

California State University System  
Police Chief's Task Force on Protests and Demonstrations  
March, 2012

## PREFACE

As sworn law enforcement officers we have a duty to uphold the United States Constitution and the freedoms guaranteed by the First Amendment.

*“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.”*

*Bill of Rights, 1791*

As campus law enforcement police chiefs and administrators we understand the criticality in an academic environment of the right of our students, faculty and staff to peacefully gather whether they are protesting or showing support for a cause. Universities are forums for the exchange of ideas and that is a treasured value in an academic environment. We also understand the special challenge for university police in these situations to uphold First Amendment rights for all while at the same time ensuring public safety.

It is the opinion of the police chiefs charged with making this report that the California State University System (CSU) does not require additional policies and procedures to deal with first amendment rights situations. The challenges related to protests and demonstrations are not in the policies themselves; there is considerable guidance on that, and campuses can ensure that their policies not only reflect this guidance, but their campus specific operational needs. Importantly, however, education and training about these policies is critical as well as monitoring compliance with policy in conjunction with excellent communications with all stakeholders. This report articulates the relevant case law and points to the best practices and professional standards that CSU Police Departments should reference and take into consideration when developing operational plans for protests and demonstrations. This, coupled with effective operational plans and excellent communications between university police chiefs and campus administration, should ensure the protection of first amendment rights while also ensuring the public safety.

## BEST PRACTICES AND PROFESSIONAL STANDARDS

We recognize that one of the greatest challenges for law enforcement in our American democracy, regardless of jurisdiction, is that of managing protests and demonstrations - regardless of the size. As previously stated, there is a competing convergence of freedom of

speech and assembly with the maintenance of order. Police in the United States have a long history in dealing with these issues from mass demonstrations in the 1960s through the Vietnam area, the 1999 Seattle World Trade Organization protest, or more recently the Occupy Movement. The list is long and the lessons learned even longer. As a result of this history, there are best practices that guide us in meeting public expectations.

## CASE LAW AND USE OF FORCE

While there are many laws that deal with freedom of speech (reference Handbook of Free Speech Issues, Office of General Counsel, CSU, April 2007), from the law enforcement/public safety perspective, one of the most critical issues is use of force and the laws that deal with use of force issues. The first step to managing use of force liability is to ensure compliance with law and maintain a legally sound, up-to-date policy on use of force. These laws (provide checks and balances) on the actions of police officers as they deal with prohibited and unlawful conduct in a protest/demonstration situation. It is the opinion of this Task Force all CSU Police Officers be familiar with the following cases and that they be reviewed on an annual basis in conjunction with annual reviews of department use of force policies and procedures.

*Graham v. Connor, 490 U.S. 386 (1989)* – All use of force lawsuits are measured by standards established by the Supreme Court in this case. In the Graham case, the Court instructed lower courts to always ask three questions to measure the lawfulness of a particular use of force. First, what was the severity of the crime that the officer believed the suspect to have committed or be committing? Second, did the suspect present an immediate threat to the safety of officers or the public? Third, was the suspect actively resisting arrest or attempting to escape? In the more than two decades that have elapsed since this case, there have been additional factors refined by the courts (i.e. degree of threat to officer/public, situations when officers are outnumbered, etc.) but the basic case is the bedrock issue in use of force situations.

*Headwaters Forest Defense v. The County of Humboldt, 276 F3d 1125 (2002)* – While pepper spray is thought to be one of the least intrusive uses of force, a claim for excessive force can be brought against an officer for improper use of pepper spray. As in all other uses of force issues, this case demonstrates to officers that the force used must be reasonable given the circumstances.

*Young v. County of Los Angeles, 655 F.3d 1156 (9<sup>th</sup> Cir. 2011)*- Critical to officers understanding in this case is the decision by the Court that the use of pepper spray and/or a baton is, as a result of this case, now classified as “intermediate” force and the use on a non-combative, albeit uncooperative, citizen is considered excessive force. The court has drawn a distinction between actively resisting without violence (i.e. stiffening up or grabbing on to a fixed object to prevent being moved) and violently resisting (battering a police officer) and that the former will not justify the use of intermediate force.

The force options are also well articulated in the P.O.S.T Learning Domains (LD #20 Force Options) and these are also useful for CSU police officer refresher training review.

The Task Force recognizes that in protests and demonstrations the command staff and supervisory staff must be ever mindful about controlling the use of force by officers. Rules of engagement in the event of prohibited or unlawful conduct must be clearly considered and discussed in the event planning process by CSU Police Chiefs and appropriate campus administration. It is critical that “worst case scenario” situations be articulated insofar as they may be reasonably envisioned so that campus administration understands how police might deal with various scenarios in which it is necessary for protestors to be removed from an area and arrested.

When considering best practices for managing special events such as protests and demonstrations, much has been compiled by the most respected organizations/experts in the profession of law enforcement to guide police departments in creating a framework, from best practices, for managing these events. [The California State University System (CSU) recognizes this and requires that written policies and procedures must be in place to guide its officers as articulated in PS 2010-01, Technical Letter re: CSU Police Services Policies and Manual Maintenance Requirements states that “*Event Management and Crowd Control Procedures*” (section 1. H.) and “*Use of Force Guidelines and Procedures*” (section 1. C.) are required policies.]

The International Association of Campus Law Enforcement Administrators (IACLEA) has gathered many resources on its website for reference by university/college police in formulating operational plans for special events and protests and demonstrations. The Task Force has reviewed these resources and has selected a list of publications as excellent reference and resource documents:

1. *Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches from the Police Executive Research Forum (PERF), 2006*
2. *Planning and Managing Security for Major Special Events: Guidelines for Law Enforcement prepared by Edward Connors for the Office of Community Oriented Policing Services, U.S. Department of Justice, March, 2007*
3. *Critical Issues in Policing Series Managing Major Events: Best Practices from the Field Police Executive Research Forum, June, 2011*
4. *Law Enforcement Guidelines for First Amendment-Protected Events, U.S. Department of Justice Global Justice Information Sharing Initiative, October, 2011*

These resources provide detailed information on a range of topics to assist in formulating operational plans including such components as: pre-event work planning and assessment, permissible and prohibited conduct, components of an operations plan, use of the National Incident Management System (NIMS), strategies to prevent lawsuits while ensuring accountability, training, managing information during an event, roles and responsibilities from command and control to citizen complaints, crowd control and use of force, media relations, mutual aid and after-action reporting, to name a few.

Additionally, the California Commission on Peace Officer Standards and Training issued this month, March, 2012 the document: *POST Guidelines Crowd Management, Intervention and Control*. This guide is another resource for CSU Police Departments in the development of policies and procedures on this topic. POST has iterated that the guide is for reference and is not intended to establish a statewide standard.

Since a number of CSU Police Departments are accredited through IACLEA and/ or the Commission on Accreditation for Law Enforcement Agencies (CALEA) it is further recommended by the Task Force that all CSU Police Departments reference the following chapters of the standards manual for the accreditation program to ensure consistency in following recognized professional standards:

1. *“Standards for Law Enforcement Agencies” Chapter 46 Unusual Occurrences and Special Operations, CALEA, 4<sup>th</sup> Edition, November 2002*
2. *“Standards for Law Enforcement Agencies” Chapter 46 Critical Incidents, Special Operations, and Homeland Security, CALEA, 5<sup>th</sup> Edition, 2006.*
3. *“Standards for Law Enforcement Agencies” Chapter 1, Section 1.3 Use of Force, CALEA, 5<sup>th</sup> Edition, 2006.*

These professional standards provide guidance on policy and procedure development in areas pertinent to protests and demonstrations. Some of the topics covered by these standards include: use of the National Incident Management System (NIMS), elements of an emergency plan, procedures for carrying out mass arrests, addressing problems and special circumstances in special events, etc. These standards will assist CSU departments in selecting what elements should be included in a policy or procedure.

A good policy contains the following elements:

- First Amendment Affirmation
- Pertinent Case Law
- Use of the National Incident Management System (NIMS) in managing command and control when designing the operational plan
- Use of Force Guidelines (i.e. use of objectively reasonable use of force)
- A Communications Plan Requirement (i.e. reach out to protest groups, discussion with campus stakeholders and administration, etc.)
- Crowd Management Methods
- Strategy as to How to Facilitate Lawful Protest Activities (Patience, communication, friendly interaction with protestors, etc.)
- Use of CSU CRU (or a Mutual Aid Plan) if needed
- Direction on Incident Documentation (including after-action report)
- Media Plan
- Professional Conduct Requirements

## PROFESSIONAL CONDUCT

Amongst the required policies for all CSU Police Departments as articulated in the CSU PS 2010-01 Technical Letter referenced above and required by the IACLEA and CALEA accreditation programs are Standards of Conduct. It is important to review conduct expectations during police briefings prior to a planned protest or demonstration to ensure officers are not complacent about this daily requirement.

Best practices frequently articulate the following tips for officer conduct at demonstrations:

- Remain calm. Don't overreact. Never let your guard down.
- Be tactful and patient when directing people to move.
- Work as a team, not as an individual.
- Treat everyone with courtesy, professionalism and respect.
- Take action only in coordination with the field supervisors and commanders – don't act alone.
- Engage the crowd in a friendly, non-confrontational manner – befriending a crowd can act as a force multiplier for police.
- Avoid using riot gear unless necessary, but keep it available.

## EVENT PLANNING STEPS

Since most campus events such as protests and demonstrations are planned ahead, these situations require strategic planning and clear articulation of law enforcement's role (it is recognized that spontaneous protests have little to no planning time but require adherence to all other elements of best practices). Amongst the most important steps in the planning process are the following:

1. Face to face discussion between University Police and event organizers as well as others in each campus's events planning structure (such as Student Affairs, Licensing Office, etc.). These events also require excellent communication at the highest levels between University Police and University Administration. This is particularly critical in terms of plans to deal with prohibited and unlawful conduct so as to ensure that campus administrators and police are in agreement as to how to handle these situations (to include worst case scenarios) should they arise. The Chief of Police should be involved in all such discussions to ensure critical communications are effectively carried out.
2. Compilation of a detailed Police Operational Plan which employs the Incident Command System as an organizational tool.
3. A determination of Mutual Aid requirements especially for planned, large-scale events. The California State University System (CSU) is fortunate to have the services of a

Critical Response Unit (CRU) - a highly trained unit comprised of officers from CSU police departments well versed in the nuances and special needs of the academic communities they serve. This unit is specially trained to deal with protests and crowd control situations (amongst other specialized training) and is available by request of police chiefs through campus Presidents to the Chancellor's Office. The CRU team is best utilized on campuses planning protests and demonstrations when it is known that the size and scope of the event will strain or exceed existing police resources on an individual campus. It is also recognized that the CRU team is generally not an option when protests and demonstrations are expected throughout the CSU system. It is imperative in these instances that all CSU Police Departments utilize consistent best practices and professional standards for protests and demonstrations.

4. A Communications and Media Plan that takes into consideration social media issues.

## SUMMARY

The challenges related to protests and demonstrations lies within the oversight and administration of Event Management and Crowd Control policies, rather than words contained therein. When restraint and patience of our officers are tested, it is about the leadership, accountability and compliance, in conjunction with strong communications at all stages of protests and demonstrations. In this regard, the Chief's Task Force unanimously supports that efforts be expended on education and training initiatives, and allow the CSU Police Chiefs the appropriate discretion and flexibility to develop policies and procedures for their respective departments meeting their campus operations needs from the preexisting professional standards and sister campus exemplars.

The California State University System Police Department's management teams recognize the importance of this issue for our academic environments and we value our role as guardians of first amendment rights as well as public safety. Our focus needs to remain vigilantly on the real crux of these matters.

Submitted by Chief Anne P. Glavin, Chair, on behalf of  
CSU Police Chief's Task Force on Protests and Demonstrations

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