blake, Perezvelez, Roberts, Yampolsky.

Noes: None Abstain: None Absent: Bartlett, Lippman, Sherman.

**Motion to adopt BPD Recommendation #27 as written.**

Moved/Seconded (Yampolsky/Perezvelez) **Motion Carried**

Ayes: Bernstein, Javier, Kealoha-Blake, Perezvelez, Roberts, Yampolsky.

Noes: None Abstain: None Absent: Bartlett, Lippman, Sherman.

**By general consent, the Commission voted to adopt the following as an alternative to Recommendation #28: The PRC should work in collaboration with BPD to develop a website and other informational materials to inform the public about the BPD's approach to protests, ground rules for them, and details of the warning and dispersal system.**

**Motion to adopt BPD Recommendation #32 as written.**

Moved/Seconded (Rogers/Roberts) **Motion Carried**

Ayes: Bernstein, Javier, Kealoha-Blake, Perezvelez, Roberts, Yampolsky.

Noes: None Abstain: None Absent: Bartlett, Lippman, Sherman.

- ii) Review and approve findings.

**By general consent, the Commission made a few changes to the staff's draft Findings; the next revision will be proposed for adoption at the next meeting.**

- ii) Discuss remainder of report, including Discussion section, and its structure.

Staff's draft was distributed for Commissioners to review and discuss at the next meeting.

## **6. CHAIR'S REPORT**

Chair Bernstein expressed concern that the Commission has been discussing the investigative report for 7 months and haven't had an opportunity to talk about addressing the underlying issues about interactions between the BPD and communities of color.

## **7. PRC OFFICER'S REPORT**

The PRC Officer said she and Commissioner Roberts attended the BPD's presentation of the Mid-year Crime Report to Council on September 15. The Chair suggested that, rather than have BPD make the same presentation to the Commission that the Commissioners read the BPD's written report to Council and

agendize for the next meeting a brief discussion of any questions they want to ask the Chief about the report; and then invite the Chief to answer the questions at a subsequent meeting.

**8. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

**9. PUBLIC COMMENT**

There were two speakers. The rules were suspended to allow for brief discussion with media present about publicizing the Commission's plan to address the BPD Recommendations regarding the media at its next meeting.

**10. ADJOURNMENT**

**By general consent, the meeting was adjourned at 9:25 p.m.**

**Lee, Katherine**

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**From:** Alison Bernstein <alibernstein@gmail.com>  
**Sent:** Thursday, September 24, 2015 12:00 PM  
**To:** Lee, Katherine  
**Subject:** journalists issue

Here is the language I would propose regarding the media recommendations.

The establishment by BPD of a regional media credentialing system is an issue that should be fully discussed with the community in order to assure that the varied interests and points of view of the journalists within our community are heard and considered. The PRC recommends that this issue be referred back to the PRC and a subcommittee be established which would solicit input from a broad community of journalists, including both full time employees of established media outlets and independent journalists.

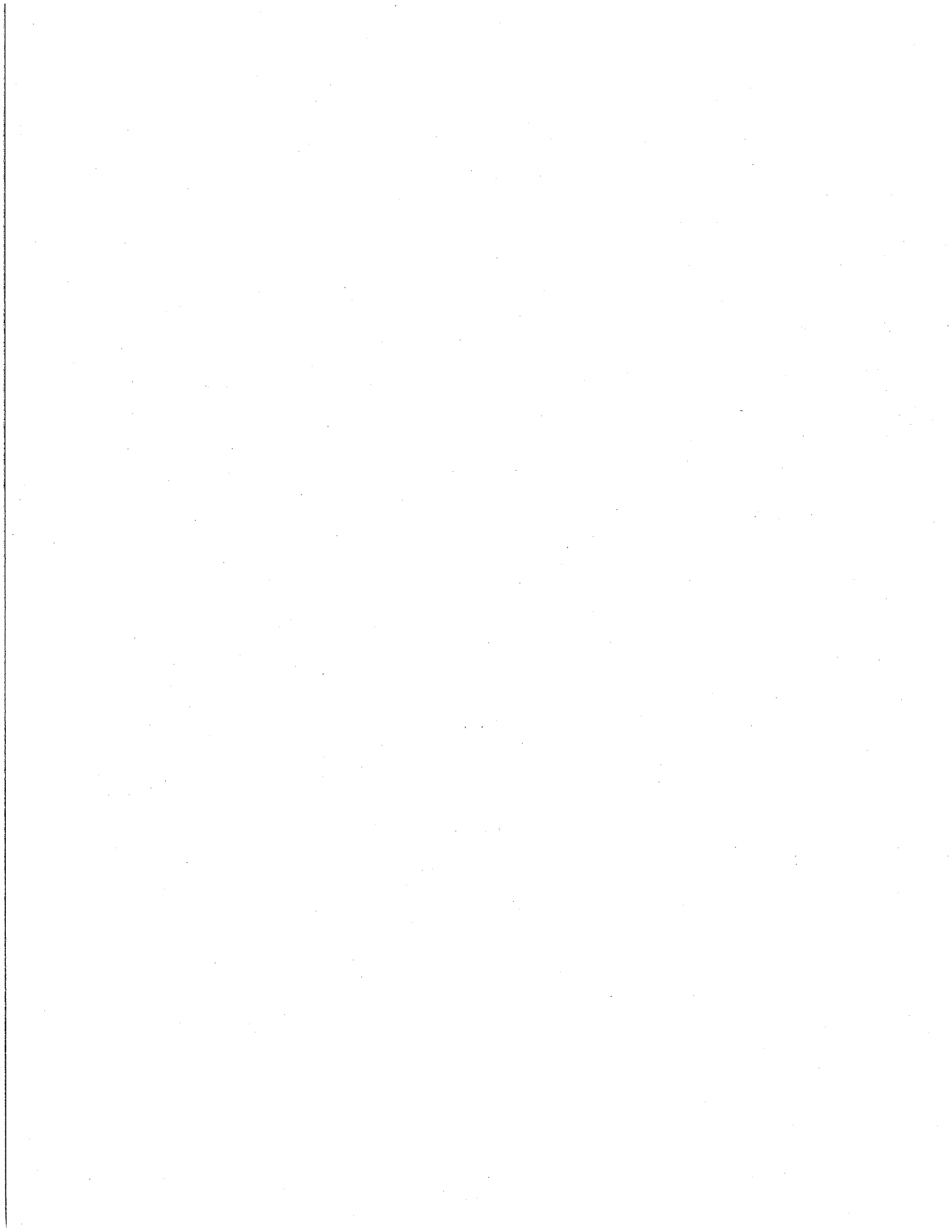
I would note that both OPD and SFPD only give press passes to full time employees of media outlets of general interest who are required to report as part of their regular job. So, only the writers are able to get press passes, not editors, producers, etc. and no independent journalists. It might be a good idea for us to talk about two different levels of press passes - one that is a pass - i.e. lets you pass behind a police line to report; and one that is a press ID - that is makes sure that the department understands you are there in a professional capacity.

I also have an independent recommendation:

For many years, the National Lawyers Guild had a team of legal observers who were present at protests in San Francisco. They were known to the OCC and the SFPD, wore special vests that said legal observers, and were allowed to remain in the area of a crowd and observe the events. I think that we should consider working the NLG or someone else to establish a squad of legal observers in Berkeley. This would be different than copwatch in that it is a neutral body - more like the UN peacekeepers than an advocate.

Let's talk later.

Alison



## Mutual Aid discussions with BPD at PRC meetings

*(Other than the one exception noted, these are summaries – and not verbatim transcripts of what was said – based on staff listening to meeting recordings. The times noted are those of the recording, for staff's reference.)*

### June 10, 2015

1:04 Lt. (Capt.) Frankel, as part of BPD presentation of report:

In conversation with Alameda Co. Mutual Aid (MA) coordinator, they agreed to send 250 officers.

MA covered under Calif. OES Guide for Emergency Ops

Allowed to request when event or circumstances are beyond their local ability to handle.

Request is made through the Co. MA coordinator. When authorized to make the call, they contact Sheriff's Dept. Discuss resources needed, the mission of responding officers, and what equipment is required to handle. Sheriff contacts law enforcement agencies within the operational area

When they come to our City, WE are in charge of the operation. However, MA responders are required to follow their own policies, and to bring their state-approved equipment.

To manage events involving multi-agency situations, required to use SEMS. Scalable tool for resource management. Mandated to do so by Govt Code sec. 8607(a).

1:06 Staging. Chose 2100 McKinley Ave. PSB parking lot too small. McKinley chosen due to proximity to PSB. Responding agencies check in there. Mutual aid commanders could easily access the DOC; responding officers could receive briefings in their briefing room; food and bathrooms avail. there.

Issues: Could have chosen more remote site, but that presents other problems for security and communications.

1:07 On Dec. 6, briefing was at 3:30 p.m. All BPD resources and half MA responders there. Decided in planning only half would respond. And depend on how things went, decide whether other half needed. One BPD commander was designated MA liaison. Provided ops plan and briefed MA responders.

*(The remainder of these notes from June 10 are from those typed during the meeting. The recorder had stopped, unbeknownst to PRC Officer.)*

Commissioner Q&A 2:38

**Vicente**

Mutual Aid – what depts. and how many and what weapons?  
Whose armored truck and why?

Capt Harris: BPD doesn't have armored vehicles  
Request for MA is made to Alameda Co. Sheriff's office and they call other agencies.  
Sgt. Montgomery: 250 officers 1<sup>st</sup> night; 100 officers from 7 agencies 2<sup>nd</sup> night  
Brought whatever equipment they had. State doesn't dictate. Nothing outrageous in their mind about what was brought.  
Meehan: Hayward's armored vehicle?

**Lippman**

Mutual aid – Council adopted PRC recommendations re crowd control in 1992. One of them concerns mutual aid: BPD take direct supervisory ability . . . to maximum allowed by law. Abide by Berkeley policy. If can't, then BPD can choose to not use. Was Chief aware of this policy, passed in 1992?

Chief: Was not aware.

In 2009 redrafted Crowd Management policies. Assume done in consultation w/ community and with those docs.

GL: assume City law.

Chief[?]: Mayor has never prohibited using one [armored vehicle?]. But don't own one.

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**June 17, 2015**

1:03:25 **GL**

Chief, you said Sheriff chooses agencies in mutual aid.. Has dept. ever tried to provide input on what agencies participate?

Chief: Not local agency's role. We make a request; the Sheriff makes a determination based on their polling of the agencies in the area as to who is available. That's not how the system works. We're not in a position – suppose if we did want to cherry pick, and say we do want this or that agency to show up, we'd get same response when we asked for help: some would show up and some would not, and the system would simply break down.

GL: So there's no rule against it, but we don't find it advisable.

Chief: Not sure what the rules are, but we've never done it and not aware of any other agency that has. Due to the necessity of being able to rely on mutual aid. No agency is large enough to handle every eventuality. Mutual aid is critically important and state mandated rule. So we have to be open to the agencies who are willing to assist us.

GL: More info about who participated and what days? Incl. who supplied armored car.

Chief: Have some info – can give short list today or longer list later:

Lt. Dave Frankel: Dec. 6 Alameda Co Sheriff's Office, Alameda PD, Hayward PD, Pleasanton PD, Livermore PD, Oakland PD, CHP and UCPD.

Dec. 7 Alameda Co Sheriff, Alameda PD, Fremont PD, Newark PD, CHP, Pleasanton PD, Livermore PD.

GL : Whose armored car? Media and eyewitnesses reports say Hayward. Can you confirm?

Chief: Believe Hayward; not sure.

GL: Position of dept. that it has no control over the makeup, conduct or equipment of other departments other than act according to law?

Chief: No.

GL: To what extent does inviting agency control equipment or conduct?

Chief: Equipment decided by agency who possesses it. We can provide general guidelines and provide a mission -- what we are trying to accomplish. And here are guidelines on how we'd like to do it. Have no authority to tell another agency what their policy should/shouldn't be and whether they should/shouldn't follow it. They're required to follow their policies and we're required to follow ours.

GL: And yet you do provide overall tactical [direction] to the event.

GL: Pathfinders -- a state or local concept? Part of mutual aid?

Chief: What we use to help liaison with mutual aid responders.

GL: Do the Pathfinders supervise the teams?

DF: Pathfinders are BPD sgts or officers assigned to mutual aid squads. They're riding with them, usually sitting next to commander of the squad. Primary role is to assist with communication and navigation issues. Relay taskings from the DOC to them.

GL: Do you have any accounting of their activities, such as their use of less than lethal force?

DF: No, pathfinders not tasked with tracking other agencies' use of force; they follow their own protocols re tracking.

GL: Are pathfinders riding with the other agencies supervising the other agencies?

DF: They are conveying commanders' directions from the DOC.

GL: Having seen/reviewed use of force doc from Hayward I see extensive use of less lethal force. Both sponge and rubber bullets. Were they directed to use those? Conveying orders to use from the command staff?

DF: Decisions to use less lethal were made by people in charge of those squads.

Chief: Would add that not only are they required follow their own policy, they're also expected to protect themselves. If they believe in a given situation that use of less lethal is to prevent further harm, then an agency would do that. They're not required to wait for our approval to do that.

#### 1:10 GPV

Is it your understanding that the responding agencies follow their own general orders and state and federal law and state-mandated POST training?

Chief: Yes, they're required to follow the law and their own rules and policies. Presumably following the state-mandated training they received.

GPV: No other agency in county that answered call for mutual aid that would be in violation of any state or federal statute. We're talking about someone coming into our city following a G.O. that is much different from our approach to crowd control/management.

Is there any police dept in the state of California that doesn't follow federal and state regulations in terms of G.O.s for that to be such a concern? Want to make it clear that every police dept in the state, regardless of G.O.s, follows state and federal law. We can change our own G.O.s, affecting how we react, but we cannot change how other agencies operate.

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**August 12, 2015**

Discussion of draft findings dated 8-10-15

16:20

Paragraph 7 line 8 ["Under the current BPD policy, mutual aid responders follow their own department's internal rules and protocol.<sup>footnote.</sup> "Footnote: BPD Report, Page 16, paragraph 3."]

TR: Is it BPD policy or per the Mutual Aid agreement? There's a difference.

AB: It's both in the current G.O. and I think in the Govt Code.

GL: State law is to the contrary. LEMA. All contradict this and say the inviting agency is responsible for what happens; conduct; materials.

AB: That's not what this says. BPD is responsible for setting and explaining the mission. But if Hayward PD says we always put 2 officers per car, and BPD says we only want one per, Hayward gets to put 2 officers .

Capt. D. Frankel: State guidelines say hosting agency is in charge, but individual responding agencies follow their own policies. For instance, when Oakland was on the line, they refused to do certain things b/c it was against their own policy; whereas, other agencies would do things differently.

GL: [inaudible]

DF: Several instances where other agencies wouldn't do things b/c it was not within their policy.

TR: So BPD couldn't require them to go against their own policy, just as if you're in another jurisdiction you follow your own policy.

DF: Accountable for own policies.

TR: By law? They could say we're not going to do this b/c against our policy?

...

20:30

Lt. D. Montgomery: Here's a concrete example of what actually happened. CHP arrived in our city on a mutual aid request that had gone beyond our county. They arrived with a squad of 50 officers; they consider their special response team to be 100 officers. When we asked them to deploy and start taking assignments, they refused and said we will not, until entire squad of 100 officers is here. The Govt Code allows them to 1) keep their chain of command and units together and intact; and 2) as well as follow own policies.

AB: Oakland PD doesn't allow for use of batons in crowd control. If BPD responds into OPD for cc, and BPD does allow batons for cc, will it use batons for cc?

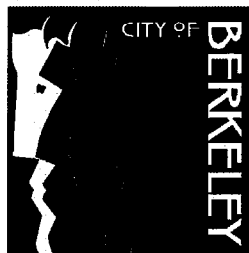
DM: Yes, they will. But generally reconcile differences with command and give assignments that are appropriate to them, e.g., by not having BPD doing front line crowd stuff.

BV: What happens if Oakland comes in and brings dogs, for instance.

DM: We did have a canine unit respond; we asked them to keep the dog in staging area, which they did. Most of the time it's not a matter of them really wanting to use a particular resource; they bring what they think is appropriate and we ask them to make adjustments. We negotiate, and try to give them assignments. We're in charge of the event.

[The Commissioners changed the sentence to omit "Under the current BPD policy" and to change the footnote reference to cite to the Calif. OES guide.]

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**City of Berkeley**

**Police Review Commission  
Report to the City Council**

**Investigation Into the Police  
Department Response to Protests  
on December 6, 2014**

**Commissioners:**

**Alison Bernstein (Chair)  
George Perezvelez (Vice-Chair)  
Benjamin Bartlett  
Jerry Javier  
George Lippman  
Terry Roberts  
Ann Rogers  
Michael Sherman  
Ari Yampolsky**

**December 1, 2015**

9-24-15

2 **1. Preface**

3  
4 The Berkeley Police Review Commission (PRC) was created by Berkeley voters "...to  
5 provide for community participation in setting and reviewing Police Department policies,  
6 practices and procedures and to provide a means for prompt, impartial and fair  
7 investigation of complaints brought by individuals against the Berkeley Police  
8 Department." (Berkeley Municipal Code Sec. 3.32.010.) Established in 1973, it is one of  
9 the oldest civilian oversight agencies in the nation.

10 The nine members of the Commission are appointed by the Mayor and City  
11 Councilmembers. In addition to the current members of the PRC listed on the cover page,  
12 former Commissioners Bulmaro Vicente and Lowell Finley (a temporary appointment)  
13 contributed to the investigation.

14 PRC staff are part of the City Manager's Office. PRC Officer Katherine Lee and  
15 temporary Investigator Beneba Thomas assisted the Commissioners in conducting their  
16 investigation and producing this report.

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3 **2. Introduction**

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5 Beginning on December 6, 2014, the City of Berkeley experienced several days of  
6 protests sparked mainly by the deaths of black men at the hands of police officers in  
7 Ferguson, MO and Staten Island, NY. The first night of protests drew the largest crowds;  
8 unfortunately, the peaceful resolve of the vast majority of demonstrators was undermined  
9 by individuals intent on committing violent acts against people and property. But the  
10 response of the Berkeley Police Department, even by its own assessment, fell short of  
11 community expectations. The days and weeks that followed were marked by public outcry  
12 over perceived excessive use of force and infringement on First Amendment rights at the  
13 hands of police. The City Council and the Police Review Commission heard from scores  
14 of members of the public who witnessed or were victims of police action on December 6.

15 One of the several actions the Council took in response was, at its February 10, 2015  
16 meeting, to ask the PRC to conduct an investigation:

17 *Refer to the Police Review Commission to initiate an investigation into the police*  
18 *response to protests on December 6, 2014; the appropriateness of using tear gas,*  
19 *and other non-lethal munitions, and baton strikes to disperse the crowd; and make*  
20 *recommendations based on what was learned from the incident and what could be*  
21 *improved upon for revised policies and procedures on crowd control, the use of*  
22 *force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as*  
*well as policies on mutual aid in First Amendment activity and crowd control*  
*incidents. . . .*

23 *The Council also refers the attached questions to the Police Review Commission*  
24 *to consider in conducting their investigation.<sup>1</sup>*

25 In conducting its investigation, the PRC listened to firsthand accounts of protestors'  
26 experiences at several of its meetings. On February 25, the PRC held a special meeting  
27 on the University of California campus to facilitate the ability of students – who comprised  
28 a large portions of the demonstrators – to speak about what they saw and experienced.  
29 Several Commissioners drew on their own experience, having themselves participated in  
30 the December 6 protests. Some Commissioners and staff attended the City Council's  
31 January 17 Worksession on Improving Police and Community Relations. Staff compiled  
32 written summaries of public comment from that Worksession and other City Council  
33 meetings for the PRC.

34  

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<sup>1</sup> See Appendix 1.

1 The PRC's investigation included review of dozens of documents the BPD supplied,  
2 along with some 400 video clips of the December 6 events taken by BPD, protesters,  
3 media, and other civilian observers. Collectively, the Commissioners viewed each one of  
4 those clips.

5 The Commission studied the BPD's applicable policies, including General Orders C-64  
6 (Crowd Management and Control), U-2 (Use of Force), and M-2 (Mutual Aid and  
7 Agreements with Law Enforcement Agencies). It also reviewed the parallel policies of the  
8 Oakland and San Francisco police departments, as well as state law governing mutual  
9 aid.

10 On June 9, the BPD issued its report, "Response to Civil Unrest December 6<sup>th</sup> and 7<sup>th</sup>,  
11 2014: A Review of the Berkeley Police Department's Actions and Events of December 6  
12 and 7, 2014," which the Commission reviewed extensively. Police Chief Michael Meehan  
13 and the BPD Post-Incident Review Team presented the report to the PRC at its June 10  
14 meeting, and then answered questions from the Commission. The Chief and/or review  
15 team members attended all subsequent PRC meetings, regular and special, to answer  
16 additional questions and provide clarifying information as the Commission continued its  
17 work.

18 The Commission appreciates the BPD's candor in spelling out in its report that the  
19 strategies used on December 6 did not achieve the desired outcome, and in identifying  
20 numerous areas for improvement. It is pleased to see the BPD reaffirm its commitment to  
21 protecting free speech and facilitating protests regardless of the message being  
22 expressed. At the same time, the PRC's views of what happened and how the BPD can  
23 improve future such responses diverge in some respects. The PRC questioned the  
24 accuracy of the BPD's characterization of who organized the protests and why, so the  
25 Commission produced its own findings of the events of December 6 (Section [3]).

26 Following the Findings, the PRC offers its analysis of those events in the Discussion  
27 section (Section [4]). Next, in the Recommendations section (Section [5]), the PRC  
28 assesses each of the 32 recommendations the BPD made in its report. The Commission  
29 agrees with some of the recommendations, offers alternatives to most others, and  
30 suggests [a few] recommendations of its own.

31 The Council asked the Commission to report its recommendations to the City  
32 Manager, Chief of Police and City Council by August 10. Due to the significance of the  
33 Council's charge, the PRC decided to handle its investigation as a full Commission,  
34 without establishing a subcommittee (other than a steering subcommittee to help organize



1 the Commission's work at the start.) The Commission worked diligently. Nonetheless, the  
2 PRC needed an additional 2-1/2 months to complete its work, due to the scope of the  
3 events and the policy issues raised. From the time of the Council's February referral until  
4 the final approval of this report, the PRC held ten special meetings to devote more time to  
5 the investigation, in addition to its 14 regular meetings, while clearing its agendas of all  
6 else but the most pressing matters. It took time to get a good picture of what unfolded  
7 over several hours, in protests that moved from the campus area to the I-80 freeway and  
8 back, and that involved crowds of up to 600 people. The police policies implicated – chief  
9 among them those regarding crowd control and crowd management, use of force, and  
10 mutual aid – are some of the most challenging and complex issues to tackle.

11 In a separate action in February, the City Council asked the PRC to review all BPD  
12 policies and orders and make recommendations for revisions that it deems appropriate. In  
13 the course of this investigation, the PRC reviewed many applicable policies of the BPD  
14 and other agencies, and made numerous general recommendations about policy, which  
15 are described in this report. Thus, much of the groundwork has been laid for developing  
16 specific revisions to the BPD's policies. The PRC looks forward to working with the BPD  
17 on these important next steps.

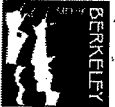
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# POLICY COMPLAINT FORM

PRC POLICY

CASE # 22904



## Police Review Commission

1947 Center Street, 3rd Floor, Berkeley, CA 94704

Website: <http://www.ci.berkeley.ca.us/prc>

E-mail: [prc@ci.berkeley.ca.us](mailto:prc@ci.berkeley.ca.us)

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received

9-21-15

1

Name of Complainant: PITCHER STEPHEN  
Last First Middle

Home Address: 2124 1/2 PRINCE BERKELEY 94705  
Street City State Zip

Home Phone: 510-845-3965 Alt Phone: \_\_\_\_\_

E-mail address: pitcherbat@gmail.com

Occupation: Unemployed Gender: \_\_\_\_\_ Age: \_\_\_\_\_

Ethnicity (For statistical purposes only):

- Asian
- Black
- Caucasian
- Hispanic/Latino
- Multiethnic:
- Other:

2

Please identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

Arresting bicyclists on the 'Bicycle Boulevard' M, Via & Parker

3

Please provide a factual description of the incident that forms the basis of your complaint. Please be specific and include what transpired, and how the incident ended.

Location of Incident (if applicable) [It occurred several

weeks ago. I sent in the forms, so I don't have the exact dates.] I was arrested — and will be fined \$600, for riding 10 mph or less through one of the dozen stop signs on the city-designated Bicycle Boulevard

It happened twice in one week.

4

What changes to BPD policy, practice, or procedure would you propose?

If the BPD needs money so badly, I would suggest they adopt another approach than preying on elderly bicyclists harmlessly traversing a "Bicycle Boulevard." Perhaps they could have a fashion show?

5

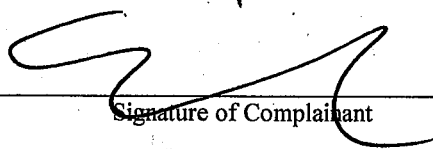
Is there any additional information you can provide the PRC about your complaint?

There is no place for bicycles in this society - we are totally (Traffic-wise) marginalized. Yet bicycles do the least harm to the planet, among means of conveyance. Motorists hate us, but a lot of us are trying to be respectful of them.

6

**VERIFICATION**

I hereby certify that, to the best of my knowledge, the statements made herein are true.

  
Signature of Complainant

9/11/15  
Date signed

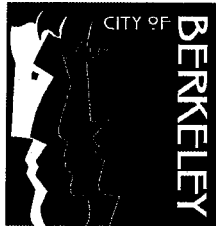
7

How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: \_\_\_\_\_
- Referral: \_\_\_\_\_
- Other: \_\_\_\_\_

*For Office Use Only*

Complaint Received By \_\_\_\_\_



Office of the City Manager

September 25, 2015

To: Honorable Mayor and Members of the City Council  
The Police Review Commission

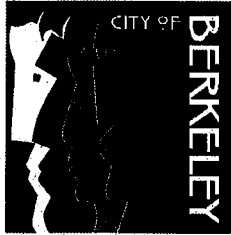
From: *DWR* Dee Williams-Ridley, Interim City Manager

Subject: Use of Pepper Spray Incident

Attached please find the Use of Pepper Spray reports that occurred on August 6, 2015. The authorization for these reports comes from the City of Berkeley Council action taken September 16, 1997, directing that any use of "Oleoresin Capsicum" OC spray be reported to the City Council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Attachment: Use of Pepper Spray Reports (2) Case 15-45650

cc: Gil Dong, Interim Deputy City Manager  
Michael Meehan, Chief of Police  
Ann-Marie Hogan, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Public Information Officer



Police Department

September 21, 2015

To: Dee Williams-Ridley, Interim City Manager  
From: Michael K. Meehan, Chief of Police *MKM*  
Subject: **USE OF PEPPER SPRAY INCIDENTS**

Attached please find the Use of Pepper Spray reports that occurred on August 6, 2015. The authorization for these reports comes from the City of Berkeley Council action taken September 16, 1997, directing that any use of "Oleoresin Capsicum" OC spray be reported to the City Council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Attachments: Use of Pepper Spray Reports (2) Case 15-45650



# BERKELEY POLICE DEPARTMENT USE OF PEPPER SPRAY REPORT



*(Note – this is a public document)*

This report is to be completed by any Department employee who use "Oleoresin Capsicum" OC spray during the performance of his or her duties. The authorization for this report comes from City of Berkeley Council action taken September 16, 1997, directing that any use of "OC" be reported to the City council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

**Date:** August 6, 2015  
Date of Pepper Spray Report

**From:** Ofc. Pierantoni #96  
Note: This form is to be completed by the Department employee using the spray. If that person is unable to complete this form due to injury, it shall be completed by his or her immediate supervisor.

**Case Number(s):** 15-45650

**Incident Date:** August 6, 2015

**Incident Time:** 0836 hrs

**Incident Location:** Camelia St. West of San Pablo Ave.

**Application was:**  Effective  Ineffective

**Subject:**  Adult  Juvenile

<b>Subject description:</b>	<u>  M  </u>	<u>  6'0"  </u>	<u>  160  </u>
	Sex	Height	Weight

**First Aid for Subject:** Paramedic responded and administered First Aid    Yes     No

**Additional comments on First Aid rendered:**

**Nature of Incident:**

5150 WI evaluation and person acting violently.

**Summary and justification of the Actions of Officer(s) Involved:**

See Incident report completed under Case # 15-45650

Narrative from report:

On 8-6-2015 at 0836 hrs, I responded to Camelia St. west of San Pablo Ave. to assist with a welfare check/5150 WI investigation involving [redacted] Ofc. Murray #85 had contacted/detained [redacted] for acting violent and causing a disturbance.

Ofc. Murray and I engaged [redacted] and tried to communicate with him but he was totally uncooperative and belligerent, and at times threatening, saying he would become violent if we approached him. The entire time we were attempting to speak to [redacted], he flexed his chest, shoulder, and arm muscles, and made fists with both his hands. We asked [redacted] several times to sit down (to better control him and maintain everyone's safety) but he refused to comply.

CIT trained Sgt. Delaluna #5-32 also attempted to communicate with [redacted] but he continued to be belligerent, threatening, an non-compliant.

The decision was made that [redacted] met the criteria for a 5150 WI hold/detention.

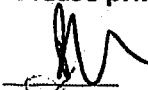
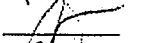
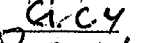
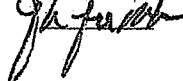
Because of his threatening behavior, I wanted to detain [redacted] in handcuffs. I told [redacted] of my intention to handcuff him and ordered him to turn away from me and place his hands behind his back. [redacted] refused to comply. I again ordered him to turn around and place his hands behind his back, this time warning him that if he refused to comply, I would spray him with O.C. [redacted] said, "Fuck you, go ahead."

I sprayed a burst of O.C. onto [redacted] eyes and face; Ofc. Murray also sprayed [redacted] with O.C. [redacted] began wiping his hands down his face and appeared to be temporarily stunned by the O.C. We took the opportunity to take control of [redacted] wrists and direct him to a prone position on the ground where we handcuffed him without incident.

We had BFD respond to the scene to provide post O.C. care to

[redacted] was transported by BFD for 5150 WI care.

Please print and route through Chain of Command to the Office of the Chief.

  
\_\_\_\_\_  
Duty Supervisor  
  
\_\_\_\_\_  
Watch Commander  
  
C.C.Y  
\_\_\_\_\_  
Operations Captain  
  
\_\_\_\_\_  
Chief of Police

Information redacted is protected  
from public disclosure by  
California Government Code  
6254 (f), (k).





# BERKELEY POLICE DEPARTMENT USE OF PEPPER SPRAY REPORT



(Note - this is a public document)

This report is to be completed by any Department employee who use "Oleoresin Capsicum" OC spray during the performance of his or her duties. The authorization for this report comes from City of Berkeley Council action taken September 16, 1997, directing that any use of "OC" be reported to the City council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Date: 8-6-15  
Date of Pepper Spray Report

From: R. MURRAY  
Note: This form is to be completed by the Department employee using the spray. If that person is unable to complete this form due to injury, it shall be completed by his or her immediate supervisor.

Case Number(s): 15-45650

Incident Date: 8-6-15

Incident Time: 0836

Incident Location: CAMELIA WEST OF SAN PABLO

Application was:  Effective  Ineffective

Subject:  Adult  Juvenile

Subject description: M 6-02 210  
Sex Height Weight

First Aid for Subject: Paramedic responded and administered First Aid Yes  No

Additional comments on First Aid rendered:

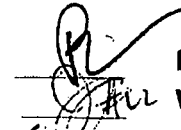
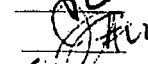
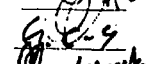
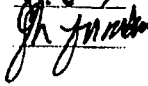
**Nature of Incident:**

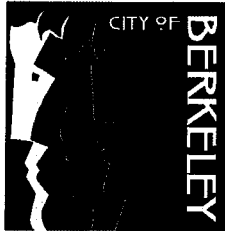
I ON VIEWED A VIOLENT SISO WHO WOULD NOT RESPOND TO MULTIPLE SIMPLE VERBAL COMMANDS. SUBJECT WAS IN A FIGHTING STANCE AND STATED HE WOULD ENSURE ANYONE WHO TOUCHED HIM.

**Summary and justification of the Actions of Officer(s) Involved:**

A VIOLENT SISO WOULD NOT COMPLY WITH SIMPLE INSTRUCTIONS AND REFUSED TO BE HANDCUFFED. I SPRAYED THE SUBJECT FROM ABOUT 7 FEET AWAY WITH TWO 1/2 SECOND BURSTS IN THE AREA BETWEEN THE SUSPECTS FOREHEAD AND MOUTH.

Please print and route through Chain of Command to the Office of the Chief.

  
Duty Supervisor  
  
Watch Commander  
  
Operations Captain  
  
Chief of Police



Office of the City Manager

COMMUNICATION No. 4404

**01**

**Worksession Item**

WORKSESSION

October 6, 2015

To: Honorable Mayor and Members of the City Council  
From: *DWR* Dee Williams-Ridley, Interim City Manager  
Submitted by: Matthai Chakko, Assistant to the City Manager  
Subject: Stanford Study: Electronic Control Weapons Study (e.g. Tasers ©)

SUMMARY

On May 6, 2014, the Council directed the City Manager to research and report back to the City Council regarding the history, potential benefits, impacts, and possible unintended consequences of allowing Berkeley police to carry and use Tasers, and to include in the report information regarding other jurisdictions "best practices" and protocols, an analysis of changes in technologies, and the feasibility of doing a pilot program, with further direction that the City Manager also consult with the Police Review Commission and the Community Health Commission.

After an extensive search for an organization that could best perform the necessary research and analysis, the City engaged the Stanford Criminal Justice Center (SCJC) to conduct such a study. The work was done by the SCJC on a pro bono basis. The selection of this organization was made with consultation from representatives of the two commissions.

Founded in 2005, SCJC serves as a research and policy institute focused on the criminal justice system. Its efforts are geared towards policy research for the public sector, as well as providing pedagogical opportunities to Stanford Law School students with academic or career interest in criminal law and crime policy. The report was written by Jena Neuscheler and Akiva Freidlin and overseen by SCJC Executive Director Debbie Mukamal and Professor David Sklansky. The work on the study began in January and concluded this summer.

The full SCJC study is appended to this report.

CURRENT SITUATION AND ITS EFFECTS

The Stanford Criminal Justice Center examined a number of issues involving electronic control weapons, a term that also includes devices with the trade name "Taser." The center's report looked at the devices themselves, the health effects of ECWs, how and when they are used, and effects on public safety.

The center was not asked to make a recommendation. Their research has shown that the extent to which local jurisdictions make decisions to use electronic control weapons depends on the values and needs of the particular community.

Part 1 includes a summary of the development of the technology, an analysis of how the devices work, and their reliability. The study also examines the health effects of the devices.

Part 2 examine how and when ECWs are used. The section also examines how widely they are used, who they are used upon, legal standards and use of force policies.

Part 3 assesses questions of whether ECWs replace use of lethal force, reduce injuries to officers, reduce non-lethal injuries to suspects and whether there have been study of other ways to achieve these goals.

#### BACKGROUND

The City Manager's Office issued an RFP to conduct the research in the Council referral. Proposals were reviewed by a panel that included representatives from the Police Review Commission, the Community Health Commission, the Police Department, and the Finance Department. The panel consensus was that the proposals did not adequately respond to the RFP or were too costly. The Stanford Criminal Justice Center has a highly regarded reputation for neutral, thorough and insightful research. They have done similar projects for other jurisdictions. The panel that included representatives of the two commissions convened to meet with and ask questions of the entire SCJC team. The panel supported the use of the SCJC to conduct this study.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### POSSIBLE FUTURE ACTION

To be determined by Council.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown.

#### CONTACT PERSON

Matthai Chakko, Assistant to the City Manager, (510) 981-7008

#### Attachments:

1: Stanford Criminal Justice Center Report on Electronic Control Weapons (ECWs)

**Lee, Katherine**

---

**From:** Taylor Kemp <computerlove87@gmail.com>  
**Sent:** Sunday, September 20, 2015 2:32 PM  
**To:** PRC (Police Review Commission)  
**Subject:** Officer Brown issuing tickets  
**Attachments:** Ticket Berkeley Bowl.jpg

I was informed by other shoppers as well as employees of Berkeley Bowl that Officer Brown hates Berkeley Bowl and REGULARLY tickets cars that DO have properly displayed parking permits. If this is true, that is EXTREMELY unprofessional and completely illegal. Like I said, I am not sure if it is true, but someone really needs to look into this behavior and correct appropriately. Brown should at least be reassigned to a different part of the city if he can't keep his own strange prejudices out of his work. Please see attached picture of my ticket. Thank You.

**Taylor Kemp**

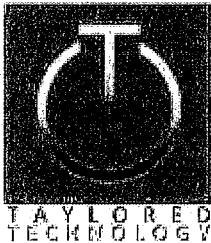
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**Managing Technician / Founder – Taylored Technology**

[computerlove87@gmail.com](mailto:computerlove87@gmail.com)

**(415) 342-6875**

“Why ‘Geek’ Your computer when you can have it Taylored?!”





Contested

**CITY OF BERKELEY  
NOTICE OF PARKING VIOLATION**

Citation Number:  
**1503518406**

Date: 09/19/2015 04:50 PM  
Officer: BROWN 820  
License: 7FNR793 CA 08/2016  
Make: TOYT GR  
VIN: 8342

Marked Time:  
Location:  
2020 OREGON ST  
Meter:

Violation: 14.52.083  
NO PAY STATION DMT DISPLAYED

Fine Amount: \$ 43

Remarks:

KEEP THIS  
PORTION



EXPIRES  
SEP 19 15  
05:08 PM  
\$ 0.50  
OREG2001

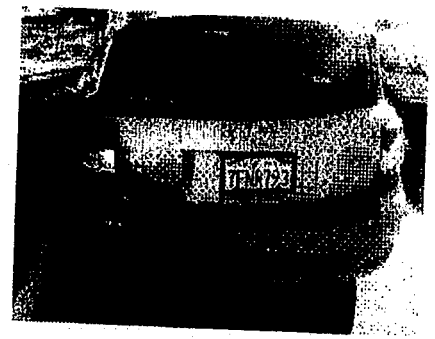
03967175  
PROOF OF  
PURCHASE

**City of Berkeley**  
NOT VALID AT SINGLE SPACE METERS

**05:08** PM SEP 19  
▲ Expiration Time ▲▲ Valid Date  
09/19/15 at 04:48 PM  
OREG2001 22386

03967175  
SEE DISPLAY DIRECTIONS  
ON OTHER SIDE

VALID ONLY IF PROPERLY DISPLAYED  
ON STREETSIDE DASHBOARD  
THIS SIDE UP



You have received this citation for a violation of parking regulations. The section of Berkeley Municipal Code or California Vehicle Code with which you are charged of violating and the penalty are listed above.  
Payment must be received within 21 days to avoid penalties and possible hold on your DMV registration renewal.

