

DRAFT

UNIVERSITY
OF
CALIFORNIA

Response to Protests on UC Campuses

2012

Response to Protests on UC Campuses

A Report to President Mark G. Yudof

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General Counsel Charles F. Robinson

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Draft—For Public Comment

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Executive Summary

After physical conflict erupted between police and students during demonstrations at UC Berkeley and UC Davis in November 2011, University President Mark G. Yudof asked Vice President and General Counsel Charles F. Robinson and Berkeley Law School Dean Christopher F. Edley, Jr. to review existing policies and practices regarding the University's response to demonstrations and civil disobedience. This review was not intended as a fact-finding investigation into the November 2011 protests, or into any other particular incident. Other reviews have been tasked with that objective. Rather, this review was aimed at identifying best practices to inform the University's response to *future* demonstrations. Since work on the review—and this resulting Report—began, additional clashes on other campuses have underscored the need for this analysis.

This Report is premised on the belief that free expression, robust discourse, and vigorous debate over ideas and principles are essential to the mission of our University. The goal of this Report is to identify practices that will facilitate such expression—while also protecting the health and safety of our students, faculty, staff, police, and the general public. For some campus administrators and police, this will require a substantial shift away from a mindset that has been focused primarily on the maintenance of order and adherence to rules and regulations. For some protestors, this will require taking more responsibility for their activities as well, including by educating themselves about protest-related rules and considering the impact acts of civil disobedience can have on others in the campus community.

In developing this prospective framework for responding to protests and civil disobedience, the authors examined existing University policies and practices on speech, demonstrations, and use of force by police; the opinions of students, faculty, administrators, staff, and police on all ten campuses; and the views of academics and other experts on speech, civil liberties, and law enforcement. The objective has been to be as broad and fair as possible in collecting information in order to develop a thoughtful and fact-based Report.

Ultimately, the Report arrives at 50 recommendations in nine areas:

1. **Civil Disobedience Challenges.** The Report points out the need for the University to define and communicate more clearly the free speech rights and responsibilities of all members of the University community. In particular, the University and individual campuses should amend their policies in order to recognize explicitly the historic role of civil disobedience as a protest tactic. Those policies should also make clear, however, that civil disobedience by definition involves violating laws or regulations, and that civil disobedience will generally have consequences for those engaging in it because of the impact it can have on the rest of the campus community.

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2. **Relationship Building.** The University must endeavor to increase trust and understanding among campus stakeholders, by better utilizing existing communication channels and building new ones. Many protests can be avoided if there are effective lines of communication between would-be protesters and administrative officials, and opportunities to raise substantive concerns with the Administration and to obtain a meaningful response. The University's response to protests can also be handled better and more efficiently by building strong working relationships between police officials and administrators and relationships of trust between campus police and the communities they serve.
 3. **Role Definition and Coordination.** To ensure an effective University response to protests involving civil disobedience, there must be an established system for coordination between police and administrators, with well-defined roles and a shared understanding that ultimate responsibility for the campus's response rests with the Chancellor. The Chancellor and other administrators should develop and follow a set of guidelines designed to minimize a police response to protests, and to limit the use of force against protesters wherever possible. Senior campus administrators with decision-making authority should be on site during significant protests. And greater emphasis must be placed on coordinating with outside law enforcement agencies who may provide assistance during large demonstrations.
 4. **Hiring and Training.** The Report advances recommendations regarding hiring police officers and better training them about how to respond to civil disobedience. It also recommends that University administrators be required to attend regular trainings, in order to educate them about approaches for de-escalating protest situations, and to help them better understand police policies and practices.
 5. **Communications with Protesters.** With strong communications between demonstrators and the campus Administration, civil disobedience can sometimes be avoided—or, at least, can take place peacefully without any use of force by police. The Report offers recommendations regarding communication and coordination with protesters in advance of a planned event, as well as during an ongoing demonstration.
 6. **Response During Events.** Once a protest is underway and individual protesters begin to engage in civil disobedience, the decisions made by administrators can directly affect whether the protest ends peacefully rather than with violence. The Report recommends several strategies for reaching a peaceful accord with protesters without resorting to the use of force by police. It also proposes adoption of policies to guide our campus police departments if the Administration decides that a police response to the protest is necessary, such as a systemwide response option framework with guidance on appropriate responses to different types of resistance.

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7. **Documenting Activity During Demonstrations.** The Report recommends several parallel methods for creating an accurate record of the actions of police and demonstrators during demonstrations. These include the use of neutral observers, a policy of videotaping activity at the demonstration, and the creation of police after-action reports following any police response to a demonstration.
 8. **Post-Event Review.** The Report recommends that the University adopt a systemwide structure located outside of the police department and the campus Administration for reviewing the response to civil disobedience.
 9. **Implementation.** Finally, the Report suggests a process for implementing the recommendations in this Report. Most significantly, it recommends that the President require each Chancellor to take concrete action to implement our recommendations, and to report promptly to the President on his or her progress.

The recommendations are being posted in draft form to be commented on and debated, after which they will be finalized and submitted to the President. To be sure, no single report can resolve all the issues the University faces regarding protest and civil disobedience. Successfully laying the groundwork for safe and accountable protest activity will take the commitment and effort of all members of the University community. This Report is just the starting point—an attempt to assist the University in moving forward to celebrate the diversity of opinion and culture on our campuses, to do so with respect and civility, and to build on the illustrious history of public involvement and free speech that is the DNA of the University of California.

Introduction

In November 2011, several of our University of California campuses experienced large protests concerning University policies and issues of income inequality. Many of these protests involved acts of civil disobedience by students and others. Each campus responded to these events in its own way. In several cases, the responses included the use of force by police, including the use of pepper spray and batons against student protesters. The actions by police on two campuses—Berkeley and Davis—have been the subject of particular scrutiny and criticism from within our University and across the nation. They have generated feelings of anger and distrust among students, faculty, and other members of our community.

The disturbing images arising out of those protests prompted demands for the University to investigate the conduct of the police and administrators, in order to understand what led to the use of force and why. The University immediately launched reviews of the particular responses at UC Berkeley and UC Davis to the November 2011 protests. Some of those reviews are ongoing.¹

At the same time, President Mark Yudof directed us to conduct a different but related review. Unlike the reviews looking backward at the demonstrations last November, President Yudof asked us to look forward. He asked us to review current policies and practices and to identify improvements to help the University avoid the use of force in response to future civil disobedience, both small and large scale.

Protest and civil disobedience are not new issues for our University. And yet, nearly fifty years after the birth of the Free Speech Movement, we continue to struggle with episodes of physical conflict arising out of civil disobedience. Our community members—students, faculty, staff, and the citizens who support our University—expect better. Many consider protests and even civil disobedience fundamental to the University's academic mission. They want the University to do everything possible to ensure that future civil disobedience does not result in the use of force by police. And our campus police and administrators also do not relish conflict with

¹ At Berkeley, an operational review of the police's response was conducted by UCLA Assistant Police Chief Jeff Young. Chief Young's report was released on Mar. 23, 2012, and is available at <http://administration.berkeley.edu/prb/UCPDOperationalReview-Redacted.pdf>. The Berkeley campus Police Review Board, chaired by law professor Jesse Choper, is also conducting a broader review of the events of November 9. A subcommittee of the Police Review Board (which includes student and staff representatives) has held two meetings open to students and other community members. The subcommittee also attended presentations by representatives of the faculty, student body, and campus police department. At Davis, internal affairs investigations of citizen complaints concerning the officers involved in the November 18 incident have been completed. Pursuant to state law, these investigations are confidential. See Cal. Penal Code § 832.7. The University also retained the consulting firm Kroll Associates, Inc. to prepare a comprehensive report regarding the events surrounding November 18. Kroll's report was provided to a task force comprised of students, faculty, staff, and other UC community members and headed by former California Supreme Court Justice Cruz Reynoso. The Reynoso Task Force Report, which includes Kroll's report, was released on April 11, 2012, and is available at <http://reynosoreport.ucdavis.edu/reynoso-report.pdf>. The Executive Council of the Davis Division of the Academic Senate also approved formation of a special committee to investigate the events leading to the use of force on November 18 (see <http://academicssenate.ucdavis.edu/committees/exec-council-nov-18.cfm>), and, at the request of Davis Chancellor Katehi, the Yolo County District Attorney's Office, in collaboration with the Yolo County Sheriff's Department, is also investigating the use of force by UC Davis police officers. Litigation concerning the Berkeley and Davis events has also been initiated.

protesters; they too want to see future demonstrations proceed peacefully without the need for police action. From all corners of our community, we hear the call for a meaningful change in the way that our University approaches civil disobedience on our campuses.

Our assignment, then, is *prospective*. Our goal is to identify best practices that will facilitate robust and peaceful discourse on our campuses, in keeping with our academic mission, while also protecting the health and safety of our students, faculty, staff, police, and the general public. For some campus administrators and police, this will require a substantial shift away from a mindset that has been focused primarily on the maintenance of order and adherence to rules and regulations. But this inquiry goes beyond police and administration practices. In our community, all members have a role to play in encouraging peaceful discourse and avoiding any physical conflict.

Toward that end, over the past six months we have reviewed existing University policies and practices on speech, demonstrations, and use of force by police; sought the views of students, faculty, administrators, staff, and police on all ten campuses; and looked outside of our system to obtain input from academics and other experts on speech, civil liberties, and law enforcement.

Although we began this project by addressing “protest” activity generally, we soon realized that the central challenge before us related to *civil disobedience* in the context of protests. There is no confusion on our campuses about the right of individuals to express themselves, and to assemble lawfully for that purpose. Such expression is essential to our educational mission. And it is lawful, so long as those expressing their views do so in accordance with the University’s reasonable time, place, and manner restrictions. These restrictions are established to ensure that protest activity does not infringe on the rights of others or interfere with important functions of the University. It is only when demonstrators engage in civil disobedience—the refusal to comply with laws or regulations as a *form* of protest or as a means of drawing attention to the demonstrators’ message—that more complicated and controversial issues arise. Exercising its enforcement discretion, what tolerance should our University have for civil disobedience? What types of civil disobedience should result in a response from the University? When, if ever, is it appropriate for police to use force in response to civil disobedience? Finally, and fundamentally, how can we best avoid or minimize conflict before tensions escalate?

In considering these and other issues regarding civil disobedience, this Report will address activity that potentially has a large impact on university functions. Protest events involving large groups of people obviously present that possibility. But the conduct of small groups may warrant the application of some of our recommendations as well.

Before turning to the body of the Report, in which we present our findings and recommendations, we offer here a brief background on protests and civil disobedience at our University. We then address the underlying principles that inform this review and methodology. Next, we summarize the nine areas in which this Report advances recommendations. Finally, we comment on the important role our campus police play in protecting our campus communities and explain why we do *not* recommend abolishing our campus police departments, despite the calls from some members of our community to do so.

I. BACKGROUND ON PROTEST AND POLICING AT THE UNIVERSITY OF CALIFORNIA

Our University has ten campuses across the State and is home to more than 235,000 students and 185,000 employees, including almost 20,000 faculty members. We are responsible for research, public service, the delivery of health care, and—most importantly—the education of Californians and people from across the globe. Our University is literally and figuratively a community of students, faculty, and staff.

With such a large, diverse, and intellectually vibrant academic community, it is not surprising that our campuses have frequently been the site of protest and civil disobedience. Indeed, ever since the Free Speech Movement began at our Berkeley campus, our University has been linked in the national consciousness with protest and free expression. The demonstrations at UC Berkeley’s Sproul Plaza in the 1960s became a pivotal period because American college students mobilized *en masse* to demand a right to speak equal to that of other adults. Establishing students’ right to free speech fundamentally altered the University’s relationship with its students and sparked similar protests across the country. Large protests continued in the following decades, first against the Vietnam War, and then on international issues such as apartheid and on more localized issues such as minority representation on campus. Hunger strikes by students at UCLA in 1993, for example, resulted in the creation of the César E. Chávez Center for Interdisciplinary Instruction in Chicana and Chicano Studies. Our campuses have also seen large protests concerning labor relations. Although students often spearhead the protests on our campuses, they are frequently joined by others—faculty, staff, and even those with no formal affiliation to the University. Indeed, as a public institution, barring non-affiliates from campus is usually inappropriate, as well as physically all-but-impossible for most of those portions of our campuses designated as public forums for speech activity.

Because of the structure of our University, administrators and police on the individual campuses are generally responsible for deciding how to respond to protests and civil disobedience on those campuses. The University of California has a Board of Regents and a single President. The President acts as the executive head of the University and leads the administrative headquarters of the University in Oakland. Each campus also has its own Administration, led by a Chancellor, which answers to the Office of the President. Campus administrators are responsible for most aspects of the day-to-day management of activities on their campus. Every campus

has its own professional police department, with sworn police officers who meet the same statewide standards for hiring and training as state and municipal police officers. Although the Office of the President coordinates certain systemwide police functions, it is not involved in the day-to-day management of any police department.² Instead, campus administrators oversee the campus police departments and are responsible for public safety issues on their campuses. Thus, when civil disobedience occurs on a campus, it is the campus administrators and their police counterparts who typically provide the University's response.

The vast majority of protests on our campuses do not result in the use of force, and many do not involve any police action whatsoever. Almost every day, demonstrators peacefully assemble and express their views somewhere within our University without any conflict. These routine protests and demonstrations involve no physical conflict, and they draw little to no attention from the press.

But occasional protests have engendered greater conflict. In 2009, for example, a group of students protesting against student fee increases and other budgetary issues barricaded themselves inside Wheeler Hall at Berkeley. During the tense, day-long stand-off that followed, police clashed with a large group that assembled outside of the Hall. The confrontation ultimately included pushing, baton strikes by the police, and struggles over metal barriers. In the aftermath, the Berkeley Police Review Board reviewed the incident and issued a 132-page report on the actions of the Berkeley Administration and campus police, including 19 recommendations for the police department and 13 recommendations for the Administration. This report is frequently referred to as the "Brazil Report," after former United States Magistrate Judge Wayne Brazil, then the Chair of the Review Board.³

Also in 2009, a large group protested outside a meeting of the Board of Regents at Covel Commons on the UCLA campus. One of the agenda items at the meeting was a proposal to increase student fees. Protesters again clashed with the police. Some demonstrators attempted to upend barricades and storm into the commons, and they threw sticks, water bottles, and vinegar soaked rags at police. Police pushed protesters and used batons and "tasers"⁴ against them. Again, a panel conducted a comprehensive review and ultimately issued a 62-page report. The UCLA report included nine separate recommendations for the Administration and UCLA Police Department.⁵

² See generally Universitywide Police Policies and Administrative Procedures, University of California, § 301 *et seq.* (Jan. 7, 2011), available at http://www.ucop.edu/ucophome/coordrev/ucpolicies/documents/policepol_adminproc.pdf.

³ See November 20, 2009, Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board (June 14, 2010), available at http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf.

⁴ A TASER® is a common brand of a "less-lethal" weapon known generically as an "electronic control device" or "ECD." Throughout this report, we employ "taser" to refer to all electronic control devices because of the general public's familiarity with the term, and because individuals we interviewed typically referred to "tasers" when discussing electronic control devices.

⁵ See November 2009 UC Regents Meeting: Post-Event Review Report (Nov. 22, 2010), available at http://newsroom.ucla.edu/portal/ucla/document/Regents_Nov_2009_Meeting_Post_Event_Report.pdf.

In 2005, events at the Santa Cruz campus organized in connection with “Tent University,” a national movement aimed at reforming higher education, resulted in clashes with police. A large group of students protesting against fee increases attempted to establish an overnight camp at the base of the campus. At the instruction of the Chancellor, police sought to disperse the group. Police used hands-on “pain compliance” methods to remove a group of students who sat in a circle with linked arms and legs. A series of reviews of the campus’s response to student protest emerged from this incident, including reports and recommendations from an Academic Senate task force,⁶ an external administrative reviewer,⁷ and the UC Santa Cruz Demonstration Planning Team.⁸

Most recently, our community saw physical conflict between police and protesters at Berkeley and Davis in November 2011, and additional clashes between police and demonstrators at the Regents’ Meetings at UC Riverside in January and at UCSF in March 2012.

This history establishes that we have more work to do. Whatever progress we have made as a result of lessons learned from past incidents of civil disobedience, our University still struggles with how to respond to civil disobedience in a manner that avoids strife and violence.

II. BACKGROUND PRINCIPLES

We are mindful that this is a Report about civil disobedience and the use of force *on university campuses*. This context matters. Our University is charged by the State of California with the profound responsibility of educating its sons and daughters.⁹ Its policies at every level must reflect that core educational mission. This is particularly true when it comes to protest and civil disobedience—activities that frequently will advance the University’s educational mission by allowing students to become active, engaged, and responsible citizens, and to express cutting-edge ideas. We must view civil disobedience by protesters through the lens of the core values of our institution. In our opinion, these core values include:

- **A commitment to learning, discovery, and imagination, together with their indispensable foundation: freedom of expression and the free exchange of ideas.** For our purposes, this is a useful formulation of the academic values which must suffuse and nurture our University and which we are duty bound to

⁶ See Report of the Tent University and Restructuring Emergency Response Procedures Task Force (Feb. 1, 2006), *available at* <http://senate.ucsc.edu/archives/campus-demonstration-response/TUSCreptSCP1479.pdf>.

⁷ See Patrick Hayashi, *UC Santa Cruz and Student Protests: Observations and Recommendations* (Mar. 15, 2006), *available at* <http://senate.ucsc.edu/archives/campus-demonstration-response/HayashiReport.pdf>.

⁸ See Demonstration Planning Team, Final Report (Mar. 1, 2007), *available at* <http://senate.ucsc.edu/archives/campus-demonstration-response/Final%20Demonstration%20Planning%20Team%20Report2.pdf>.

⁹ See University of California’s Mission, *available at* <http://www.universityofcalifornia.edu/aboutuc/mission.html> (noting that the University of California’s mission includes teaching, research and public service, and providing “individuals with the tools to continue intellectual development over a lifetime and to contribute to the needs of a changing society”).

safeguard. Specifically, freedom of expression is essential to the University's mission of teaching, research, and public service. Limitations on the freedom of speech or the exchange of ideas can undermine that mission. One kind of fuel for speech and exchange in our community is the diversity we seek in our membership—diversity in many dimensions, intended to generate a creative contest of ideas. Protest, which sometimes accompanies expression reflecting a clash of ideas, is an inevitable reality of any modern university. This Report emphatically is not concerned with stopping protests, curbing criticism of the University, or discouraging debate about larger social issues. Quite to the contrary, we embrace and encourage those valuable forms of expression and strive to create an environment in which they can occur peacefully and safely—ideally, in furtherance of understanding and critical thinking.

- **Recognition that civil disobedience has been used as a form of expression in respected and important political movements.** Although civil disobedience involves violating laws or regulations by its very definition, many protesters engage in civil disobedience in an attempt to bring about social or legal change. Under the best of circumstances, protesters come to civil disobedience as a last resort, only after other efforts to effect change have failed. In doing so, they are participating in an important and valuable tradition in American democracy, and one that has been particularly prominent on university campuses.
- **Accountability and responsibility for civil disobedience.** Even when motivated by the best intentions, civil disobedience has an impact on the University community. It may displace members of the community, interfere with their educational or business activities, or divert scarce resources away from other important priorities. When motivated by less honorable intentions, civil disobedience can result in fear, intimidation, or even violence. All of us—including administrators, protesters, and police—have a responsibility to avoid activity that imperils the safety of others in the community. Additionally, in recognition of the impact of civil disobedience on the University community as a whole, those engaging in civil disobedience should expect that they will be held accountable for their actions, just as those responding to acts of civil disobedience are accountable for their actions. The management of demonstrations and protests can and should be collaborative, with all parties communicating, coordinating, and working together to make the event meaningful and safe. Although some believe an approach that asks protesters to work with the Administration is the antithesis of what civil disobedience is, we think it is warranted by the need to protect the University's educational mission and public safety.
- **Respect for different viewpoints and goals.** We are a diverse community, with diverse perspectives on almost every issue. The subjects of this Report are no exception. Some in our University believe that protesters should always be able to engage in civil disobedience without drawing a police response, unless the protesters engage in physical violence. Some view protests that prevent a professor from teaching in the classroom as a “teachable moment” that can never justify police involvement. Still others are concerned with the potential for disruption of classes or the closure of University facilities occasioned by some protests, and

call for greater intervention when civil disobedience by demonstrators interferes with the ability of others to study or work. Our community will never be of one mind on these issues.

- **Inclusion and transparency.** The subject of this Report affects every member of our campus community. Such a subject calls for a bottom-up process that considers the diverse perspectives within our community. We therefore sought to include as many people as possible in the development of our recommendations—staff, students, police, faculty, and the Chancellors of our campuses. We know that President Yudof will provide other appropriate avenues for input before final decisions are reached on the dozens of recommendations we offer.

We recognize the critical role of these values to the University, and our recommendations aim to reflect and affirm these values. In particular, we will focus on our shared responsibility for building peaceful avenues for discourse, debate, and protest. Our University can improve its management of protests and civil disobedience if there are strong relationships and communication between protesters, administrators, and police, and if the expectations and objectives of each group are clear in advance.

III. METHODOLOGY AND PROCESS

Our review involved three parts. First, we collected and analyzed existing UC policies on speech, demonstrations, and use of force by police. We looked not only at systemwide policies, but also at campus and police department policies at each of our ten individual campuses.¹⁰ Second, we interviewed members of our campus community, including students, faculty, staff, administrators, members of the Board of Regents, and campus Police Chiefs on all ten campuses. As part of this internal review, we also held town hall meetings at the Berkeley, Davis, and Irvine campuses. This process helped us to develop a better understanding of how the University's formal policies are understood and implemented in practice, and to solicit thoughts and concerns from all corners of our community.¹¹ Third, we obtained the views of outside experts—including academics, civil libertarians, and law enforcement officials. We conducted dozens of interviews with outside experts, and reviewed scores of scholarly articles.¹²

¹⁰ We analyzed the policies from each campus as they existed at the outset of our review, in December 2011. In some instances, this Report will reference policies developed or adopted more recently. But we have not comprehensively collected policies adopted since December 1, 2011.

¹¹ A complete list of members of the UC community we interviewed is presented in Appendix B.

¹² A comprehensive list of the outside experts we consulted and the literature we reviewed is presented in Appendices C and D.

Shortly after President Yudof charged us with conducting this review, he directed the UCSF School of Pharmacy to evaluate the health effects resulting from human exposure to pepper spray, a weapon that is currently available to trained officers on all of our campuses. The School of Pharmacy reviewed existing literature on this subject and analyzed a decade of data from the California Poison Control System. As part of this review, we received a detailed report from the School of Pharmacy summarizing their work.¹³

After collecting and synthesizing this information, we drafted the findings and recommendations that follow. We view this Report as a first step in a longer process. We are posting this Report on the University of California website and providing an opportunity for the public to comment on the Report online. Thereafter, the Report will be finalized and submitted to President Yudof for his consideration.

Finally, other reviews and investigations arose from the events of last November.¹⁴ In particular, former California Supreme Court Associate Justice Cruz Reynoso has led a review of the UC Davis pepper spray incident, and the UC Berkeley Police Review Board is investigating the use of batons by police and related matters. The Reynoso report recently became available, and we have reviewed it. We find that the recommendations advanced in that report are generally consistent with the recommendations that we make here, although there are some notable differences that we discuss below. The Reynoso report and the results of other pending investigations will, of course, further inform President Yudof's decisions about whether and how to implement the policy recommendations provided here.

IV. THEMES

This Report identifies a set of recommended best practices for our University going forward. The best practices do not all relate to our police, because we do not view this narrowly as a “police” problem. Rather, our recommendations identify ways in which all of us can work together to enhance dialogue on substantive issues of concern to our community; to facilitate peaceful and lawful protests; and to craft a reasonable response to civil disobedience that minimizes the risk of violence and the use of force by police—in order to protect the safety of all, together with core academic values.

In drafting these recommendations, we faced a tension between the need to erect a uniform systemwide framework, and the desire to accommodate the profound differences among our campuses. A rigid systemwide framework might help ensure a consistent response to civil disobedience across all our campuses, but it would not provide any flexibility to allow for the unique culture and physical setting of each campus. Nor would it allow for innovation at the campus level. Our recommendations thus seek to strike a balance by

¹³ The report by the UCSF School of Pharmacy is attached as Appendix E.

¹⁴ See *supra* n.1.

establishing a broad set of common policies that span our entire system while creating a measure of space for local autonomy.

We have divided our recommendations into the following nine thematic categories:

1. **Civil Disobedience Challenges.** Although the University already has policies regarding free expression, we recommend that it amend those policies in order to recognize explicitly the important and historic role of civil disobedience as a protest tactic. Such a discussion will remind administrators and police that civil disobedience is not generally something to be feared and will not necessarily require force in response. Those policies should also make clear, however, that civil disobedience by definition involves violating laws or regulations, and that because of the impact it can have on the rest of the campus community, civil disobedience will generally have consequences for those engaging in it.
2. **Relationship Building.** Protests are an inevitable reality for any modern university. But some protests can be avoided if there are effective lines of communication between would-be protesters and administrative officials and robust opportunities to raise substantive concerns with the Administration and to obtain a meaningful response. The University's response to protests can also be handled better and more efficiently by building strong working relationships between police officials and administrators. Interactions between protesters and police in the midst of a demonstration will be less fraught if these groups have an opportunity to interact and learn about each other *before* the demonstration. We recommend ways to build each of these relationships in advance of protests or civil disobedience.
3. **Role Definition and Coordination.** In order to ensure an effective University response to protests involving civil disobedience, there must be an established system for coordination between police and administrators, with well-defined roles and a shared understanding that ultimate responsibility for the campus's response rests with the Chancellor. We offer recommendations aimed at improving the coordination between administrators and police and at implementing a consistent approach across our campuses. We also advance recommendations regarding coordinating with outside law enforcement agencies who may provide assistance during large demonstrations.
4. **Hiring and Training.** The most effective way to avoid violent confrontations between police and protesters is to ensure that the police and administrators on the ground have the knowledge and the temperament to help resolve the situation in a peaceful way. We advance recommendations regarding our policies for hiring police officers and for training them about how to respond to civil disobedience. We also recommend that the University require the civilian administrators responsible for responding to civil disobedience to attend regular trainings, in order to educate them about methods to de-escalate protest situations and to help them understand police policies and practices.

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5. **Communications with Protesters.** Violent confrontations between police and protesters often result from a break-down in communications. With strong communications, civil disobedience can sometimes be avoided—or, at least, can take place peacefully without any use of force by police. We offer recommendations regarding communication and coordination with protesters in advance of a planned event, as well as during an ongoing demonstration.
 6. **Response During Events.** Once a protest is underway and individual protesters begin to engage in civil disobedience, the decisions made by administrators can directly affect whether the protest ends peacefully rather than with violence. We propose various strategies for reaching a peaceful accord with protesters without resorting to the use of force by police, including employing trained mediators and using administrative citations in place of arrests. We also recommend policies to guide our campus police departments if the Administration decides that a police response to the protest is necessary. These include developing a framework to provide detailed guidance on appropriate responses to different types of resistance, adopting consistent policies across our campuses regarding which weapons may be carried by UC police, and devising procedures for improving coordination with outside law enforcement agencies if they are needed to provide assistance.
 7. **Documenting Activity During Demonstrations.** A consistent problem in the area of police response to civil disobedience is determining, after the fact, what actually happened. We recommend several parallel methods for recording the actions of demonstrators and police: the use of neutral observers, a policy of videotaping activity at the demonstration, and the creation of police after-action reports following both successful and unsuccessful police responses to demonstrations.
 8. **Post-Event Review.** In the wake of any civil disobedience incident involving the use of force, the conduct of the police and the protesters should be the subject of a close and careful review. Although one of our campuses has a dedicated police review board composed of civilians, the other campuses do not have any established form of post-event review outside of the police department. We recommend that the University adopt a systemwide structure located outside of the police department for reviewing the police response to civil disobedience.
 9. **Implementation.** Finally, we suggest a process for implementing the recommendations in this Report. Most centrally, we propose that the President require each Chancellor to take concrete action to implement our recommendations, and to report promptly to the President on his or her progress.

In some instances, implementing our recommendations would create additional costs. We recognize that this is a time of severe fiscal constraint for our University and for the State. But given the importance of the subject at hand and the widespread consensus that the University must improve its response to protest and civil disobedience, we would hope that the necessary funding would be forthcoming.

V. UC POLICE DEPARTMENTS ARE ESSENTIAL ON OUR CAMPUSES

Before proceeding to the balance of our Report, we emphasize that there is one recommendation we have *not* made. During our consultations, several members of the University community argued we should not have police on our campuses at all because police presence interferes with the free exchange of ideas.¹⁵ Some students said they perceive their campus police as a “hostile presence,” effectively a “militarization” of the campus.¹⁶ Others pointed to universities in other countries and other states that do not have police departments.¹⁷

We do not agree with these calls to abolish our campus police departments. Creation of the University of California Police Department was specifically authorized by an act of the California Legislature, to protect the peace on and around our campuses.¹⁸ The total size of the UC police force is almost 400 sworn officers, and the number of officers ranges from just eight at UC Merced to over 60 each at UC Berkeley and UCLA. Although each department is small in size, collectively they protect hundreds of thousands of people on our campuses and in dormitories, laboratories, and other off-campus University buildings. The hundreds of sworn officers throughout our University serve honorably to protect us on a daily basis. The departments respond to thousands of crimes each year.¹⁹ Most are property crimes, but some are life-threatening—as when the UC Berkeley Police Department recently responded to a man with a gun at the Haas Business School at Berkeley.²⁰

The Haas incident, as well as violent episodes outside our system such as the 2007 massacre at Virginia Tech, reinforce a sad reality: our campuses will sometimes face emergencies that require an immediate police response to protect the lives of our students, faculty, and staff. This reality makes dedicated law enforcement agencies a necessity. Seventy-four percent of four-year colleges and universities with more than 2,500

¹⁵ Jan. 31, 2012 UC Berkeley Town Hall; Jan. 11, 2012 Meeting with UC Berkeley Faculty.

¹⁶ Jan. 6, 2012 Meeting with UC Riverside Students.

¹⁷ Jan. 31, 2012 UC Berkeley Town Hall; Feb. 10, 2012 UC Davis Town Hall.

¹⁸ See Cal. Educ. Code § 92600.

¹⁹ In 2010, FBI crime data showed that crime across the University of California decreased by 12.9 percent. Violent crime decreased by 2.2 percent, while property crime decreased by 13.9 percent. Property crime offenses represented 90 percent of the 5,424 cases on UC campuses. University of California Police Department, Annual Report & Crime Statistics: Universitywide Crime Summary (2010), *available at* <http://police.ucsf.edu/images/stories/AnnualReport/2010AnnualReport/2010/index.html> (referencing FBI reporting criteria contained in the Uniform Crime Reporting (UCR) Program to determine the University of California's 2010 reportable crimes).

²⁰ Jan. 11, 2012 Meeting with UC Berkeley Faculty; Jan. 26, 2012 Meeting with Council of Executive Vice Chancellors.

students have a campus law enforcement agency with sworn officers, and 93 percent of all public universities do.²¹ Moreover, having our own campus police who come to understand the academic values of our University and who are accountable to our Chancellors better positions us to respond to civil disobedience than if we were to rely on local police—over whose selection, training, and supervision the University has no control. The fact that we have dedicated campus police departments will enable us to implement the recommendations in this Report directly, rather than merely urging outside law enforcement agencies to please reform themselves.

²¹ Bureau of Justice Statistics, Special Report: Campus Law Enforcement, 2004-05, at 1 (Feb. 2008), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/cle0405.pdf>.

Discussion And Recommendations

I. EXPLICIT POLICY FOCUS ON CIVIL DISOBEDIENCE AND FIRST AMENDMENT RIGHTS

Protests and civil disobedience have been important components of social and political movements throughout the history of this country. Protests at the University of California in particular have played an important role in that history. And there is probably nothing more important to a university community than ensuring that members of the community feel free to express their views, regardless of how unpopular those views may be.

But there is also an important distinction between First Amendment-protected speech and civil disobedience. The First Amendment protects the right to express one's views, but it also allows the government to place reasonable time, place, and manner restrictions on that expression.²² The First Amendment does *not* guarantee any right to engage in civil disobedience—which, by its very definition, involves the violation of laws or regulations to communicate a political message—without incurring consequences. Indeed, part of the reason a protester engages in civil disobedience is to express the protester's willingness to be arrested or otherwise sanctioned as a sacrifice to the political cause in question; the history of civil disobedience includes a history of consequences.²³

We noticed in our discussions with some students and faculty that they looked past this distinction—mistakenly viewing civil disobedience as just one form of constitutionally protected speech. It is not. Some students and faculty seem not to recognize that civil disobedience can have adverse effects on other members of the community, or that civil disobedience fundamentally is illegal and may therefore have legal consequences.²⁴

²² The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Due Process Clause of the Fourteenth Amendment applies the First Amendment to state entities, like the University of California.

In evaluating restrictions of speech on government-owned property, courts apply a "forum analysis." See *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). This analysis recognizes that any right of access to public property and limitations on such a right depend on the type of property at issue. *Id.* at 44. Thus, public speech rights are greatest in areas such as streets and parks that have historically been used for public assembly and communication (known as "traditional public fora") or areas that the government has specifically opened for public discourse ("designated public fora"). On the other hand, the government has more leeway to regulate access to other "nonpublic forum" areas, such as classrooms and dormitories.

Even in public fora, the government may impose reasonable restrictions on the "time, place, or manner" of speech. See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 298 (1984). Thus, for example, the United States Supreme Court has ruled that the National Park Service could prohibit camping in areas of the Parks, even though demonstrators sought to call attention to political issues such as homelessness by setting up tent cities in these areas. The Court noted, "Damage to the parks as well as their partial inaccessibility to other members of the public can as easily result from camping by demonstrators as by nondemonstrators. In neither case must the Government tolerate it." *Id.* at 298. Such restrictions, however, may not target some viewpoints over others. See *id.* at 295.

²³ We note that, if one is arrested or otherwise interacts with the police, there is a Fourth Amendment right not to be subject to excessive force.

²⁴ Cf. Alan Brownstein & Vikram Amar, "College protests stepped beyond free speech," SACRAMENTO BEE, Apr. 27, 2012, at 13A, available at <http://www.sacbee.com/2012/04/27/4446564/college-protests-stepped-beyond.html> ("The important starting point in our First Amendment analysis is that a blockade is not constitutionally protected speech. It is conduct that government has always had the legitimate authority to proscribe because it so obviously obstructs the liberty and lawful pursuits of others.").

On the other hand, our conversations with some police and some administrators suggested that they have overlooked the expressive component of civil disobedience and its social and historical importance.

In this initial section, we consider how to ensure that our campuses' official policies express both the significance of civil disobedience as a component of protest activity and the consequences that may follow from it.

A. Background

Our review of existing UC policies revealed that there are policies at the system level and on every campus that explicitly recognize First Amendment rights. Our campus policies vary, however, in the degree to which they acknowledge the importance to university life of expressive protest activity. Our policies also vary in the degree to which they recognize that civil disobedience is an important component of protest activity, but one that has consequences.

The systemwide *Policies Applying to Campus Activities, Organizations and Students* express the University's "commit[ment] to assuring that all persons may exercise the constitutionally protected rights of free expression, speech, assembly, and worship." Those policies, which are available on the internet, also recognize that "[t]he time, place, and manner of exercising [such rights] are subject to campus regulations that shall provide for non-interference with University functions and reasonable protection to persons against practices that would make them involuntary audiences or place them in reasonable fear . . . for their personal safety."²⁵ Consistent with this, our campuses' time, place, and manner regulations are designed to allow expressive activity while minimizing noise levels for surrounding classrooms; ensuring that members of the campus community have avenues for ingress and egress to and from their classes, labs, dormitories, and offices; and so on.

All of the campuses' speech policies either recognize First Amendment rights directly or provide links in their local policies to the systemwide policies described above.²⁶ Some campuses have adopted additional language affirming the importance of free expression to the academic environment. For example, the *UCLA Regulations on Activities, Registered Campus Organizations, and Use of Properties* begin with the introductory statement that "free and open association, discussion and debate are important aspects of the educational

²⁵ See Section 30, available at <http://www.ucop.edu/ucophome/coordrev/ucpolicies/aos/uc30.html>. The systemwide "Policy on Use of University Properties" also explicitly recognizes First Amendment rights, as well as the need to avoid interference with the operation of any campus. It states: "On University grounds open to the public generally, as may be described in campus implementing regulations, all persons may exercise the constitutionally protected rights of free expression, speech, assembly, and worship." That policy further instructs that "[s]uch activities shall not interfere with the orderly operation of the campus and must be conducted in accordance with campus time, place, and manner regulations." Section 40, available at <http://www.ucop.edu/ucophome/coordrev/ucpolicies/aos/uc40.html>.

²⁶ See, e.g., UC Berkeley Statement on Free Speech, available at <http://campuslife.berkeley.edu/sa/free-speech> (referencing and linking to the systemwide policies).

environment of the University, and should be actively protected and encouraged, even where the positions advocated are controversial and unpopular.”²⁷

Some policies from outside our system contain similar discussions of the importance of free speech. For example, Harvard’s Free Speech Guidelines state:

*“Free speech is uniquely important to the University because we are a community committed to reason and rational discourse. Free interchange of ideas is vital for our primary function of discovering and disseminating ideas through research, teaching, and learning. Curtailment of free speech undercuts the intellectual freedom that defines our purpose. It also deprives some individuals of the right to express unpopular views and others of the right to listen to unpopular views.”*²⁸ ”

We did not find any University or general campus speech policies—within our University or at the other schools we consulted—that address civil disobedience specifically, or its peculiar challenges: that it can serve (and historically has served) to prompt important and beneficial changes, but also can imperil the rights and safety of others in the community. Accordingly, these policies fail to express any principles or offer any guidance on the most difficult questions that can arise with regard to campus protest activity.

The current policies of our campus police departments vary in the way they discuss First Amendment rights and civil disobedience’s important history as part of protest activity. Several departments, including Irvine, Los Angeles, Berkeley, and San Diego, have adopted formal policies governing the police response to demonstrations and civil disobedience.²⁹ In addition, Santa Barbara recently prepared a draft policy, which it has not yet finalized.³⁰ These written policies typically discuss the importance of free expression and respecting constitutional rights, and then specifically address police responses to issues that may arise during protests and demonstrations. For example, the UC San Diego Police Department Demonstrations policy states that the department “strives to ensure the Constitutional rights of individuals to peacefully gather and freely

²⁷ See UCLA Regulations on Activities, Registered Campus Organizations, and Use of Properties, *available at* <http://www.studentactivities.ucla.edu/docs/UCLA%20Regulations102908.pdf>.

²⁸ See Harvard Free Speech Guidelines, *available at* http://isites.harvard.edu/icb/icb.do?keyword=k72845&pageid=icb.page368059&pageContentId=icb.pagecontent763341&state=maximize&view=view.do&viewParam_name=Free%20Speech%20Guidelines. The University of Michigan likewise has a Statement on Freedom of Speech. The Statement contains guidelines specifically focused on the interaction between a speaker and protesters who object to the speaker; but even in that narrower context it emphasizes the need “to maintain at the University an environment in which the free exchange of opinions can flourish, where the learning that such exchange makes possible can occur.” University of Michigan Statement on Freedom of Speech and Artistic Expression, *available at* <http://www.umich.edu/~spolicy/statefree.html>. That policy further instructs that “[s]uch activities shall not interfere with the orderly operation of the campus and must be conducted in accordance with campus time, place, and manner regulations.”

²⁹ UC Berkeley Police Department Crowd Management Policy; UC Irvine Police Department General Orders Nos. 2011-06, 2011-07; UC San Diego Police Department Policy Manual § 423 (Jan. 6, 2012); UCLA Police Department Policy Manual §§ 317, 423. Several of those campuses are in the process of revising their policies.

³⁰ See Memorandum to All Sworn Personnel from UC Santa Barbara Chief Olson Regarding “Crowd Control and Demonstrations” (undated).

express views in an environment where the rights of every individual are protected.”³¹ That policy then addresses issues including coordinating with the campus Administration and considerations relating to potential use of force.³²

The balance of the UC police departments, however, have not yet adopted formal policies on demonstrations. To be sure, we understand that police on those campuses receive training regarding responding to demonstrations and the rules and laws governing use of force.³³ And all of the Police Chiefs we spoke to described practices and strategies they have developed for responding to demonstrations.

B. Recommendation

We were pleased to see that our systemwide and campus-specific policies all expressly recognize First Amendment rights and values. This express recognition helps ensure that all subsequent policies are viewed with core speech-endorsing values in mind. To the extent our campus policies and police department policies do not also recognize the importance of free speech, expression, and discourse to an academic environment, as UCLA’s and Harvard’s campus policies do, we think they should be amended to do so.

Given the University’s history of being at the cutting edge of the free speech movement, we also think it would be helpful for our campus and police policies to explicitly describe the important role protests and civil disobedience have played on our campuses and in bringing about social change. This discussion should make clear, however, that civil disobedience is not protected speech, that it may have a negative effect on the protected interests of others, and that it may have consequences for the protesters.

Such a discussion will offer assurance to the general University community that University officials are mindful of the history of civil disobedience (particularly within our system) and that their actions are informed by it. This is not currently the common understanding. Policies discussing civil disobedience will serve as a reminder of what is at stake if the response to civil disobedience is not appropriately measured—surely, an appropriately measured response is what we expect for any infraction, but this is of particular import with protests where there is a risk of chilling speech. To protesters, campus policies addressing civil disobedience can serve as a reminder of the impact of their conduct on the remainder of community—and hence the possibility of consequences.

We also believe that our campus police departments should group all of their policies governing the police response to demonstrations involving civil disobedience (including the express discussions of First Amendment

³¹ UC San Diego Police Department Policy Manual § 423.1.

³² *Id.* §§ 423.6, 423.13.

³³ Interviews with campus Police Chiefs.

rights, the history of civil disobedience, and the consequences of civil disobedience) into a single publicly available volume or chapter of the department's policies. This will increase transparency by helping protesters understand applicable guidelines.

Recommendation 1. Add to current "Free Speech" policies language formally recognizing that civil disobedience has had an historic role in our democracy, that it is not protected speech under the Constitution, and that it may have consequences for those engaging in it.

Recommendation 2. Consolidate campus police policies concerning civil disobedience in one location within each department's regulations, and make them publicly available.

II. Opening Lines of Communication and Building Relationships

A. Increasing Regular Avenues for Communication with the Administration

A recurring theme during our interviews and Town Hall meetings was the lack of trust between some administrators and some students (and, to a lesser extent, some faculty) on several campuses. Many faculty and students attributed this problem to what they perceived as inadequate opportunities for dialogue on important substantive issues. They also suggested that students often resort to civil disobedience because they believe there is no other way to get the Administration's attention. In particular, students and faculty suggested that there should be more formal mechanisms for raising broad-based grievances and concerns with University policies, and for receiving a substantive response.

1. Background

Many students and some faculty told us that they feel a lack of connection with their campus Administration. One student said that "we've never really seen administrators willing to engage with students in the kind of communication students want."³⁴ A speaker at a Town Hall meeting told us that part of the problem is "that the top administrators are invisible" to the campus community, and many students and faculty with whom we spoke echoed this sentiment.³⁵

³⁴ Jan. 24, 2012 Meeting with Student Leaders.

³⁵ Jan. 31, 2012 UC Berkeley Town Hall Meeting.

Some of the students we interviewed told us that it would help avoid civil disobedience and related confrontations if there were more opportunities for students to discuss their underlying concerns with administrators.³⁶ Student demonstrators told us that administrators needed to address the substantive problems motivating protests, rather than just discussing the protests themselves.³⁷ Similarly, student leaders expressed the view that if the UC Regents were willing to let the students interested in protesting enter Regents' meetings and engage in meaningful dialogue about their concerns, this might eliminate the incentive for many protests during those meetings.³⁸

Many administrators, on the other hand, pointed out that there are avenues for members of the campus community to communicate with them, ranging from Ombudspersons to Student Affairs staff to administrator attendance at student government meetings.³⁹ Regents have also made themselves available individually to talk with students, and time is allotted at Regents meetings for public comment. The fact that even student leaders appear to be unaware of some of these opportunities for communication suggests that there are some information gaps in this area.

Students and faculty on some campuses also recommended that administrators make an effort to interact casually with students on a routine basis, in order to build better relations and trust.⁴⁰ In their view, if students trusted administrators more, it might be easier to engage in dialogue rather than civil disobedience. In addition, when civil disobedience occurs, it might be easier to negotiate an end to it. On other campuses within our system, administrators were praised for the extent to which they were "out and about" on campus, interacting with students.⁴¹

When we spoke with officials from other universities, they also emphasized the importance of maintaining open lines of communication between administrators and the rest of the campus community as a means of avoiding tensions that could lead to civil disobedience.⁴²

³⁶ Jan. 31, 2012 UC Berkeley Town Hall; Jan. 6, 2012 Meeting with UC Riverside Students.

³⁷ Jan. 6, 2012 Meeting with UC Riverside Students.

³⁸ Jan. 24, 2012 Meeting with UC Student Leaders.

³⁹ *E.g.*, Meetings with Campus Counsel.

⁴⁰ Feb. 10, 2012 Meeting with UC Davis Student Leaders; Feb. 10, 2012 Meeting with UC Davis Academic Senate Leaders.

⁴¹ For example, we heard that on one campus the Chancellor maintains high visibility within the campus community by walking the campus at various hours of the day and night, and making it a point to stop and speak with students, staff, and faculty in an informal manner. That Chancellor also attends student government meetings as an observer, regularly joins students for meals in the campus dining commons, and stops when students are tabling or distributing fliers to ask questions and learn about the issues of concern.

⁴² Jan. 13, 2012 Interview with Harvard University Police Department Public Information Officer Steven Catalano; Jan. 20, 2012 Interview with the University of Pennsylvania Vice-President for Public Safety Maureen Rush; Feb. 7, 2012 Interview with University of Michigan Public Affairs Director Kelly Cunningham.

2. Recommendation

We recommend that campus administrators ensure that there are meaningful channels for students, faculty, and staff to discuss broad-based concerns with senior administrators. This involves creating new channels and better publicizing existing ones.

Possibilities might include establishing a dedicated student advocate within the Administration responsible for listening to complaints and concerns and communicating them to the relevant decision-makers; having the Chancellor or a Vice Chancellor periodically attend student government meetings; instituting monthly “office hours” for top administrators during which students, faculty, or staff could make appointments and raise their concerns; establishing a process for submitting petitions with requests or concerns and obtaining a substantive response from the Administration; or developing a mediation process in which faculty or staff trained in mediation skills could mediate discussions between students and administrators.

Regardless of the specific approach, campuses should ensure that members of the campus community are able to engage with a senior administrator who, in perception and reality, possesses genuine authority. Also, administrators should not merely wait for students to bring concerns to them. It is incumbent upon our senior administrators to pay attention to student concerns, to build relationships with students and student groups, and to solicit the thoughts and views of students at every opportunity. Some of our administrators already do these things; others must be more proactive in this area. It is not solely the responsibility of staff in Student Affairs.

To be sure, opening avenues of communication with the Administration may reduce the perceived need for civil disobedience in many instances, but this approach may or may not be effective when would-be protesters are not UC affiliates, or when the issues motivating potential civil disobedience are outside the University’s control.

Recommendation 3. Increase and better publicize opportunities for students, faculty, staff, and others to engage with senior administrators, particularly on issues likely to trigger protest or civil disobedience events.

B. Building Familiarity with the Campus Police and with Rules Governing Protest Activity

In our discussions throughout the UC system, students expressed a lack of understanding of the possible responses by authorities to civil disobedience. Would-be protesters and the community at large should understand which activities are permitted and which ones are prohibited, and how the Administration and police might respond to different types of civil disobedience. Currently, most lack that understanding.

Many students and other community members also knew little about the nature and role of campus police generally, but they expressed interest in opportunities to learn more. Students also said they lack trust in campus police, and that they have too few opportunities to interact with the campus police in a positive way.

1. Background

Our campuses' time, place, and manner regulations governing protest activity have long been accessible to the public on the internet.⁴³ For example, UC Berkeley's website states that Sproul Plaza and Lower Sproul Plaza are specifically designated as "areas for public expression" and "are open to the public generally between the hours of 6:00 a.m. and 12:00 midnight."⁴⁴ Berkeley's website also lists other regulations, including requirements that speakers obtain authorization before using sound amplification,⁴⁵ and rules governing the use of tables, displaying of materials, and posting of flyers on bulletin boards.⁴⁶ Similarly, UC Santa Barbara's website specifies locations and hours in which sound amplification may be used, size restrictions for posted flyers and banners, and safety provisions such as the rule that "[t]ables or moveable stands may not be placed in areas where passages to any entrance or walkways are blocked, where the free flow of pedestrian traffic is restricted, or where emergency fire lanes are blocked."⁴⁷

In contrast to time, place, and manner regulations, which have generally been available on campuses' websites, most of our campus police departments' policies have not historically been available to the public. In recent months, though, some of our police departments have begun to change that by posting on their websites their policies regarding the use of force and the police response to demonstration activity. For example, the UC Irvine Police Department's *Use of Force* policy was recently posted on the Department's website.⁴⁸ We frequently heard requests from students for greater access to police policies relating to civil disobedience and more information generally about how the police might respond to acts of civil disobedience.

We also were struck by a more fundamental information gap: most members of our community know very little about our campus police departments. That is not to say that opportunities for learning more about the police are completely lacking. Some campus police departments hire students as workers, which provides a rich educational experience for a small number of students.⁴⁹ Some campus police departments also offer

⁴³ They readily can be located by typing the name of the campus and "time place and manner" into an internet search engine.

⁴⁴ See UC Berkeley Campus Regulations Implementing University Policies, § 331, *available at* <http://students.berkeley.edu/uga/regs.stm>.

⁴⁵ *Id.* §§ 340-46.

⁴⁶ *Id.* §§ 350-69.

⁴⁷ See UC Santa Barbara Campus Regulations, Chapter III, Campus Activities, Speech and Advocacy, *available at* http://www.sa.ucsb.edu/regulations/campus_activities.aspx. As for areas on our campuses that are not public forums, such as classrooms, administration buildings, and dorm rooms, some have signs regarding limitations on access by non-students and restrictions on speech.

⁴⁸ See UC Irvine Police Department Use of Force Policy, *available at* http://www.police.uci.edu/safety/docs/UCI_UseOfForcePolicy300.pdf.

⁴⁹ On some campuses, these students serve "community service" functions, allowing them to interact regularly with the community in their capacity as police department employees. Interviews with campus Police Chiefs.

academic courses on policing issues. At UC Santa Cruz, for example, the police department offers a quarter-long course titled “Citizen Police Academy,” for up to twenty-five students, faculty, and staff. Class members gain a deep familiarity with the campus police department.⁵⁰ In addition, on some of our campuses, the police make presentations at new student orientations. But these existing opportunities for students and other members of the University community to educate themselves about their campus police departments apparently have not satisfied the community’s desire for information. Members of our police departments also agreed that greater educational opportunities for students and faculty would be beneficial.

Students and faculty on our campuses repeatedly told us that if they knew the police better and trusted them more, it would help in resolving situations involving civil disobedience. Some students suggested that building relationships between police and students could be as simple as having more police walk or bike around campus and make an effort to interact with students⁵¹—a practice that is already common on several of our campuses. A student leader on one campus also recommended that the Chiefs of Police attend student government meetings as a means of facilitating dialogue.⁵²

Similarly, on some campuses, there is not much interaction between the Police Chief and the top campus administrators. Yet in our conversations with campus administrators and Police Chiefs, it was clear that coordination between the Administration and the police over responses to civil disobedience is most effective when the Chancellor has a good working relationship with the campus Police Chief.⁵³

2. Recommendation

We believe that each campus should make accessible to the public its policies about protest activity, use of force, and civil disobedience. Campuses should continue to post time, place, and manner regulations on their websites. Likewise, it is important for police departments to be as transparent as possible, and for protesters to know what they may expect from the police if they violate laws or campus policies. Those police departments that have not yet done so should post their policies regarding use of force and demonstrations on their

⁵⁰ *Id.*

⁵¹ For example, students at UC Davis told us there is one campus police officer who rides a bike around campus and regularly chats with students, and that students greatly respect and trust him. They thought that if other campus police rode bicycles or walked around campus instead of driving police cars, students would build relationships with these officers as well. Feb. 10, 2012 Meeting with UC Davis Student Leaders.

⁵² Jan. 24, 2012 Meeting with Student Leaders.

⁵³ Interviews with campus Police Chiefs; Feb. 28, 2012 Meetings at UC Irvine.

websites as soon as possible. To the extent that certain sensitive portions of police policies would reveal information that would endanger police or others, or threaten police operations, however, we think it is appropriate for that information to remain confidential.⁵⁴

Beyond merely making policies accessible, our campuses should be proactive in publicizing them to the campus community. New-student orientations present one opportunity to reach one of the largest parts of our campus communities. The Administration on each campus should work with its police department to create written summaries of the policies on civil disobedience to be distributed at every orientation, including descriptions of the types of protester conduct that could result in a police use of force. Social media are also important channels for communicating with student populations, and each campus should consider how best to use them to bring attention to policies on civil disobedience. Students also have a responsibility to read these materials.

Overall, we are not persuaded that deep distrust or hostility to campus police is widespread, but there certainly is some such sentiment. To help build stronger bridges between the campus community and the police, we think that each campus should offer more opportunities for students and other members of the campus community to learn about the police department. Examples of protest-related topics that could be covered in programs about the campus police include demonstration policies, the rights and responsibilities of protest participants, alternatives to civil disobedience, and the policies governing use of force by police. Such programs should be offered at least every year, to allow the newest members of our community to participate.⁵⁵

We also recommend that our campuses work to increase other sorts of opportunities for building relationships between the campus police and the rest of the campus community. This is in line with the principles of community policing, which a number of campus police and policing experts identified as a good model for campus police.⁵⁶ Community policing is an overall approach to policing that emphasizes establishing and strengthening relationships in the community and, based on those relationships, fostering a pro-active, problem-solving approach to policing.⁵⁷ As one expert noted, policing involves much more than enforcing the law. Police need to think about how to prevent and anticipate problems, rather than just reacting to them, and how to make use of a variety of community interactions rather than solely enforcing the law. This in turn

⁵⁴ A similar recommendation regarding policy availability was also made in the Brazil Report. See November 20, 2009: Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 13 (June 14, 2010), *available at* http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf (“For civil disobedience: fix, publicize, and consistently enforce clear policies and rules.”).

⁵⁵ The Brazil Report contained a similar recommendation about educating all parts of the campus community about the rules that apply to civil disobedience and the consequences of violations. See November 20, 2009: Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 14 (June 14, 2010), *available at* http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf (“Educate all parts of the campus community, but especially incoming students (undergraduate and graduate) about the rules (criminal, civil, and campus rules that could affect academic standing) that apply to civil disobedience and the consequences of violating those rules.”).

⁵⁶ Interviews with campus Police Chiefs.

⁵⁷ See, e.g., United States Department of Justice, Community Policing Defined, *available at* <http://www.cops.usdoj.gov/default.asp?item=36>.

requires strong relationships.⁵⁸

As in any relationship, it takes time and familiarity to build trust. If police and students seldom interact outside of traffic stops and the like, there will be no reservoir of trust to draw upon during protests and acts of civil disobedience. We know that many of our police already make efforts to reach out to students and faculty; these efforts should be acknowledged, commended, and re-doubled. In particular, police should build their relationships with student government and leaders of student organizations—seeking their input, attending their meetings, and listening to their concerns. When possible, police should consider walking their beats or riding bicycles around campus, to increase the number of positive interactions with other members of our community.⁵⁹ Students should take advantage of such opportunities to interact with the campus police and to get to know them better.

Finally, Chancellors and Police Chiefs need good working relationships, so that they have the mutual trust to work together effectively in stressful situations. We recommend that the Chancellor and the Police Chief on each campus meet regularly.

- Recommendation 4.** Develop a comprehensive set of policies governing the response to events of civil disobedience—as well as written materials describing conduct that is or could be perceived as threatening to safety and thus trigger a police use of force—and publicize by posting on system and campus websites and distributing at least annually during student orientations, along with user-friendly summaries of those policies.
- Recommendation 5.** Offer opportunities for the campus community to become acquainted with the campus police agency.
- Recommendation 6.** Offer opportunities for the campus community to become acquainted with the applicable rules for campus protests—including rights and responsibilities, triggers for an administration or police response, the response option framework, and alternate modes for engaging with authorities.
- Recommendation 7.** Increase opportunities for routine interaction between police and students and between the Chancellor and the Police Chief.

⁵⁸ Feb. 2, 2012 Interview with Herman Goldstein, Professor of Law Emeritus at University of Wisconsin. The website “popcenter.org” contains additional information on problem-oriented policing.

⁵⁹ We recognize that this recommendation will have resource implications. Officers can cover more area and respond faster to calls for assistance in cars than on bikes or on foot; more officers may be required overall if the University increases bike or foot patrols.

III. Defining Roles of Administrators and Police With Respect to Responses to Civil Disobedience

A. Administrator and Police Coordination

A successful response to protests involving civil disobedience requires coordination between the police and the campus Administration. Most campuses currently employ some form of team for the purpose of coordination and planning between police and administrators in advance of campus protests. These processes have not been formalized, however, and they are inconsistent across the campuses. Moreover, many of them suffer from ambiguity about how the teams should interact with the Incident Command System used by the police and about the respective roles of administrators and police.

In addition, while most campuses involve senior administrators in the planning for a protest event, on some campuses their involvement ceases once the event begins. As a consequence, there is sometimes no mechanism for confirming or reconsidering plans as a protest unfolds, and discretion about how to enforce earlier decisions has rested primarily with the police. Such an approach runs contrary to the widely held desire that senior administrators, and particularly the Chancellor, must be held accountable for any decision to proceed with police action that involves a use of force on protesters engaged in civil disobedience.

1. Background

(a) Police Policies, Incident Command System, NIMS, and SEMS

The written policies of our police departments contain little detail regarding coordination between police and administration officials in advance of demonstrations. Most of the policies on demonstrations merely instruct officers to “work[] with key stakeholders in the . . . community.”⁶⁰ One policy directs police to “[n]otify the Office of Student Life, as appropriate, to be present at the event.”⁶¹ Most UC campus police department policies regarding demonstrations also fail explicitly to explain how administrators or other non-police officials should interact with the police during a demonstration.⁶² Similarly, we are aware of only a few written policies governing administrators that bear on coordination with police before or during a demonstration, although we

⁶⁰ *E.g.*, UC Irvine Police Department General Order No. 2011-06, § 1.2.

⁶¹ UC Berkeley Police Department Crowd Management Policy, at 5, *available at* <http://administration.berkeley.edu/prb/PRBCrowdPolicy.pdf>.

⁶² One exception is UC San Diego. There, the police demonstration policy provides that, in the event of a peaceful, nonviolent demonstration that does not pose an imminent threat of harm to people or property, the Incident Commander should consult with campus administrators regarding whether civil disobedience should be permitted to continue without police action. It explicitly identifies several factors that might be relevant to the administrators’ decision, including whether the demonstrators’ conduct constitutes a substantial disruption of University activities, and whether the administrators believe that immediate action could lead to violence. UC San Diego Police Department Policy Manual § 423.11.

understand that some campuses are currently in the process of devising additional written policies on this subject.⁶³

Within the police department, however, the police use a formal management system for responding to events. The Incident Command System is a standardized command system for responding to emergencies, as defined by the National Incident Management System (“NIMS”) and the Standardized Emergency Management System (“SEMS”). NIMS is a structured framework used nationwide for both governmental and non-governmental agencies to respond to natural disasters or other emergencies at the local, state, and federal levels.⁶⁴ SEMS is a similar framework that was designed to provide effective management of multi-agency and multijurisdictional emergencies in California.⁶⁵ The Incident Command System is one component of the NIMS and SEMS frameworks and is intended to provide the structure and command system used for the field response to an emergency or other incident. In the protest context, the Incident Command System typically kicks in once police arrive at the scene, and the Incident Commander is usually the most qualified police officer on site, who directs the actions of the other officers involved.⁶⁶

Currently, the Incident Command System does not formally call for consultation with the campus Administration unless the event and its impact on campus functions are so large as to trigger the campus’s Emergency Operations Center procedures.⁶⁷ This means that, for all but the biggest civil disobedience events, there is currently no formal mechanism for administration officials to communicate with the police once an event is underway.

(b) Event Response Teams

Despite the lack of written policies calling for coordination between administrators and police, many administrators and police with whom we spoke described informal processes they have developed for planning and communicating in advance of and during demonstrations. These largely *ad hoc* processes generally

⁶³ Interviews with campus Police Chiefs.

⁶⁴ See Incident Command System (ICS), available at <http://www.fema.gov/emergency/nims/IncidentCommandSystem.shtm#item1>; see also University of Wyoming Police Department, questions and answers regarding NIMS and ICS, available at <http://www.uwyo.edu/uwupd/nims-ics.html> (“NIMS is an overall management framework for responding to emergencies, while ICS is the management system established to manage emergency and other incidents.”).

⁶⁵ See Standardized Emergency Management System, available at <http://www.calema.ca.gov/planningandpreparedness/pages/standardized-emergency-management-system.aspx>. By standardizing key elements of the emergency management system, SEMS is intended to facilitate the flow of information within and between levels of the system, and to facilitate coordination among all responding agencies.

⁶⁶ See generally ICS Review Material, available at <http://training.fema.gov/EMIWeb/IS/ICSResource/assets/reviewMaterials.pdf>.

⁶⁷ Interviews with campus Police Chiefs.

center around a group or team of individuals, which includes representatives from the police department and the campus Administration, and which we will refer to as an “event response team.”⁶⁸

The precise membership of event response teams varies across our campuses. Typically, the teams include at least some of the following: the Chancellor; the Provost or Executive Vice Chancellor; the Vice Chancellor for Administration or Business Affairs; the Vice Chancellor for Student Affairs or Dean of Students; the Campus Counsel; a representative from the Communications or Public Information Office; the Chief of Police; and a representative from the Fire Department. Additionally, the membership of these teams may vary depending on the nature of the demonstration. For example, if the expected demonstration will involve a labor union, many campuses would include a representative of the Human Resources Department.⁶⁹

Our research revealed that other universities similarly use a team-based approach to plan for and respond to demonstrations or other large-scale events.⁷⁰ Experts in the area of campus policing also confirmed the value of creating teams in which administrators and police work jointly to respond to events. They advise that university administrations and campus police should work together to “ensure campus priorities are represented.”⁷¹

We asked administrators and police on our campuses to describe how their event response teams are intended to function. Typically, the event response team becomes involved as soon as the police or Administration learn of a demonstration. For planned demonstrations, the teams try to meet well in advance of the event, and they schedule additional conference calls and face-to-face meetings as necessary in the days leading up to the event and on the day of the event.⁷² The teams have adopted various mechanisms for ongoing communication.⁷³

In their initial meetings, event response teams discuss several broad subject areas. First, the teams share basic information about the upcoming demonstration. Depending on the circumstances, some team members may have more information—or more accurate information—than others. It is important that all members of the team are on the same page regarding the basic facts: Where is the demonstration expected to take place?

⁶⁸ These event response teams go by different names on the different campuses, including the Crisis Management Team at UC Berkeley, the Campus Operations Committee at UCLA, and the Demonstration Operations Team at UC Santa Cruz. Interviews with campus Police Chiefs.

⁶⁹ Interviews with campus Police Chiefs.

⁷⁰ Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling; Feb. 7, 2012 Interview with University of Michigan Public Affairs Director Kelly Cunningham.

⁷¹ Bill Bratton and Major Cities Chiefs Association, *Campus Security Guidelines: Recommended Operational Policies for Local and Campus Law Enforcement Agencies*, at 29 (Sept. 2009), *available at* https://www.majorcitieschiefs.com/pdf/MCC_CampusSecurity.pdf.

⁷² *See, e.g., id.*; Interviews with campus Police Chiefs.

⁷³ At UC San Diego, for example, all of the members of the team for a particular event exchange cell phone numbers in advance. Interviews with campus Police Chiefs.

How many demonstrators will be involved? Are they students, staff, faculty, or individuals with no formal affiliation to the University? What are the objectives of the demonstrators?⁷⁴

Second, the event response teams discuss priorities and objectives for responding to the demonstration, and consider how, if at all, the Administration should respond to unlawful activity by the demonstrators. For example, the team might address what would happen if demonstrators were to occupy the administration building. Would the campus tolerate an extended occupation of that building? Or, would the objective be to clear the building as soon as possible, even if it meant arresting protesters or possibly using force? Are there certain areas, such as emergency room entrances, that it would never be tolerable for protesters to block?⁷⁵ During these discussions, it is the role of the police representatives to educate other members of the team regarding what would be necessary to accomplish particular objectives, and to explain why certain objectives may be problematic or impossible from a tactical standpoint.⁷⁶ As an example, the police might explain that if they are asked to clear a particular plaza, their officers will need to don helmets and carry batons, and that they might need to use physical force if demonstrators refuse to move after all other means of persuasion are exhausted.⁷⁷

Third, the teams develop a strategic plan for responding to the demonstration. This strategic plan includes discussion of how, if at all, the police should respond to different actions by the demonstrators. The teams also discuss the roles and responsibilities of different team members during the demonstration. For example, teams share the names and contact information for responsible officials, the time and location for upcoming meetings, and plans for possible responses to the demonstration. The teams may also decide which of their members should be present at the demonstration. Several Chiefs of Police told us that it was important to plan to have administrators or faculty present at demonstrations to coordinate with police and interact with demonstrators.⁷⁸ These discussions by the event response team inform the more detailed Operations Plan that is drafted by the police department to govern its officers' actions.⁷⁹

For unplanned events, the event response teams generally meet once they become aware of the event. They engage in as many of the above steps as possible, though in a more condensed timeframe.⁸⁰

Leadership of these event response teams generally is not well defined. It appears that most of the teams do not have a formal "chair."⁸¹ We are not aware of any formal or even informal policies regarding who should have the final say on the matters decided by the teams.

⁷⁴ Interviews with campus Police Chiefs.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ At UC Santa Cruz, the "Demonstrations Operations Team" is chaired by an Associate Vice Chancellor. *Id.*

Similarly, we learned that the role of the Chancellor varies substantially across our campuses. Chancellors generally do not personally participate in the activities of the event response team. On some campuses, however, the Chancellor coordinates directly with the Chief of Police in advance of demonstrations.⁸² On other campuses, the Chief reports to a Vice Chancellor for Administration, but may alert the Chancellor regarding major actions or events.⁸³ Members of our faculty said that it was essential for the Chancellor to be ultimately responsible for decisions about how to respond to on-campus protests—and some suggested that if that responsibility is delegated, it should be to the Executive Vice Chancellor Provost, because of the Provost’s connection to the academic mission of the university.⁸⁴

Many of our police also told us that it was important for Chancellors to be directly involved in decision-making regarding upcoming protests. One Chief of Police within our system stressed the importance of maintaining “a functional reporting relationship” between the Chief and the Chancellor, even if it is not direct. This is consistent with other universities where campus police chiefs have regular access to senior campus administrators and other key decision-makers.⁸⁵ That does not necessarily require a direct reporting relationship, but it does require regular, face-to-face meetings with Chancellors, Provosts, and relevant Vice-Chancellors. This also tracks the recommendation of the U.S. Department of Justice that “[a]ll campus police chiefs and security directors should have access to and meet with college and university presidents and other key decision makers.”⁸⁶

We did not find any written policies regarding how our campus administrators make decisions within their event response teams. However, in recent months many of our campuses have been developing principles to guide their event response team’s deliberations about whether particular civil disobedience situations require a response at all, and, if so, what type of response is appropriate. For example, the Administration at UC Davis has decided that, when faced with civil disobedience, it will consider into which of the following categories the disobedience falls: (1) tolerable, (2) not tolerable, and (3) life threatening. The notion is that police involvement would be avoided altogether for violations in the first category, though other types of response could be considered. Another example of such guiding principles, though in the police rather than administrator context, is the Washington D.C. Metropolitan Police Department’s Standard Operating Procedures for Handling First Amendment Assemblies and Mass Demonstrations. There, the Use of Force Protocol begins by requiring police to determine if they are responding to “orderly crowds or marches,” “peaceful civil disobedience,” or to

⁸² Jan. 6, 2012 Meeting with UC Riverside Administrators.

⁸³ Interviews with campus Police Chiefs.

⁸⁴ Jan. 6, 2012 Meeting with UC Riverside Faculty.

⁸⁵ Jan. 13, 2012 Interview with Harvard University Police Department Public Information Officer Steven Catalano; Feb. 9, 2012 Interview with John Jay College of Criminal Justice President Jeremy Travis; Feb. 1, 2012 University of Wisconsin at Madison Chief Sue Riseling.

⁸⁶ U.S. Department of Justice Office of Community Oriented Policing Services, and Community Oriented Police Services, “National Summit on Campus Public Safety: Strategies for Colleges and Universities in a Homeland Security Environment,” at 11 (July 2005), available at <http://regents.ohio.gov/safetyandsecurity/resources/NationalSummitonCampusPublicSafety.pdf>.

“non-peaceful civil disobedience.”⁸⁷ If the activity is an orderly crowd or march, the protocol permits police presence but no physical contact. If it is peaceful civil disobedience, the police may consider mass arrests if necessary depending on the scenario and degree of disruption. And only if the officers are facing non-peaceful civil disobedience may they utilize force.

(c) Lack of Formal Coordination Between Police and Administrators During Events

Although event response teams actively engage in planning for events, and the objectives of the event response team generally inform the drafting of the police’s Operations Plan for the event, the members of the event response team do not always have an opportunity to review the Operations Plan to make sure that it accurately reflects their objectives. In addition, once an event begins, there is no formal system for the campus Administration to provide further input to the police—unless the event is so large and disruptive as to trigger the campus’s NIMS-compliant Emergency Operations Center (“EOC”) procedures. In that case, the EOC procedures provide that the police Incident Commander reports to the Chancellor (or the Chancellor’s designee), and the Chancellor necessarily guides all decision-making about any police response. For smaller events, however, there is currently no formal link between the Incident Command System and the campus Administration.

Despite the lack of formal policies, police and administration officials on some of our campuses described various informal ways that they keep in contact with each other during demonstrations.⁸⁸ On some campuses, senior administration officials who are members of the event response team are typically on the ground at the demonstration to stay abreast of developments.⁸⁹ At one campus, police use a web-based information system to provide the event response team with real-time updates about the demonstration.⁹⁰ Police officials on some of our campuses also told us that they would consult the Chancellor directly before taking a major police action in a demonstration context, unless there were exigent circumstances. Such consultations are not formally required, however, unless EOC procedures are triggered, and are not a consistent practice across our campuses.

When police and administrators do consult during events, there is also no formal division of decision-making responsibility between them. To be sure, some campus officials described to us an informal division of decision-making responsibilities. A consistent theme of our interviews with our campus Police Chiefs was their view that tactical decisions—*i.e.*, what police techniques should be used to achieve a certain objective with the

⁸⁷ Washington D.C. Metropolitan Police Department Standard Operating Procedures for Handling First Amendment Assemblies and Mass Demonstrations (Rev. Dec. 2, 2009), Appendix K “Use of Force” Section V(C)(1).

⁸⁸ Interviews with campus Police Chiefs.

⁸⁹ *Id.*

⁹⁰ *Id.*

minimum risk to the safety of protesters and officers—must be made by the police. As one UC Police Chief told us, “when it comes to ‘police work,’ the Chief is in charge.”⁹¹

At the same time, police officials throughout our system agreed that the Administration should be responsible for setting objectives. For example, the administrators on an event response team might decide that an extended occupation of a particular plaza by demonstrators is acceptable, and that there should be no physical response by police so long as the situation does not become violent or unsafe.⁹² Or, if the Administration believes that acts of civil disobedience are unreasonably interfering with important campus functions, such as students’ ability to get to their classes or to receive their financial aid checks, the Administration might decide that the protesters in question should be arrested and removed if they refuse to disperse voluntarily.⁹³

Other universities we contacted said they divide responsibilities along these same lines.⁹⁴ As one Police Chief from an outside university put it, he would not give students a warning that they must disperse or face arrest without first talking to the Administration. Carrying out the warning and subsequent arrests, however, would be done by the campus police without administrator involvement.⁹⁵ Another expert explained that it is best if the Administration makes strategic choices that allow the Administration to consider the campus values, risks, and public relations.⁹⁶ To enable the Administration to do so, it is incumbent upon the campus police to educate administrators about the tactics required to implement the administrators’ decisions, including any possibility that force will be used.⁹⁷

2. Recommendation

We believe the framework for coordination between administrators and police in planning for and responding to events needs to be made more formal, and several gaps in current practice should be filled. While most campuses have event response teams of some type, those teams and their responsibilities are generally not formally defined. And, for all but the largest events, after the event begins there are no formal procedures for coordination among the campus Administrators and the police leaders operating under the Incident Command System. To address these problems, we think it is necessary for all campuses to establish a standing event response team, with well-defined roles and responsibilities for planning responses to demonstrations that might

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ This was the case, for example, at the University of Michigan, the University of Wisconsin, Harvard, and throughout the CUNY (City University of New York) system. Feb. 7, 2012 Interview with University of Michigan Public Affairs Director Kelly Cunningham; Jan. 13, 2012 Interview with Harvard University Police Department Public Information Officer Steven Catalano; Feb. 9, 2012 Interview with Director of Public Safety for the City University of New York William Barry.

⁹⁵ Feb. 9, 2012 Interview with Director of Public Safety for the City University of New York William Barry.

⁹⁶ Feb. 6, 2012 Interview with Police Assessment Resource Center President Merrick Bobb.

⁹⁷ Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

involve civil disobedience.⁹⁸ We further believe that the event response team must remain involved once an event begins. Even if full Emergency Operations Center procedures are not triggered, the police Incident Commander should coordinate with the Chancellor or the Chancellor's designee on the event response team throughout the event.

As for the precise composition of the event response team, we believe this is an area where extensive systemwide rules and requirements might do more harm than good. Each of our campuses is unique, and each divides leadership responsibilities somewhat differently. The skills of the incumbent in any particular position vary over time. For that reason, the Chancellor at each campus should have broad discretion to structure the event response team in a manner that best suits that campus, and to select the chair of the team, subject to a few important requirements. At a minimum, the team must include the Chancellor, or another administrative official designated by the Chancellor with decision-making authority on behalf of the entire Administration, such as the Executive Vice Chancellor. It also must include the Chief of Police, the Vice Chancellor to whom the Chief of Police reports, and the Vice Chancellor for Student Affairs. It is also essential that the team reflects and understands the academic values of the institution, which will make it more legitimate in the eyes of the community. The team should therefore include one or more administrators who are members of the Academic Senate, and whoever chairs the team should both have the confidence of the Chancellor and be perceived by faculty and students as firmly aligned with our academic values and mission.

The team should meet at least twice a year, even in the absence of demonstrations or other events warranting a meeting. Such meetings will allow the team members to build working relationships with each other, evaluate responses to past events, identify areas for improvement, and participate in simulations and other training exercises—all without the pressure of planning for a specific upcoming event.

The team also should develop mechanisms for convening rapidly at the request of the team's chair—when, based on considerations such as the number of demonstrators involved in an event, the event's impact on campus operations, or the potential safety risks involved, the chair determines that an event is significant enough to call for the team's involvement. Additionally, the team should develop a system for real-time

⁹⁸ The Brazil Report made similar recommendations, although it did not tie the recommendations to creation of a formal team. See November 20, 2009: Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 13 (June 14, 2010), *available at* http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf ("Develop detailed protocols for responding to group acts of civil disobedience. Specify the roles to be played by the Administration (various units) and UCPD; as part of such protocols, establish rules and provide redundant tools to ensure prompt and clear communication between civilian decision-makers and the police."); *id.* at 14 ("For anticipated demonstrations, use time that is committed to advance planning more productively by identifying specific scenarios and developing multiple detailed strategies (and tactics) for responding to each scenario."); *id.* at 14 ("Set up a system for gathering information independently and for sharing it promptly with all affected entities and persons.").

communication among members and should designate alternates in case some members are out of town or unavailable when the team needs to convene.⁹⁹

One threshold task for event response teams is to develop principles that will guide administrators in their response to civil disobedience. We believe that each campus should develop and adopt such guidelines, and present them to the President for review, within one year following the President's acceptance of this Report's recommendations.¹⁰⁰

Setting out the exact nature of these guidelines is beyond the scope this Report and, we believe, should be the result of a collaborative process that solicits input from the campus's students, faculty, staff, administrators, and police. That said, we believe that there are certain core principles that should be followed as these guidelines are developed.

First, the guidelines should include clear definitions of the roles of campus administrators and of campus police in responding to demonstrations.¹⁰¹ In our view, the administrators set objectives and the police educate administrators regarding the tactical options for pursuing those objectives. For example, the Administration's objective might be to allow final exams to go forward uninterrupted at a given location. The police might advise the event response team that removing protesters from a building in which final exams are being administered could require use of force. Given this risk of physical altercation, administrators might decide to move the exam to an alternate location, or they might confirm that the police should attempt to clear the building. It is the role of administrators to re-evaluate and confirm or change the objectives after receiving input from the police on the feasibility of those objectives and what would be required to achieve them.¹⁰² At least for planned demonstrations, the police should then develop an Operations Plan for the event based on this input. Once the Operations Plan is prepared, the police should share it with the event response team to ensure that it properly reflects the Administration's objectives.

Second, the guidelines should make explicit that the responsibilities of the Administration and the police continue throughout the event as the administrators and police continue to discuss both the objectives and the police tactics necessary to achieve them. That discussion enables an iterative process through which appropriate changes can be made to the Administration's objectives if, in light of developments during a

⁹⁹ See also November 20, 2009: Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 14 (June 14, 2010), available at http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf ("Set up a system for prompt and reliable communication within the Administration, ensuring that the person or people in charge have all the pertinent information that is known by all the other administrative players.").

¹⁰⁰ See *infra* section IX.

¹⁰¹ Similar recommendations were advanced in the Brazil Report. See November 20, 2009: Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 13 (June 14, 2010), available at http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf ("In a written policy that is developed specifically for responding to group acts of civil disobedience, set forth clearly the allocation and responsibility between the civilian Administration and UCPD.").

¹⁰² When planning for an event, the event response team should also consider whether other campus resources, such as medical providers, mental health professionals, or the fire department, should be involved in the response.

demonstration, the police response required to achieve an objective would involve tactics that in the moment are no longer acceptable to the Administration. Civil disobedience that does not require police presence or a physical response on day one might require such a response by day three, and these guidelines should require the campus Administration to evaluate the continually changing context of any protest or civil disobedience activity. This must be done in conjunction with input from the police, as changing events may alter the Administration's objectives and the police response required to achieve those objectives. Tactics that had been discussed and approved at one point may no longer be considered acceptable as the event unfolds, and administrators must be able to respond and tell the police to change course, as appropriate. In some situations, the entire event response team will be able to discuss whether objectives need to be revised in light of developments during the event. In other situations, an on-site administrator (either the Chancellor or someone the Chancellor designates, as discussed below) will engage in these discussions with the police Incident Commander on the ground.¹⁰³ At a minimum, however, the Administration should re-approve any objectives that could require the use of force by police immediately before force is used, absent exigent circumstances.¹⁰⁴

Third, we envision that these guidelines would require campus event response teams and administrators to take an incremental and progressive approach when responding to civil disobedience, beginning with the least confrontational option. Since each step along the progression could escalate the situation, administrators should be able to articulate reasons why an earlier option did not or would not work before moving on to more confrontational options.

The first step in such a progression must be to determine whether any police presence is necessary, or if the response can be limited to observation only. We believe that protests and non-aggressive civil disobedience can often be managed through administrator communication only, without police interaction. This does not mean that campus police would not be involved in the decision-making process. As we said earlier, campus police are vital members of the event response teams, and their input would certainly shape administrators' understanding of a situation. The decision about how to respond, however, should begin with administrators whenever possible.

The second step would be to assess whether a greater police response is required. The framework recently adopted at UC Davis, which categorizes civil disobedience based on whether it is "tolerable," "not tolerable," or "life threatening," offers one promising approach for making this determination, though each event response

¹⁰³ Protest Response Guidelines were recently issued at UC Berkeley that are consistent with this recommendation. They state as follows: "While recognizing that police must at times respond to emergency circumstances, we will attempt to ensure that any decision to authorize police engagement, or to escalate or de-escalate police engagement, will be made only by a fully briefed senior administrator, who will be on-site during police actions." Feb. 21, 2012 email to Campus Community from George W. Breslauer, Executive Vice Chancellor & Provost, titled "Protest Response Guidelines." President Yudof gave a similar instruction in a recent letter to Chancellors: "In the event of a major demonstration, there should be a designated senior official on the ground, working closely with senior police officers, with discretionary authority to intervene with the police in advance of any use of force." Jan. 10, 2012 Letter from President Yudof to UC Chancellors, at 1.

¹⁰⁴ We believe that exigent circumstances mean an imminent threat of harm to individuals or significant destruction of property.

team may want to formulate its own framework. However formulated, we believe that administrators should be guided by their campus's academic mission, because greater police response will generally not be required if there is no significant interference with that mission. Each campus's definition of its academic mission may differ somewhat, but it would include obvious academic activities like classes and lectures, protecting the members of our greater campus community, and core university functions such as clinical care and financial aid. We note that people often think about civil disobedience as solely a matter between protesters and the campus Administration. However, civil disobedience can also have a significant impact on non-participating students and other members of the campus community. For example, some students complained to us about protesters occupying an administration building and blocking them from obtaining the financial aid checks they needed to pay for rent and living expenses.¹⁰⁵ Others were upset that protesters interrupted their midterms; they felt that the protesters were unfairly interfering with their education.¹⁰⁶ Staff members related experiences of feeling that their safety was threatened by protesters occupying buildings in which they work, and of being unable to return to their families at the end of the day because of blocked roads or garages. We respect and value the long history of civil disobedience in our University. At the same time, in crafting these guidelines we believe that administrators must also be mindful of their obligations to the greater University community.

Only if administrators have determined that there is a significant interference with their campus' academic mission, as defined through the process described above, should they consider engaging the campus police in any activity that could lead to a use of force. Even then, that engagement should begin with communication and de-escalation, rather than confrontation. We recognize, however, that there will be situations when communication is not effective. In those situations, it is likely that administrators will have to approve some use of force by the police. It is our hope that these situations will be rare and, indeed, we believe that our campus administrators already handle many protests with no need for force. Because other alternatives sometimes fail, however, these guidelines must address when administrators may authorize the use of force by police against protesters. The full contours of these guidelines as they relate to force cannot be established here.

We believe there is one area, however, where we should provide detailed guidance. In gathering comments and input for this Report, many members of our community sought an explicit recommendation regarding the use of pepper spray against protesters who are linking arms. We recommend that event response team's guidelines, should specify that administrators will not authorize any physical police response against protesters non-aggressively linking arms unless the protesters were significantly interfering with the academic mission of the campus. Even then the response should begin with communication and negotiation. Communication would include explaining why the University felt the protesters needed to move and explaining that protesters would face arrest if they did not move. Next, authorities should give protesters the opportunity to leave or be arrested peacefully. Only if all these other options did not work would any force become necessary, and it is

¹⁰⁵ Feb. 10, 2012 UC Davis Town Hall.

¹⁰⁶ *Id.*

the hope of the authors of this Report that those situations would be extremely rare. In these rare situations, however, we would recommend that campus police utilize hands-on pain compliance techniques before pepper spray or batons whenever feasible.¹⁰⁷

Throughout the event, the police Incident Commander must exercise leadership in the field and ensure that the plans developed with the Administration are carried out appropriately. The Incident Commander's goal always should be to diffuse tensions with protesters and to have the police use the minimum force necessary to achieve the Administration's objectives.

Although the event response team guidelines should be campus-specific, we believe that a systemwide policy must clarify that ultimate responsibility for the response to civil disobedience during a demonstration—including for any response that might be taken by the campus police department—rests with the Chancellor.

Chancellors may delegate decision-making responsibilities, but they must remain sufficiently involved in the process, and/or be sufficiently confident in anyone to whom they delegate, to ensure that the handling of the situation is appropriate.¹⁰⁸ As in other matters, if the Chancellor delegates decision-making, the Chancellor's responsibility lies in the appropriateness of that delegation.¹⁰⁹

We also recommend that the Chancellor designate at least one administrator from the event response team to be present at the demonstration to facilitate the Administration's involvement in decision-making during the demonstration. If that person is not the Chancellor or the person to whom the Chancellor delegated ultimate decision-making responsibility, then the person on the ground must be able to communicate in real-time with the Chancellor or other ultimate decision-maker. In the view of Dean Edley, the on-site administrator must be a member of the Academic Senate, in order to enhance the legitimacy of decision-making from the perspective of the University's academic mission. In the view of General Counsel Robinson, the on-site administrator should be whomever the Chancellor trusts, as allowing the Chancellor such discretion is consistent with the responsibility we seek to assign the Chancellor for the overall protest response.

¹⁰⁷ Nothing in this or any other policy should be interpreted as preventing officers from using whatever force is reasonably necessary to protect themselves or others from physical harm, or to prevent significant property damage. All force options should be available to any officer or administrator responding to a threat to life or the safety, or a threat of significant property damage.

¹⁰⁸ Some have asked whether the Chancellor should have this responsibility if the civil disobedience in question is targeted at a Regents meeting occurring on the Chancellor's campus. Our view is that the Chancellor should be responsible for decision-making in such circumstances, but that, where time permits, the Chancellor should consult with the University President and the Chair of The Regents. The Chancellor will be better positioned to respond to civil disobedience on his or her campus than the President or the Chair of The Regents would be, because the Chancellor will have relationships with the campus Chief of Police, will understand the layout of the campus, will be in a position to oversee the event response team's pre-event planning, etc.

¹⁰⁹ As a practical matter, when the Chancellor has delegated decision-making responsibility, holding the Chancellor accountable will involve evaluating whether the situation was one in which it was appropriate to delegate at all, and, if so, whether the Chancellor appropriately chose whom to delegate to. The Chancellor is also responsible for choosing appropriate members of the event response team to help with decision-making, and for making sure that the team is appropriately trained, as will be discussed further below.

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- Recommendation 8.** Establish a standing event response team on each campus to plan and oversee the campus response to demonstrations—include on the team faculty members and/or administrators recognized by students and faculty to be sensitive to the University’s academic mission and values.
- Recommendation 9.** To the extent necessary, modify police policies to require the participation of senior administrators in decision-making about any police response to civil disobedience—clearly define the respective roles of administrators (objectives) and police (tactics) in this process.
- Recommendation 10.** Develop principles to guide the event response team in determining whether particular acts of civil disobedience merit a response—when a response is necessary, specify use of lower levels of force (e.g., persuasion, hands-on compliance), before resorting to higher levels of force (e.g., pepper spray, batons), barring exigent circumstances.
- Recommendation 11.** When faced with protesters who are non-aggressively linking arms, and when the event response team has determined that a physical response is required, principles should specify that administrators should authorize the police to use hands-on pain compliance techniques rather than higher levels of force (e.g., pepper spray, batons), unless the situation renders pain compliance unsafe or unreasonable.
- Recommendation 12.** Place a senior administrator on-site within viewing distance of the event and with instant communication to the police Incident Commander—that administrator must (Edley) or may (Robinson) be a member of the Academic Senate.
- Recommendation 13.** During the course of an event, continuously re-assess objectives, and the wisdom of pursuing them, in light of necessary police tactics—seek to pursue only important goals with the minimum force necessary.
- Recommendation 14.** Absent exigent circumstances, bar commencement or escalation of force by police unless the Chancellor or the Chancellor’s designee approves it immediately before the action is taken.

B. Assistance from Other Police Departments

Because of the small size of our campus police departments, police responses to campus demonstrations often involve obtaining assistance—including mutual aid—from other police departments. Such assistance might come from other departments within the UC system or from outside law enforcement agencies. While outside help is sometimes necessary, the presence of officers from other police departments during campus demonstrations creates a potential for problems. Police from other departments often bring with them different cultures, equipment, and training. And many police from outside the UC system are perceived, rightly or wrongly, as insensitive to campus constituents and to the academic mission of the University. In the rush to respond to a rapidly evolving campus demonstration, these external departments sometimes are inadequately briefed. Policies regarding assistance from other police departments need to better promote effective coordination between departments so that the actions of outside officers during demonstrations will be consistent with the decisions made by the campus Administration.¹¹⁰

1. Background

At the statewide level, the California Emergency Management Agency has promulgated a lengthy Law Enforcement Mutual Aid Plan.¹¹¹ This Plan divides the state into seven “mutual aid” regions and describes the standard procedures for acquiring aid and ensuring coordination between law enforcement agencies. The Universitywide Police Policies and Procedures also contain rules regarding the reassignment of police personnel from one campus to another.¹¹² These policies direct that requests for assistance from other campus departments will be made before special campus events or incidents of civil disorder, and that “[c]ampuses will make every reasonable effort to provide the requested mutual aid commensurate with available resources and depending on local circumstances.”¹¹³

Outside experts and our campus Police Chiefs stressed the importance of communicating, planning, and training in advance of demonstrations with law enforcement partners who might provide aid. For example, the Major Cities Chiefs Association (MCC) advises that, in advance of demonstrations, campus police departments

¹¹⁰ The recommendations in this section apply to unplanned events as well, but they will be more difficult to achieve in that context. The campus police department should do as much coordination as possible with police providing assistance when the assistance is in response to an unplanned event.

¹¹¹ See Law Enforcement Mutual Aid Plan, California Emergency Management Agency (2009 ed.), *available at* <http://www2.oaklandnet.com/oakca/groups/police/documents/agenda/oak032688.pdf>.

¹¹² See Universitywide Police Policies and Administrative Procedures, § 1301 *et seq.* (Jan. 7, 2011), *available at* http://www.ucop.edu/ucophome/coordrev/ucpolicies/documents/policepol_adminproc.pdf.

¹¹³ *Id.* §§ 1301, 1302, 1303.

should work together with local law enforcement partners to develop a coordinated response.¹¹⁴ The MCC has also suggested that representatives of local law enforcement should meet with the campus police department and campus administrators at least twice a year to share concerns and review events.¹¹⁵ Many of the other universities and university police departments with whom we spoke do this and more. For example, the campus and city police officials in Madison, Wisconsin meet at least monthly along with their senior staff, and they sometimes include the county sheriff.¹¹⁶ They told us that these regular meetings help them build a strong enough relationship to enable them to work together effectively even in responding to unexpected or spontaneous events.¹¹⁷

Many of our campus police departments already engage in substantial planning and coordination with other police departments. Several Police Chiefs told us that, when possible, they meet extensively in advance of large demonstrations with commanders from the law enforcement agencies that may provide assistance. During these pre-meetings, supervisors from each department survey the site of the event, discuss the command structure and operations plan, and review the rules of engagement.¹¹⁸ If time permits, campus police departments also train with outside officers in advance of the event.¹¹⁹ On the morning of the event, many Chiefs host a briefing for law enforcement partners, to review again the Operations Plan and ground rules for the demonstration.¹²⁰

A critical issue in the area of outside assistance, however, is command structure—*i.e.*, who commands off-campus personnel who come to a campus to provide assistance during a demonstration? When another police department provides assistance, the officers of that department often arrive with their own commander. The assisting officers will report to that commander, who in turn should coordinate with the Incident Commander from the host-campus police department.¹²¹

¹¹⁴ Bill Bratton and Major Cities Chiefs Association, *Campus Security Guidelines: Recommended Operational Policies for Local and Campus Law Enforcement Agencies*, at 41-42 (Sept. 2009), *available at* https://www.majorcitieschiefs.com/pdf/MCC_CampusSecurity.pdf. See also Police Executive Research Forum, “Managing Major Events: Best Practices from the Field,” at 24 (June 2011) (observing the need to ensure that each agency’s role is clear prior to an event, and to build a mechanism for sharing information between mutual aid partners).

¹¹⁵ Bill Bratton and Major Cities Chiefs Association, *Campus Security Guidelines: Recommended Operational Policies for Local and Campus Law Enforcement Agencies*, at 41-42 (Sept. 2009), *available at* https://www.majorcitieschiefs.com/pdf/MCC_CampusSecurity.pdf.

¹¹⁶ Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

¹¹⁷ Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

¹¹⁸ Interviews with campus Police Chiefs.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* Students and other community members have expressed confusion about the chain of command in situations involving outside departments. One student leader told us that it is “unclear who is in charge,” and urged us to address this issue in our report. Jan. 24, 2012 Meeting with UC Irvine Student Leaders.

When advance planning is possible, the police from the host campus may request that the assisting police not wear personal protective equipment (known as “riot gear”) or carry particular weapons. *If the assisting agency is not comfortable with those conditions, however, it can refuse to provide assistance.*¹²² In an emergency, the assisting department’s supervisors have discretion to decide on the equipment to be worn and carried by their officers, and the host campus has virtually no input.¹²³

Each police department within and outside the UC system currently has its own use-of-force policy. Officers are only trained on their own department’s policy, which also can pose a challenge for coordination when a campus department obtains outside assistance.¹²⁴

In our discussions with UC Police Chiefs, most voiced a preference for using police from other UC campuses, rather than seeking assistance from law enforcement agencies outside the UC system. There are two primary considerations behind this preference. First, campus policing requires a specific skill set and sensitivity to campus populations, and a familiarity with academic values. Officers from non-UC agencies do not always possess these traits.¹²⁵ Second, because of their different uniforms, it is easy for demonstrators to see that outside officers are not from within the UC system, which can fuel tensions, changing the dynamic of the event.¹²⁶ That said, it sometimes is not possible to rely exclusively on other UC police departments, whose staffing pressures may render them unable to provide assistance, or who may be dealing with parallel civil-disobedience events on their own campuses.¹²⁷ And a few UC Police Chiefs, who had developed strong working relationships with their municipal counterparts, told us they were more comfortable relying on assistance from local law enforcement agencies—in part because those agencies are nearby and their officers can arrive on shorter notice.

In the event that non-UC law enforcement agencies do assist in responding to civil disobedience, many UC Police Chiefs are careful about what responsibilities they are given. One Chief said that it was important to “be deliberate” in deciding what kind of assignments to give non-UC officers. For example, if possible, they should not be placed in “hands on” situations such as making arrests. Several other Chiefs told us that outside law enforcement agencies should be kept on the perimeter of a demonstration, or held in reserve and employed only if the situation escalates or if reinforcements are required.

¹²² Interviews with campus Police Chiefs.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

2. Recommendation

Outside assistance poses challenges for many of our campus police departments. While the host department is responsible for managing the event, the host department lacks control—particularly when aid from other departments is sought on an emergency basis—over the assisting officers' attire, equipment, and training. Because the assisting officers typically remain under the supervision of their own supervisors, there is also a need for coordination between those supervisors and the Incident Commander from the host campus police department.

To facilitate coordination and ensure a consistent police response, it is a best practice for the campus police department to engage in pre-event planning with any agencies that may provide assistance during an upcoming demonstration. Time permitting, an initial face-to-face meeting should take place with all such agencies several days in advance of the event, to share information about the demonstration and to discuss the Operations Plan (the plan that the home campus police department develops to guide police operations in response to the event). The agencies should stay in contact in the days leading up to the event. If possible, a law-enforcement briefing should be held on the morning of the demonstration to discuss the final Operations Plan for the event, the command structure, the rules of engagement, the Administration's objectives, and so on. It is crucial for all participating agencies to understand the need to respect First Amendment rights as well as issues such as how many officers will be participating, each agency's role, the communications system, and limitations on the use of force—issues typically covered in the Operations Plan of the host campus police department.¹²⁸ Because a commander from the department providing assistance may supervise that department's officers, if possible, she should be included in the coordination between police and administrators discussed in the previous section.

In most situations, our Police Chiefs should seek assistance from other UC campuses, rather than from non-University agencies. And, when called upon to offer assistance to other UC campuses, our campus departments should make every effort to provide it. This approach will help ensure that the assisting officers understand and appreciate academic values and the importance of free expression to the University's mission.¹²⁹ In addition, once the recommendations we make below are implemented, officers on all UC campuses will share similar training and will follow the same response option framework,¹³⁰ eliminating some of

¹²⁸ We note that a similar recommendation was included in the Brazil Report. See November 20, 2009: Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 19 (June 14, 2010), *available at* http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf ("When requesting mutual aid, specify the number of officers needed, the purposes for which they will be deployed, the circumstances in which they will be working, what equipment and gear they should bring and what equipment and gear they may not bring, and make sure UCPD will be able to communicate in real time (by radio or otherwise) with every unit that will come on campus.").

¹²⁹ The police agency of a local California State University campus may offer another source for officers trained and familiar with operating in a university environment.

¹³⁰ See *infra* section VI.B.1.a.iii.

the challenges to coordination.¹³¹ In some circumstances, however, there may be good cause for obtaining assistance from a local law enforcement agency rather than from another campus, such as where parallel demonstrations have sapped the resources of sister campuses, where a municipal police department has a demonstrated history of constructively assisting in the response to campus demonstrations, or where assistance is needed urgently.

Where non-university law enforcement agencies do provide assistance, the campus Police Chief should give careful thought to how best to deploy them, and should consider whether to keep them on the perimeter of the demonstration or hold them in reserve. We considered but ultimately rejected formal recommendations that officers from outside agencies not be placed in close contact with demonstrators, or that they always be paired with a UC officer. Although these may be the best approaches in many circumstances, we think that formal recommendations would be too prescriptive, and could hamstring campus administrators and police in responding to particular events. For example, at least one campus Police Chief told us that he simply did not have enough officers to implement a requirement that non-UC officers be kept away from demonstrators.

Recommendation 15. Coordinate in advance of planned demonstrations with other police departments likely to provide assistance.

Recommendation 16. Require each campus police agency to seek aid first from other UC campuses before calling on outside law enforcement agencies, except where there is good cause for seeking aid from an outside agency.

IV. Hiring and Training

At bottom, the best way to ensure that individual police officers on the ground and their supervisors make good judgments in the heat of an event involving civil disobedience is to hire the right people for the job and give them the right training.

¹³¹ We recognize that the report prepared by Kroll regarding the November 2011 events at UC Davis voiced a somewhat different opinion on this subject. Kroll highlighted as an “issue” the “trend to obtain officers from other UC campuses despite the distance, response time and small size of the other UC police departments,” before “turning to the Davis Police Department or the local Sheriff’s Department.” In Kroll’s view, “there are problems with relying on only the other UC agencies,” including, for example, that “on some of the days of public order challenges at UC Davis, there were statewide protests that should have reasonably been expected to demand the police at their home campuses.” Kroll, Report Concerning the Events at UC Davis on November 18, 2011, at 124, *available at* <http://reynosoreport.ucdavis.edu/reynoso-report.pdf>. As discussed in the main text, we agree with Kroll that there may be good cause under some circumstances to use local law enforcement instead of police from other UC campuses. When those circumstances are not present, however, we think that the shared values of our UC police departments, as well as the greater opportunities for shared training, warrant a policy of seeking aid from other UC departments in the first instance.

A. Police Hiring

Campus policing takes a special type of professional—one who understands and appreciates the University’s mission and the importance of First Amendment values, and who displays sensitivity to the diverse populations on our campuses. We have been privileged to meet many officers cut from this cloth during our review. As our departments hire new officers and promote existing ones, it is crucial for them to identify people who will meet this high standard.

1. Background

University policy requires all campus police departments to adhere to the regulations and standards of the California Commission on Peace Officer Standards and Training (“POST”) in the employment of peace officers at the entry level as well as for lateral entrants.¹³² POST was established by the California Legislature to set minimum selection and training standards for California law enforcement.¹³³

POST’s minimum selection standards include those set forth in California Government Code sections 1029 and 1031: officers must be free of any felony convictions; be a United States citizen or permanent resident who has applied for citizenship; have good moral character as determined by a background investigation; have at least a high school degree; submit to fingerprinting; and be free from any physical, emotional, or mental condition that might adversely affect the exercise of police powers.¹³⁴ POST’s minimum selection standards also include passing a reading and writing ability assessment.

Many of our campus police departments have hiring standards that are more rigorous than the POST minimum standards, such as favoring applicants with a college degree.¹³⁵ Many also use the interview process and psychological testing to attempt to find candidates who will best understand the academic environment and who will be creative and flexible in working with students.¹³⁶ Police chiefs from other universities with whom we spoke use similar methods.¹³⁷

Some of our campus Police Chiefs told us that a good source for desirable candidates is UC alumni. Others emphasized that hiring candidates with some college education is helpful. Some Chiefs noted, though, that they face challenges finding these types of applicants because neighboring municipal and county agencies generally offer higher pay than our campus departments can afford.

¹³² Universitywide Police Policies and Administrative Procedures §§ 601-602 (Jan. 7, 2011), *available at* http://www.ucop.edu/ucophome/coordrev/ucpolicies/documents/policepol_adminproc.pdf.

¹³³ See About POST, *available at* <http://post.ca.gov/about-us.aspx>.

¹³⁴ See Overview of Peace Officer Selection Standards, *available at* <http://post.ca.gov/overview-selection-standards.aspx>.

¹³⁵ Interviews with campus Police Chiefs.

¹³⁶ *Id.*

¹³⁷ *E.g.*, Feb. 29, 2012 Interview with University of Nevada Las Vegas Police Department Chief Jose Elique.

On some of our campuses, police departments include members of the campus community in their hiring processes to ensure that officers will relate well to all segments of the campus community.¹³⁸ For example, at one campus, the interview panels include a representative from student government, student affairs, student health, or human resources.¹³⁹ Additionally, our Police Chiefs consistently told us that it is a best practice for the Chief personally to interview any candidate before he or she is hired for a sworn position, and to emphasize during the interview the unique nature of campus policing to ensure that the candidate will succeed in a campus environment.¹⁴⁰

In our research and discussions with external experts, we learned that there are currently no national standards that set forth minimum qualifications for hiring campus police or security personnel. The United States Department of Justice recommends, however, that all law enforcement agencies “should seek to hire and retain a diverse workforce that can bring an array of backgrounds and perspectives to bear on the issues the agencies confront and the choices they must make enforcing the law.”¹⁴¹ It also advises that departments should use composite examinations that measure job-related cognitive abilities and personality traits, and that departments should assess a candidate’s suitability based on the candidates’ personal, work, and school experiences.¹⁴²

2. Recommendation

No matter how robust our policies are, we cannot avoid breakdowns in the police response to protests and civil disobedience if individual officers on the ground do not have the appropriate outlook and temperament. Simply put, we must hire the right people for the job. To a large extent, this is not a matter of policy. It is a matter of sound judgment on the part of those involved in police hiring on our campuses.

But there are a few simple policies that can help improve our chances of hiring the right people, in addition to continuing to follow the POST guidelines. As an initial matter, we should require Police Chiefs personally to interview and approve all newly hired officers. We understand that is current practice on all of our campuses, but it has not always been so. Going forward, the head of each of our police departments should be intimately involved in the hiring process for each vacancy—without exception—to help ensure that new hires are cut out for the job of campus policing. We also recommend that Chiefs attempt to hire candidates with at least some college education, making it more likely that they will appreciate campus life and student perspectives. We further recommend reviewing compensation practices to ensure they are competitive enough to attract and retain highly qualified officers and supervisors.

¹³⁸ Interviews with campus Police Chiefs.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ US Department of Justice, Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies, at 19 (Jan. 2001).

¹⁴² *Id.*

As part of the hiring process for all sworn officers, some members of our campus community from outside the department and the Administration should meet the candidate and provide input to the Police Chief. This could include students, faculty, staff, or some combination of the above. Input into hiring decisions from the campus community will enhance the credibility of the campus police department and the community's trust in it, and will increase the understanding that the police are part of the community. Members of the community should have an even greater role in the hiring of Police Chiefs and command-level positions within the department, and the promotion of current personnel to those positions.

Recommendation 17. Require the Chief of Police on each campus personally to interview and approve all newly hired sworn officers.

Recommendation 18. Review UC police compensation practices to ensure that compensation is sufficiently competitive to attract and retain highly qualified officers and police leaders.

Recommendation 19. Obtain input from members of the campus community (e.g., students, faculty, staff) in the process for hiring campus police officers, and promoting or hiring officers for command-level positions within the department.

B. Police Training

Properly training our campus police is critical to ensuring that they make good decisions in the field and that the policies discussed in this Report are implemented. Our interviews established that UC police officers currently do receive training related to demonstrations and civil disobedience, both as a part of the required statewide POST curriculum and on an *ad hoc* basis within their own departments. But it is not clear that all of our officers who might be confronted with situations involving civil disobedience and demonstrations receive the *right* training, including training on how to de-escalate protest situations and avoid the use of physical force if at all possible. There certainly is a perception held by people on our campuses that current training is inadequate.¹⁴³ For that reason, we have considered ways in which current training practices could be expanded and improved.

1. Background

Current University policy requires that all campus police officers complete a POST-certified Regular Basic Course and then serve a probationary period of twelve months.¹⁴⁴ POST-certified Regular Basic Courses are

¹⁴³ Jan. 6, 2012 Meeting with UC Riverside Students.

¹⁴⁴ Universitywide Police Policies and Administrative Procedures § 603 (Jan. 7, 2011), available at http://www.ucop.edu/ucophome/coordrev/ucpolicies/documents/policepol_adminproc.pdf.

programs of study offered by the forty police academies in California, all of which require at least 664 course hours across 42 subject areas.¹⁴⁵ The basic topics that the curriculum must cover in each of those subject areas are defined by POST.¹⁴⁶ Each police academy then develops its own more specific curriculum covering each topic, which is approved in advance by POST.¹⁴⁷

The protest-related topics that POST requires academies to cover in the “disputes and crowd control” subject area are: “peace officer responsibilities regarding the protection of an individual’s right to free speech and assembly”; “the role of law enforcement regarding crowd control”; “psychological factors associated with crowd behavior”; “phases of crowd development from a casual gathering through the development of a riot”; and “the three primary roles individuals play within a crowd.”¹⁴⁸

Police also must complete at least 24 hours of continuing education training every two years. This training is usually offered by the department, though the curriculum for each training module must be approved by POST.¹⁴⁹ At least 14 of the 24 hours must be devoted to training in “perishable skills,” which include use-of-force techniques. The additional subjects to be taught are determined by the Chief of each department.¹⁵⁰ Many of our campus Police Chiefs told us that they make a practice of including topics related to crowd control, protests, and civil disobedience in their department’s continuing education sessions.¹⁵¹

The Police Executive Research Forum (“PERF”), which is a national membership organization of progressive police executives from the largest city, county, and state law enforcement agencies,¹⁵² recommends that training for the management of demonstrations include the following: (1) applicable federal and state laws and departmental policies; (2) civil liberties issues inherent in demonstrations; (3) rules of engagement, use of force policies, and arrest procedures; (4) instruction on emotional control, teamwork, and adherence to commands; (5) instruction on de-escalation techniques; (6) strong statements of expectations for highly disciplined behavior; and (7) the consequences for failing to comply with laws and policies.¹⁵³ PERF further recommends that all departments include demonstration management in their regular training schedule.¹⁵⁴

¹⁴⁵ Jan. 6, 2012 Interview with POST Assistant Executive Director Bob Stresak.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See Overview of Peace Officer Selection Standards, “LD 24 Handling Disputes/Crowd Control,” *available at* <http://www.post.ca.gov/regular-basic-course-training-specifications.aspx>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Interviews with campus Police Chiefs.

¹⁵² See About PERF, *available at* <http://policeforum.org/about-us/>.

¹⁵³ Police Executive Research Forum, “Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches,” at 22 (2006).

¹⁵⁴ *Id.*

Experts with whom we spoke emphasized that training on techniques for de-escalating protest situations is particularly important. For example, officers in a campus police department should be trained on how to limit their response to taunting and other disrespectful but not physically threatening acts by students.¹⁵⁵

During our review, we learned that our campus Police Chiefs have begun working to establish a joint “special response team” for responding to demonstrations involving civil disobedience. This team would be comprised of officers from each of our campuses, who would receive supplemental training on civil disobedience, crowd control, and use-of-force policies. Some of this supplemental training would be conducted jointly so that the members of the special response team get to know each other and practice working together. Members of this special team would then be the first responders on their own campuses to civil disobedience situations, and, when further assistance was needed, members of the special response team from other campuses could be called upon to help.¹⁵⁶ The California State University System also has this type of special response team, which it calls a Critical Response Unit (CRU). The CRU has officers from each of the 23 California State University campuses, who are organized into squads and are deployed for special events and crowd control. The CRU officers receive specialized training and use a CRU policy manual.¹⁵⁷

Several of our Police Chiefs also told us that they routinely participate in joint training exercises with local law enforcement agencies, which help build relationships and trust in the event that they need to call on those agencies for assistance in responding to civil disobedience.¹⁵⁸ Experts told us that the best way to develop this type of relationship is through training, drills, and table-top exercises with mutual aid partners. This permits the agencies to understand each other’s approach to crowd management and better prepares the agencies to work together.¹⁵⁹

¹⁵⁵ Jan. 9, 2012 Interview with Professor David Sklansky.

¹⁵⁶ Interviews with campus Police Chiefs.

¹⁵⁷ Feb. 29, 2012 Interview with the California State University System Chief Law Enforcement Officer Nathan Johnson.

¹⁵⁸ Interviews with campus Police Chiefs. In our conversations with experts outside the UC system, we learned that other police departments similarly train with nearby departments to prepare to respond to events involving substantial civil disobedience. For example, prior to the 2003 Free Trade Area of America meetings in Miami, the Miami Police Department brought together the 167 agencies that would be participating in the management of the event for table-top exercises and planning. The department also provided a 40-hour “Managing Civil Actions in Threat Incidents” course to officers. See Police Executive Research Forum, “Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches,” at 24-25 (2006).

¹⁵⁹ Jan. 30, 2012 Interview with Professor Geoffrey Alpert; Police Executive Research Forum, “Managing Major Events: Best Practices from the Field,” at 4, 24, 30 (June 2011) (Seattle Assistant Chief Paul McDonagh).

2. Recommendation

Our police departments currently adhere to the minimum POST standards on training, and they should continue to do so. But we believe that alone is insufficient. In light of the great likelihood of civil disobedience on our campuses, all of our officers must be given additional training that will equip them to respond in a responsible way. In particular, we recommend that all of our campus police departments focus more of their training time on mediation, de-escalation, and crowd management skills.

It also appears to be a best practice to develop greater specialization within departments. We therefore recommend that select officers from each UC police department be chosen to receive additional training in mediation, de-escalation, and crowd management skills. Those officers should be the first responders if a police response to civil disobedience is required on their campus. Several of our police departments have already sent officers to crowd-control trainings put on by experts in other jurisdictions;¹⁶⁰ all of our Chiefs should seek out and take advantage of such opportunities. Commanders likely to serve as Incident Commanders should also receive such training.

We further recommend that the Chiefs continue developing a regional or systemwide “special response team” consisting of officers from across our campuses who will receive additional, joint training in responding to civil disobedience. In particular, this training should focus on what one Police Chief called “soft skills,” such as learning how to compromise with protesters and de-escalate a protest situation, and practicing facing insults without responding with force. The officers on the “special response team” would be the officers to go to other campuses when outside assistance is needed.

We also recommend that each campus police department conduct trainings with local law enforcement agencies that are likely to send their officers to provide assistance to the campus. Such joint training should include briefing on past events, table-top exercises regarding crowd control and demonstrations, and other scenario planning.¹⁶¹ These joint exercises should be held often enough to ensure a good working relationship between the departments. We recognize that such training sessions are costly, and that implementing this recommendation may require additional resources.

Recommendation 20. Increase training of campus police officers in the areas of crowd management, mediation, and de-escalation of volatile crowd situations.

¹⁶⁰ Interviews with campus Police Chiefs.

¹⁶¹ Police Executive Research Forum, “Managing Major Events: Best Practices from the Field,” at 24 (June 2011).

Recommendation 21. Create specialized response teams with additional training in crowd management, mediation, and de-escalation techniques at the systemwide level.

Recommendation 22. Establish a regular program for joint trainings, briefings, and scenario planning with law enforcement agencies on which each campus police department is likely to call for assistance or mutual aid.

C. Administrator Training

As discussed above, we think senior administrators should be deeply involved in decisions about how (if at all) police respond to demonstrations. To participate constructively, they need training.

1. Background

Our administrators currently receive no formal training in subjects related to police responses to demonstrations. That is not to say that our administrators are entirely uninformed on topics such as the Incident Command System police use during events, police policies, crowd management tactics, and use-of-force options. But, for the most part, any knowledge they have on these subjects has been obtained informally—through *ad hoc* conversations with police, or as a result of their involvement in the response to prior demonstrations.¹⁶² Nor are our administrators systematically trained on issues related to responses to demonstrations that do *not* necessarily involve the police, such as mediation and de-escalation techniques.

This is consistent with the practice at universities outside our system. We conducted interviews with administrators, police, and general counsels at a number of other universities, and none of them described any sort of formal training programs for administrators regarding responding to demonstrations and civil disobedience.¹⁶³

But there is a growing sense within our community that some formal administrator training is necessary. President Yudof emphasized the importance of such training in a January letter to all UC Chancellors, which directed that “[s]enior administrators should have rehearsal discussions or simulations with police and, perhaps, student representatives.”¹⁶⁴ In our interviews, administrators repeatedly expressed a desire for more training in crowd management techniques and use-of-force options, so that they can better understand and

¹⁶² Interviews with campus Police Chiefs.

¹⁶³ *E.g.*, Feb. 15, 2012 Call with Outside University General Counsels.

¹⁶⁴ Jan. 10, 2012 Letter from President Yudof to UC Chancellors, at 1.

guide police actions in response to civil disobedience.¹⁶⁵ And police also thought that formalized training for administrators would be helpful.¹⁶⁶ One Chief told us that “we need to be able to speak the same language.”¹⁶⁷ Another told us that administrators need to be able “to understand the different types of force, when force is appropriate, when force is unreasonable, and what are the possible triggers.”¹⁶⁸ Outside experts agreed that it is vital for administrators to understand issues such as the incident command system.¹⁶⁹

2. Recommendation

We agree with those throughout the University who have said that formal training for administrators is essential to improving the response to demonstrations and civil disobedience. This training will be all the more important if, as we recommend, our campuses establish formal event response teams involving senior administrators and rely on those teams to guide the police response to civil disobedience events at demonstrations.¹⁷⁰

The University should provide senior administrators with training on policies and concepts related to the response to civil disobedience. Those subjects would include any systemwide policies arising out of this Report’s recommendations, mediation skills, de-escalation techniques, use-of-force policies, the Incident Command System, and the specific weapons and techniques available to police on our campuses. We envision that this training would occur primarily at the campus level—so that administrators are trained together on their individual campuses. The campus training sessions should include a discussion of campus-specific issues, such as the incident command system and how it is implemented on that campus, the structure of the event response team, and the dynamics of past protests on the campus. The training should also include table-top exercises conducted with members of the police department to simulate the response to various civil disobedience scenarios.

We recommend that this training be required for all Chancellors, all members of the event response team on each campus, and those members of each campus’s Communications Department who interact with the media during civil disobedience events. The campus Police Chief should participate in the trainings to answer questions and to build relationships with the administrators involved. The training should occur at least annually, to refresh the knowledge of senior administrators and inform them of new issues, and to ensure the prompt training of new administrators.

¹⁶⁵ Jan. 11, 2012 Meeting with UC Berkeley Administrators.

¹⁶⁶ Interviews with campus Police Chiefs.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Jan. 24, 2012 Interview with Professor Christopher Stone.

¹⁷⁰ See *supra* section III.A.2.

At the system level, various officials at the Office of the President should be involved in setting policies regarding the response to civil disobedience and assisting the efforts of campus Administrations and police in this area. These officials should receive similar training on these issues so that they can more effectively communicate with their colleagues on the individual campuses. The University President should direct which officials within the Office of the President are required to receive this training.

Recommendation 23. Implement formal training of administrators, at the system and campus levels, in the areas of crowd management, mediation, de-escalation techniques, the incident command system, and police force options, to be refreshed annually.

Recommendation 24. Conduct simulations jointly with campus administrators and campus police to rehearse responses to civil disobedience scenarios.

V. Communication with Protesters and the Campus Community

A. Coordination and Communication with Protesters in Advance of Planned Protests

When members of the event response team know that a protest is being planned, such advance notice creates opportunities for administrators proactively to engage with the protesters in question. Successful pre-event communications can allow for a frank exchange of information and concerns on both sides, set expectations about the intentions of protesters and campus officials, and create channels for communication during the event. Many officials on our campuses already seek to communicate with leaders of planned protests in advance of an event, but the approaches to such communications vary across the campuses.

1. Background

There are few written policies on our campuses regarding communication between demonstrators and campus officials in advance of a planned demonstration. One campus's policy instructs that, in advance of a planned demonstration, the police department's "liaison officer" should: "[i]dentify, make contact and attempt to develop a rapport with the organizers of the proposed event"; "[d]etermine intentions and motivations of the group, organizers, and identified leadership"; "[f]acilitate meetings with the organizers/leadership and stakeholders to discuss time, place, and manner issues"; "[i]dentify the actual contact person for the group during the event and

identify back up contacts”; and “[c]learly state what activities are and are not permitted.”¹⁷¹ Many other administrators and Police Chiefs within our system said that they engage in similar outreach as an informal practice.¹⁷²

If possible, the event response team should identify leaders of the protesters with whom to communicate.¹⁷³ One Chief of Police told us that the “first priority” should be to determine who the leaders of the group are. Increasingly, however, demonstrations on our campuses involve nominally “leaderless” groups such as the Occupy movement, where issues are taken before a general assembly and individual members are reluctant to speak on behalf of the group.¹⁷⁴

Campuses have adopted different practices regarding who typically initiates pre-event discussions with protesters. On some campuses, the police frequently initiate these conversations.¹⁷⁵ On other campuses, it is more typically someone from Student Affairs.¹⁷⁶ In our meetings with faculty and administrators, many suggested that it could be helpful for faculty to be more involved in discussions with protesters both before and during events, although there was concern that faculty might need some additional training before being called upon to do so.¹⁷⁷

Whoever initiates conversations with those planning a protest, we were told that it is generally best to conduct such conversations face-to-face, insofar as that is possible before an event begins.¹⁷⁸ In addition, some faculty recommended that administrators and faculty should make greater efforts to use social media to communicate to a broader audience regarding protest issues.¹⁷⁹

¹⁷¹ UC Berkeley Police Department Crowd Management Policy, at 5, *available at* <http://administration.berkeley.edu/prb/PRBCrowdPolicy.pdf>.

¹⁷² Interviews with campus Police Chiefs.

¹⁷³ See Police Executive Research Forum, “Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches,” at 11 (2006); Interviews with campus Police Chiefs.

¹⁷⁴ We believe that there are actually de facto leaders within every group, but when a group claims it does not have leaders, it makes it much more difficult to coordinate with the group. To address this, some police have tried to find ways to communicate with the group that do not depend on official leaders, such by using social media to communicate directly to all the protesters, and by forming relationships and communicating directly with protesters who seem to hold sway with the larger group. Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Occupy Policing, Part II: Setting and conveying the right tone, *available at* <http://cops2point0.com/2011/12/occupy-policing-part-ii-setting-conveying-right-tone> (describing approaches used by Philadelphia police).

¹⁷⁵ Interviews with campus Police Chiefs.

¹⁷⁶ Feb. 10, 2012 Meeting with UC Davis Student Affairs Administrators.

¹⁷⁷ Jan. 25, 2012 Meeting with Academic Council; Feb. 10, 2012 UC Davis Town Hall; Feb. 28, 2012 Meetings at UC Irvine.

¹⁷⁸ Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling; Jan. 31, 2012; Interview with Professor Lorie Fridell.

¹⁷⁹ Jan. 25, 2012 Meeting with Academic Council.

2. Recommendation

It is a best practice for campus officials to communicate early and often with demonstrators. Wherever possible, this communication should begin well in advance of the demonstration. The event response team should attempt to identify the leaders of a protest group and work with them; where that is not possible, campus officials still should attempt to communicate with at least some members of the group, and should consider using social media to do so.

We recommend that campus officials attempt to engage those planning a protest in a dialogue that seeks to understand the protesters' concerns and objectives; explains the ground rules such as applicable time, place, and manner regulations; and describes how the Administration and the police are likely to respond to various types of conduct by the protesters.¹⁸⁰ For example, the message to demonstrators may be that, as long as their demonstration is not violent and there is no damage to property, campus officials will work with the demonstrators to facilitate their event; however, if the demonstrators obstruct traffic or occupy certain buildings, they will be subject to arrest or student discipline.¹⁸¹ Campus officials should also make demonstrators aware of alternatives to civil disobedience—including other avenues for airing with the Administration their grievances and substantive policy concerns. The more objectively credible those alternatives, the more likely they are to help avoid civil disobedience.

Regarding who from the University should reach out to protesters, generally we think that outreach should begin with someone from the campus Administration, selected on a case-by-case basis after considering the experience and skills of individual campus administrators, and any existing relationships they have with the protesters in question. In all events, our recommendation is that *someone* from the Administration—generally someone from the event response team, though it could be someone designated by that team—should attempt to communicate with demonstrators in advance of each planned demonstration.

Recommendation 25. Identify and contact members of the demonstration group—preferably one or more group leaders—in advance of the demonstration to establish lines for communication.

Recommendation 26. Inform protesters, in advance of the event, of the availability of alternative avenues for communication of their concerns or proposals.

¹⁸⁰ Police Executive Research Forum, "Managing Major Events: Best Practices from the Field," at 10 (June 2011); Police Executive Research Forum, "Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches," at 32 (2006); Interviews with campus Police Chiefs.

¹⁸¹ Interviews with campus Police Chiefs.

Recommendation 27. Pursue a dialogue between Administration officials and the demonstration group about protest objectives and applicable rules for campus protest.

B. Communicating With Demonstrators During Protest Events

Once a protest begins, it is critical that police and administrators continue to communicate with the protesters through the course of the event. Some of our campuses pursue these communications primarily through police officials. Many students and faculty, however, told us that they would prefer that these communications be pursued primarily by senior administrators directly with protesters, with minimal police participation.¹⁸² Campus administrators, in turn, have encountered challenges in communicating effectively with leaderless groups. These administrators could benefit from developing means to communicate more broadly to the group at large during protests. Similarly, administrators and police could improve their efforts to communicate with the broader campus community about protest events, the University's response, and any effect on other campus activities.

1. Background

Many UC administrators with whom we spoke stressed that, during a protest, it is important that the "primary line of communication with protesters . . . go through the Administration."¹⁸³ Faculty generally also agreed that the Administration should be primarily responsible for communication, although some mentioned the positive role that faculty have played in past protests, a role that faculty at other universities sometimes also take on.¹⁸⁴ Individual campuses have recently taken steps to ensure that the communication involves the right parties. UC Davis, for example, is currently working to build an "engagement team," intended to engage protesters and to discuss their substantive concerns in a non-confrontational way. The team is expected to include staff from Mediation Services, staff from Student Affairs, faculty members, an experienced negotiator from the police department, and potentially others.¹⁸⁵

Police on our campuses also emphasized the importance of having administrators on hand at demonstration sites to engage in discussions with protesters. Some described the important role that Student Affairs staff can have in communicating with demonstrators. One Chief of Police told us that his preference is to have

¹⁸² Some police officials believe that their participation in the conversations, at least in conjunction with Administration officials, is essential. In their view, these conversations offer police an opportunity to develop relationships with the protesters that may become important should the potential for police action become more likely.

¹⁸³ Jan. 6, 2012 Meeting with UC Riverside Administrators; Meetings with Campus Counsel.

¹⁸⁴ Communication with protesters at past events at UC Berkeley has often been through respected faculty members. Jan. 9, 2012 Interview with Professor David Sklansky. The University of Michigan and the University of Wisconsin have both relied on faculty to communicate with student demonstrators when appropriate. Feb. 7, 2012 Interview with University of Michigan Public Affairs Director Kelly Cunningham; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

¹⁸⁵ Interviews with campus Police Chiefs.

academic Deans and representatives from Student Affairs and the Office of Student Conduct coordinate with student demonstrators as much as possible, unless the situation escalates, in which case police can become more involved in the communications. Another told us that he believed it was helpful for both police *and* administrators to talk with the demonstrators during protests.

Experts we spoke with emphasized that it is particularly important for the police to warn protesters of any police action before the action is taken, unless exigent circumstances preclude a warning. They recommended that the police explain what they plan to do, the reasons for doing so—and that, after such an explanation, the police give protesters a chance to leave or otherwise respond before taking the action in question.¹⁸⁶ Consistent with this approach, some of our campus police departments have policies stating that, “if no exigent circumstances exist,” the police incident commander should meet with the demonstration group leadership to discuss the various options available to them prior to any police action taking place.¹⁸⁷

Several campuses also have specific policies regarding communication of “dispersal orders.” Consistent with legal requirements and POST guidelines, policies at some UC campuses in Southern California direct that, when police deliver dispersal orders, they give them in a manner in which they can be heard and understood, that the order specify a route for the crowd to leave, and that the police allow a reasonable time for dispersal to occur before making arrests.¹⁸⁸

Experts told us that administrators and police can make use of social media to communicate with protesters during events. Especially when the protesters are a “leaderless” group, police can try using text messages, Facebook, or Twitter to communicate directly with protesters.¹⁸⁹ Both the Boston and the Philadelphia Police Departments, for example, recently used Twitter to distribute their own requests or concerns during Occupy protests in their cities.¹⁹⁰ Social media allowed the police departments to set a cooperative, non-violent tone. The Philadelphia Police, for example, Tweeted during the protest that “@phillypolice encourages continued peaceful protesting.”¹⁹¹

¹⁸⁶ Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling; Police Executive Research Forum, “Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches,” at 58 (2006).

¹⁸⁷ See, e.g., UC Irvine Police Department General Order No. 2011-07, § 1.1; UC San Diego Police Department Policy Manual § 423.6.

¹⁸⁸ See, e.g., UC Irvine Police Department General Order No. 2011-06, § 1.3.

¹⁸⁹ Police Executive Research Forum, “Managing Major Events: Best Practices from the Field,” at 36-37 (June 2011); Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans.

¹⁹⁰ Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Occupy Policing, Part II: Setting and conveying the right tone, *available at* <http://cops2point0.com/2011/12/occupy-policing-part-ii-setting-conveying-right-tone>.

¹⁹¹ Occupy Policing, Part II: Setting and conveying the right tone, *available at* <http://cops2point0.com/2011/12/occupy-policing-part-ii-setting-conveying-right-tone>.

The Associated Students of the University of California (ASUC) Student Advocate’s Office at UC Berkeley has also urged campus police to use campus PA systems to communicate with protesters and to “issue clear messages prior to police action (e.g. dispersal orders, notices that encampments will be cleared, etc.) with relevant timeline and explanation.”¹⁹²

2. Recommendation

Communication and dialogue must be the cornerstone of any response to a campus demonstration. The campus Administration should make every effort to engage demonstrators in a dialogue that addresses the substance of the demonstrators’ concerns and aims, with the goal of de-escalating any situation such that police involvement becomes unnecessary. When the Chancellor or a designee decides who should communicate with protesters, consideration should be given to who will most effectively engage in dialogue on behalf of the University. We believe that, in many if not most circumstances, it will be most effective for administrators or faculty, rather than the police, to be the primary communicators on behalf of the University.¹⁹³ It is also essential that a senior administrator be visibly present at the site of a demonstration, and available to confer with protesters and police as necessary. There may be some instances in which the presence of an on-site administrator would be infeasible or unhelpful. In most cases, however, we believe that the presence of such an administrator will facilitate communications and signal the Administration’s commitment to crafting a fair and appropriate response to the demonstration.

We recommend throughout this Report ways to try avoiding any police response to a protest. If a police response is required, however, we recommend that the police clearly and consistently communicate with protesters regarding rules the police will enforce and how the police will do so. If the protesting group is “leaderless,” the police should attempt to communicate directly with as many of the protesters as possible, possibly using social media.

Recommendation 28. Absent special circumstances, assign administrators or faculty members, rather than police, to serve as the primary University spokesperson during a demonstration.

Recommendation 29. Establish senior administrators as a visible presence during protests, absent good cause.

¹⁹² Nov. 15, 2011 e-mail to Campus Administrators and UCPD Officials titled “Recommendations re: Nov 9 Events from ASUC Student Advocate’s Office and Student Govt Leaders”.

¹⁹³ We note that communications issues were also discussed in the Brazil Report. That Report makes several important recommendations on this subject, including the need for leadership at each campus to communicate directly with protesters. See, e.g., November 20, 2009, Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 14, 19 (June 14, 2010), available at http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf.

Recommendation 30. Establish a communication link with identified leaders or sponsors of the event—for leaderless groups, communicate broadly to the group as a whole (through social media and otherwise) until relationships form.

C. Communications with the Broader Campus Community

In addition to communicating with those involved in protest activity, the Administration needs mechanisms for communicating with the larger campus community. Protest activity can raise concerns for the entire campus—students, faculty, and staff alike. The Administration must be in a position to provide timely updates to the larger community to the extent the demonstration has an effect upon the teaching and research mission of the University, or the safety of other members of the community.

1. Background

In our discussions with students and faculty, many expressed a desire to have more real-time information about protests on campus. Are any facilities or classrooms blocked? Is the demonstration peaceful and respectful of the desires of other students to attend class and of faculty to conduct research? UC students suggested several methods for communicating, including emails from the Chancellor, social media, and the campus “Warn Me” system used to alert students in an emergency.¹⁹⁴

2. Recommendation

Each campus should determine how to communicate to the campus community as a whole when a demonstration is planned or ongoing, and should generally provide updates on a predictable schedule. We expect these communications will serve several helpful purposes. First, they may inform the community about what the Administration is doing to address the demonstrators’ underlying concerns. Second, they may reduce the desire of potential onlookers to come to the site of the protest to find out what is occurring. Third, they may inform people of areas of campus that are inaccessible (if any) and/or that should be avoided. Fourth, they may increase transparency by explaining how the Administration—and the police, if they are involved—are handling the demonstration.

Recommendation 31. Establish a communication mechanism for promptly informing the campus community at large about ongoing protests.

¹⁹⁴ Feb. 16, 2012 Meeting with UC Davis Student Leaders.

VI. Response During Events

It is our hope that the practices outlined in this Report will improve communications in a way that avoids the need for many protests, and will increase the likelihood that protests that do take place are peaceful and do not require a University response. We recognize, however, that there will be times when these practices fail and some response is necessary. This section addresses options and responses in those circumstances.

A. Alternatives to Arrest or Force

Students and faculty expressed concern to us that administrators and police too often resort to confrontation and arrests before exhausting available alternatives.¹⁹⁵ Moreover, while most campuses seek to engage protesters in a dialogue in an effort to avoid physical conflict, our review suggested that these efforts generally are *ad hoc* and often are conducted by persons lacking adequate training in dispute resolution. Below, we discuss three different alternatives that campuses should consider employing before arresting protesters or using physical force to remove them. First, campuses can turn to trained mediators to facilitate discussions between protesters and the Administration. Second, administrators and police can employ “de-escalation techniques” designed to minimize tensions and reduce the risk of violent clashes. Third, particularly when the civil disobedience in question is “tolerable,”¹⁹⁶ campuses may be able to use student discipline processes rather than arrests to sanction student protesters for civil disobedience. (This third approach would require a major redesign of many campuses’ existing student discipline systems, which are not currently structured for such a use.)

1. Mediation

(a) Background

At the Town Hall meetings we conducted, several people suggested that our campuses should train mediators who could facilitate discussion between protesters and the Administration during civil disobedience events.

¹⁹⁵ Critics often have accused police officials when it was in fact administrators who determined the objective—e.g., “Clear the building”—and the timing.

¹⁹⁶ See Section III above discussing principles guiding event response team’s decision-making.

These mediators might be faculty members or staff, or mediation experts from outside the University.¹⁹⁷ Students said that the Administration’s “first response should not be ‘let’s call the police department,’” and that a mediation approach would offer the Administration a helpful alternative.¹⁹⁸ Several pointed to instances when faculty members had helpfully facilitated communications between student protesters and the Administration.¹⁹⁹ Regarding one of these instances, a student reported: “I saw a hand reaching out from the faculty. I see that as one of the ways where we can make progress.”²⁰⁰

(b) Recommendation

We agree with students and faculty who urged that a formal mediation program be established. In many instances, the interaction between protesters and administrators would benefit from the presence of a trained mediator, who could help both sides arrive at feasible solutions. We think it would be preferable to train staff or faculty volunteers to perform this function, rather than to rely on mediators from outside the University. Mediators internally recruited and trained would be familiar with the University and would require little advance preparation to get up to speed on most issues prompting a demonstration. Additionally, mediators may be needed on short notice; it would be helpful to have them readily available on campus, rather than relying on external mediators with potentially conflicting commitments. We therefore recommend that campuses either develop their own team of mediators or join with other campuses in their region to do so.²⁰¹

Recommendation 32. Establish an internal mediation function at the campus or regional level to assist in resolving issues likely to trigger protests or civil disobedience.

Recommendation 33. Consider deploying this mediation function as an alternative to force, before and during a protest event.

¹⁹⁷ Jan. 31, 2012 UC Berkeley Town Hall; Feb. 10, 2012 UC Davis Town Hall. We also spoke with ombudspople from across our system to discuss the role they might play in a protest situation. They emphasized to us their strong view that it would be inappropriate to assign ombudspople a formal role as mediators in protest situations. They thought that acting as mediators would frequently be inappropriate and inconsistent with the fundamental tenets of the work they do. For example, they said that it was important for ombudspople to work in a confidential setting, where they are viewed as a neutral resource. In a protest situation, they feared that their work could not be confidential, and that they might be viewed as an agent of the Administration. They did suggest, however, that ombudspople might serve as an informal resource to those involved in protest situations. Mar. 20, 2012 Meeting with UC Ombudspople.

¹⁹⁸ Jan. 31, 2012 UC Berkeley Town Hall; Feb. 10, 2012 UC Davis Town Hall.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Such mediators could be useful not only in the context of civil disobedience events involving large numbers of protesters but also in smaller contexts, such as if a small number of protesters attempt to disrupt a class or an invited speaker’s presentation.

2. De-escalation Techniques

There are moments during protest events when decisions made by those responding can escalate tensions. At such moments, the approach taken by the responders—whether the campus Administration or police—can tip the balance toward a peaceful resolution or can push the event in a more violent direction. It is essential that both our administrators and our police be trained in methods for encouraging peaceful resolution. These methods generally are referred to as “de-escalation techniques.”²⁰²

(a) Background

In our discussion with our campus police, many talked about training in and using “de-escalation techniques,” but, perhaps significantly, they had difficulty describing precisely what these techniques involve. We were unable to identify any internal policies or training materials addressing the subject. We received greater detail from the policing experts we spoke with from other universities and jurisdictions. Based on those external discussions, de-escalation techniques generally fall into three broad categories: communication, tactics, and restraint.

(a.1) Communication techniques

A key theme in our discussions with policing experts was that the manner in which police (and campus administrators) communicate with protesters can serve to escalate or de-escalate tensions.²⁰³ Voice tone, volume, and choice of words all will affect how protesters respond. For example, using a quiet voice to make a one-on-one request that a protester clear a sidewalk can be more effective than using a loudspeaker and issuing a public ultimatum.²⁰⁴ Using a respectful tone instead of a condescending tone will encourage a similarly respectful response on the part of protesters.²⁰⁵ And speaking calmly rather than in an agitated manner will likewise help prompt less agitated reactions.²⁰⁶

²⁰² Obviously, protesters should also make an effort to de-escalate protest situations. This section, however, focuses primarily on the Administration’s and police’s response to protests.

²⁰³ Jan. 31, 2012 Interview with Professor Lorie Fridell; Jan. 9, 2012 Interview with Professor David Sklansky; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

²⁰⁴ Jan. 30, 2012 Interview with Professor Geoffrey Alpert; Jan. 25, 2012 Interview with Boston Police Superintendent William Evans.

²⁰⁵ Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Jan. 25, 2012 Interview with Boston Police Superintendent William Evans; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

²⁰⁶ Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Jan. 25, 2012 Interview with Boston Police Superintendent William Evans; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

(a.2) Tactics

Another key theme in our discussions was that certain police tactics are likely to increase tensions with demonstrators. Recognizing the likely impact of these tactics and considering alternatives, where possible, can mitigate this risk. For example, the manner in which officers are outfitted, the types of weapons they carry, and how any weapons are displayed can escalate or de-escalate a situation. If the police wear personal protective equipment (commonly referred to as “riot gear”) or display long batons or similar weapons, this will create a more combative environment, which can escalate a situation.²⁰⁷ On the other hand, if the police appear without personal protective equipment and with any weapons carried in a less threatening manner, this can send a signal that officers are prepared to trust that protesters will keep things peaceful, which in turn may help bring about that result.²⁰⁸ Similarly, when officers arrive from outside agencies wearing different uniforms, following a request for outside assistance, this likely will signal to protesters that the demonstration has reached a new, dramatically more serious stage, which again can escalate tensions. Of course, on many occasions, the message communicated by these tactics may be either intentional or unavoidable, due to concerns about officer safety. Nonetheless, the point made here is that such tactical decisions should be made with full awareness of their likely impact on the dynamic of the event.

Apart from the above, many experts emphasized that dispersal orders can escalate tensions and therefore should be issued only after every available alternative has been exhausted.²⁰⁹ Similarly, mass arrests can substantially escalate tensions.²¹⁰ Conversely, making single arrests that are targeted at particular individuals can actually reduce tension.²¹¹ For example, if particular protesters want to be arrested, and lines of communication are open, handling the arrest respectfully can give both sides what they need and allow the demonstration to proceed peacefully.²¹² Or, if there are particular protesters who are threatening or engaging in violence while those around them are attempting to engage in peaceful protest activity, targeting the arrests

²⁰⁷ Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Jan. 25, 2012 Interview with Boston Police Superintendent William Evans; Jan. 31, 2012 Interview with Professor Lorie Fridell.

²⁰⁸ Jan. 31, 2012 Interview with Professor Lorie Fridell; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

²⁰⁹ Jan. 31, 2012 Interview with Professor Lorie Fridell; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans. For example, alternatives might include negotiating different protest sites, re-routing traffic around protest activity, or re-assigning classrooms.

²¹⁰ Jan. 31, 2012 Interview with Professor Lorie Fridell; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray.

²¹¹ Jan. 31, 2012 Interview with Professor Lorie Fridell; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans.

²¹² Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Jan. 31, 2012 Interview with Professor Lorie Fridell.

to those individuals can de-escalate the situation rather than aggravating it.²¹³ Moreover, once individuals are arrested, removing them from the location if the protest is ongoing rather than detaining them within view of the other protesters is a recommended de-escalation technique.

(a.3) Restraint

Some protest tactics are designed to provoke an angry or hostile response from authorities. But there are techniques for exercising restraint and resisting such provocation. Policing experts we spoke with emphasized that it is important for police to learn how to stay calm even when faced with taunting and other disrespectful but not physically threatening acts.²¹⁴ One method for resisting provocation is known as “verbal judo.”²¹⁵ Verbal judo is the use of tactical communication techniques, both verbal and nonverbal, which allow officers to maintain control while reducing the need to escalate to a use of force.²¹⁶ Officers are trained to respond to hostile audiences, verbal abuse, and disapproval through empathy, verbal disarming, and feedback and negotiation, rather than confrontation and force.²¹⁷

(b) Recommendation

While many of these de-escalation techniques may be based on common sense, the experts we spoke with agreed that these methods can be taught and rehearsed. We therefore recommend that our campus police—including line officers and incident commanders—and our administrators who will be involved in the on-the-ground response to demonstrations and civil disobedience receive training in de-escalation techniques. We further recommend that these techniques be used when responding to protests, with the goal of avoiding, to the greatest extent possible, situations in which force might be needed.

Recommendation 34. Beware of police tactics likely to increase tensions and where possible, avoid them – pursue instead tactics designed to diffuse the tensions.

²¹³ Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Jan. 30, 2012 Interview with Professor Geoffrey Alpert; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling; Jan. 31, 2012 Interview with Professor Lorie Fridell.

²¹⁴ Jan. 9, 2012 Interview with Professor David Sklansky; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray.

²¹⁵ Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Jan. 30, 2012 Interview with Professor Geoffrey Alpert.

²¹⁶ The Art of Verbal Judo, *available at* <http://www.officer.com/article/10248713/the-art-of-verbal-judo>.

²¹⁷ Verbal Judo: A System for Handling Difficult Audiences, *available at* <https://www.msu.edu/course/prr/351/Course%20Readings/Verbal%20Judo.pdf>.

3. Administrative Citation

(a) Background

In our discussions with UC faculty and administrators, some suggested that confrontations with the police could be avoided if we used University student discipline processes rather than arrest to sanction student protesters for violating laws or campus rules.²¹⁸ The suggestion might have particular appeal when the civil disobedience in question is of a form that is tolerable, but is sufficiently disruptive that some sanction for the protesters is necessary. Rather than arresting the students, the University could issue them a citation that would lead to subsequent student discipline.

Some students thought that the student disciplinary process would provide greater transparency and predictability than does the criminal justice system regarding the consequences for civil disobedience.²¹⁹ Others we spoke with endorsed a student-discipline-centered approach because it might reduce the need for police intervention and would keep decision-making about discipline internal to the University. In contrast, when police make arrests, the local prosecutor decides whether to press charges in a process that is outside the University's control. Some pointed out that, unlike the criminal justice process, student discipline can be used when the civil disobedience in question violates campus regulations but not state law. In such situations, the police generally do not have authority to make arrests unless they issue dispersal orders that are then violated.²²⁰

Many other students, faculty, and administrators expressed extreme skepticism about the viability or desirability of using the student disciplinary processes to address civil disobedience.²²¹ For example, one student leader voiced the opinion that using student discipline would make students feel like their First Amendment activities would imperil their education. That student leader explained that students would be much more concerned about being suspended or expelled than they would be about spending a night in jail or having a misdemeanor on their record.²²²

The near consensus among Vice Chancellors of Student Affairs from across our campuses was that our campuses are not equipped currently to respond to student protest using internal discipline processes. They were concerned that student conduct officials lack sufficient resources to process the many cases that could arise from mass civil disobedience events, and they feared that the politics often surrounding protest-related infractions could overwhelm the merits in particular cases. The Vice Chancellors also warned that student affairs officers who run student conduct proceedings are often the same people who serve as mediators or as

²¹⁸ Feb. 10, 2012 Meeting with UC Davis Chancellor; Meetings with Campus Counsel.

²¹⁹ Feb. 10, 2012 Meeting with UC Davis Student Leaders.

²²⁰ Meetings with Campus Counsel.

²²¹ Feb. 10, 2012 Meetings at UC Davis; Jan. 17, 2012 Meeting with Academic Senate Leaders.

²²² Feb. 16, 2012 Meeting with UC Davis Student Leaders.

representatives of the Administration during protests events, and that it would be inappropriate for witnesses to a demonstration to preside over subsequent conduct proceedings involving the same event.²²³

Student discipline obviously would not be a viable option for those engaging in civil disobedience who are not students (e.g., faculty, staff, or non-affiliates). Additionally, even for student demonstrators, it could be difficult to use the student discipline processes if they are wearing masks and refuse to identify themselves, as some have done in recent demonstrations.

At least one of our campuses has had some success in using student discipline to respond to civil disobedience. UC Irvine has done so—generally in conjunction with, not instead of, arrest. We were told that using the student conduct process in these circumstances proved to be very time- and resource-intensive, and that the process under these circumstances was difficult to manage. Nonetheless, the process ultimately was deemed to be a success.

UC Irvine also has a student “citation” program—thus far used only for non-protest-related activity—under which students can be issued a University citation instead of being arrested, and can be directed to report later to student conduct officers for appropriate discipline. These citations are issued by the campus police and are currently used for infractions such as public intoxication. We were told that the citation program has been very successful, and perhaps could be expanded to address civil disobedience as well.²²⁴ The police currently have no equivalent option for discipline short of arresting demonstrators, because no law currently authorizes use of citations similar to traffic tickets for any of the activities typically associated with civil disobedience.²²⁵

(b) Recommendation

There is enough disagreement about the viability of using student conduct processes to address civil disobedience that we do not believe we can require its use on all campuses and in all protest situations. However, we do believe that each campus should develop or modify existing procedures for student discipline so that they *may* be an option for responding to civil disobedience.²²⁶ Just as we believe that we need campus police because they are a part of our community, so we believe that we need a viable disciplinary option that is within our system. There are many situations in which using internal student discipline might be more appropriate than criminal proceedings—for example, if a single student disrupts a classroom lecture. We recognize that additional resources and special procedures would probably be needed to put this

²²³ Jan. 25, 2012 Meeting with Vice Chancellors of Student Affairs.

²²⁴ Interviews with campus Police Chiefs; Feb. 28, 2012 Meeting with UC Irvine Student Affairs Administrators.

²²⁵ Interviews with campus Police Chiefs.

²²⁶ Using student discipline processes to respond to civil disobedience would obviously not be an option if the demonstrators who engaged in civil disobedience were not students.

recommendation into action, and that each campus would need to ensure that it has procedures for a fair and content-neutral process. We believe, however, that having the option available is sufficiently important so as to make the recommendation.²²⁷

Consideration also should be given to urging the California Legislature to pass legislation enabling police to issue citations for civil disobedience on our campuses, similar to those issued for infractions (e.g., traffic tickets). Properly issued citations, just as administrative citations, could be issued without affecting an arrest of the protesters. We would thus expect them to be less likely to require any use of force by the police.

Recommendation 35. Develop or modify existing student discipline processes as an alternative to arrests and the criminal justice system.

B. Response Options

1. Response Option (Use of Force) Framework

Earlier in this Report we recommended the creation of guidelines for administrators and event response teams as they determine how to respond to protests and demonstrations.²²⁸ Campus police departments similarly need guidelines for their responses to demonstrations, particularly regarding use of force. Current policies at most of our campus police departments rely almost exclusively on a broad “reasonableness” standard governing use of force by police officers. While this is consistent with the law,²²⁹ critics assert that these policies afford too much discretion to the police and provide too little notice to protesters regarding how police may respond to different types of protest tactics. At least one of our campus police departments—along with the majority of police departments across the country—has adopted a “force continuum” to establish clearer expectations around the use of force for police and civilians alike. We have concluded that adoption of such a framework would improve the response to civil disobedience on our campuses, and that the framework should be systemwide.

²²⁷ In retooling their student discipline processes so that they may be used in response to misconduct at demonstrations, each campus should consider the likelihood that UC students may travel away from their home campus and participate in protests at sister campuses. Consideration must be given to how the student discipline system should work in that situation, including whether the student should be disciplined using the procedures at her home campus or at the campus where she participated in the demonstration.

²²⁸ See *supra* section III.A.2.

²²⁹ In evaluating a Fourth Amendment claim of excessive force, courts ask “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Graham v. Connor*, 490 U.S. 386, 397 (1989).

(a) Background

(a.1) Existing UC Policies

Because any discussion of “force” options can trigger questions about misplaced priorities and suspect motives, we begin with this basic proposition: *except when exigent circumstances exist, other available options should be explored in responding to civil disobedience before turning to the police and considering the potential use of force.* This point made, however, in the event that these efforts fail, the use of physical force by police may become a necessity.

Under current policy, and consistent with Fourth Amendment principles and court decisions on police liability, responses to protests on our campuses are governed by a common fundamental standard: the police may use only such force as is reasonable under the circumstances. The policy language varies from location to location, but on many of our campuses, the use-of-force policy provides as follows: “[o]fficers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.”²³⁰ These policies further state that the “[r]easonableness’ of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the event.”²³¹

Some of our campuses have endeavored to provide more detailed guidance to officers regarding the level of force that is appropriate. One campus, UC San Francisco, has adopted what is known in the literature as a “force continuum.” A force continuum typically ranks different force options in terms of severity, with the explicit purpose of providing officers guidance on what force option to employ.²³² Some force continua also match the force options to specific kinds of resistance, such as “passive resistance” or “active aggression.”²³³

At UC San Francisco, the force continuum does not expressly match force options to specific types of resistance, but instead is designed as a general “guide or model used when discussing the use of force.”²³⁴ Officers are instructed that “[w]henver possible, any force used shall be progressive in nature and that progression shall not proceed beyond the suspect’s submission or the point at which the officer gains control of the suspect.”²³⁵ The policy sets out six “levels” of force: (1) presence; (2) verbal commands; (3) physical contact; (4) physical control (*i.e.*, temporary restraints, pressure point manipulation, and takedown techniques like hair pulling); (5) serious physical control (*i.e.*, pepper spray, focused blows, batons, police dogs); and (6)

²³⁰ See *e.g.*, UC Irvine Police Department Policy Manual § 300.2.

²³¹ See *e.g.*, *id.*

²³² See William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at 1 (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

²³³ *Id.* at *ii*.

²³⁴ UCSF Police Department General Order § 4.3.1(C).

²³⁵ *Id.* § 4.3.1(B)(4).

deadly force.²³⁶ The UC San Francisco continuum is not designed specifically for demonstration or civil disobedience situations; it applies in all contexts where an officer might consider using force.

Other UC police departments have decided not to adopt a formal “force continuum” approach. That said, several UC police departments do have policies regarding the use of force in demonstrations that align force options to demonstrator resistance in much the way that a continuum might. One example is the UC San Diego police department. It limits the force options available in response to certain types of resistance, as described in the table that follows. (The table format has been added here to assist the reader; these policies do not appear in tabular form in the UC San Diego Police Policy Manual.)

Table 1. Force Limitations from UC San Diego Demonstration Policy

UC San Diego Police Department Policy Manual § 423.13

Activity	Definition	Limits on Force Options
Passive resistance	Actions that do not prevent the officer’s attempt to control a subject. For example, a subject who remains in a sitting, standing, prone, or limp position with no physical contact (e.g. locked arms with other individuals). ²³⁷	A subject involved in passive resistance shall not be subjected to the use of control devices including tasers, batons, or chemical agents including pepper spray.
Active resistance	Evasive physical movements to defeat an officer’s attempt at control, including bracing, tensing, linking arms or verbally signaling an intention to avoid or prevent being taken into or retained in custody.	The use of intermediate force (pepper spray, tasers, baton strikes) shall not be used against non-aggressive displays of active resistance during a peaceful protest, such as locking arms while sitting or standing.
Active aggression	A threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to a person appears imminent.	Policy implies that police may use the range of approved force options so long as the use of force is reasonable under the circumstances.

²³⁶ *Id.*

²³⁷ To take another example from within our system, the current policy at UC Irvine prohibits the use of pepper spray, batons, or tasers against a subject involved in “passive resistance.” As in San Diego’s policy, the term “passive resistance” is defined to *exclude* individuals who have “locked arms.” See UC Irvine Police Department General Order 2011-06, § 1.5.

(a.2) Policies in Other Jurisdictions and Expert Opinions

Outside of our system, all of the departments we studied have a policy implementing some version of the general “reasonableness” standard governing the use of force.²³⁸ That standard is echoed in myriad guidance documents regarding the use of force, such as the Department of Justice’s Principles for Promoting Police Integrity: “Police officers should use only an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of officers and others.”²³⁹

There is less consistency within the police industry, however, when it comes to the use of a “force continuum.” A recent study funded by the National Institute of Justice surveyed more than 600 police and sheriff departments throughout the United States on this subject. It found that over 80 percent of the responding agencies used some type of force continuum.²⁴⁰ One of the most significant findings of the study is the substantial variation in the types of force continua used by the reporting agencies.²⁴¹

²³⁸ See, e.g., *Graham v. Connor*, 490 U.S. 386 (1989).

²³⁹ U.S. Department of Justice, Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies, at 3 (Jan. 2001).

²⁴⁰ See William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at ii (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

²⁴¹ *Id.* at ii.

More than two-thirds of the agencies reviewed in the NIJ study used a “linear” force continuum.²⁴² A linear force continuum is similar to the model used at UC San Francisco. It lists the different options in order of increasing severity.²⁴³ At some agencies, unlike at UC San Francisco, the linear force continuum is designed to indicate the type of resistance that can justify a particular force option. One example cited in the NIJ study of that model comes from the Charlotte Mecklenburg Police Department,²⁴⁴ and is depicted below:

Figure 1. Example of “Linear” Approach



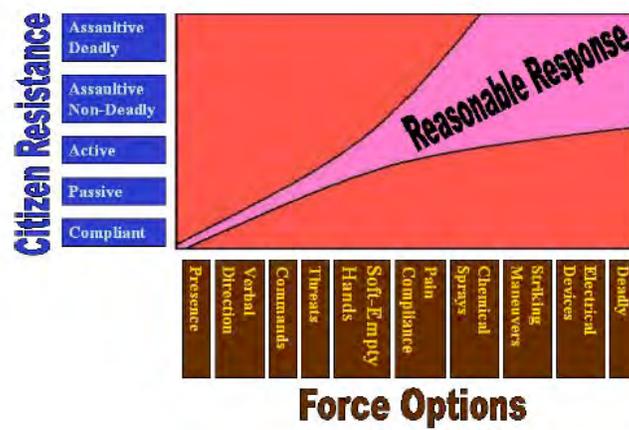
²⁴² *Id.* at 17.

²⁴³ See *generally* Police Executive Research Forum, Exploring the Challenges of Police Use of Force, at 47-49 (Apr. 2005).

²⁴⁴ See, e.g., William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at App A-14 (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

About ten percent of the agencies studied in the NIJ report used a “matrix” or “box” continuum. This design typically depicts the force options on one axis, and the level of resistance by a subject on the second axis.²⁴⁵ The matrix then designates the acceptable or reasonable responses for different levels of resistance. Below is an example taken from the survey used in the NIJ study:²⁴⁶

Figure 2. Example of “Matrix” Approach

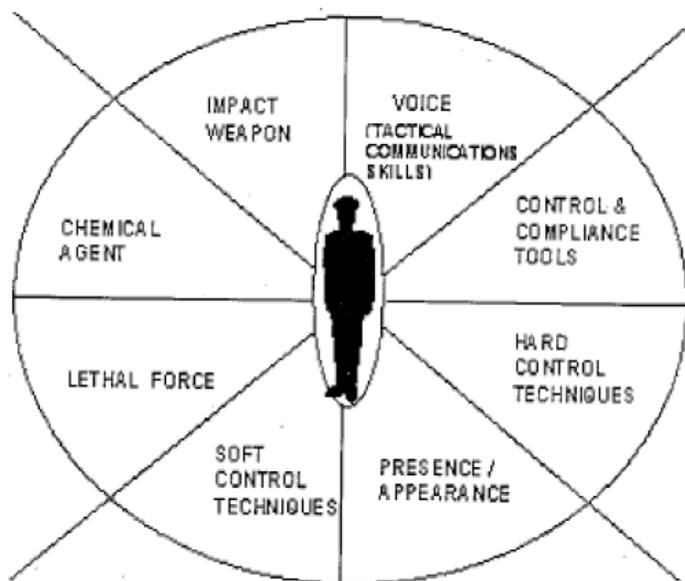


²⁴⁵ See *id.* at xi.

²⁴⁶ See *id.* at App. A-7.

Another nine percent of the agencies surveyed in the NIJ study used what is known as a “force wheel.”²⁴⁷ In that design, the officer is often presented in the middle, with the various force options arrayed in a ring around her.²⁴⁸ One purpose of the wheel approach, as opposed to a linear format, “is so officers do not think about force progression in a ladder or step-by-step format.”²⁴⁹ An example from the Colorado Springs police department follows:²⁵⁰

Figure 3. Example of “Wheel” Approach



Finally, about twenty percent of the police departments in the study do not employ a force continuum at all,²⁵¹ a result which is consistent with our interviews.²⁵² It should be noted that the various force continua surveyed by the NIJ are not specific to demonstrations. They apply to all situations involving the police, regardless of whether they occur in the context of civil disobedience.

²⁴⁷ *Id.* at 17.

²⁴⁸ Police Executive Research Forum, Exploring the Challenges of Police Use of Force, at 47-49 (Apr. 2005).

²⁴⁹ William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at vi (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

²⁵⁰ *Id.* at App. A-17.

²⁵¹ *Id.* at ii.

²⁵² During our interviews, for example, we learned that the City of Madison, Wisconsin does not use a formal force continuum. Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray.

Police departments that have adopted force continua appear to “pick and choose,” and tweak and adapt, in a multitude of ways—all, unfortunately, without empirical evidence as to which approach is best or even better than another.”²⁵³ Many police departments take an approach similar to that reflected in the UC San Francisco policy—they do not attempt to link the various force options to different types of resistance, or to provide a “resistance progression.” A slight majority of departments surveyed in the NIJ study, however, adopted a force continuum that incorporated the levels of the resistance encountered by police.²⁵⁴

A number of industry authorities have endorsed the use of force continua as a general practice. The U.S. Department of Justice “recommends the force continuum as a best practice.”²⁵⁵ Others have observed that written departmental policies taken alone can be vague and difficult for officers to apply in the field, and that a use-of-force continuum can clarify written policies by helping officers visualize variations in levels of force.²⁵⁶

There is a robust debate within the academic community about the efficacy of force continua. Some argue that a force continuum provides necessary guidance to police regarding the range of non-force and force options available to them in different situations, encourages consistency, and educates the public about the possible police response to different types of resistance.²⁵⁷ A force continuum can provide clear examples of resistance matched with appropriate use-of-force responses whereas “an ambiguous use-of-force policy sends a message that officers have leeway in their actions.”²⁵⁸ Force continua can also be valuable as training tools to help refocus officers on *when* to use force as opposed to simply *how* to use force.²⁵⁹ And they can help ensure that all officers receive consistent training in identifying, assessing and responding to use-of-force situations.²⁶⁰

Others in the academic community, however, express concerns that force continua do not allow for consideration of every factor that might affect the officer’s choice of response, and that it may be difficult for officers to remember the model in a stressful situation requiring a quick decision. Officers also may incorrectly

²⁵³ William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at iv (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

²⁵⁴ See *id.* at 18.

²⁵⁵ “Promoting Police Integrity: Examples of Promising Police Practices and Policies,” U.S. Department of Justice, Jan. 2001 at 4.

²⁵⁶ J. Peters and M. Brave, “Force Continuums: Are They Still Needed?,” *Police and Security News* 22 (1) at 2 (2006), available at <http://www.ecdlaw.info/outlines/forcecontinuums.pdf>. Within our own system, the review conducted by the Police Assessment Resource Center in the wake of the use of a taser against a UCLA student in 2006 recommended that the UCLA police department “should develop and implement a ‘force options’ or ‘force continuum’ system that provides an explicit range of appropriate responses for each level of subject resistance or threat.” See M. Bobb, *et al.*, *A Bad Night at Powell Library: The Events of November 14, 2006*, at 70 (Aug. 2007), available at http://www.parc.info/client_files/UCLA/UCLA%20Taser%20Report%20August%20Final.pdf.

²⁵⁷ For a more complete discussion, see Lorie Fridell, “Taking the Straw Man to the Ground: Arguments in Support of the Linear Use-of-Force Continuum,” *The Police Chief* at 20-25 (Dec. 2011), available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2548&issue_id=122011.

²⁵⁸ Rolando Delgado, *An Ideal Use of Force for Law Enforcement: An Assessment of the Austin Police Department*, at 16-19 (2011).

²⁵⁹ Security News Vol. 22, at 3 (2006); Lorie Fridell, “Taking the Straw Man to the Ground: Arguments in Support of the Linear Use-of-Force Continuum,” *The Police Chief*, at 20-25 (Dec. 2011), available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2548&issue_id=122011.

²⁶⁰ R. Humoffman *et al.*, “Canada’s National Use-of-Force Framework for Police Officers,” *The Police Chief*, at 71 (Oct. 2004), available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1397&issue_id=102004 (discussing Canada’s national use of force framework which includes a continuum.).

believe that they must hit every level or step in the continuum before moving to the next level of force.²⁶¹ Other critics cite literature establishing that a number of factors influence an officer's decisions regarding force, and asserting that continua are too simple and one-dimensional to be truly useful.²⁶²

In our own campus departments that do not use force continua, we heard similar concerns. One UC Police Chief told us that a policy that establishes an “escalating ladder of options” can be problematic, because it implies that police must “hit every step” as they move to greater levels of force, rather than giving police the discretion to use the force that is reasonably necessary under the circumstances. Another UC Police Chief indicated that he thought it was unwise to adopt a rigid continuum setting bright-line rules.

In sum, it is fair to say that there is no consensus among experts on which model of force continuum is best.²⁶³ Indeed, the NIJ study found that “there is no ideal (or flawed) policy approach across all outcomes,” and concluded by “leav[ing] it to police executives to consider those outcomes most important or relevant to them and their constituents, and [to] see which policy approaches performed more favorably in those respects.”²⁶⁴

(a.3) Defining Levels of Resistance

To the extent that force continua or response matrices seek to match levels of force to levels of offender resistance, the levels of resistance must be defined in policy in real-world terms. Developing such definitions involves a complicated and potentially controversial exercise in line-drawing. Depending upon how a continuum or matrix is structured, these threshold definitions can have profound implications for how police will deploy force under different circumstances, including in response to acts of civil disobedience during protests.

Within the UC system, several of our police departments—including UC San Diego, UC Irvine, and UC Los Angeles—currently maintain policies defining different types of resistance. For example, the Los Angeles policy defines the following resistance levels:

- **“Active Aggression** - A threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to a person appears imminent.”

²⁶¹ T.D. Petrowski, “Use-of-Force Polices and Training: A Reasoned Approach,” *FBI Law Enforcement Bulletin* (Oct. 2002), at 3, available at http://findarticles.com/p/articles/mi_m2194/is_10_71/ai_93915942/; J. Peters & M. Brave, “Force Continuums: Are they Still Needed?,” *Police and Security News*, at 3 (Jan./Feb. 2006), available at <http://www.ecdlaw.info/outlines/forcecontinuums.pdf>.

²⁶² See C. Crawford & R. Burns, Predictors of the Police Use of Force: The Application of a Continuum Perspective in Phoenix, *Police Quarterly*, at 41-64 (Dec. 1998); D. A. Klinger, “The Micro-Structure of Nonlethal Force: Baseline Data from an Observational Study,” *Criminal Justice Review*, at 169-186 (Autumn 1995); William Terrill & Stephan D Mastrofski, “Situational and Officer-based Determinants of Police Coercion,” *Justice Quarterly*, at 215-248 (June 2002).

²⁶³ See Police Executive Research Forum, “Exploring the Challenges of Police Use of Force,” at 47-50 (Apr. 2005) (reviewing debates).

²⁶⁴ William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at xvi (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

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- “**Actively Resisting** - Evasive physical movements to defeat an officer’s attempt at control, including bracing, tensing, linking arms or verbally signaling an intention to avoid or prevent being taken into or retained in custody.”
 - “**Passive Resistance** - Actions that do not prevent the officer’s attempt to control a subject. For example, a subject who remains in a sitting, standing, or limp or prone position with no physical contact (e.g. locked arms) with other individuals.... A subject who, while sitting or standing, has locked arms with another subject is not engaged in passive resistance, but is engaged in proactive action to obstruct.”²⁶⁵

Outside our system, other police departments use slightly different terms and definitions. For example, the Charlotte continuum discussed above defines “passive resistance” as “the subject does not cooperate with an officer’s commands, and does not take action to prevent being taken into custody.”²⁶⁶ A protester who lies down in front of a doorway but allows himself to be carried away upon arrest would satisfy this definition. Charlotte’s policy directs that the only permissible force options in the face of passive resistance are presence, verbal dialogue and commands, and “soft empty hand control” (defined to include hands-on pain compliance and “takedowns”).²⁶⁷

Within our system, the current line between “passive resistance” and more elevated forms of resistance is not clear to students, faculty, and, at times, even to the police.²⁶⁸ A particularly controversial and important consideration for our campuses is whether “passive resistance” should be defined to include the act of linking or locking arms. Linking arms is a frequent tactic for individuals engaged in civil disobedience, a tactic with a pedigree dating back to the Civil Rights Movement. Under current police policies, there is a broad consensus across our campuses that linking arms to resist a lawful arrest constitutes an “active” form of resistance.²⁶⁹ (Note that, nonetheless, at least one campus police department has adopted a policy explicitly forbidding the

²⁶⁵ UCLA Police Department Policy Manual § 423.7. The 2007 report arising out of the taser incident specifically recommended that the UCLA police department “should explicitly distinguish between levels of resistance,” and “should define the terms “violent,” “active aggression,” “active physical resistance,” and “passive resistance.” See Merrick Bobb, et al., *A Bad Night at Powell Library: The Events of November 14, 2006*, at 70-71 (Aug. 2007), available at http://www.parc.info/client_files/UCLA/UCLA%20Taser%20Report%20August%20Final.pdf. The definitions quoted in the main text are similar, though not identical, to the definitions proposed by that report. *Id.*

²⁶⁶ Charlotte-Mecklenberg Police Department Use of Force Policy. Similarly, the University of Pennsylvania similarly defines “passive resistance” as “physical actions that do not prevent an officer’s attempt at control, but fail to assist in that control.” University of Pennsylvania Police Department Directive Number 1, Section IV.

²⁶⁷ Charlotte-Mecklenberg Police Department Use of Force Policy.

²⁶⁸ See Merrick Bobb, et al., *A Bad Night at Powell Library: The Events of November 14, 2006*, at 56 (Aug. 2007), available at http://www.parc.info/client_files/UCLA/UCLA%20Taser%20Report%20August%20Final.pdf (“There is no uniform definition of passive resistance.”).

²⁶⁹ See, e.g., UCLA Police Department Policy Manual § 423.7; UC Irvine Police Department General Order No. 2011-06, § 1.12. Relatedly, in a 2006 national survey of police departments, 82 percent of responding departments said that they would authorize chemical spray in a situation where the person being arrested “tenses his arms and refuses to comply with the officer’s orders to stop resisting” and “continues to tense and pull against the officer for 15-20 seconds.” Sept. 29, 2008 Presentation by Lorie Fridell on “Less Lethal Weapon Deployment Policy and Training: Results from a National Survey” (presented at the conference “Police Use of Force: Less Lethal Weapons and In-Custody Deaths” sponsored by the Institute for Law Enforcement Administration).

use of batons, pepper spray, or tasers against this form of resistance.²⁷⁰) Yet, many members of our community hold the view that linking arms with other protesters is, at core, a quintessential form of passive resistance. As such, it is a form of resistance, in their view, that should never be met with any type of force.²⁷¹

(b) Recommendation

As an initial matter, we note that, as applied to protests and demonstrations, any sort of continuum or matrix discussing force options is relevant only if the circumstances dictate a police response. As discussed above, many acts of civil disobedience might be deemed “tolerable,” or at least tolerable for a time. They might call for responses such as additional opportunities for dialogue with high-level officials, mediation, or student disciplinary citations, rather than a response by police. *The Event Response Team always should consider whether the civil disobedience in question interferes sufficiently with the mission of the University or with the rights of others to require a police response.* If not, the police options for responding to various forms of resistance may be rendered moot.

This said, there inevitably will be situations in which police involvement and arrests are required. To prepare for such situations, our research has persuaded us that the University should adopt a response option framework at the systemwide level to guide our campus police in choosing among the range of approved force options. While many jurisdictions call this a “force continuum” or “force matrix,” we use the term “response option framework” because it is essential for police to consider options other than physical force.

The substantial majority of police departments nationwide employ such a framework, and the U.S. Department of Justice has identified its use as a best practice. Indeed, many of our campuses already differentiate among types of protester activity and place some limits on the level of force that may be used in response to those activities. A more comprehensive framework would provide needed guidance, not only to our police officers, but also to administrators who work with them. It would also promote greater consistency in police response across the system. Further still, such a framework would provide notice to all members of the community, including would-be protesters, of the normal range of options available to police (subject to exceptions for exigent circumstances) for responding to various types of protester activity. Such notice would help enable protesters to avoid provoking situations in which force might be warranted.

²⁷⁰ See *supra* section VI.B.1.a.i.

²⁷¹ *E.g.*, Jan. 6, 2012 Meetings at UC Riverside; Feb. 10, 2012 UC Davis Town Hall; (Revised) Resolution Proposed by Professors Barsky and Simon, *available at* http://academic-senate.berkeley.edu/sites/default/files/committees/division/meetings/resolution_b-barskysimon-rev-for_web_4.pdf.

It would be beyond our mandate and, we think, unwise, for us to define the precise contours of this framework, other than to propose certain guiding principles for the development of the framework. As the NIJ study indicates, there is considerable disagreement even among police professionals regarding how the various force options should be “ranked” in force continua.²⁷² Our interviews with police officials confirmed this.²⁷³ Therefore, we believe the University should establish a rigorous process for establishing a response option framework for use across the system. This process should include significant input from students, faculty, administrators, outside experts, and, most critically, our police professionals. Part of this process should include determining the extent to which the framework should be used for general application or should be tailored for use in protest and civil disobedience situations.²⁷⁴

At a high level, we believe that this framework should incorporate the following elements. First, as noted, the response option framework should be deployed systemwide. One of the primary reasons for developing a response continuum is to ensure a more consistent response by police to similar types of resistance by demonstrators regardless of the campus; the Regents and the public presumably expect this consistency. Furthermore, the experts we interviewed repeatedly stressed the need for a use-of-force policy that is uniform across all the campuses in order to facilitate mutual aid among campus police departments and to enable common training programs.²⁷⁵

Second, the response option framework should correlate the permissible responses to types or levels of resistance. We are aware that some police departments—including the UC San Francisco department—have adopted continua that simply rank permissible types of police response, without linking them to levels of resistance. But we think that the prevailing approach, which builds different levels of resistance into the response continuum, provides greater guidance to officers in the field and better notice to community members at large.

²⁷² The NIJ study reports that “[t]he placement of chemical sprays and [tasers] offered the greatest challenge for police administrators as to the proper placement within the force continuum: Roughly 30 percent of the agencies place chemical sprays with hands-on pain compliance techniques, another 30 percent of the departments place chemical sprays with hard hand tactics, and just over a third of the agencies place chemical sprays with impact weapons.... Nearly 60 percent of the agencies place [tasers] at the impact weapon level, while another 2.0 percent place it along with deadly force. The remaining agencies place [tasers] with some sort of hands on force ...” William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at ii-iii (May 2011), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

²⁷³ Within our system, one Police Chief told us that he thought pepper spray would be “higher” on a use of force continuum than batons. But a second Police Chief cautioned that batons should be considered as a more serious weapon, because they can cause broken bones and even permanent damage.

²⁷⁴ At a minimum, the framework must extend to the police response to demonstrations and civil disobedience. We recognize that most force matrices used throughout the country apply to all situations where police confront resistance—not just to demonstrations—and we expect that the response option framework developed as a result of this Report might have similarly broad application.

²⁷⁵ Feb. 9, 2012 Interview with John Jay College of Criminal Justice President Jeremy Travis; Feb. 6, 2012 Interview with Police Assessment Resource Center President Merrick Bobb; Jan. 13, 2012 Interview with Harvard University Police Department Public Information Officer Steven Catalano.

Third, the response option framework should contain clear definitions of the types and levels of resistance it addresses. In particular, there should be a clear demarcation between “passive resistance” and more active forms of resistance. The continuum should provide illustrative examples so that students, faculty, administrators and officers can understand which actions could trigger a response involving the use of physical force.²⁷⁶

Fourth, the response option framework should recognize that a large-scale police presence itself is perceived by many protesters as a show of force.²⁷⁷ This is especially so if police wear types of personal protective equipment (PPE) known as “riot gear” or “turtle shell” armor, or if they make an aggressive display of weapons.²⁷⁸ Personal protective equipment and aggressive displays of weapons may also escalate tensions with protesters, so the response option framework should take into account these concerns in establishing the potential levels of police response.

Fifth, the response option framework must include explicit exceptions for responding to threats of violence and other exigent circumstances. Situations involving resistance to police directives can evolve quickly. When confronted with a dangerous situation, our police officers should not be constrained in their ability to protect against property damage or injury, to themselves or others. They should instead have the discretion to take those actions that are reasonable under the circumstances.

Once this response option framework is established, it should be implemented and incorporated into the training regimes at all ten campus police departments. Senior administrators also should be trained on it.²⁷⁹ And, like other police policies on demonstrations and use of force, the response option framework should be made available to the public on the internet.

The response option framework must always be coupled with the best practices and recommendations concerning decision-making during demonstrations already identified in this Report. In particular, except in circumstances in which delay would result in a risk of injury or significant property damage, police should seek approval from the Chancellor or the Chancellor’s designee shortly before initiating any type of physical force against demonstrators, even if it is one of the permissible force options indicated on the response framework.

²⁷⁶ We have previously made recommendations concerning how administrators should respond to protesters who link their arms in a non-aggressive way. See *supra* section III.A.2. The response option framework should be consistent with the recommendations in that section.

²⁷⁷ UC faculty, administrators, and police, as well as outside experts, emphasized that a visible police presence at the site of a demonstration should be considered a show of force, because that is how it is likely to be perceived by demonstrators. Jan. 11, 2012 Meeting with UC Berkeley Faculty; Jan. 20, 2012 Interview with the University of Pennsylvania Vice-President for Public Safety Maureen Rush; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Jan. 19, 2012 Interview with Police Executive Research Forum (PERF) Executive Director Chuck Wexler; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

²⁷⁸ Jan. 31, 2012 Interview with Professor Lorie Fridell; Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Police Executive Research Forum, “Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches” at 58 (2006).

²⁷⁹ See *supra* section IV.C.

Recommendation 36. Establish and implement a systemwide response option framework for use on each campus.

Recommendation 37. Require that campus police and other authorities (to the extent controlled by the University) act in accordance with the response option framework, absent exigency or good cause.

2. Procurement of Equipment

Weapons authorization—the process by which weapons and other devices are approved for use by police—is a threshold component of any force option policy. To be sure, the concerns and considerations underlying weapons procurement and weapons authorization extend well beyond the context of campus protest activity. Nonetheless, we address the subject briefly here because of its obvious implications for the police response to civil disobedience. Currently, the University lacks a consistent program across the system for determining which weapons and devices, and specifically which so-called “less lethal” weapons, or “control devices,” should be available for use on our campuses.²⁸⁰ We recommend establishing such a program at the system level, while also affording campuses the option to decline deploying devices otherwise approved for use, in order to meet specific campus objectives.

(a) Background

The University’s “Universitywide Police Policies and Administrative Procedures” manual leaves selection of weapons largely to the discretion of the campuses, for implementation through local policies. With respect to so-called “less-lethal” weapons—weapons that are designed to be less likely than conventional firearms to result in death—the “Universitywide Policies” manual adopts a mixed approach. For certain categories of weapons, including tear gas, pepper spray (formally known as “oleoresin capsicum” spray),²⁸¹ and police batons, the manual authorizes use on a systemwide basis.²⁸² For tasers and all other “less-lethal” weapons, it defers to the judgment of the individual police departments.²⁸³ At the campus level, most of our police department policies provide that only those weapons “that have been approved by the Chief of Police or his/her

²⁸⁰ We refer in this section to “less-lethal weapons” and “control devices.” Most of the principles and recommendations in this section should apply with equal force to the approval of techniques regarding how such weapons are used—for example, which of the two settings on a taser may be used—and to the approval of weaponless techniques such as the carotid restraint hold or hands-on pain compliance techniques.

²⁸¹ Universitywide Police Policies and Administrative Procedures § 812 (Jan. 7, 2011), *available at* http://www.ucop.edu/ucophome/coordrev/ucpolicies/documents/policepol_adminproc.pdf.

²⁸² *Id.* § 813.

²⁸³ *Id.* §§ 814-15. The Universitywide policies say nothing about what process should be used to arrive at campus-specific policies governing whether tasers or other “less-lethal” weapons are permissible.

designee are authorized to be carried by members of this department.”²⁸⁴ One campus expressly requires that the Chief of Police personally approve all weapons.²⁸⁵

The current system creates a risk that the various campus police agencies will arrive at different conclusions about the safety record of particular weapons—generally, whether the weapons have a record of being operable and operated as intended—and the appropriateness of the weapons’ use in a campus environment. It also lacks formal, consistent methods for assessing new weapons and keeping current in the evolving field of “less lethal” weaponry. Such methods would include reviewing new technologies that could render existing weapons obsolete or unsafe, and reviewing new research regarding the relative safety of weapons options.

Additionally, the existing policies of our police departments differ in the level of detail they provide about approved weapons. On some campuses, the names of all of the approved “less-lethal” weapons are included in the police department use of force policy. By way of example, the policy on one campus states that “[t]he authorized less-lethal weapons are Chemical Agents, Oleoresin Capsicum, and Impact Weapons (i.e. batons).” It then provides that trained officers shall carry “First Defense MK-4 10% Oleoresin Capsicum (OC) pepper spray,” and that “First-Defense MK-9 Magnum OC may be carried by personnel during crowd control situations.”²⁸⁶ Other campuses do not provide this level of detail about the weapons that are approved for use.

(b) Recommendation

We believe that our current regime for approving which categories of “less lethal” weapons may be used by police officers on our campuses suffers from two flaws. First, the University has approved *some* “less lethal” weapons on a systemwide basis; but the systemwide policies allow individual police departments unilaterally to approve and use other such weapons that are not on the systemwide approved list. We think it is essential for the University to have a common understanding of which weapons are “safe” (or not unsafe) and appropriate for use in the campus environment. Members of our community also occasionally raise questions about the safety and effectiveness of the “less lethal” weapons used by our police; we should have a means of providing a uniform, systemwide response to these questions.

Second, the University lacks an established process for re-evaluating which “less lethal” weapons should be approved. Weapons technology evolves rapidly, as do best practices in this area. A category of “less lethal” weapon that is widely accepted and used in one decade might be rendered obsolete in the next by the emergence of more effective devices. Our University should develop an established process at the system level for staying abreast of these advances, and for reassessing the list of weapons options that should be available to our officers in light of them.

²⁸⁴ *E.g.*, UC Irvine Police Department Policy Manual § 308.1.

²⁸⁵ UC Santa Barbara Police Department Policy Manual § 308.1.

²⁸⁶ UCSF Police Department General Order § 4.3.6.

We envision that this process will be led by the existing Council of Chiefs, comprising the leaders of our ten campus police agencies, or by a subcommittee of that group. But we recognize that authorization of weapons involves complex judgments that must consider the potential health effects of the weapons, their effectiveness with regard to their intended use, officer safety, cost, and a number of other important factors. The Chiefs of Police should therefore solicit input from medical professionals, law enforcement experts, weapons manufacturers, and the diverse constituencies on our campuses. They should also, of course, seek advice regarding legal limits on the use of each type of weapon. Finally, this process should consider both the availability of the weapons generally, and whether they should be permitted for use in the context of demonstrations. Consistent with current policy, the list of available weapons options should be approved by administrators in the Office of the President before it is finalized.

We presume that the “less lethal” weapons currently approved for use on UC campuses would meet appropriate standards and would be re-approved through this process. But we lack the expertise to make that final judgment, and we recognize that judgments such as these may change as new technologies and research data emerge in the future.

We also recognize that some of our police departments may decide that it is not necessary to employ the full range of weapons approved through this systemwide process, based on considerations unique to that campus. In that circumstance, we think it is appropriate for each campus Police Chief to have the authority to limit the weapons options available to their officers as he or she see fit. At bottom, we propose to shift from a model by which the University approves certain weapons on a system-wide basis and permits each campus to *add* to that list, to a model by which the University establishes a comprehensive set of approved weapons and permits each campus to *subtract* from that list.

Finally, we think it is a best practice for each campus's Chief of Police personally to approve the specific weapons that may be utilized by the department's officers (e.g., “First Defense MK-4 10% Oleoresin Capsicum (OC) pepper spray”). Our departments are sufficiently small—and this decision is sufficiently weighty—that it need not and should not be delegated to more junior officers. And to improve transparency and accountability, the list of devices that are approved for use in response to demonstrations and civil disobedience should be included in each department's use-of-force policies, and made available to the public.

Recommendation 38. Develop a systemwide process for determining which “less lethal” weapons may be utilized by UC police officers.

Recommendation 39. Require each campus Police Chief personally to approve the specific types of less lethal weapons available to officers in their department.

Recommendation 40. Require each campus police department to include the list of weapons approved for use in response to demonstrations and civil disobedience in its use-of-force policies, and to make the list available to the public.

3. Evaluation of Safety of Pepper Spray

As part of our policy review, we received a special charge from President Yudof to review the results of a study he requested from the School of Pharmacy at UCSF on the potential adverse health effects from human exposures to pepper spray—a weapon currently available to trained officers on all of our campuses. The School of Pharmacy’s report is now available, and, while its findings are helpful, they do not enable a comparison among the potential health effects of pepper spray and those of alternative weapons or devices. We therefore recommend commissioning further research that would allow for such a comparison.

(a) Background

Coincident with our policy review, President Yudof directed the School of Pharmacy at UCSF to evaluate the potential adverse health effects from human exposures to pepper spray. That evaluation has now been completed.²⁸⁷

The School of Pharmacy conducted a review of existing literature on pepper spray and the health outcomes for subjects exposed to oleoresin capsicum (“OC”), the active ingredient in pepper spray. They also analyzed data from over 4,000 accounts of pepper spray exposures reported to the California Poison Control System over a 10-year period. The School of Pharmacy noted in part that “[t]he short- and long-term safety of [oleoresin capsicum] has not been critically reviewed.”²⁸⁸ The available literature suggested that “[t]he effects of OC products are generally self-limited and resolve within 45 minutes,” but that “severe adverse events requiring medical care may occur in 1% to 15% of exposures to [oleoresin capsicum] products.”²⁸⁹ Severe events can include corneal epithelial defects, pulmonary effects such as asthmatic responses, and cardiovascular effects such as hypertension and tachycardia.²⁹⁰ Data from the California Poison Control System established that 6.4% of reported pepper spray cases produced “moderate or more significant symptoms suggestive of tissue injury that warranted a medical evaluation.”²⁹¹ The most common health effects included dermal burns or blisters, symptoms suggestive of bronchospasms, and symptoms suggestive of possible corneal abrasion.²⁹²

²⁸⁷ The report is attached as Appendix E.

²⁸⁸ Exhibit E (UCSF School of Pharmacy, Evidence-Based Safety Review of Oleoresin Capsicum (Pepper Spray) Exposure in Humans, at 3).

²⁸⁹ *Id.* at 13.

²⁹⁰ *Id.*

²⁹¹ Exhibit E (UCSF School of Pharmacy, Adverse Health Events Associated with Pepper Spray Products: A 10 year Retrospective Review of the California Poison Control System Reported Cases, at 2).

²⁹² *Id.*

The School of Pharmacy, however, noted that these data may be subject to reporting bias because reports to the poison center are voluntary.²⁹³

Other studies have examined the efficacy and safety of various other less lethal weapons, using a more comparative approach. A 2008 study by the National Institute of Justice, for example, studied the “effectiveness” of various less lethal weapons by analyzing and coding five years of data from the Orange County (Florida) Sheriff’s Office and the Orlando Police Department. One of the study’s conclusions was that tasers were relatively more effective at ending conflict between officers and suspects than other weapons and techniques such as chemical agents, batons, and compliance holds.²⁹⁴ It concluded that “[w]hile TASERs are not injury free (puncture wounds from dart probes, or skin burns from drive stuns), the alternative (broken bones from batons, burning pain from pepper spray, and potential death from firearm) makes them a preferential choice.”²⁹⁵

A 1991 thesis at California State University, Los Angeles, compared outcomes of “conventional force” methods, such as kicking, punching, and striking with blunt objects, against the use of tasers, pepper spray, and other chemical irritants. The author found that tasers and pepper spray were less likely to cause significant injuries than the more “conventional” force options. The data relied on in the study are two decades old and may no longer be reliable. But the thesis makes the point that any study of force options must consider whether displacing weapons like tasers and pepper spray with other, “conventional” force options, could have adverse consequences.²⁹⁶

(a) Recommendation

While the analysis performed by the UCSF School of Pharmacy contains very helpful insights into the health risks posed by pepper spray, it does not compare those risks with the effects of other weapons that might be used in place of pepper spray, such as batons and tasers. We therefore think that a comparative study, like that done by the National Institute of Justice, should be commissioned. Without information on comparative safety, we think it would be imprudent for us to offer any conclusive recommendations on whether UC police officers should continue to carry pepper spray.

²⁹³ *Id.* at 6.

²⁹⁴ William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at 88 (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>; see generally UCLA Assistant Police Chief Jeff Young, Operational Review of the Events of Police Actions: Sproul Hall Protests - November 9, 2011, at 33-36, available at <http://administration.berkeley.edu/prb/UCPDOperationalReview-Redacted.pdf> (discussing advantages and disadvantages of various control devices).

²⁹⁵ William Terrill *et al.*, “Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes,” at 93 (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>.

²⁹⁶ See Greg Meyer, “Nonlethal Weapons Versus Conventional Police Tactics” (Mar. 1991) (unpublished M.S. thesis, California State University, Los Angeles).

Recommendation 41. Commission further studies on the effects of pepper spray on resisters as compared to the effects of other force options.

VII. Documenting Activity During Demonstrations

A consistent challenge in assessing police response to demonstrations is determining, after the fact, what actually transpired during the event. Below, we review several methods of documenting events at demonstrations, and recommend several approaches for obtaining accurate, unbiased reporting.

A. Observers

One method already employed on some of our campuses involves the use of neutral observers. Advocates for observer programs argue that they provide a means independent of the police agencies to verify developments during the event, and that they promote accountability for all parties involved in a demonstration by establishing a record on which any necessary corrective actions may be based.

1. Background

Some of our campuses have in place formal or informal observer policies.²⁹⁷ At UC Berkeley, for example, the “University Observers” program relies on members of the University staff. They wear nametags to identify themselves as observers, and are permitted access to areas where demonstrations are taking place.²⁹⁸ These observers document what they see at demonstrations and create formal reports for the Dean of Students.²⁹⁹ This program is an established feature in the policies of the UC Berkeley police department, which affirm that the department “recognizes University Observers and normally intends to allow them access to all areas of the event.” The policies add the important caveat that “[o]bservers not cooperating with police directions or interfering with operations will have their privileges withdrawn.”³⁰⁰ Most UC campuses have not yet adopted a

²⁹⁷ Jan. 25, 2012 Meeting with Council of Vice Chancellors for Administration (discussing prior observer programs at UC Santa Cruz and UC Berkeley). Some campuses also have policies regarding “demonstration monitors.” Monitors are not neutral observers, but instead are individuals from within a demonstration group who are responsible for maintaining reasonable order and coordinating with campus officials during a demonstration. At UC San Diego, the Student Conduct Code requires groups engaging in demonstrations to designate at least two monitors. The monitors must wear an identifying mark and are responsible for maintaining order and coordinating with Student Affairs. UC San Diego Student Regulations § 16.15.14.10, *available at* http://students.ucsd.edu/student-life/_organizations/student-conduct/regulations/16.00.html. At UC Berkeley, the police department’s crowd management policy states that officers should “[e]ncourage the group to utilize a method of ‘self-monitoring.’” UC Berkeley Police Department Crowd Management Policy, at 5, *available at* <http://administration.berkeley.edu/prb/PRBCrowdPolicy.pdf>.

²⁹⁸ Interviews with campus Police Chiefs.

²⁹⁹ *Id.*

³⁰⁰ UC Berkeley Police Department Crowd Management Policy, at 8, *available at* <http://administration.berkeley.edu/prb/PRBCrowdPolicy.pdf>.

formal observer program. Officials on these campuses caution that any policy requiring an observer program should include concrete guidelines on the role and responsibilities of observers.³⁰¹

A number of universities outside of our system also have adopted some variation of an “observer” program. The University of Oregon, for example, has implemented a program offering trained neutral observers at demonstration sites who are supposed to provide unbiased accounts of the event’s developments and have a “calming effect” on the crowd.³⁰²

Additionally, outside organizations concerned with civil liberties and free expression operate observer programs that are sometimes employed during campus protests. For example, the National Lawyers Guild (NLG) established a legal observer program in 1968 in response to campus protests at Columbia University.³⁰³ The ACLU also has sent observers to protests.³⁰⁴ We are not aware of any policies within our system that explicitly recognize observers from outside organizations.³⁰⁵ To the contrary, we heard some anecdotes suggesting that these unofficial observers are sometimes accorded no special status by police during an event, and are not distinguished from protesters.

2. Recommendation

The presence of neutral observers at demonstrations provides a useful means for documenting the events that unfold, including any police response to civil disobedience. Observers often can provide a fuller account of the event’s developments than can audio or video recordings, and may offer a more objective view than the event’s participants (protesters and responders alike). Observers also promote accountability—with regard to all participants—for the benefit of the University community and the general public.

To be sure, an observer program is not without its costs in terms of staff time, training expense, and potential safety risk to observers. Moreover, with the advent of social media and smart phones, and the reality that any important public event is videotaped on such devices from multiple angles, one might argue that the need for observers or monitors has diminished in recent years. Still, we conclude that the University’s response to demonstrations can only be improved by more transparency, greater accountability, and increased objectivity in the reporting of events surrounding a demonstration. Accordingly, in our view, each campus should establish a

³⁰¹ Interviews with campus Police Chiefs.

³⁰² See University of Oregon, Neutral Observer Program, *available at* <http://uodos.uoregon.edu/SupportandEducation/ConflictResolutionServices/NeutralObserverProgram/tabid/137/Default.aspx>.

³⁰³ See National Lawyers Guild, Legal Observer® Program, *available at* <http://www.nlg.org/resources/legal-observing/>.

³⁰⁴ At the budget protests in Wisconsin in early 2011, for example, the ACLU organized trained neutral observers to witness the interactions between police and demonstrators. See ACLU Press Release, “ACLU of WI Legal Observers Protect Right to Assemble and Speak,” *available at* http://www.aclu-wi.org/News/Releases/20110218_Legal_Observer_Release_Madison.pdf.

³⁰⁵ On one campus, the police department’s policies state that it “does not grant blanket recognition or any special authority or privileges to ‘observers’ from other units or from the group sponsoring the demonstration.” UC Berkeley Police Department Crowd Management Policy at 8, *available at* <http://administration.berkeley.edu/prb/PRBCrowdPolicy.pdf>. Some of our campus Police Chiefs expressed a concern that outside “legal observers” can interfere with the police response, because rather than actually acting as neutral observers, they sometimes intervene on behalf of demonstrators.

formal observer program. The program should comprise recruits from within our system, who could be drawn from the ranks of faculty, staff, and/or students. Faculty may be particularly effective as observers, in view of their familiarity with the campuses on which they serve and their credibility with students and staff. Some have suggested that observers from outside organizations be included as well, but we decline to endorse this suggestion, as our campuses are ill-equipped to assess the objectivity or intentions of outside groups.³⁰⁶ We do, however, believe that observer training and procedures should be made transparent in some fashion so that others can be assured that the training is appropriate to the University's mission and values, and consistent with applicable law and regulations.

In order to ensure the effectiveness of the program, observers should be granted special status and access privileges. For example, they should be permitted to remain in the vicinity of a protest following the issuance of dispersal orders, absent exigent circumstances. They also should be made aware of the additional responsibilities that accompany their access privileges. The observer program should include steps for training recruits, a system for identifying those who are functioning as formal observers, and protections to ensure that they remain safe during events and that they do not hinder the legitimate efforts of campus officials and police in responding to unlawful activity.

Recommendation 42. Establish at each campus a formal program to allow designated observers to gain access to the protest site for purposes of observing, documenting, and reporting on the event.

B. Video Recording Events

At many of our campuses, police create a video record when they are called upon to respond in protest situations. However, this practice is inconsistent across campuses, and departments sometimes do not use multiple cameras in order to capture different perspectives of the events. At the same time, some students and faculty object to the practice of videotaping demonstrations, asserting privacy concerns and fears that the practice itself and/or the resulting recordings could be used to deter speech.

1. Background

Our interviews with UC Police Chiefs confirmed that most campuses follow a practice of videotaping demonstrations when a police presence at the event is deemed necessary. The Chiefs explained that video recording creates a record of the activities of the police and of the demonstrators, and allows the police department to review its work after the fact. On a few campuses, this practice has been adopted as a formal

³⁰⁶ Even when limiting the official observer program to members of the campus community, each campus will need to develop criteria for selecting and registering observers that do not depend on the observers' viewpoints.

policy. The UC Berkeley crowd management policy, for example, provides “[n]ormally all demonstrations or crowd situations will be videotaped to ensure complete documentation of the event. During periods when there are actual violations, police actions[,] or other significant activities [are] occurring, there should be at least two video cameras being used.”³⁰⁷ At several other campuses, police policies provide that officers should consider “us[ing] video and/or audio recording for documentation” during demonstrations.³⁰⁸

At a few of our campuses, police commanders seek to deploy two or more video cameras at significant demonstrations, in order to increase the odds that they will capture the entire scene and sequence of events. But other police officials noted that resource constraints limit their ability to develop a complete video record. One Chief observed that he generally does not have sufficient resources to assign sworn officers to operate video cameras. Another said that he used his parking enforcement officers to videotape demonstrations, and only had enough resources to run one camera at a time. A third Chief noted that videotaping may require the assignment of an officer to protect the videographer, and therefore can deplete resources required for more pressing needs.

From other parts of our community, we heard concerns that police videotaping of demonstrations may be used to intimidate protesters and to chill speech.³⁰⁹ Indeed, these concerns are so pervasive that at least one campus has adopted a policy to constrain the ability of police to videotape demonstrations. In particular, at UC San Diego, the student conduct regulations expressly state that “the video-taping of student demonstrations should not occur unless there is probable cause to believe that participants are engaging in illegal activity or activity subject to UCSD disciplinary proceedings.” They further provide that “[n]o information shall be gathered for any other purpose and placed or maintained in police or administrative files.”³¹⁰

Outside our system, many jurisdictions have policies on videotaping and recording events, some of which aim to strike a balance between the creation of a video record and the First Amendment concerns expressed above. For example, the City of San Francisco Police Department has adopted guidelines stating that:

“It is the policy of the Department to videotape and photograph in a manner that minimizes interference with people lawfully participating in First Amendment events.... The Department shall videotape or photograph only for crowd control training or evidentiary purposes.”³¹¹

³⁰⁷ UC Berkeley Police Department Crowd Management Policy, at 8, *available at* <http://administration.berkeley.edu/prb/PRBCrowdPolicy.pdf>.

³⁰⁸ *See, e.g.*, UC Irvine Police Department General Order No. 2011-06, § 1.10.

³⁰⁹ *E.g.*, Jan. 6, 2012 Meeting with UC Riverside Students.

³¹⁰ UC San Diego Student Regulations § 16.11, *available at* http://students.ucsd.edu/student-life/_organizations/student-conduct/regulations/16.00.html#16.11.

³¹¹ San Francisco Police Department General Order 8.10, § XI (June 30, 1999), *available at* http://www.aclunc.org/library/additional_info/asset_upload_file391_3284.pdf.

Similarly, the policy of the Madison, Wisconsin Police Department permits videotaping of demonstrations for the purpose of “document[ing] evidence of criminal activity for future prosecution, deter[ring] criminal behavior,” and “improv[ing] departmental response to demonstrations and assemblies.”³¹² Law enforcement experts have identified police videotaping of major protest events as a best practice.³¹³

2. Recommendation

We agree that requiring police departments to create a video record of their activities during a demonstration is a best practice. Videos can be critical to reviewing the actions of officers and demonstrators after the fact. In particular, police should record all dispersal orders, all arrests, and any use of physical force, to the extent possible. Police should use an appropriate number of cameras to ensure that all relevant events are captured on video. To the extent that resource constraints are an issue, in our view, the University should re-allocate resources as necessary so that a complete record can be developed.

Some participants in our review expressed concerns about the privacy implications of videotaping public demonstrations. We do not share this concern. In this digital age, in which cell phone cameras are ubiquitous, we expect that demonstrators’ actions already are the subject of numerous recordings captured by bystanders, by the news media, and by the demonstrators themselves. We expect that would-be protesters on our campuses already are aware of this phenomenon and we have seen no evidence that their expression has been chilled. Were the University not to adopt the recommendation that we offer here, we suspect that the only parties without a recording of most protest events would be University officials.

This said, the Administration and police can and should take steps to minimize the impact of any program to videotape protest events on free speech rights and privacy. Such a program should be objective and content neutral in the choice of which events to record, should produce a reliable record of conduct by both demonstrators and the police, and should be conducted in a manner that avoids chilling speech.³¹⁴ Once created, the recordings should be used only for evidentiary or training purposes

Recommendation 43. Establish a program for video recording protest events designed to develop a fair and complete record of event activity solely for evidentiary or training purposes.

³¹² Madison, Wisconsin Police Department Policy No. 9-100, *available at* <http://www.cityofmadison.com/police/documents/PolicyandProcedureManual.pdf>; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray. The University of Wisconsin at Madison has a similar campus policy allowing videotaping, as does the University of Nevada, Las Vegas. Apr. 18, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling; Feb. 29, 2012 Interview with University of Nevada Las Vegas Police Department Chief Jose Elique.

³¹³ See, e.g., Police Executive Research Forum, “Managing Major Events: Best Practices from the Field” at 39 (June 2011) *available at* <http://www.policeforum.org/dotAsset/1491727.pdf>.

³¹⁴ November 20, 2009: Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board, at 18 (June 14, 2010), *available at* http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf.

C. Reporting By Police

The majority of our campus policies require post-event reports for protest events only when force was deployed, an arrest was made, or a misconduct complaint was filed. As a consequence, there are few officials records of protest events—specifically protest events involving civil disobedience—that were resolved successfully (*i.e.*, without protester violence or police use of force), though anecdotal evidence suggests there have been many. The lack of such records makes difficult any effort to identify best practices or to train for future events.

1. Background

Our campus police departments require officers to report every instance when they use force against a person, including instances involving demonstrations. In most of our departments, officers must create a written report following any use of a control device or any application of force that results in an injury. Written reports are then forwarded for review up the chain of command, with the specific reporting obligations and review procedures varying in each department based on the level of force used and the severity of the outcome. Consistent with applicable law, each campus agency also follows established processes for investigating, documenting, and responding to citizen complaints.³¹⁵

The police departments at UC Irvine and UCLA have adopted broader reporting requirements regarding the police response to demonstrations. They require the Incident Commander to complete an “after-action report” as soon as possible following a demonstration, regardless of whether force was used. The report must include facts about the incident, an evaluation of training needs, and a critique of operations and procedures, among other matters.³¹⁶ At UC Berkeley, police are required to prepare an “overall police report” after each demonstration, and to conduct a critique of their operation.³¹⁷ Additionally, the Chief of Police at UC Berkeley typically reviews the formal reports prepared by the University Observers and filed with the office of the Dean of Students.³¹⁸ On some campuses, the event response team convenes a post-event meeting to debrief and review the response to a demonstration after the fact.³¹⁹

³¹⁵ See, e.g., UC San Diego Police Department Policy Manual § 1020.

³¹⁶ See, e.g., UC Irvine Police Department General Order No. 2011-06, § 1.16. A draft UC Santa Barbara policy includes the same requirement.

³¹⁷ UC Berkeley Police Department Crowd Management Policy at 11-12, *available at* <http://administration.berkeley.edu/prb/PRBCrowdPolicy.pdf>. That policy also requires the Overall Commander and Senior Staff to consider whether to request reports from the university observers who attended the event. See *id.*

³¹⁸ Interviews with campus Police Chiefs.

³¹⁹ See, e.g., UC San Diego Demonstration Committee Planning Sheet; Interviews with campus Police Chiefs.

After-action reporting on the police response to demonstrations is routine at many of the other agencies with whom we spoke.³²⁰ Some of these agencies formally require written after-action reports, while others told us they consider the act of review indispensable but do not have a formal policy requiring it.³²¹ At the California State University system, individual campuses are required to prepare an after-action briefing that must be forwarded to the system Vice Chancellor for Public Safety and Risk Management.³²² The Police Executive Research Forum (“PERF”) also recommends after-action reports for protest related events. It highlights two particularly effective tools for conducting post-event review—a decision log, which memorializes the process of decision-making during an event, and an event file, which captures all relevant documents and correspondence pertaining to the event.³²³

2. Recommendation

In order to gain the most from our experience with protests, including both successes and setbacks, we recommend that our campus police prepare an after-action report each time they respond to a demonstration—even if the event does not result in the use of force by police. We recommend that these reports describe the event and any police response, evaluate the pre-event operations plan and its subsequent implementation, and identify any additional training that may be needed. All such reports should be provided to the members of the campus event response team, so that the team can reflect on what worked well and what did not. Additionally, copies of any reports prepared through the campus observer program should be forwarded to the Chief of Police and to the event response team. Copies of these reports also should be made available to the UC Office of the President (to the Executive Vice President for Business Operations), so that the Office of the President can facilitate a centralized review of successes and challenges and share lessons-learned systemwide.

Recommendation 44. Amend existing police department policies to require after-action reports for all protest events involving a police response, regardless of whether the response resulted in force, injury, or civilian complaint.

³²⁰ Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans; Feb. 3, 2012 Interview with Madison, Wisconsin Police Department Chief Noble Wray; Feb. 1, 2012 Interview with University of Wisconsin at Madison Chief Sue Riseling.

³²¹ Jan. 20, 2012 Interview with the University of Pennsylvania Vice-President for Public Safety Maureen Rush (stating the department routinely does after-action reports); Jan. 25, 2012 Interview with Boston Police Department Superintendent William Evans (stating that his department does after-action reports but not a formal review process); Jan. 13, 2012 Interview with Harvard University Police Department Public Information Officer Steven Catalano (stating the Harvard Police Department does after-action reporting).

³²² Feb. 29, 2012 Interview with the California State University System Chief Law Enforcement Officer Nathan Johnson.

³²³ Police Executive Research Forum, “Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches,” at 36 (2006).

Recommendation 45. Coordinate review of after-action reports on a periodic basis with campus event response teams, and with the Office of the President.

VIII. Post-Event Review

Perhaps no subject during our study generated as much passion as post-event review of administration and police responses to protest events. Many in our community hold firm convictions that campus police, in particular, should be subject to scrutiny by some form of civilian review body—an authority external to the campus police agencies. Advocates for civilian review asserted that the very process of external review enhances transparency and establishes a basis for holding police accountable to the community they serve. Detractors question the fairness and efficacy of such reviews, which they claim inevitably lead to out-of-the-moment “second-guessing” of professional judgments by untrained laypeople. While we see merit in both perspectives, ultimately we conclude that an additional avenue for independent review beyond existing campus policies should be established. The form of that review is the focus of the discussion below.

1. Background

All of our campus police departments maintain internal programs for reviewing the use of force by their officers. On occasion, and particularly in the past few years, campus leadership has supplemented these programs through the appointment of *ad hoc* committees to review police responses to specific events. To date, only the Berkeley campus has established a standing committee, consisting of an independent citizen review board, to review police actions. The UC Berkeley Police Review Board consists of eight members appointed by the Vice Chancellor of Administration: two students, two faculty members, one University staff member, one retired police officer, one member of the local community, and a chair with a “judicial temperament and background.”³²⁴ The Board reviews the outcome of civilian complaint investigations by campus police, on appeal by an aggrieved party, and conducts investigations at the direction of the Vice Chancellor for Administration.³²⁵ In appropriate cases, the Board also has authority to conduct an independent investigation on its own initiative, and to audit the department’s policies and practices.³²⁶ After the Review Board conducts its review and holds any necessary hearings, the findings of the Board are forwarded to the Chief of Police for appropriate action.³²⁷

³²⁴ UC Berkeley Police Review Board Procedures § I(3)(a), available at <http://administration.berkeley.edu/prb/PoliceReview.htm>.

³²⁵ *Id.* § VII(2).

³²⁶ *Id.* § II(1)(e).

³²⁷ *Id.* § V(14).

The civilian review board model is a popular concept among many students and faculty on our campuses. Student leaders on several campuses voiced the concern that existing review processes within the police departments do little, if anything, to promote transparency and accountability. They favored the creation of civilian review boards, with the power to review *any* cases involving force by police in response to protest activity, and not simply appeals from the departmental complaint process.³²⁸ Many faculty representatives, as well as the American Civil Liberties Union of Northern California, similarly supported civilian review boards.³²⁹ The ACLU asserts that civilian review boards should be authorized to conduct initial investigations, and not simply appeals, regarding use of force by police; that they should be empowered to issue conclusive findings; and that they should be assigned dedicated staff to complete their work.³³⁰ One campus Police Chief told us that civilian review boards would provide helpful oversight.

But many others participants in our review pointed to substantial drawbacks in the civilian review board model. As an initial matter, civilian review boards generally have limited access to material information. In most cases, the Boards lack the authority to compel testimony from witnesses or the production of key documents. Access to information is further constrained by laws such as the California's Public Safety Officers Procedural Bill of Rights Act (POBR), and sections of the California Penal Code. These laws have been held to require that certain information about police officers be kept in confidence and withheld from external reviewing entities, such as civilian review boards. Among the information subject to these protections in many cases are complaints and investigations of complaints about police officers with regard to the performance of their duties. As a consequence of these protections, civilian review boards must rely on voluntary cooperation by the targets of their investigation in order to conduct a meaningful review. Even when such cooperation is secured, the foregoing laws may limit the information that the boards may disclose regarding their findings and conclusions. The challenges posed by these laws were highlighted in March of this year, when a police labor union sought and obtained court orders enjoining the University and a University-appointed Task Force from releasing a full version of a report concerning the November 18, 2011 protest event at the Davis campus.³³¹

Apart from difficulties in accessing information, many Police Chiefs, administrators, and some faculty members, expressed a concern that establishing standing civilian review boards would be inefficient. Several of our campus Police Chiefs told us that civilian review boards would duplicate review programs already in place and functioning well within the police agencies and the campus Administrations. Others stated that no single campus generates sufficient numbers of use-of-force incidents in a given time period to warrant establishing a

³²⁸ Jan. 24, 2012 Meeting with Student Government Leaders.

³²⁹ Jan. 11, 2012 Meeting with UC Berkeley Faculty.

³³⁰ See Feb. 10, 2012 Letter to Dean Edley and Charles Robinson from the ACLU of Northern California.

³³¹ See, e.g., Mary L. Vellinga, "Hearing this week on UC Davis pepper-spray report's delay," SACRAMENTO BEE, Mar. 12, 2012, at 1B, *available at* <http://www.sacbee.com/2012/03/12/4329461/hearing-this-week-on-uc-davis.html>.

standing board. Administrators and some faculty members voiced a preference for maintaining the status quo, and leaving it to the Chancellor to appoint *ad hoc* review committees when circumstances warrant such action.³³²

Further still, some experts on policing argue that civilian review boards frequently lack the training and experience necessary to evaluate police actions in complex and dynamic situations.³³³ Most experts acknowledge that civilian review boards carry credibility with the public because of their independence and diversity.³³⁴ Nonetheless, lack of expertise, combined with limited access to information, lead many experts to conclude that civilian review boards are ineffective in performing meaningful review and that there is a risk that boards will set expectations that cannot be met.³³⁵

Our review revealed an alternative approach for external review: the so-called “auditor” model.³³⁶ Auditor review is conducted by an individual who is employed outside of the police department but within the civilian Administration overseeing the department. The auditor generally has a background or training in police practices, and is responsible for reviewing the police department’s investigation into use-of-force incidents and for issuing an independent report.³³⁷ Because auditors are employed within the administrations to which the police report, they are not subject to the same legal constraints on access to information that challenge civilian review boards. Several of the experts we consulted view the auditor model as a more effective approach, because auditors are external to the police department but can gain access to the necessary internal information.³³⁸

2. Recommendation

Meaningful and transparent review of the response to civil disobedience promotes accountability and enhances the credibility of campus and police leadership within the University community, and beyond. But there is considerable debate over how that review should be conducted. The debate is waged on several fronts: whether the review body should be employed or established within or outside the campus Administration; whether the review body should consist of a single individual or a larger group; whether it should be charged

³³² Jan. 15, 2012 Meeting with Vice Chancellors for Administration; Feb. 27, 2012 Meeting with Chair and Vice Chair of Academic Freedom Committee.

³³³ Interview with CALEA Executive Director Sylvester Daughtry.

³³⁴ Feb. 6, 2012 Interview with Police Assessment Resource Center President Merrick Bobb; Jan. 18, 2012 Interview with Professor Emeritus Samuel Walker.

³³⁵ Jan. 18, 2012 Interview with Professor Emeritus Samuel Walker; Feb. 6, 2012 Interview with Police Assessment Resource Center President Merrick Bobb; Jan. 30, 2012 Interview with Los Angeles County Office of Independent Review Chief Attorney Michael Gennaco; Jan. 20, 2012 Interview with the University of Pennsylvania Vice-President for Public Safety Maureen Rush.

³³⁶ In our research we found that some use the term “auditor” and some use the term “monitor,” but there was not uniform agreement as to the distinctions between the two. We therefore use the term “auditor” to mean both “auditor” or “monitor.”

³³⁷ U.S. Department of Justice, National Institute of Justice Issues & Practices, *Citizen Review of Police, Approaches & Implementation*, at 62-64 (2001).

³³⁸ Jan. 18, 2012 Interview with Professor Emeritus Samuel Walker; Jan. 30, 2012 Interview with Los Angeles County Office of Independent Review Chief Attorney Michael Gennaco; see also S. Walker, *Police Accountability: The Role of Citizen Oversight* (2001).

with reviewing all cases (*i.e.*, review of right) or only those it deems worthy of review (*i.e.*, discretionary review); and whether it should be established on each campus, regionally, or system-wide.

We have considered each of these difficult questions, as well as the concerns voiced by various members of our community. As a threshold matter, we conclude that the status quo, under which independent review is generally triggered only when a Chancellor deems it appropriate and appoints an *ad hoc* panel, offers insufficient relief to potential grievants.³³⁹ Recent protest events have shaken the confidence of the University community and the general public in our commitment to responsible discourse and our tolerance for dissent. We believe that an established independent process for reviewing campus response to protest activity and civil disobedience is an essential precursor to regaining that confidence.

We submit that this formal review process must include several basic elements. The reviewing body must have real authority, including the power to make findings and issue recommendations. It must have access to information, including the details of the Administration's actions in response to demonstrations and the conduct of individual police officers. Its review must be timely, so that when remedial steps are necessary, they are carried out swiftly. The reviewing body must be independent of both the police and the administrators who made decisions regarding the protest response and/or who are ultimately accountable for those decisions. Finally, there must be transparency—to the extent permitted by law, our community deserves to know the findings and recommendations that result from the review process.

In order to accomplish these objectives, we make the following recommendations. *First*, we believe that the reviewing body should be housed within the University but outside the Administration and police department on the campus in question. We have considered closely the model of an external civilian review board, favored by many of the people we consulted, including the ACLU. In view of the considerable concerns raised by experts about the efficacy of civilian review boards, and the state law constraints on their access to relevant information, we conclude that civilian review boards are not the best solution. We think that the “auditor” model offers a better fit for our University, as it allows for an objective review by a party sufficiently associated with the University to gain access to critical information, but also sufficiently removed from the event decision makers to ensure independence. While the access to information may come at a cost—potential limits on the publication of review outcomes—we expect that significant information will still be disclosed, based on a more meaningful process than otherwise would be possible under alternative approaches.

³³⁹ The Berkeley campus represents the one exception to this observation, but its process lacks other features we deem essential to effective review.

Second, we believe the review should be conducted by an individual, rather than a board or committee. This approach will conserve resources and allow for more timely review and earlier implementation of corrective actions. It also allows the individual to gain experience and knowledge, so that he or she can more effectively examine our internal police procedures. To the extent the reviewer requires assistance or access to expertise on a particular subject, he or she may call upon existing resources within the University or contract with outside consultants.

Third, we believe the reviewer should have the authority to consider or reject requests for review, and to initiate reviews without a request, at his or her discretion. As many students and police advised us, the vast majority of protests and civil disobedience incidents do *not* result in the use of force by protesters or by the police. We think it would be unnecessary and overly burdensome to require a mandatory review of all such incidents. In many instances, the existing campus review processes are sufficient. The reviewer should be in a position to focus his or her efforts on significant events and matters where there are reasons to question the efficacy or outcomes of the campus process. We believe that the auditor should also consider periodic audits of the internal police reviews at each campus. There are existing protocols that could be followed to reinforce accountability and prevent future incidents.³⁴⁰

Fourth, we believe that there should be a single, systemwide reviewer, instead of separate reviewers located on each campus. In part, this recommendation is borne out of a desire for administrative accountability. As this Report urges, Chancellors and other senior administrators should be deeply involved in the campus response to civil disobedience. In order for the review of their actions to carry any credibility, the reviewer must be removed from the campus chain of command. Moreover, establishing a single, systemwide reviewer will promote consistency in the review process and facilitate the application of best practices in event response across the system. In order to conserve resources and assess demand, this centralized review function might be joined initially to an existing function within the Office of the President, such as to the office of the “Locally Designated Official.”

Fifth, we believe that the auditor should release public reports summarizing what was reviewed and what the results were, consistent with legal limitations. There is value to the transparency and accountability that comes with letting the public know what the auditor did, which incidents he or she reviewed, and whether the results were acceptable.³⁴¹ Being accountable to the public, even with the restrictions imposed by POBR and other laws, is vital.

To be clear, none of these recommendations are intended to supplant existing mechanisms for post-event review at the campus level, or to discourage campuses from conducting their own reviews in the future of the

³⁴⁰ Apr. 12, 2012 Interview with Professor Samuel Walker.

³⁴¹ *Id.*

campus response to demonstrations. Our intent is that the proposed centralized review will complement existing processes on the campuses and provide an additional safeguard for persons engaging in activity central to the University's mission and history.

Recommendation 46. Establish a structure and process at the system level for discretionary review of campus responses to protest activity, consistent with existing legal limitations.

IX. Implementation

A substantial number of our review participants expressed concern that the recommendations in this Report would be “placed on a shelf” and forgotten. Justified or not, there is widespread perception that prior reviews following similar protests gone awry have produced few tangible changes. In order to honor the contributions made by participants to this study and to avoid a serious loss of credibility, the University must put into place mechanisms to ensure that those recommendations from this Report accepted by the President are timely implemented.

1. Background

As noted above, prior outcries over protest events have produced several thorough reviews and detailed recommendations.³⁴² Perception is widespread, particularly among students and faculty, that many of the recommendations proffered in these reviews have never been implemented. As one faculty member asserted during a town hall meeting, “the Brazil Report [on the occupation of Berkeley's Wheeler Hall] was thorough and well written—and we still haven't seen a response from the Administration.”³⁴³ A similar sentiment is reflected in a recent resolution adopted by the Berkeley Faculty Senate.³⁴⁴ Administrators dispute these claims, citing corrective actions adopted following release of the Brazil Report, the “November 2009 UC Regents Meeting: Post-Event Review Report” commissioned by UCLA,³⁴⁵ and other similar reports.³⁴⁶

³⁴² See November 20, 2009, Review, Reflection & Recommendations, Report by the UC Berkeley Police Review Board (June 14, 2010), *available at* http://administration.berkeley.edu/prb/6-14-10_prb-report.pdf; November 2009 UC Regents Meeting: Post-Event Review Report (Nov. 22, 2010), *available at* http://newsroom.ucla.edu/portal/ucla/document/Regents_Nov_2009_Meeting_Post_Event_Report.pdf.

³⁴³ Jan. 31, 2012 UC Berkeley Town Hall Meeting.

³⁴⁴ (Revised) Resolution Proposed by Professors Barsky and Simon, *available at* http://academic-senate.berkeley.edu/sites/default/files/committees/division/meetings/resolution_b-barskysimon-rev-for_web_4.pdf.

³⁴⁵ See November 2009 UC Regents Meeting: Post-Event Review Report (Nov. 22, 2010), *available at* http://newsroom.ucla.edu/portal/ucla/document/Regents_Nov_2009_Meeting_Post_Event_Report.pdf.

³⁴⁶ Feb. 13, 2012 Council of Chancellors Meeting; Feb. 13, 2002 Meeting with UC Berkeley Student Affairs Administrators; Meetings with Campus Counsel.

2. Recommendation

We are sensitive to the concerns of those who fear that this Report will not result in meaningful changes in policy. We doubt anyone is more determined than we are to ensure that this project spurs substantial improvements.

The recommendations in this Report necessarily are presented at a high level. In some areas, such as the development of a response option framework and the standardization of weapons authorization, the details of our recommendations must be developed by others with expertise in law enforcement, the medical sciences, public health, and other disciplines. In other areas, implementing the recommendations made here will require adopting new policies through the normal University policy-making processes, which provide opportunities for student, faculty, and staff input. In short, more work must be done to carry these recommendations to fruition. To ensure that work is completed, we recommend that the President immediately create the temporary position of Systemwide Implementation Manager to propose specific policy language in those areas where recommendations call for common or systemwide policies or practices, and to assist the President and his principal lieutenants in moving these measures through the normal policymaking channels. During the implementation, the President should consider whether there is a need for a permanent position to help coordinate and implement police policy on a systemwide basis going forward.³⁴⁷

We further recommend that the University adopt a formal mechanism to ensure that each campus implements the recommendations ultimately adopted by the President. Within six months following the President's acceptance of any recommendations in this Report, each Chancellor should be required to submit a status report directly to the President describing the progress made towards implementing the recommendations at his or her campus. Within one year following the President's acceptance of any recommendations in this Report, each Chancellor should be required to submit a final report describing how his or her campus has implemented the recommendations, along with a certification that all of the recommendations have been implemented.

³⁴⁷ The Kroll Report recommended creation of such a position, though the Reynoso Task Force did not adopt that recommendation. See Kroll, Report Concerning the Events at UC Davis on November 18, 2011, at 129, *available at* <http://reynosoreport.ucdavis.edu/reynoso-report.pdf>.

Going forward, we also must ensure that future recommendations arising out of the post-event review process described above are implemented. We think a similar reporting and certification process should be adopted to accomplish this objective.

Recommendation 47. Establish a systemwide Implementation Manager to develop specific policy language in those areas where recommendations call for common or system policies or practices, and to track campus-level measures.

Recommendation 48. Require status reports from each campus six months following the President's acceptance of this Report's recommendations concerning progress on implementation of the recommendations.

Recommendation 49. Require a final report and certification from each Chancellor one year following the President's acceptance of this Report's recommendations confirming that all recommendations so accepted have been implemented.

Recommendation 50. Establish similar reporting and certification requirements for future recommendations arising out of the event review process described above.

Appendix A – Recommendations

Recommendation 1.	Add to current “Free Speech” policies language formally recognizing that civil disobedience has had an historic role in our democracy, that it is not protected speech under the Constitution, and that it may have consequences for those engaging in it.....	20
Recommendation 2.	Consolidate campus police policies concerning civil disobedience in one location within each department’s regulations, and make them publicly available.....	20
Recommendation 3.	Increase and better publicize opportunities for students, faculty, staff, and others to engage with senior administrators, particularly on issues likely to trigger protest or civil disobedience events.....	22
Recommendation 4.	Develop a comprehensive set of policies governing the response to events of civil disobedience—as well as written materials describing conduct that is or could be perceived as threatening to safety and thus trigger a police use of force—and publicize by posting on system and campus websites and distributing at least annually during student orientations, along with user-friendly summaries of those policies.....	26
Recommendation 5.	Offer opportunities for the campus community to become acquainted with the campus police agency.....	26
Recommendation 6.	Offer opportunities for the campus community to become acquainted with the applicable rules for campus protests—including rights and responsibilities, triggers for an administration or police response, the response option framework, and alternate modes for engaging with authorities.....	26
Recommendation 7.	Increase opportunities for routine interaction between police and students and between the Chancellor and the Police Chief.....	26
Recommendation 8.	Establish a standing event response team on each campus to plan and oversee the campus response to demonstrations—include on the team faculty members and/or administrators recognized by students and faculty to be sensitive to the University’s academic mission and values.....	39
Recommendation 9.	To the extent necessary, modify police policies to require the participation of senior administrators in decision-making about any police response to civil disobedience—clearly define the respective roles of administrators (objectives) and police (tactics) in this process.....	39

Recommendation 10.	Develop principles to guide the event response team in determining whether particular acts of civil disobedience merit a response—when a response is necessary, specify use of lower levels of force (e.g., persuasion, hands-on compliance), before resorting to higher levels of force (e.g., pepper spray, batons), barring exigent circumstances.39
Recommendation 11.	When faced with protesters who are non-aggressively linking arms, and when the event response team has determined that a physical response is required, principles should specify that administrators should authorize the police to use hands-on pain compliance techniques rather than higher levels of force (e.g., pepper spray, batons), unless the situation renders pain compliance unsafe or unreasonable.39
Recommendation 12.	Place a senior administrator on-site within viewing distance of the event and with instant communication to the police Incident Commander—that administrator must (Edley) or may (Robinson) be a member of the Academic Senate.39
Recommendation 13.	During the course of an event, continuously re-assess objectives, and the wisdom of pursuing them, in light of necessary police tactics—seek to pursue only important goals with the minimum force necessary.....39
Recommendation 14.	Absent exigent circumstances, bar commencement or escalation of force by police unless the Chancellor or the Chancellor’s designee approves it immediately before the action is taken.....39
Recommendation 15.	Coordinate in advance of planned demonstrations with other police departments likely to provide assistance.44
Recommendation 16.	Require each campus police agency to seek aid first from other UC campuses before calling on outside law enforcement agencies, except where there is good cause for seeking aid from an outside agency.44
Recommendation 17.	Require the Chief of Police on each campus personally to interview and approve all newly hired sworn officers.47
Recommendation 18.	Review UC police compensation practices to ensure that compensation is sufficiently competitive to attract and retain highly qualified officers and police leaders.47
Recommendation 19.	Obtain input from members of the campus community (e.g., students, faculty, staff) in the process for hiring campus police officers, and promoting or hiring officers for command-level positions within the department.47
Recommendation 20.	Increase training of campus police officers in the areas of crowd management, mediation, and de-escalation of volatile crowd situations.50

Recommendation 21.	Create specialized response teams with additional training in crowd management, mediation, and de-escalation techniques at the systemwide level.....51
Recommendation 22.	Establish a regular program for joint trainings, briefings, and scenario planning with law enforcement agencies on which each campus police department is likely to call for assistance or mutual aid.51
Recommendation 23.	Implement formal training of administrators, at the system and campus levels, in the areas of crowd management, mediation, de-escalation techniques, the incident command system, and police force options, to be refreshed annually.....53
Recommendation 24.	Conduct simulations jointly with campus administrators and campus police to rehearse responses to civil disobedience scenarios.....53
Recommendation 25.	Identify and contact members of the demonstration group—preferably one or more group leaders—in advance of the demonstration to establish lines for communication.55
Recommendation 26.	Inform protesters, in advance of the event, of the availability of alternative avenues for communication of their concerns or proposals.....55
Recommendation 27.	Pursue a dialogue between Administration officials and the demonstration group about protest objectives and applicable rules for campus protest.56
Recommendation 28.	Absent special circumstances, assign administrators or faculty members, rather than police, to serve as the primary University spokesperson during a demonstration.58
Recommendation 29.	Establish senior administrators as a visible presence during protests, absent good cause.....58
Recommendation 30.	Establish a communication link with identified leaders or sponsors of the event—for leaderless groups, communicate broadly to the group as a whole (through social media and otherwise) until relationships form.59
Recommendation 31.	Establish a communication mechanism for promptly informing the campus community at large about ongoing protests.59
Recommendation 32.	Establish an internal mediation function at the campus or regional level to assist in resolving issues likely to trigger protests or civil disobedience.61
Recommendation 33.	Consider deploying this mediation function as an alternative to force, before and during a protest event.61

Recommendation 34.	Beware of police tactics likely to increase tensions and where possible, avoid them – pursue instead tactics designed to diffuse the tensions.64
Recommendation 35.	Develop or modify existing student discipline processes as an alternative to arrests and the criminal justice system.67
Recommendation 36.	Establish and implement a systemwide response option framework for use on each campus.80
Recommendation 37.	Require that campus police and other authorities (to the extent controlled by the University) act in accordance with the response option framework, absent exigency or good cause.80
Recommendation 38.	Develop a systemwide process for determining which “less lethal” weapons may be utilized by UC police officers.82
Recommendation 39.	Require each campus Police Chief personally to approve the specific types of less lethal weapons available to officers in their department.82
Recommendation 40.	Require each campus police department to include the list of weapons approved for use in response to demonstrations and civil disobedience in its use-of-force policies, and to make the list available to the public.83
Recommendation 41.	Commission further studies on the effects of pepper spray on resisters as compared to the effects of other force options.85
Recommendation 42.	Establish at each campus a formal program to allow designated observers to gain access to the protest site for purposes of observing, documenting, and reporting on the event.87
Recommendation 43.	Establish a program for video recording protest events designed to develop a fair and complete record of event activity solely for evidentiary or training purposes.89
Recommendation 44.	Amend existing police department policies to require after-action reports for all protest events involving a police response, regardless of whether the response resulted in force, injury, or civilian complaint.91
Recommendation 45.	Coordinate review of after-action reports on a periodic basis with campus event response teams, and with the Office of the President.92
Recommendation 46.	Establish a structure and process at the system level for discretionary review of campus responses to protest activity, consistent with existing legal limitations.97

Recommendation 47.	Establish a systemwide Implementation Manager to develop specific policy language in those areas where recommendations call for common or system policies or practices, and to track campus-level measures.....99
Recommendation 48.	Require status reports from each campus six months following the President's acceptance of this Report's recommendations concerning progress on implementation of the recommendations.99
Recommendation 49.	Require a final report and certification from each Chancellor one year following the President's acceptance of this Report's recommendations confirming that all recommendations so accepted have been implemented.99
Recommendation 50.	Establish similar reporting and certification requirements for future recommendations arising out of the event review process described above.99

Appendix B – Internal University of California Interviews

December 12, 2011

Meeting with UC Student Regents

Alfredo Mireles Jr., Student Regent
Jonathan Stein, Student Regent-designate

January 5, 2012

Meeting with Timothy P. White, Chancellor, UC Riverside

January 6, 2012

Meeting with UC Riverside Student Leaders

Nine undergraduate students.

January 6, 2012

Meeting with UC Riverside Faculty Leaders

Mary Gauvain, Chair, Academic Senate
Ameae Walker, Vice-Chair, Academic Senate
Dan Hare, Vice Chair, Committee on Faculty Welfare
Thomas Morton, Chair, Academic Freedom Committee
Martin Johnson, Chair, Committee on Educational Policy (CEP)
Jose Wudka, Chair, System-wide Committee on Educational Policy (CEP)

January 6, 2012

Meeting with UC Riverside Administrators

Dallas L. Rabenstein, Executive Vice Chancellor and Provost
Gretchen Bolar, Vice Chancellor Finance and Business Operations
James Sandoval, Vice Chancellor for Student Affairs

January 10, 2012

Meeting with Risk Management Leadership Group

Bruce G. Flynn, Chair, San Francisco
Brian Oatman, ANR
Jake McGuire, ANR
Andy Goldblatt, Berkeley
Eric Kvigne, Davis
Anna Orlowski, Davis Medical Center
Kathleen Rowe, Davis Medical Center
Rick Coulon, Irvine
Nancy Hove, Irvine Medical Center
Dean Malilay, Los Angeles
Johanna Klohn, Los Angeles Medical Center
Carol Castillo, Merced
Grace Crickette, Office of the President

Cheryl Lloyd, Office of the President
Terri Kielhorn, Office of the President
Gary Leonard, Office of the President
Karen Vecchi, Office of the President
Kevin Confetti, Office of the President
Erike Young, Office of the President
Norm Hamill, Office of the President
Shaudreya Waterman, Office of the President
Nida Niravanh, Riverside
Pam Lombardo, Santa Barbara
Saladin Sale, Santa Cruz
Jon Schmidt, San Diego
Alexandra Borrego, San Diego Medical Center
Patricia Kicak, San Diego Medical Center
Hillary Ross, San Francisco
Andy Brunner, San Francisco
Susan Penney, San Francisco Medical Center

January 11, 2012

Meeting with UC Berkeley Administrators

Robert J. Birgeneau, Chancellor
George W. Breslauer, Executive Vice Chancellor & Provost
Christopher M. Patti, Chief Counsel
John Wilton, Executive Vice Chancellor for Administration and Finance

January 11, 2012

Meeting with UC Berkeley Faculty

Ten members of UC Berkeley faculty

January 17, 2012

Meeting with Academic Senate

Robert Anderson, Chair
Robert L. Powell, Vice Chair
Martha Kendall Winnacker, Executive Director, Academic Senate

January 23, 2012

Meeting with UC Berkeley Student Leaders

Jonathan Stein, UC Student Regent-designate
15 additional student campus leaders

January 24, 2012

Meeting with Council of Student Body Presidents and Student Association

Student Campus Leaders
Judy Sakaki, Vice President-Student Affairs, Office of the President
Jerlena Griffin-Desta, Associate Director Student Affairs,
Office of the President

January 25, 2012

Meeting with Academic Council and Faculty Groups

Robert Anderson, Chair, Academic Senate
Robert L. Powell, Vice Chair, Academic Senate
Robert Jacobsen, Berkeley Divisional Chair
Linda F. Bisson, Davis Divisional Chair
Craig Martens, Irvine Divisional Chair
Andrew Leuchter, Los Angeles Divisional Chair
Susan D. Amussen, Merced Divisional Chair
Mary Gauvain, Riverside Divisional Chair
Joel Sobel, San Diego Divisional Chair
Farid Chehab, San Francisco Divisional Vice Chair
Henning Bohn, Santa Barbara Divisional Chair
Susan Gillman, Santa Cruz Divisional Chair
William Jacob, Chair, Board of Admissions and Relations
with Schools (BOARS)
Rachael Goodhue, Chair, Coordinating Committee
on Graduate Affairs (CCGA)
Margaret W. Conkey, Chair, University Committee
on Affirmative Action & Diversity (UCAAD)
Katja Lindenberg, Chair, University Committee
on Academic Personnel (UCAP)
Jose Wudka, Chair, University Committee on Educational Policy (UCEP)
William Parker, Chair, University Committee on Faculty Welfare (UCFW)
John Crawford, Chair, University Committee on Research Policy (UCORP)
James Chalfant, Chair, University Committee on Planning
and Budget (UCPB)
Martha Winnacker, Executive Director, Office of the President
Todd Giedt, Associate Director, Office of the President
Clare Sheridan, Committee Analyst, Office of the President

January 25, 2012

Meeting with Vice Chancellors for Student Affairs

Harry Le Grande, Berkeley
Lora Jo Bossio, Davis
Thomas Parham, Irvine
Jane Lawrence, Merced
James Sandoval, Riverside
Penny Rue, San Diego
Joseph Castro, San Francisco
Michael Young, Santa Barbara
Alma Sifuentes, Santa Cruz
Janina Montero, Office of the President
Judy Sakaki, Vice President-Student Affairs, Office of the President
Jerlena Griffin-Desta, Associate Director Student Affairs,
Office of the President

January 25, 2012

Meeting with Council of Vice Chancellors for Administration

John Wilton, Berkeley
Ed Denton, Berkeley
Wendell Brase, Irvine
Jack Powazek, Los Angeles
Jim Genes, Merced
Georgianne Carlson, Assistant Vice Chancellor, Riverside
Steve Relyea, San Diego
Gary Matthews, San Diego
John Plotts , San Francisco
Marc Fisher, Senior Associate Vice Chancellor, Santa Barbara
Ron Cortez, Associate Vice Chancellor, Santa Barbara
Nathan Brostrom, Executive Vice President, UCOP
Peter J. Taylor, Executive Vice President and Chief Financial Officer, UCOP
Dwayne Duckett, Vice President, UCOP
Patrick Lenz, Vice President, UCOP
Debora Obley, Associate Vice President, UCOP
Michael Reese, Associate Vice President, UCOP
Kay Harrison Taber, Associate Vice President, UCOP
Kobie Crowder, Associate Director, UCOP

January 26, 2012

Meeting with Council of Executive Vice Chancellors

George Breslauer, Berkeley
Ralph Hexter, Davis
Marie Carter-Dubois, Assistant EVC, Davis
Michael Gottfredson, Irvine
Keith Alley, Merced
Scott Waugh, Los Angeles
Dallas Rabenstein, Riverside
Barbara Sawrey Associate VC, San Diego
Jeffrey Bluestone, San Francisco
Gene Lucas, Santa Barbara
Alison Galloway, Santa Cruz
Lawrence Pitts, Provost and Executive Vice President, UCOP
Susan Carlson, Vice Provost, UCOP
Dwayne Duckett, Vice President, UCOP
Judy Sakaki, Vice President-Student Affairs, UCOP
Patrick Lenz, Vice President, UCOP
Debora Obley, Associate Vice President, UCOP
Todd Greenspan, Director of Academic Planning, UCOP

January 30, 2012

Meeting with Norman Pattiz, Regent

January 31, 2012

UC Berkeley Town Hall Meeting

Approximately 75 students, faculty, and staff

February 1, 2012

Meeting with Council of Chancellors

Mark Yudof, President
Robert J. Birgeneau, Berkeley
Linda P.B. Katehi, Davis
Michael V. Drake, Irvine
Dorothy Leland, Merced
Timothy P. White, Riverside
Marye Anne Fox, San Diego
Susan Desmond-Hellmann, San Francisco
Henry T. Yang, Santa Barbara
George Blumenthal, Santa Cruz
Nina Robinson, Interim Chief of Staff, UCOP
Lawrence Pitts, Provost and Executive Vice President, UCOP
Nathan Brostrom, Executive Vice President, UCOP
Peter Taylor, Executive Vice President and Chief Financial Officer, UCOP
Daniel M. Dooley, Senior Vice President, UCOP
John D. Stobo, M.D., Senior Vice President, UCOP

February 1, 2012

Meeting with Alumni Regents

Alan Mendelson
Ronald Rubenstein

February 2, 2012

Meeting with Council of Police Chiefs

Mitchell Celeya, Berkeley
Matthew Carmichael, Acting Chief, Davis
Paul Henisey, Irvine
James Herren, Los Angeles
Rita Spaur, Merced
Mike Lane, Riverside
Orville King, San Diego
Pamela Roskowski, San Francisco
Dustin Olson, Santa Barbara
Nader Oweis, Santa Cruz

February 3, 2012

Meeting with Chief Campus Counsel

Christopher M. Patti, Berkeley
Steven A. Drown, Davis
Diane F. Geocaris, Irvine
Jeff Blair, LBNL
Elisabeth R. Gunther, Merced

Kevin S. Reed, Los Angeles
Patricia M. Jasper, Los Angeles
Michele C. Coyle, Riverside
Daniel Park, San Diego
Marcia J. Canning, San Francisco
Nancy G. Hamill, Santa Barbara
Carole R. Rossi, Santa Cruz

- February 3, 2012** **Meeting with John Lohse, Director of Investigations, UCOP**
- February 8, 2012** **Meeting with UC Berkeley Student Leaders**
Approximately 15 student campus leaders
- February 10, 2012** **Meeting with UC Davis Academic Senate**
Linda Bisson, Chair
Bruno Nachtergaele, Vice Chair
Mary Christopher, Chair of Special Committee
- February 10, 2012** **Meeting with UC Davis Academic Federation**
Daniel Wilson, Chair
Kathleen Ward, Chair, Committee on Academic Freedom
Ana Corbacho, Chair, Committee on Affirmative Action & Diversity
Victoria Cross, Chair, Committee on Educational Affairs
- February 10, 2012** **Meeting with UC Davis Administrators**
Linda P. B. Katehi, Chancellor
Ralph J. Hexter, Provost and Executive Vice Chancellor
Griselda Castro, Associate Vice Chancellor
Fred Wood, Vice Chancellor of Student Affairs
Steven A. Drown, Chief Campus Counsel
Anne Myler, Associate Director, Center for Student Involvement
- February 10, 2012** **Meeting with UC Davis Student Leaders**
Five student campus leaders
Rahim Reed, Associate Vice Chancellor, Davis
- February 10, 2012** **UC Davis Town Hall Meeting**
Approximately 60 students, faculty, staff, and community members.

February 13, 2012	<p>Meeting with UC Berkeley Student Affairs Administrators</p> <p>Harry Le Grande, Vice Chancellor of Student Affairs Jonathan Poullard, Dean of Student Affairs</p>
February 16, 2012	<p>Meeting with Davis Student Leaders</p>
February 27, 2012	<p>Meeting with UC Staff Representatives</p> <p>Ravinder Singh, Chair, Council of University of California Staff Assemblies (CUCSA) Steve Garber, Chair-Elect, Council of University of California Staff Assemblies (CUCSA) Kevin Smith, Staff Advisor Designate to The Regents</p>
February 27, 2012	<p>Meeting with University Committee on Academic Freedom</p> <p>Roberta Rehm, Chair Cameron Gundersen, Vice Chair</p>
February 27, 2012	<p>Meeting with Chief Campus Counsel</p> <p>Christopher M. Patti, Berkeley Steven A. Drown, Davis Elisabeth R. Gunther, Merced Marcia J. Canning, San Francisco Nancy G. Hamill, Santa Barbara Carole R. Rossi, Santa Cruz Diane Geocaris, Irvine Kevin S. Reed, Los Angeles</p>
February 28, 2012	<p>Meeting with UC Irvine Student Leaders</p> <p>Approximately 15 student campus leaders</p>
February 28, 2012	<p>Meeting with UC Irvine Academic Senate</p> <p>Craig Martens, Chair Mary Gilly, Chair-elect</p>
February 28, 2012	<p>Meeting with UC Irvine Administrators</p> <p>Michael Drake, Chancellor Michael R. Gottfredson, Executive Vice Chancellor and Provost Diane F. Geocaris, Chief Campus Counsel Wendell Brase, Vice Chancellor, Administrative and Business Services Thomas A. Parham, Vice Chancellor Student Affairs</p>

Rameen Talesh, Assistant Vice Chancellor Student Affairs
Daniel Dooros, Associate Vice Chancellor Student Affairs
Edgar Dormitorio, Director of Student Conduct
Leslie Millerd Rogers, Communications Director Student Affairs
Paul Henisey, Chief of Police

February 28, 2012

Meeting with Chief Campus Counsel, Southern California Campuses

Diane F. Geocaris, Irvine
Kevin S. Reed, Los Angeles
Michelle C. Coyle, Riverside
Daniel Parks, San Diego

February 28, 2012

UC Irvine Town Hall Meeting

Approximately 35 students, faculty, staff, and community members.

March, 20, 2012

Meeting with UC Campus Ombudspeople

Michele Bernal, Berkeley
Sunny Lee, Berkeley
Bridget Regan, Berkeley
J. Michael Chennault, Irvine
Katherine Canul, Los Angeles
Thomas Griffin, Los Angeles
Katy Kolodziejcki, Los Angeles
Tom Kosakowski, Los Angeles
Andrew Larratt-Smith, Riverside
Judith Bruner, San Diego
Nancy James, San Diego
Randy Daron, San Francisco
Kirsi Aulin, Santa Barbara
Bill Forgie, Santa Barbara
Priscilla Mori, Santa Barbara
Laurie McCann, Santa Cruz

Individual Interviews with Campus Chiefs of Police

Pamela Roskowski, Chief of Chiefs, San Francisco (January 4, 2012)
Mitchell Celeya, Berkeley (January 10, 2012)
Matt Carmichael, Acting Police Chief, Davis (January 11, 2012)
Paul Henisey, Irvine (January 12, 2012)
James Herren, Los Angeles (January 12, 2012)
Rita Spaur, Merced (January 26, 2012)
Mike Lane, Riverside (January 6, 2012)
John Freese, Assistant Chief of Police, Riverside (January 6, 2012)
Orville King, San Diego (January 5, 2012)

Dustin Olson, Santa Barbara (January 26, 2012)
Nader Oweis, Santa Cruz (January 17, 2012)

Additional meetings within Office of the President

Nathan Brostrom, Executive Vice President, Business Operations
Kobie Crowder, Associate Director, Business Operations
Daniel M. Dooley, Senior Vice President, External Relations
Susan Fogel, Senior Paralegal Specialist, Office of the General Counsel
Brad Hayward, Chief of Staff, External Relations
Steve Juarez, Associate Vice President and Director,
State Governmental Relations
Jenny Kao, Executive Director, Issues Management,
Policy Analysis and Coordination
Peter King, Director, Public Affairs
Steve Montiel, Director, Media Relations
Kimberly Peterson, IMPAC Coordinator
Karen Jensen Petrulakis, Deputy General Counsel,
Office of the General Counsel
Nina Robinson, Interim Chief of Staff, President's Executive Office
Peter J. Taylor, Executive Vice President and Chief Financial Officer
Lynn Tierney, Associate Vice President, Communications
Adrienne Witte, Executive Secretary to Charles F. Robinson
Margaret Wu, Senior Counsel, Office of the General Counsel
Elisabeth Yap, Senior Counsel, Office of the General Counsel

Additional input from The Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley School of Law

Barry Krisberg, Director of Research and Policy, and Lecturer in Residence
Andrea Russi, Associate Director, Berkeley Center for Criminal Justice
Rebecca Sullivan Silbert, Senior Legal Policy Associate
Eleanor Taylor-Nicholson, Legal Policy Associate

Appendix C – External Interviews

Academic Experts

Anthony Braga	Ph.D., M.P.A., Senior Research Fellow, Harvard University John F. Kennedy School of Government; Professor, Rutgers University School of Criminal Justice
Wayne Brazil, Ph.D., J.D.	Professor from Practice, University of California, Berkeley School of Law
Geoffrey P. Alpert	Ph.D., Professor, University of South Carolina, Dept. of Criminology and Criminal Justice
Lorie Fridell, Ph.D.	Associate Professor/Graduate Director, Department of Criminology, University of South Florida, former Director of Police Executive Research Forum (PERF)
Herman Goldstein	Professor of Law Emeritus, University of Wisconsin Law School
David Sklansky, J.D.	Yosef Osheawich Professor of Law, University of California, Berkeley School of Law
Christopher Stone, J.D.	Professor of the Practice of Criminal Justice & Director of the Hauser Center for Nonprofit Organizations, Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard
Jeremy Travis, J.D.	President, John Jay College of Criminal Justice, CUNY
Samuel Walker, Ph.D.	Professor Emeritus, Criminal Justice, University of Nebraska

Police Professionals

William Barry	University Director of Public Safety, CUNY
Diane Brown	Director, Public Affairs, University of Michigan Police Department
Steven Catalano	Special Assistant to Chief of Police/Public Information Officer, Harvard University Police Department
Jose A. Elique	Chief of Police, University of Nevada, Las Vegas
William Evans	Superintendent, Boston Police Department
Victoria Harrison	former Associate Vice Chancellor/Chief of Police, University of California, Berkeley
Nate Johnson	Chief of Police, California State University, Chancellor's Office
Susan Riseling	Chief of Police/Associate Vice Chancellor, University of Wisconsin, Madison Police Department
Noble Wray	Chief of Police, Madison, Wisconsin Police Department

Police Oversight & Review Experts

Barbara Attard	Accountability Associates, former President, National Association for Civilian Oversight of Police (NACOLE)
Merrick Bobb	Executive Director/President, Police Assessment Resource Center (PARC)
Michael Gennaco, J.D.	Chief Attorney, Office of Independent Review, Los Angeles County
Joyce Hicks	Executive Director, City and County of San Francisco, Office of Citizen Complaints; member National Association for Civilian Oversight of Police (NACOLE)
Tom Hayden	Former California Assemblyman and Senator, and Director of the Peace and Justice Resource Center

Policing Experts

Sylvester Daughtry Executive Director of the Commission on Accreditation of Law Enforcement (CALEA), former President, International Association of Chiefs of Police (ICAP), former Chief of Police, Greensboro, North Carolina

Gary J. Margolis, Ph.D. Associate Professor, former Chief of Police, University of Vermont, former board member of the Commission on Accreditation of Law Enforcement (CALEA) and the International Association of Chiefs of Police (ICAP)

Bob Stresak Assistant Executive Director, Commission on Peace Officer Standards and Training (POST)

Chuck Wexler, Ph.D. Executive Director, Police Executive Research Forum (PERF)

University General Counsel and Administrators

Kelly Cunningham Director, Public Affairs Office, University of Michigan

Laura Bernstein Fjeld Vice President and General Counsel, University of North Carolina

William F. Howard Senior Vice Chancellor and General Counsel, SUNY

G. Andrew Jones University Counsel, California State University

Jamie Lewis Keith Vice President and General Counsel, University of Florida

Karin L. Nyrop Assistant Attorney General, University of Washington

Mark B. Rotenberg General Counsel, University of Minnesota

Maureen Rush Vice President for Public Safety, University of Pennsylvania

Daniel H. Sharphorn Associate Vice Chancellor and Deputy General Counsel, University of Texas

Appendix D – Literature reviewed

A. Academic Publications & Articles

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Appendix E – UCSF Study



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January 13, 2012

Mark G. Yudof
Office of the President
University of California
1111 Franklin St., 12th Floor
Oakland, CA 94607

Re: Adverse Health Effects of Pepper Spray

Dear President Yudof:

Attached is a report evaluating the potential adverse health effects from human exposures to pepper spray. The report is generated by faculty members in the Medication Outcomes Center and California Poison Control System (CPCS), which are both programs within the Department of Clinical Pharmacy, UCSF School of Pharmacy. The report is in two parts, which complement one another and provide a comprehensive and evidenced-based review of the topic.

PART ONE presents a systematic review of the literature and summarizes the use of pepper spray and the outcomes of subjects exposed to the substance. The review title is "Evidenced-Based Safety Review of Pepper Spray Exposure in Human," and the author is Dr. Sheri VanOsdol who is a faculty member with the Medication Outcomes Center in the UCSF School of Pharmacy.

Dr. VanOsdol concludes that "severe adverse events requiring medical care may occur in 1% to 15% of exposures to pepper spray products."

Currently, there are no published data on the effects of chronic or repeated exposure to pepper spray. Nor are there published data on the chronic effects associated with an acute exposure.

PART TWO presents an evaluation of more than 4,000 accounts of pepper spray exposures reported to the CPCS over a 10-year time frame. This analysis further substantiates and clarifies Dr. VanOsdol's findings regarding the potential risk of adverse health effects from exposure to pepper spray products.

Findings appear in the report section entitled "Adverse Health Effects Associated with Pepper Spray Products: A 10-year Retrospective Review of the California Poison Control System Reported Cases." The author is Dr. Thomas Kearney, a managing director of the CPCS.

Dr. Kearney and his colleagues found that 6.4% (or 237 cases) of pepper spray cases had moderate symptoms, which were defined as having significant symptoms suggestive of tissue injury that warranted a medical evaluation. The most common symptoms were ocular or eye injury cases (54.4%, or 129 of 237 cases) that were suggestive of a possible corneal abrasion; some 31.2 % (or 74 of 237 cases) had respiratory symptoms suggestive of bronchospasm. The remainder had dermal burns.

The CPCS, which is managed statewide by the Department of Clinical Pharmacy, provides a vitally important 24/7 poisoning hotline service to all Californians—and has since 1997. As well, it is relied upon by hospital emergency room physicians and other health care providers for its unique expertise.

This review is but one example of the exceptional service the CPCS provides, on behalf of the University of California, to Californians—both through CPCS's advice to patients through its hotline and through data collection, analysis, and reviews.

The CPCS serves the state by keeping health care expenditures down. No doubt hundreds of thousands of health care dollars were saved by CPCS professionals as they helped victims manage the effects of pepper spray at home, thus preventing unnecessary admissions to California emergency rooms.

Unfortunately, the work of the CPCS is always at risk because it is funded through state and federal contracts.

If further clarification or testimony is needed on this topic, both Dr. VanOsdol and Dr. Kearney are available. Dr. VanOsdol will be in the best position to explicate her report and Dr. Kearney to clarify and expand on experience with these cases.

Respectfully submitted,



Mary Anne Koda-Kimble, PharmD
Dean, UCSF School of Pharmacy



B. Joseph Guglielmo, PharmD
Chair, Department of Clinical Pharmacy, UCSF School of Pharmacy

CC: John D. Stobo, MD, Senior V.P., Health Sciences and Services, University of California
Thomas E. Kearney, PharmD, Professor of Clinical Pharmacy, UCSF School of Pharmacy
& Director, San Francisco Division, California Poison Control System
Sherilyn J. VanOsdol, PharmD, Assistant Professor of Clinical Pharmacy,
Medication Outcomes Center, UCSF School of Pharmacy

Evidence-Based Safety Review of Oleoresin Capsicum (Pepper Spray) Exposure in Humans

Date of Review: December 22, 2011

Prepared for: The University of California
Prepared by: Sheri VanOsdol PharmD, BCPS
University of California San Francisco
School of Pharmacy, Department of Clinical Pharmacy
Medication Outcomes Center

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Summary of Oleoresin Capsicum (pepper spray) Evidence-Based Safety Review

Background

Riot control agents are used by law enforcement officers and the military to subdue suspects who are combative or otherwise resisting arrest. Oleoresin capsicum (OC, "pepper spray") is a commonly used riot control agent. The use of OC in California was legalized for use by law enforcement agencies in October, 1992, and as a personal protective agent for civilians in March, 1994. The short- and long-term safety of OC has not been critically reviewed.

Purpose

The purpose of this review was to perform an evidence-based review and summarize all literature regarding outcomes of subjects exposed to OC products.

Search Strategy

The search terms "pepper spray" or "oleoresin capsicum," were used to search for clinical research and case reports in Pubmed, and Google Scholar. The tertiary drug information databases Micromedex, Toxdex, MD Consult, UpToDate, LexiComp, and Natural Standard, and the websites for the Occupational Safety & Health Administration, the United States Department of Justice, the United States Pharmacopoeia, the Merck Index, and the Food and Drug Administration (FDA) were also searched. Relevant "related citations" and cited references from literature found using the above strategies were also reviewed and included as appropriate. Trials and case reports that utilized OC containing products currently in use in the United States were included in this review. Trials designed to assess the consequences of OC products in relation to officer or assailant injuries during confrontation or resisted arrest were excluded.

Published Literature

Eight clinical trials were included in this review; two were prospective, randomized trials, two were prospective studies, and four were retrospective studies. Six case reports were also included in this review.

The majority of published studies reveal acute irritating, self-limited effects on the skin, eye lids and mucosa, and lungs. No evidence exist that skin or oral mucus membrane symptoms persist beyond 45 minutes following decontamination; topical treatments do not improve the severity or duration of dermal pain. Corneal epithelial defects persisting up to 6 weeks and ranging in severity from mild to severe were reported in 3 of the studies, and 4 case reports; most of these patients received ocular decontamination. Pulmonary effects of unspecified duration, including 1 case of allergic respiratory response and 4 asthmatic responses, were reported in 2 retrospective studies, and 2 case studies; one case report involved a 4 month old who required extracorporeal membrane oxygenation following respiratory failure. Cardiovascular effects, including hypertension and tachycardia were reported in 2 retrospective studies, and 1 case report; it is unclear whether these end points were examined in other studies.

One retrospective study examined the role of OC in in-custody deaths. OC was implicated in 63 in-custody deaths; however, causation could not be determined. Sixteen deaths were also associated with illicit drug use (e.g. cocaine, phenylcyclidine) and 23 deaths were associated with illicit drug use and/or underlying disease alone or in combination with other factors beyond OC exposure, 7 deaths were associated with positional asphyxia. Two deaths were associated with OC and pulmonary compromise (i.e. asthma, and positional restraint in an obese subject).

Conclusions:

- Published literature on OC exposure is heterogeneous in purpose and study design. The studies included in this review were small (10 to 100 subjects), and the four prospective trials were conducted in controlled settings. The results of these studies should be considered in context, as their results may not be indicative of outcomes in combat or other emergency situations.
- Contact with OC produces burning and pain of the skin, eyes, and mucus membranes, and reflex sneezing, coughing, mucus production, and blinking or closure of the eyes. Some exposed subjects may also suffer bronchospasm, temporary blindness, and/or panic.
- The effects of OC products are generally self-limited and resolve within 45 minutes of exposure
- Severe adverse events requiring medical care may occur in 1% to 15% of exposures to OC products
- Restraint following exposure has been associated with severe adverse outcomes and death following OC exposure, though a causal relationship has not been proven.
- Currently, there are no published data on the chronic effects of OC exposure; additionally, there are no published data on long term consequences of multiple exposures to OC products.
- The paucity of data assessing chronic effects of OC exposure mandates further investigation.

Evidence-Based Safety Review of Oleoresin Capsicum (Pepper Spray) Exposure in Humans

Date of Review: December 22, 2011

Prepared for: The University of California

Prepared by: Sheri VanOsdol PharmD, BCPS

University of California San Francisco, Department of Clinical Pharmacy
Medication Outcomes Center

Drug Name: Oleoresin capsicum (“pepper spray”)
Manufacturer: Mace Security, First Defense, Sabre, Zarc International, others
Therapeutic Category: Counterirritant
Chemical Weapon Category: Riot control agent, Peripheral chemosensory irritant
Related Agents: Capsaicin, cayenne pepper, chili pepper

I. OVERVIEW OF OLEORESIN CAPSICUM

Background:

Riot control agents (RCAs) are used by law enforcement officers and the military to subdue suspects who are combative or otherwise resisting arrest. RCAs are also referred to as irritants, lacrimators, or “tear gas.” Common RCAs include chloracetophenone (i.e. Mace®), oleoresin capsicum (i.e. pepper spray), chlorobenzylidene maloritolite, chloropicrin (also a fumigant), bromobenzylcyanide, and others (Anderson, 2011). The effects of RCAs include burning of nasal mucosa and skin, lacrimation, blurred vision, drooling, rash, and nausea/vomiting; these symptoms typically last 15 to 45 minutes following appropriate decontamination.

Oleoresin capsicum (OC) is a commonly used RCA agent. It is preferred over other RCAs due to immediate subdual of most assailants, whereas other products may take 20 seconds, and effectiveness in up to 85% of the population (Czarnecki, 2003). The use of OC in California was legalized for use by law enforcement agencies in October, 1992, and for civilians in March, 1994 (ACLU, 1995). The short- and long-term safety of OC has not been critically reviewed

OC exposure in humans:

The number of OC exposures in humans in the U.S. over any given period of time is unknown. A substantial subset of the population has been exposed to OC sprays and related products due to its use in training practices. Corrections officers, law enforcement agents, and military trainees are commonly exposed to OC during routine training exercises (Busker 1998, Olajos 2004, Czarnecki 2003); however, the number of training- or combat- related exposures has not been reported. A report conducted by the Federal Bureau of Investigation Firearms Training Unit described a volunteer study of 899 OC-exposed subjects who did not suffer adverse effects severe enough to warrant medical care (Busker, 1998). A study of approximately 6000 corrections officers sprayed with OC spray during training resulted in 61 cases in which medical care was sought due to the severity of adverse effects (Olajos, 2004). A report of the use of OC spray in California estimated that in less than 3 years following legalized use by law enforcement officers, it had been used by law enforcement officers nearly 16,000 times (ALCU, 1995).

Because OC products are legally sold to civilians in most states, the number of exposures in the general population is also unknown. Data related to these exposures has primarily been reported as epidemiological studies through poison center or emergency department data, or as case studies. Authors of a study of aerosol container-related eye injuries in a sample of emergency departments in the U.S. from 1997-2009 extrapolated that 493 (95% CI, 130 to 856) eye injuries presenting to emergency departments over that time were related to pepper spray; approximately two-thirds of these injuries occurred in pediatric patients aged 0 to 18 years (Seidman, 2011). The Texas Poison Centers reported 1,531 cases of ocular exposure to pepper spray over a 5-year period from 1998 to 2002; 85% of these exposures were managed outside of health care facilities (Forrester, 2003).

Oleoresin capsicum:

OC has been available since 1973, and became widely adopted by law enforcement agencies in the U.S. during the late 1980s (Chan, 2001). OC exposure is widely regarded as more effective, less toxic, and safer than other forms of tear gas or mace (Chan, 2001). Exposure to pepper spray is a common practice in the training of law enforcement officers (Czarnecki, 2003).

Chemical properties:

The active ingredient in pepper spray is oleoresin capsicum, an oily extract of pepper plants in the genus *Capsicum*. Oleoresin capsicum, the capsaicinoid used in pepper spray, is extracted from the dried fruits of *C. annum* or *C. frutescens* (Merck, 2011). Capsaicin, the main active capsaicinoid, is approved by the FDA as a topical counterirritant for treatment of pain from rheumatoid arthritis, osteoarthritis, and neuropathic pain associated with shingles and diabetes; the FDA does not oversee the use of these products as RCAs. Other active compounds in OC include dihydrocapsaicin, nordihydrocapsaicin, homohydrocapsaicin, homocapsaicin, and nonivamide (Czarnecki, 2003). The “hotness factor” of OC is measured in Scoville Heat Units (SHU), where most products fall in the range of 0.5 million to 2 million SHU (Zollman, 2000). Related compounds include spices used in curries and other edible hot sauces, topical agents in topical anesthetics and analgesics.

Other chemicals present in pepper spray formulations that may cause tissue irritation or injury are product-specific (see Products section).

Pharmacology:

Capsaicin interacts with relatively nonselective ion channels in nociceptive nerve fibers causing depolarization and release of substance P (Busker 1998). Following depolarization, the fibers undergo a selective blockade of nervous conduction, and neurogenic inflammation resulting in swelling, pain, and other local irritant effects (Gerber, 2011). Contact of capsaicinoids with airway mucosa induces the release of tachykinins, substance P, and neurokinin A, which induce inflammation in airway blood vessels, epithelium, and smooth muscle causing mucus vasodilation, increased vascular permeability, mucus secretion, and bronchoconstriction (Smith, 1999). The physiological effects of OC exposure and mechanisms are presented in Table 1.

Table 1. Typical effects of OC exposure on humans (Smith 1999; Czarnecki 2003; Olajos 2004; Barry 2008):

System	Effect	Mechanism
Dermal	Tingling, intense burning, pain	Release of substance P from nociceptive nerve fibers
Mucus membranes	Immediate burning sensation, mucus production, irritation, sneezing	Release of substance P from nociceptive nerve fibers
Respiratory	Coughing, shortness of breath, inflammation of airways, mucus production, bronchospasm	Transient paralysis of pharynx Substance P depletion results in mast cell activation and subsequent histamine release
Ocular	Redness swelling, stinging, severe burning pain, conjunctival inflammation, lacrimation blepharospasm, reflex closing of eyelids, temporary blindness	Mucus membrane effects on inner eyelids Dilation of eyelid capillaries
Psychological	Panic, fear of blindness and/or suffocation	Not specified

Products:

The concentration of capsicum in commercially available pepper spray ranges from 2% to 17%; most law enforcement pepper spray products contain a concentration of 5% to 10% (Czarnecki, 2003). Higher concentrations are associated with more severe and longer-lasting effects. Pepper spray is dispersed via aerosol, fogger, foam, and liquid stream formulations. Products that spray in a cone pattern or stream act as liquids when they come into contact with surfaces and may pose an aspiration risk if sprayed directly into the mouth (Olajos, 2004).

Pepper spray products include chemicals that may contribute to tissue irritation or injury such as isobutene and propane, which are used as propellants and either isopropyl alcohol, water, oil, or foam which is used as a carrier agent (Barry, 2008). Excipients may include UV dyes, propylene glycol, or isopropanol (Olajos, 2004). Product containers and manufacturer Material Safety Data Sheets should be referenced when determining the propellants and carrier agents present in a given OC-containing product.

II. LITERATURE REVIEW

Purpose

The purpose of this review was to perform an evidence-based review and summarize all literature regarding outcomes of subjects exposed to OC products.

Search Strategy:

The search terms “pepper spray” or “oleoresin capsicum,” limited to “humans” and “English” were used to search for clinical research and case reports in Pubmed, and Google Scholar. These search terms were also used to search the tertiary drug information databases Micromedex, Toxdex, MD Consult, UpToDate, LexiComp, and Natural Standard, and the websites for the Occupational Safety & Health Administration, the United States Department of Justice, the United States Pharmacopoeia, the Merck Index, and the Food and Drug Administration (FDA). Finally, the term “MSDS” was added to “pepper spray” or “oleoresin capsicum” in a Google search to capture information present on material safety data sheets for the chemical compounds, as pepper spray is not regulated by the Food and Drug Administration. Relevant “related citations” and cited references from literature found using the above strategies were also reviewed and included as appropriate. Trials and case reports that utilized OC containing products currently in use in the United States were included in this review. Trials designed to assess the consequences of OC products in relation to officer or assailant injuries during confrontation or resisted arrest were excluded.

Literature summary:

Eight clinical trials were included in this review; two were prospective, randomized trials, two were prospective studies, and four were retrospective studies (Table 3). Six case reports were also included in this review.

The majority of published studies reveal acute irritating, self-limited effects on the skin, eye lids and mucosa, and lungs. No evidence exist that skin or oral mucus membrane symptoms persist beyond 45 minutes following decontamination; topical treatments do not improve the severity or duration of dermal pain. Corneal epithelial defects persisting up to 6 weeks and ranging in severity from mild to severe were reported in 3 of the studies, and 4 case reports; most of these patients received ocular decontamination. Pulmonary effects of unspecified duration, including 1 case of allergic respiratory response and 4 asthmatic responses, were reported in 2 retrospective studies, and 2 case studies; one case report involved a 4 month old who required extracorporeal membrane oxygenation following respiratory failure. Cardiovascular effects, including hypertension and tachycardia were reported in 2 retrospective studies, and 1 case report; it is unclear whether these end points were examined in other studies.

One retrospective study examined the role of OC in in-custody deaths. OC was implicated in 63 in-custody deaths; however, causation could not be determined. Sixteen deaths were also associated with illicit drug use (e.g. cocaine, phenylcyclidine) and 23 deaths were associated with illicit drug use and/or underlying disease alone or in combination with other factors beyond OC exposure, 7 deaths were associated with positional asphyxia. Two deaths were associated with OC and pulmonary compromise (i.e. asthma, and positional restraint in an obese subject).

Table 2. Evidence Grading For Published Literature (Concato, 2000):

Evidence Category	Description
Type I	Obtained from at least one properly designed RCT
Type II-1	Obtained from well-designed controlled trials without randomization
Type II-2	Obtained from well-designed cohort or case-control analytic studies, preferably from more than 1 center
Type II-3	Obtained from multiple time series with or without intervention; dramatic results in uncontrolled experiments could also be regarded as this type of evidence
Type III	Opinions of respected authorities, based on clinical experience, descriptive studies, or reports of expert committees

Table 3. Summary of Clinical Effects Studies:

Objective Citation	Study Design	Population (n)	Description of exposure	Clinical effects	Duration of effects	Evidence Grade
Chan, 2001	Randomized, controlled, crossover study; subjects served as their own controls	Volunteer subjects aged 22 to 46 years were recruited from a law enforcement training academy; 8 subjects had a history of smoking, lung disease, or respiratory inhaler use (34: 24 men, 10 women)	OC exposure: OC or placebo sprayed for 1 second in a small enclosed space, where subject remained for 5 seconds Positional restraint: hogtie or hobble position	OC vs placebo, sitting: No difference in FVC or FEV1 at 1.5 and 10 minutes post-exposure; no difference in blood oxygenation levels; a small, but significant decrease in carbon dioxide levels occurred in the OC group OC vs placebo, restrained: No difference in FVC, FEV1 between exposure groups; FVC and FEV1 significantly decreased in both groups, compared sitting, non-restrained groups Hypoxemia, hypercapnea, hypoventilation not associated with restraint position OC vs placebo, regardless of position: Significant elevations in MAP, and heart rate 3, 6, and 9 minutes post-exposure	Subjects observed 1 hour post-expose without further follow-up Long-term consequences not assessed	I
Barry, 2008	Prospective, single-blind, randomized evaluation of 5 different regimens for treatment of topical capsaicin exposure	Military law enforcement trainees, aged 18-36 years (49: 44 men, 5 women)	2-second spray to the face from a predetermined distance (not stated); exposure repeated if subject closed eyes during first exposure; then must complete a 2 minute training procedure before decontamination Subjects used tap water to decontaminate exposed skin, then applied a cloth dampened with either magnesium hydroxide-aluminum hydroxide, whole milk, baby shampoo, 2% lidocaine gel, or water Pepper spray: 5.5% OC, 64% isopropyl alcohol carrier agent, 30.5% isobutene/propane propellant	Pain scores did not vary between treatment groups for the 60 minutes following OC exposure The authors concluded that time was the only factor predictive of improved pain scores No serious adverse events were reported	60 minutes	I

Objective Citation	Study Design	Population (n)	Description of exposure	Clinical effects		Duration of effects	Evidence Grade
				Symptom	# patients		
To describe the clinical toxicity caused by OC spray during law-enforcement action Watson, 1996	Retrospective chart review of patients in a consecutive series of patients presenting after OC exposure from June, 1991 to June, 1994	Adult patients (mean age 27.6 ± 7.9 years) presenting to the ED after OC-spray exposure secondary to law-enforcement use (81: 91% male, 73% African American)	OC exposure: occurred during arrest by law enforcement; location, distance, or duration of OC spray not documented Decontamination with fluid irrigation prior immediately post-OC exposure occurred in 13 patients; the rest did not receive decontamination measures until arrival at the ED OC used was a 5% "Cap-stun spray" product	Ocular	63	Mean duration in ED: 1.6 ± 0.9 hours Duration of symptoms not described	III
				• Burning	45		
				• Conjunctival injection	36		
				• Erythema	32		
				• Lacrimation	13		
				• Altered vision	7		
				• Corneal abrasion*	7		
				Dermal	26		
				• Burning	20		
				• Erythema	12		
				Respiratory	6		
				• Shortness of breath	3		
				• Wheezing	2		
				Tachypnea (> 20 rpm)	16		
				Tachycardia (>100 bpm)	32		
*7 of 30 patients who received fluorescein staining had corneal abrasions 12 patients had a documented history of asthma; these patients reported respiratory symptoms similar to the test of the study population							
To describe medical complaints following OC spray during training of corrections officers Smith, 1999 (study not available, summary from Olajos, 2004)	Retrospective review of cases reported between February 1993 and August 1995	Correction officers presenting for medical attention post-training related OC exposure (61)	OC exposure not described Decontamination procedures not describe	Condition	# affected	> 1 week in 13%	III
				Eye irritation*	28		
				Chest symptoms [^]	20		
				Nose/eye/throat symptoms	7		
				Skin effects [#]	5		
				Hypertension [%]	11		
				Headache [§]	16		
				Cardiovascular effects ⁺	2		
				Loss of consciousness	2		
				Hyperventilation	3		
				*1 described as an eye burn with 5 days lost from work [^] 1 allergic respiratory reaction, 4 asthmatic responses [#] 2 cases of urticaria [%] Blood pressure 180/110 in 1, 200/110 in 1 [§] 9 reported as "severe" ⁺ 1 with EKG changes, 1 requiring nitroglycerine			

Objective Citation	Study Design	Population (n)	Description of exposure	Clinical effects	Duration of effects	Evidence Grade
To assess the role of OC in in-custody deaths U.S. Department of Justice, 2003	Retrospective analysis of in-custody deaths to assess causality of pepper spray	In-custody deaths that occurred following pepper spray exposure (63)	All subjects were directly exposed to OC during arrest. Decontamination procedures were not described.	Cause of death: 12 deaths: illicit drug use 4 deaths: illicit drug use and heart disease 7 deaths: positional asphyxia 23 deaths: combination of factors including confrontational situation plus illicit drug use and/or underlying disease 6 deaths: weapon or health-related 2 deaths: asthma; 1 subject was obese and placed in supine positional restraint after multiple OC exposures	NA	III

Abbreviations: bpm=beats per minute, ED=emergency department, ekg=electrocardiogram, FEV1=forced expiratory volume for 1 second, FVC=forced vital capacity, MAP=mean arterial blood pressure, OC=oleoresin capsicum, rpm=respirations per minute, SHU=Scoville heat units

Published Case Reports:

Accidental discharge of a pepper spray device into the face of a 4-week old infant caused rapid onset gasping respirations, apnea, and cyanosis (Billmire, 1996). Within 20 minutes, the infant suffered respiratory failure, requiring mechanical ventilation, and 96 hours post-exposure required a 138 hour course of extracorporeal membrane oxygenation to sustain life. The infant survived, but suffered multiple viral lung infections over the 12 month follow-up period.

Two adult females (45 and 20 years of age) were sprayed in the face with pepper spray in a carjacking attempt (Miller, 1996). The women immediately went to a nearby emergency department and were placed in a cool-water shower for decontamination. Upon presentation, both women reported burning sensations on exposed skin areas and of their eyes. The 45 year old woman also suffered labored breathing; her vital signs at presentation were blood pressure of 110/70 mmHg, a pulse of 92 beats/minute, and respirations of 24 breaths per minute, with an oxygen saturation of 98%. The 20 year old woman reported no other symptoms and presented with a blood pressure of 140/88 mmHg, a pulse of 120 beats per minute, and unlabored respirations at 20 breaths per minute. Forty-five minutes post-exposure, both women were symptom free, and were discharged home after an additional hour of observation. No further follow-up was reported.

An adult female sprayed in the eyes with pepper spray while resisting arrest was immediately handcuffed; ocular decontamination did not occur for >9 hours following OC exposure (Epstein, 2001). She presented for an eye examination 7 days post-OC exposure, at which time her left eye had decreased visual acuity (20/80, baseline 20/20), and a 3.5 mm round epithelial defect with underlying inflammation. The epithelial defect healed within 5 days, but inflammation persisted. Twenty-one days post-exposure, an irregular astigmatism associated with a new corneal opacity was present, and patient had 20/40 vision in the left eye with the use of corrective lenses. No further follow-up was reported.

A 75 year old male presented to an emergency department complaining of redness and swelling in his left eye 18 hours post-OC exposure (Das, 2005). His eye had been irrigated immediately following OC exposure. Eye examination revealed severe conjunctival injury including an epithelial defect present in all four quadrants, a subtotal epithelial defect of the cornea, and mild stromal edema. Topical ascorbate (10%), citrate (10%), atropine sulfate, and chloramphenicol were used topically for 1 week. One week post-exposure, the conjunctival defect had healed, and the corneal epithelial defect measured 6 x 5 mm. At 6 weeks, his visual acuity was near normal, and examination of his cornea revealed a few punctate epithelial erosions. No further follow-up was reported.

Following exposure of a 10% OC product containing 90% benzyl alcohol, a 2.5 year old boy presented to an ophthalmologist with redness, mild pain, and itching around his left eye (Gerber, 2011). Exposure had occurred a few hours prior, and his mother reported immediately rinsing his face and eyes with water for a few minutes. Initial treatment included artificial tears with hyaluronic acid, and dexpanthenole. Three weeks later the boy presented with proliferation of conjunctival tissue, which was treated with topical tobramycin and dexamethasone for 3 weeks. Surgery, followed by continued tobramycin and dexamethasone, was then required to remove the proliferative tissue; ten days after surgery, complete healing was observed and topical treatment was stopped.

A 21 year old military police officer candidate was sprayed directly in the face with OC as part of a training drill (Shimada 2011). Immediately following the procedure, he reported blurry vision, mild photophobia in both eyes, which were irrigated with normal saline. On an eye examination due to continued left eye pain 2 days post-OC exposure, examination revealed a corneal ulcer 1 x 4 mm. The ulcer was treated with topical scopolamine, erythromycin, and artificial tears; 4 days post-exposure, the ulcer appeared to be healing upon examination.

Discussion:

The published literature on OC exposure is heterogeneous in purpose and study design. The studies included in this review were small (10 to 100 subjects), and the four prospective trials were conducted in controlled settings. The results of these studies should be considered in context, as their results may not be indicative of outcomes in combat or other emergency situations. For example, in the latter situations, thorough and immediate decontamination may not be possible and medical care may not be readily available. Assessment of the chronic effects of OC exposure is lacking. Additional evaluation of the long-term effects is warranted.

III. SAFETY CONSIDERATIONS

Decontamination and Management:

Overview:

Most effects of OC last for less than 45 minutes. Effects lasting beyond 45 minutes warrant emergency medical care (Czarnecki 2003). All exposed subjects should remove contaminated clothing to prevent secondary exposure following decontamination. Exposed areas should be rinsed with copious amounts of water for at least 15 minutes. Baby shampoo or mild soap may be used in addition to water.

Dermal:

Mild soap and water can be used to remove the oil-based OC compounds from skin to prevent secondary contamination; decontamination does not improve pain or irritation caused by OC. A study that assessed effectiveness of 5 topical treatments for dermal decontamination following tap water irrigation after OC exposure (magnesium hydroxide-aluminum hydroxide, whole milk, baby shampoo, 2% lidocaine gel, further water irrigation) resulted in no improvement of pain regardless of treatment; time after OC exposure was the best predictor of decrease in pain (Barry, 2008).

Ocular:

Eyes should be irrigated with copious amounts of water for a minimum of 15 minutes following ocular exposure to OC (Sciencelab MSDS, 2010). Contact lenses should be removed immediately and discarded. Rubbing of the eyes should be avoided.

Capsaicin disrupts the epithelial layer of the cornea, causes a loss of blink reflex, and decreases sensation in the eye (Smith, 1999). These combined responses to capsaicin may lead to corneal abrasions from contact lens wear, foreign body, or rubbing of the eyes. Contact lens wearers and populations prone to eye rubbing (e.g. children, developmentally disabled persons) may be at higher risk for corneal abrasions. Additionally, subjects with impaired corneal integrity (e.g. recurrent corneal erosion, exposure keratitis) are more susceptible to severe ocular effects than those with normal corneas.

Mucus membranes:

Anecdotal evidence suggests rinsing of the mouth followed by ingestion of casein-containing foods (e.g. milk, milk chocolate, bread) may counteract effects of capsaicin in the oral mucosa (Miller, 1996).

Respiratory:

Once contaminated clothing has been removed, exposed subjects should be moved to a well-ventilated area to improve respiratory effects. The use of humidified oxygen may provide some relief; beta-2 agonists should be used in cases of dyspnea or bronchospasm (Shen, 2006). There is no consensus in the literature as to whether asthmatic patients or smokers are at higher risk for respiratory complications than those subjects with normal airways (Smith 1999, ACLU 1995, Chan 2001, Watson 1996, Busker 1998). As a precaution against serious pulmonary injury including pulmonary edema, experts recommend that subjects with underlying lung disease are admitted for observation (Shen, 2006). If sprayed directly into the mouth, there may be a risk of aspiration

Cardiovascular:

No specific cardiovascular effects are mentioned in material safety data sheets, or publications addressing OC effects. Two trials described increased mean arterial pressure, tachycardia, or tachypnea following OC exposure (Chan 2001, Watson 1996). Cases of mortality have been reported in subjects under the effects of illicit substances (e.g. cocaine, phenicyclidine) who were also exposed to pepper spray (U.S. DOJ, 2003). Mortality was also associated with OC-exposed patients with underlying cardiovascular disease.

Further Safety Considerations:

The literature regarding the effects of capsaicinoids, including OC, on subjects with compromised respiratory physiology or other potential sensitivity is lacking. Anecdotal reports of asthmatic officers exposed to OC suggest no additional side effects occur (Czarnecki, 2003); there was no report of how well- or poorly- controlled baseline asthma symptoms were in these subjects. Currently, no data exist on the effects of OC exposure during an asthma attack; use in this situation should be avoided due to known physiological responses on bronchospasm and mucus secretion.

There are no data on the toxic or reproductive consequences of OC exposure in pregnancy (Czarnecki, 2003).

No consensus or clear data exist to suggest that OC exposure has a causal relationship with in-custody death; however, numerous of in-custody deaths following exposure to OC cases have been reported (Southall, 2008, ACLU 1995, U.S.

Department of Justice, 2003). OC has not been proven as the causal agent, but exposure was documented in minutes to hours prior to 97 reported in-custody deaths (Southall, 2008, ACLU 1995, U.S. Department of Justice, 2003). The majority of these patients had at least one of the following characteristics: multiple OC exposures, detectable levels of illicit drugs, high alcohol levels, underlying respiratory or cardiac disease, restraint use. A study published by the American Civil Liberties Union of Southern California in 1995 estimated that 1 in-custody death occurred for each 600 OC exposures (ACLU 1995). The role of positional restraint in mortality following OC exposure is unclear.

There are no published reports on the chronic effects of OC exposure (Sciencelab MSDS, 2010).

IV. SUMMARY

Acute effects of OC:

The acute effects following OC are generally irritating but self-limited. Typical symptoms include burning and itching of exposed skin, reflex closure or repeated blinking of the eyes, coughing, sneezing, and bronchospasm. These effects typically last no longer than 45 minutes following usual topical OC exposure (e.g. 1-10% OC sprays no more than 1-2 minutes in duration). Prolonged exposure to OC (i.e. sprays lasting more than 1-2 minutes), and repeated exposures over a short period of time may cause a longer duration of, or more severe symptoms than typical exposure.

Following ocular exposure, subjects may be at increased risk of corneal epithelial defects or abrasions. The role of immediate ocular decontamination in preventing these effects is unclear. Effects of OC on the respiratory and cardiovascular systems are also unclear; while some subjects have had pronounced effects in each of these systems, following OC exposure, neither risk factors nor causality have been defined. Rare, but serious adverse events linked to respiratory failure and severe ocular damage have been reported.

Chronic effects of OC:

Currently, there are no published data on the chronic effects of OC in humans (Sciencelab MSDS, 2010).

Conclusions:

- Published literature on OC exposure is heterogeneous in purpose and study design. The studies included in this review were small (10 to 100 subjects), and the four prospective trials were conducted in controlled settings. The results of these studies should be considered in context, as their results may not be indicative of outcomes in combat or other emergency situations.
- Contact with OC produces burning and pain of the skin, eyes, and mucus membranes, and reflex sneezing, coughing, mucus production, and blinking or closure of the eyes. Some exposed subjects may also suffer bronchospasm, temporary blindness, and/or panic.
- The effects of OC products are generally self-limited and resolve within 45 minutes of exposure
- Severe adverse events requiring medical care may occur in 1% to 15% of exposures to OC products (Olajos, 2004, Forrester, 2003)
- Restraint following exposure has been associated with severe adverse outcomes and death following OC exposure, though a causal relationship has not been proven.
- Currently, there are no published data on the chronic effects of OC exposure; additionally, there are no published data on long term consequences of multiple exposures to OC products.

Recommendations:

- All subjects exposed to OC should undergo immediate decontamination procedures, including removal of contaminated clothing and rinsing exposed areas with water for at least 15 minutes. Contact lenses should be removed immediately and discarded.
- Subjects requiring physical restraint, particularly in a supine position, following OC exposure should be closely monitored for adverse effects.
- Subjects with underlying cardiovascular disease or under the influence of illicit stimulant substances should be monitored closely following OC exposure.
- Medical services should be offered to any subject exposed to OC complaining of severe adverse effects (e.g. bronchospasm, labored breathing, severe pain of eyes or lungs), or having symptoms that last beyond 45 minutes.
- Prolonged or repeated exposures to OC should be avoided due to the lack of long term safety data.
- The paucity of data assessing chronic effects of OC exposure mandates further investigation.

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Adverse Health Events Associated with Pepper Spray Products: A 10 year Retrospective Review of the California Poison Control System Reported Cases

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ABSTRACT

Background: Pepper sprays, that contain oleoresin capsicum (OC), are used as a non-lethal method to subdue delirious or violent individuals by law enforcement agencies, as an animal repellent, and by the general public for self-defense. The health consequences and risk factors for humans exposed to pepper spray are poorly understood.

Objective: To determine the severity of pepper spray-related adverse health events reported to the California Poison Control System (CPCS). In particular, the prevalence of symptoms suggestive of tissue injury beyond transient irritation in persons exposed to pepper spray.

Method: A retrospective review of the CPCS electronic database of cases within a 10-year period (2002 to 2011) was conducted. All cases of humans aged greater than 6 years of age that were exposed to a pepper spray product were included. Cases were differentiated into 2 outcome groups based on case definition criteria, minor transient symptoms, and moderate or more significant symptoms suggestive of tissue injury that warranted a medical evaluation. The circumstances and organ system effects were tabulated for the moderate outcome group.

Results: A total of 4,544 cases were identified and 3,809 met the inclusion criteria. Of these, 237 cases (6.4%) had moderate symptoms. There were no reported deaths. The most common health effects by organ system for the moderate outcome reported following pepper spray exposure included: ocular or eye injury, eg. suggestive of a possible corneal abrasion (54.4%, or 129 of 237 cases), respiratory, eg. symptoms suggestive of bronchospasms (31.2%, or 74 of 237 cases), and dermal burns/blisters (16%, or 38 of 237 cases).

The most common known reasons for and circumstances of exposure for the moderate outcome cases included: indirect exposure, eg. contact with sprayed animal or in room where spray discharged (16.9%), intentional direct spray, eg. use by law enforcement, for self-defense, or in the act of committing a crime (13.5%), and unintentional direct spray, eg. accidental discharge (11.8%).

Conclusions: Our experience with pepper spray exposures in California suggests that there is a risk for more serious adverse health effects in persons exposed to these products and the prevalence is consistent with the range (1-15%) as concluded by the literature review by Dr. VanOsdol. The most common risk is a potential for ocular injury. Our review is unable to address chronic toxicity or residual disability in persons exposed to pepper spray; we could make no conclusions on its effects on pregnancy.

INTRODUCTION

Pepper sprays, that contain oleoresin capsicum (OC), are used as a non-lethal method to subdue delirious or violent individuals by law enforcement agencies, as an animal repellent, and by the general public for self-defense. The health consequences and risk factors for humans exposed to pepper spray are poorly understood. As concluded by Dr. VanOsdol's review, there may be a risk of serious adverse events requiring medical care in 1% to 15% of exposures to OC products. Therefore, we recognize the importance to substantiate and delineate this risk for future policy decisions. The California Poison Control System (CPCS) has served the state California since 1997 and has an archived case database of all poisons reported to its 24/7 hotline service. It is also the largest poison center system in the United States. We took the opportunity to review human exposures to pepper spray reported to the CPCS with the goal to determine the severity of pepper spray-related adverse health events. In particular, the prevalence of symptoms suggestive of tissue injury beyond transient irritation in persons exposed to pepper spray.

METHODS

Study Design and Case Inclusion

A retrospective chart review of the CPCS electronic database was conducted for pepper spray exposure consultations provided between October 1, 2002 and September 30, 2011. The CPCS provides treatment advice and referral assistance to the public as well as to healthcare professionals through four highly integrated sites operating under a single administration. CPCS services are available to all residents of the state of California through the CPCS toll-free emergency hotline, 24 hours a day, 365 days a year. Each reported poisoning case is entered prospectively into a clinical database (Visual Dotlab) by trained Specialists in Poison Information (SPIs). The SPIs are licensed pharmacists or nurses with special training in clinical toxicology through a regional poison center. They are individually certified by the American Association of Poison Control Centers (AAPCC) after passing a standardized national examination.

For each case, the SPIs enter specific product, symptom, treatment, and outcome codes according to AAPCC criteria; initial and follow-up notes are also entered into a text field. We searched the electronic database for exposures to pepper spray to retrieve all relevant records. For all cases meeting the inclusion criteria, we read all case narratives to ensure proper coding of symptoms, outcomes, and treatments.

Eligible cases involved all human cases, aged 6 years or greater, that were exposed to pepper spray. Most exposures involved aerosolization but non-aerosolized cases, involving exposure to a leaking container or other spill, were included. In addition, young children, less than 6 years of age, were excluded in this analysis since most of these probably involved non-aerosolized inconsequential exposure (e.g. lick or

taste of container) exposures and we were targeting health effects in adolescent and adult populations.

Data Analysis and Coding

Cases meeting the inclusion criteria were analyzed and aggregated as a cohort over the 10 year time period. Data fields of interest included: patient demographics (age/gender), product formulation/type (e.g. self-defense spray, animal repellent), reason or circumstance of use or exposure, symptoms/types of adverse health effects experienced, management site (e.g. non-healthcare facility vs. healthcare facility), and outcome. Outcomes were dichotomized, as minor (transient irritation, as is typical of exposure) vs. moderate (or significant), based on the case definitions below. Case definitions were developed from the approved triage criteria utilized by the CPCS and Medical Compendia, *Tintinalli's Emergency Medicine* (Chapter 236, eye emergencies), *Current Diagnosis & Treatment in Pulmonary Medicine* (Chapter 33, Drug-induced Lung Disease).

Case Definitions:

1. Minor or transient irritation; self-limiting effects involving irritation to body surfaces (i.e. dermal or skin, ocular or eye, respiratory or nose and throat), in persons exposed to pepper spray. The following are examples of anticipated symptoms:
 - A. Dermal/skin: Erythema, swelling, pain, itching. Note that prolonged pain of several hours may be expected in persons not adequately decontaminated.
 - B. Ocular: Initial pain, tearing, redness
 - C. Respiratory: Initial cough and choking, throat irritation (suggestive of upper airway irritation)
 - D. Gastrointestinal: Nausea, vomiting

2. Moderate symptoms; suggest more significant tissue injury that requires a medical evaluation and may require specific medical care beyond field decontamination. The following are examples of symptoms, diagnostic findings or care rendered for cases assigned to this group:
 - A. Dermal/skin: Rash and or blisters suggestive of a persistent dermatitis and/or dermal second degree burn.
 - B. Ocular: Persistent pain (more than an hour beyond irrigation), blurred vision, foreign body sensation, photophobia, discharge or exudate, periorbital swelling (symptoms suggestive of a possible corneal abrasion, iritis, or ocular infection). Cases that had documented abnormal ocular (e.g. slit lamp) examinations and diagnosis, as well as administered ocular therapies (e.g. ophthalmic antibiotics or steroids) were noted.
 - C. Respiratory: Shortness of breath, chest tightness, wheezing (suggestive of bronchial and/or lower airway irritation or injury). Cases that had documented histories of asthma, abnormal physical or pulmonary function

examinations, as well as administered respiratory therapies (e.g. bronchodilators) were noted.

For cases that were determined to have moderate symptoms, the circumstances, routes of exposure, symptoms by organ system, and other specific medical therapies provided were coded. The circumstance codes were grouped and defined as follows:

A. Type of Exposure (Intent):

1. Unintentional direct- e.g. accidental exposure but sprayed directly on person
2. Intentional direct- e.g. purposeful exposure directly on person such as law enforcement to subdue suspect or by individual to incapacitate another when threatened.
3. Indirect- e.g. environmental exposure- walk into area where pepper spray released
4. Direct unknown- direct contact with spray, but intent unknown

B. Individual responsible for incident (e.g. who sprayed):

1. Self
2. Other: e.g. friend, relative, etc.
3. Law enforcement
4. Unknown

C. Intended use of product/product type:

1. Self-defense (public)
2. Animal repellent
3. Law enforcement-individual victim as target
4. Law enforcement –crowd control

RESULTS

A total of 4,544 cases were identified and 3,699 met the inclusion criteria. Figure 1, algorithm of cases screened and reviewed, provides a summary of reasons for exclusion of cases, and the final outcomes for included cases. Note that there were no deaths reported and that for all cases meeting inclusion criteria, 237 cases (6.4%) had moderate symptoms. Table 1 summarizes the comparative demographics (age and gender) between the two groups. In both groups (minor and moderate symptoms) more than 50% of exposures involved males. The average age of individuals with minor/transient symptoms was 25 years and with moderate symptoms, 29 years. Table 2 summarizes the circumstances and routes of exposures for cases with moderate outcomes. The common reasons for and circumstances of exposure for the moderate outcome cases included: unintentional direct spray, e.g. accidental discharge (11.8%), intentional direct spray, e.g. use by law enforcement or for self-defense (13.5%), and indirect exposure, e.g. contact with sprayed animal or in room where spray discharged

(16.9%). Table 3 categorizes, by organ system (ocular, dermal, respiratory), the health effects for the moderate outcome cases reported following pepper spray exposure. The most common were ocular or eye injury, e.g. suggestive of a possible corneal abrasion (54.4%), respiratory, e.g. symptoms suggestive of bronchospasms (31.2%), and dermal burns/blisters (16%).

DISCUSSION

Limitations

There are several limitations to the data. First, the retrospective review of the data source used (poison control case reports) were an inherent limit to completeness of the data. SPIs and related personnel responsible for documenting Poison Control Center (PCC) cases focus on patient management and were not under protocol to collect prescribed information, which would be interesting to this particular topic (e.g. specific product name). As a result, some information may be missing in our data set. Another factor for missing information in PCC reports is incomplete follow-up of patients. Patients are frequently lost to follow-up due to various reasons beyond the control of PCC personnel (e.g. patient leaving against medical advice or having already been discharged upon follow-up call), as well as due to workload limitations. This explains the potential lack of information about long-term health consequences from exposures.

As an observational study and retrospective review, we are unable to claim a definitive causal relationship between the exposure and resultant symptoms or outcomes. There are likely other variables or confounders present. For example, we don't know the precise time and effectiveness of decontamination procedures or other interventions performed on exposure victims. Since exposures to pepper spray are principally from aerosolization of multiple products (with variable concentrations of capsicum, solvents, and propellants), the particle size, dose administered and impact of the ingredients are difficult to estimate. Our results may also be subject to reporting bias because reports to the poison center are voluntary and may not reflect the true population prevalence of pepper spray exposures and outcomes.

Conclusions

Our experience with pepper spray exposures managed by the CPCS suggests that there is a risk for more serious adverse health effects in persons exposed to these products and the prevalence is consistent with the range (1-15%) as concluded by the literature review by Dr. VanOsdol. The most common risk is a potential for ocular injury. Our review is unable to address chronic toxicity or residual disability in persons exposed to pepper spray to include effects on pregnancy. It is also unclear if a past medical history of asthma puts an individual at a higher risk for bronchospasm if exposed to pepper spray.

Although we don't know the degree to which prompt decontamination by irrigation of exposed body surfaces mitigated symptoms or injury, it seems reasonable that individuals or institutions that use or intend to use pepper spray be informed of the importance of performing this first aid procedure. In addition, that exposed persons, to the extent possible, be followed for the potential of developing more severe adverse health effects.

Acknowledgements

Terry Carlson, PharmD, for data acquisition.

Figure 1: Algorithm for outcome of California Poison Control System cases of exposure to pepper spray

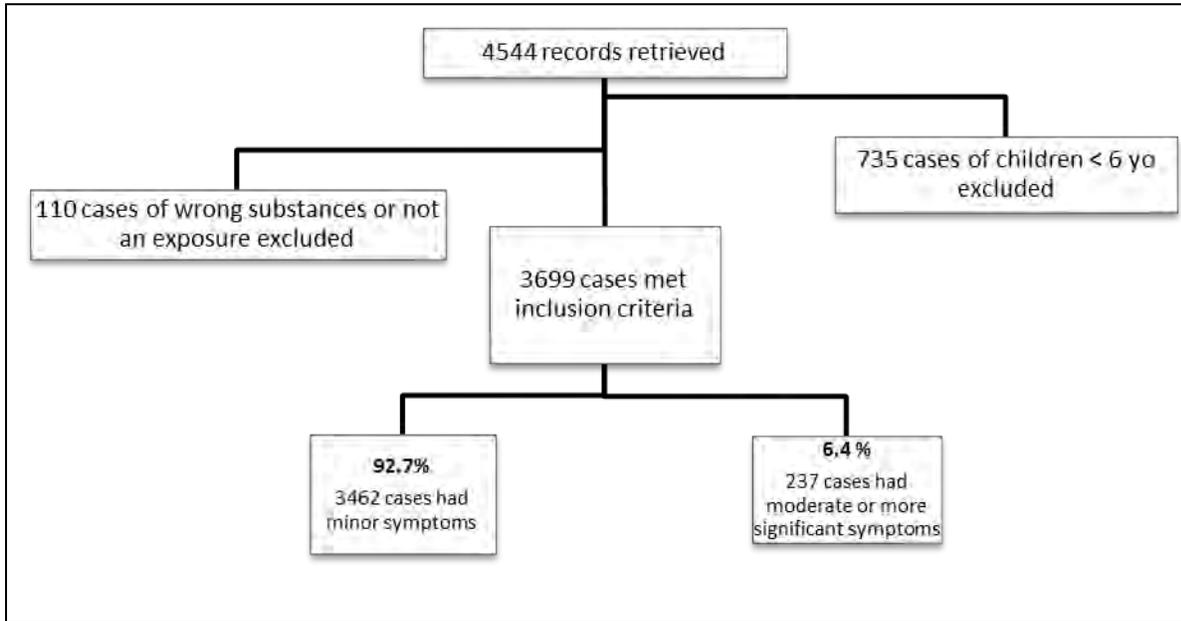


Table 1. Demographics

Demographics	Minor Symptoms	Moderate Symptoms
Gender		
M	1759 (51%)	131 (55%)
F	1636 (40 pregnant)	106 (4 pregnant)
Unknown	67	
Age		
Average Range	25 (6 – 94 years)	29 (6 – 82 years)

Table 2. Circumstances of Pepper spray exposure that resulted in moderate outcomes (N=237)

Type of Exposure (Intent)*	N	%
Unintentional, Direct	28	11.8
Intentional, Direct	32	13.5
Unknown, Direct	137	57.8
Indirect	40	16.9
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Individual responsible for incident	N	%
Self	20	8.4
Other	51	21.5
Law Enforcement	12	5.0
Unknown	154	65.0
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Intended use of product	N	%
Self-defense	31	13.1
Animal repellent	8	3.4
Law enforcement	29	12.2
Unknown	169	71.3
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Route of Exposure*	N	
Dermal	95	
Ocular	154	
Inhalation	71	
Ingestion	2	

**Definitions: Type of Exposure (Intent): Unintentional direct e.g. accidental exposure but sprayed directly on person; Intentional direct e.g. purposeful exposure sprayed directly on person; Indirect e.g. environmental exposure such as walking into area where pepper spray was released; Direct unknown e.g. direct contact with spray but intent is unknown. Individual responsible for incident (e.g. who sprayed): Self; Other e.g. friend, relative or stranger; Law enforcement (in the course of business or in training exercise); Unknown (circumstances of exposure unknown). Intended use of product/product type: Self-defense (used by public), Animal repellent (bear or dog most commonly), Law enforcement (individual target or for crowd control); Unknown (original purpose of spray not known).*

*** Multiple routes of exposure are possible*

Table 3. Most common significant adverse health effects from Pepper spray exposure (N=237)

Body/Organ System Effect	Associated signs and symptoms	Number	%*
Ocular	Persistent pain, blurred vision, foreign body sensation, discharge or exudate, periorbital swelling **	129	54.4
Respiratory	Shortness of breath, chest tightness, wheezing ***	74	31.2
Dermal	Rash, Blisters	38	16.0

* Total is > 100%. Multiple symptoms were present in many patients but only 6 patients had significant adverse effects in more than one organ system.

** 12 cases had a documented corneal abrasion

*** 10 cases had documented wheezing and bronchospasm



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