

**November 20, 2009**  
**Review, Reflection & Recommendations**

A Report by the Police Review Board  
University of California, Berkeley  
June 14, 2010

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## **INTRODUCTION: SETTING THE EXPECTATIONS STAGE**

They say hindsight is 20/20. They're wrong.

The purpose of this report is not to identify with certainty all the actions by all of the actors who played some role in connection with the demonstrations on November 20, 2009. That is impossible. It would be impossible even if all of the tools of civil litigation were masterfully deployed for years -- and then all of the admissible evidence were submitted to a mentally and morally perfect jury. Certainty about the historical facts would be an even greater pretense in a report like this -- unsupported, as is appropriate, by use of even the basic tools of civil litigation.

The inaccessibility of certainty, however, is not fatal to our mission. Our mission, as an agent of a University, is not to judge, but to contribute something to learning. Learning, in settings like these, is best advanced dialectically. And the dialogues that are likely to yield the richest and most reliable learning are not binary. Instead, they are multi-dimensional -- informed from a wide range of divergent sources.

We hope to be one such source. We strive to be as objective, balanced, and thoughtful as possible -- but we want no one to assume that we want ours to be the last word. Rather, we want our words to be part of a continuous process of engaged reflection from all interested quarters -- a process that began before we began and that should continue long after our work is done.

To make our contribution to productive dialogue, we have striven not to be definitive about all the details, but to identify the events, developments, and decisions that seem to have affected most the way the story unfolded -- and in which we see the most promising opportunities for learning.

Given the limitations of our process, and the complexity of the events we have been asked to chronicle, we make no attempt to isolate for blame individuals, individual acts, or individual decisions. The events of November 20th were not linear and were not the product of any one hand -- visible or invisible. They did not evolve -- at least if that word connotes direction. Rather, what happened on the 20th, probably at every major



turn, was the product of a host of divergent forces and factors bouncing and playing off one another in complex, unpatterned and unpredictable ways.

Nothing was unitary. The students who occupied Wheeler Hall apparently were divided and could not foretell their own course of action. The composition, size, mood, and objectives of the multi-dimensional crowd outside Wheeler varied from corner to corner of the perimeter and were in virtually continuous flux. There were many changes over the course of the day in the size and composition of the law enforcement contingent, as well as in its composure and sense of direction. Within the civilian Administration, the flow of information was variable and uneven, impressions and reactions took many shapes, and the locus of responsibility for decision-making seemed mobile and uncertain.

In a setting this complicated and changeable, to attempt to pass definitive judgment would be hazardous in the extreme -- both intellectually and morally. It also would divert us from the main chance -- which is learning. It is to that task that we have devoted our work.

We have been asked not only to recount events, but also to try to assess dynamics and formulate recommendations. Meeting these responsibilities necessarily creates a risk that we will sound patronizing -- that it will appear that we neither appreciate what our readers already know, nor understand all the pressures and obligations that affect their actions and decisions. We mean to be patronizing to no one. We pretend to understand nothing fully. We are not perfect -- in determining facts, in understanding events or actions, or in any other way. We do not expect others to be perfect. What we hope for, in ourselves and others, is openness to learning.

In the process of developing the information base for our Report we have met and developed considerable respect for many of the people who were involved in the events we have chronicled. In some instances, our analyses and recommendations may seem critical of some decisions or courses of action by some of these people. We hope they understand that our respect for them remains fully intact and that we do not for a minute suggest that the acts on which we comment are 'representative' of how they meet the multiple, varied, and heavy demands of their jobs. We know that they appreciate that it is only by thinking independently, and by explaining honestly what we have concluded, that our work can contribute to reliable learning.

## EXECUTIVE SUMMARY

### **Toward an Integrating Understanding of the Day**

In this Report the Police Review Board describes and analyzes the events of November 20, 2009 – the occupation of Wheeler Hall, the demonstration in support of that occupation, and the responses by the police and the Administration.

For much of the day, the dynamic between police and demonstrators was non-violent. But on several occasions restraint collapsed, on both sides, and things got ugly. While one purpose of this Report is to describe what happened, the larger goal is to learn. What kinds of things could have been done differently? And what steps might be taken so that, in the future, occasions like this have a more handsome story line?

To address these questions intelligently, it might help to have ‘a theory of the case’ -- an integrating understanding of the principal drivers of the day’s events. While many such ‘integrating understandings’ are possible, we will describe the two that seem most compelling.

The first of these two ‘theories of the case’ focuses primarily on the police and the Administration. Through this lens, it might appear that miscalculations, missteps, and inaction -- by both the police and the Administration -- converged to convert an animated but essentially non-violent protest into a raw power struggle between demonstrators and police. Under this theory, it was primarily a series of over-reactions by insufficiently supervised police -- over-reactions that degenerated into dramatic uses of force -- that first inspired, then intensified, fears in the demonstrating crowd about what the police would do to the barricaded protestors when they forced entry into the second floor of Wheeler.

These fears, in turn, intensified the crowd’s physical resistance to efforts by police to shore up the apparatus of control and to bring in reinforcements. And students on site were able to use inflammatory images of confrontations between police and demonstrators (shared electronically) to induce more students to join their ranks. Late in the day, before the occupiers were released, tensions outside Wheeler had mounted to literally dangerous levels.

If guided by this understanding of things, the campus’ longer-range responses to November 20th would focus on ways to improve administrative and police practices.

A second ‘theory of the case’ focuses first on the protestors. They were a heterogeneous lot, but consisted for the most part of students who generally were inclined to be civil. These students, however, were very upset about increases in the cost of their education and about how the Administration was responding to budget cuts. Most of these demonstrators were young, sincere, and emotionally mobile.

There was a smaller group in their midst that was less concerned about means than ends, a group that was looking for ways to tap the power inherent in the emotions of the majority. In this version of the story, this smaller, more calculating (but perhaps no less sincere) group set out to instigate confrontations with the police – to engineer challenges to their authority and to erect obstacles to their plans in order to provoke them into high-visibility over-reactions that could be used to inflame the crowd and escalate its aggressiveness.

Under this second theory of the case, the campus’ long range responses to November 20th would focus on ways to equip the larger group of civilly inclined students to remain independent and less responsive to the appeals and maneuvers of the smaller group of less retrained activists.

These two different ‘theories of the case’ are not mutually exclusive. At important junctures, they intersect and overlap. We are inclined to believe that there is some truth in both of them -- and that it was the convergence of factors and forces from both story lines that proved so potent.

Shifting gears, we offer one additional integrating perspective on the events of the 20<sup>th</sup>. For this purpose, we use a spatial metaphor (acknowledging its analytical limitations). After studying the roles of the demonstrators, the police, and the Administration, we realized that, on November 20<sup>th</sup>, all three shared one significant and dysfunctional characteristic. In ways we detail in our narrative, each of these groups was ‘center-less’ for much of the day. To the extent this characterization is accurate, the shapelessness of the story, and the virtual randomness of some of the actions by which it was marred, can be understood as byproducts of the interplay (sometimes collisions) between three center-less spheres.

### **Principal Lessons and Recommendations**

What are the principal lessons that our study of November 20th has suggested? What recommendations do we make? A comprehensive list would be too long for this kind of summary -- so we distill here into a few major points the longer and more detailed list of suggestions that we present in the penultimate section of this report. Gluttons will find more food for thought imbedded in our 'narrative' of the 20th, as well as in the separate section of this Report that discusses the Police Department's "Operational Review."

### **The Administration on November 20th**

As it already understands, the Administration's response to the unfolding events on November 20th was, in important respects, center-less. Its planning for the three-day strike was far too generalized to be helpful. Even though there were reasons to worry that protestors might occupy a building, the planners prepared no specific strategies for responding to such a development. Relatively little thought was given to the advisability of activating the Emergency Operations Plan, or using the Emergency Operations Center, to improve communication or to coordinate responses.

On the 20th, the civilian leadership was misled (not intentionally) by unduly optimistic projections by UCPD – in part because the Administration failed to ask probing questions about plans and circumstances.<sup>1</sup>

Thereafter, the Administration's response to the occupation and demonstration suffered badly from infirmities in the flow and inaccuracies in the content of incoming information. There was no reliable system for gathering information independently, or for effectively sharing accurate information with the campus community. While some players on the civilian side knew that they were not getting all the information they needed, no one made sufficient efforts to determine whether the Administration, at highly credible levels, needed to play a much more active and visible role in responding to the demonstration and in communicating with the barricaded students, their supporters outside Wheeler, and the police.

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<sup>1</sup> Asking such questions can expose superficiality and unsupported assumptions. And knowing that they will be asked such questions pressures planners to prepare their plans with greater care and specificity.

There were many reasons to believe that the vast majority of the barricaded protestors, and of the demonstrators outside Wheeler, were students. The Administration remained concerned, however, that “labor agitators” were playing key roles – even though its own Human Resources staff had concluded that unions were not directly involved. Thus, even information that was available from sources within the Administration did not reach key decision-makers in California Hall.

Had the Administration known that it was dealing mostly with students, perhaps it would have been proactive. As it was, the Administration took virtually no initiative -- even after it learned late in the morning that the police could not keep their earlier promises and the situation around Wheeler was deteriorating badly.

In the afternoon, after the Administration was prodded by students into involvement, it focused its efforts to communicate on the protestors who had barricaded themselves inside Wheeler, devoting too little effort and imagination to trying to communicate with the much larger and more volatile group of demonstrators outside Wheeler. The failure to communicate effectively with the crowd created the mis-impression that the Administration didn’t care about or respect the students’ sincere emotions about the issues. That mis-impression fanned flames of anger.

### **Recommendations for the Administration**

1. In a written policy that is developed specifically for responding to group acts of civil disobedience, set forth clearly the allocation of authority and responsibility between the civilian Administration and UCPD.
2. 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 assure prompt and clear communication between the civilian decision-makers and the police.
3. Decide whether, or under which circumstances, to use the systems for communication and coordination that already have been established in the Emergency Operations Plan.
4. For civil disobedience: fix, publicize, and consistently enforce clear policies and rules. Include a specific provision prohibiting false fire alarms.

5. 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 these rules.

6. 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.

7. Decide, in advance, who will be in charge. Decide who will be in charge if the person who is to be in charge is not available.

8. Set up a system for gathering information independently and for sharing it promptly with all affected entities and persons.

9. 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.

10. During group acts of civil disobedience, search actively for ways to communicate not only with “leaders” of the protest, but also with all other persons who are participating. Initiate such efforts immediately after the protest event begins, be persistent, and be sure these efforts to communicate are visible to participants, to the campus community, and to the media.

11. Determine the appropriate level of the Administration that should participate in such efforts to communicate -- and clearly identify (for the protestors and others) the position and role<sup>2</sup> of each person from the Administration who initiates communication with or responds to communication from the protestors.

12. During demonstrations, find ways to remain accessible and to respond promptly to concerned faculty and students. Be sure the Administration’s accessibility is visible. Avoid the appearance of a ‘bunker mentality.’

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<sup>2</sup>A vice chancellor who participated in the Administration’s response on the 20th felt inhibited about roles he might play in part because he was not sure the crowd would know who he was or what position he occupied.

13. Re-evaluate the size and organization of UCPD to determine the levels of staffing that will be sufficient to enable our police force to respond appropriately to large scale group acts of civil disobedience.

### **UCPD on November 20th**

The key leadership positions within the campus police department are occupied by good people, with good intentions, who try to run their department as constructively as circumstances permit. But the leadership of the department has been thinned by budget cuts and has been in place only for a relatively brief period. So its ability to meet new challenges has been limited by shortfalls both in resources and experience.

Just before 6:00 a.m. on November 20th, a UCPD officer who was on routine patrol discovered that all the doors into Wheeler Hall had been barricaded from the inside and that there were people occupying the building. Other officers who had been called to the scene soon discovered that a first floor window remained unlocked. Two officers entered a dark classroom through that window. Shortly thereafter, they arrested three protestors who were trying to put more barricades in place. After a brief physical confrontation, a fourth protestor escaped into the interior of the building.

When additional officers arrived (also gaining entry through the unlocked window), they conducted a systematic search of the building and determined that all of the remaining protestors were on the second floor, having barricaded all its entrances. Identifying himself as a police officer, a lieutenant ordered the protestors to open the doors. They refused.

Because the barricaded protestors had entered or remained in the building unlawfully (when it was closed to the public), because they were physically preventing others from entering the building and using it for its intended purposes, and because their occupation was compromising, significantly, the University's ability to pursue its core academic mission, the UCPD officers on the scene did not consider this occupation of Wheeler to be merely an "unlawful assembly."

Had the occupation been so deemed, it would have been appropriate for the officers to follow a set of protocols that the Department had developed for attempting to persuade an unlawful assembly to disperse. Under those protocols, the officers would have

announced that the assembly was unlawful (in violation of campus rules, and, in some circumstances, the state's criminal laws), ordered the crowd to disperse, identified a route or routes by which the people could comply with the dispersal order, told the assembled people that they had a specific, limited amount of time to leave and warned them, clearly, that if they did not comply with the dispersal order they would be arrested.

But because the barricaded protestors clearly were violating state law, the UCPD lieutenant who was on the scene "told them [at about 7:00 a.m., through the barricaded doors] they were under arrest for trespassing" and again ordered them to open the doors. As a "ruse," he "threatened to use pepper-spray on them if they did not open the doors."<sup>3</sup> This "ruse" was ineffectual and unwise.<sup>4</sup> The protestors again refused to open the doors.

By 8:30 a.m., UCPD command staff had determined that the police could remove the barricaded protestors by 11:00 a.m. This determination was made too hastily -- without knowing that Berkeley Police officers would not agree to enter Wheeler to assist in the removal operation, without foreseeing how quickly the crowd outside Wheeler would grow and how animated it would become, and without anticipating how long it would take to mobilize the bulk of the UCPD force that was off-duty.

Only the normal compliment of UCPD officers (about five) was on duty early in the morning of the 20th, even though the Department knew that some kind of 'escalation' of strike activities was planned for that day, and even though it knew that "there may be a protest inside of Wheeler Hall." The Department had scheduled additional officers to report for duty later in the morning -- in anticipation of a large rally for Big Game in Sproul Plaza and a strike-related demonstration around California Hall, both of which had been announced in advance for noon on the 20th. But the Department had made no special arrangements in advance to bring off-duty officers to campus quickly if an unforeseen need were to arise. Thus, when the call went out to the bulk of the off-duty

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<sup>3</sup>In this Report, quoted material for which we provide no citation has been taken from unpublished police reports, summaries of interviews conducted by the police, or statements or complaints that have been submitted to the Police Review Board.

<sup>4</sup>It was unwise for at least two reasons. It fueled fears in both the barricaded protestors and in their supporters outside the building about what the police might do to the protestors if they could get to them. Because it was not true, it also could be used later to intensify distrust of the police.



officers (after the occupation and demonstration were more than two hours old), they ‘dribbled’ in.

After the Department determined that its original plan was not feasible, several hours passed before the leadership made the call for mutual aid that would secure the presence (a few hours later still) of a sufficient number of officers to carry out the removal plan.

During those several hours (and throughout the rest of the day), demonstrators frequently broke the police tape surrounding Wheeler -- and occasionally breached the perimeter (to limited extents). But apparently no one tried to rush into the building. Over the entire course of the day, police officers arrested only one person for breaking or cutting the crime scene tape -- a professor.

By mid-morning the Department decided to replace sections of its crime scene tape with metal barricades. When officers began bringing barricades through the crowds late in the morning, demonstrators resisted and tried to block the officers’ paths. This aggressive physical resistance was unlawful and unprovoked. It cannot be condoned or excused, even though the officers’ efforts to bring in the barricades were ill-planned, insufficiently supervised by command staff, and not preceded by effective efforts to communicate with demonstrators.

In the early afternoon officers brought in additional barricades – to try to complete a line on Wheeler’s south side. On this occasion, the crowd had inched into a six-foot wide band of territory that had been placed off-limits by police tape that someone had torn. For reasons we don’t understand, officers decided to take this territory back, so they could place the barricade along the original tape line. When the officers pushed the crowd back, a violent confrontation ensued.

The crowd’s anger and agitation increased as the hours of demonstration and foul weather dragged on. Officers were targets of taunts, obscenities, and threats.

In mid-afternoon officers from the Alameda County Sheriff’s Department and the Oakland Police Department began arriving in response to Captain Bennett’s call for mutual aid. The officers from off-campus agencies were deployed on the front lines with little briefing and no means of communicating by radio with UCPD command staff. They marched, in full riot gear and with provocative arms readily apparent, through physically

resistant demonstrators. More violence ensued. UCPD officers had led these squads through the ranks of the protestors without command supervision, without first looking hard enough for alternative courses, and, again, without communicating effectively in advance with the crowd -- whose anger, by this time, had been largely re-directed from the Administration to the police.

The dramatic confrontations between the police and the demonstrators were captured by demonstrators and the media on cameras and cell phones. Demonstrators then used the images of these physical struggles to encourage more students to join the protest. These images also fueled fears in the crowd about what the police might do to the students who occupied Wheeler's second floor. These fears made the crowd outside Wheeler even more volatile.

At about 5:00 p.m., after trying for most of the afternoon to persuade the barricaded students to leave Wheeler voluntarily, the police forced entry into the second floor, where they found all 40 of the protestors in one classroom, sitting with hands raised. The students cooperated fully with the arrest and booking process. About two hours later, after being cited, they were escorted out of the building and released.

### **Recommendations for UCPD**

1. Teach all UCPD officers that they must be friendly and respectful when serving in this campus community, even when dealing with disrespectful people, and that by conducting themselves in this way they will be more effective. Moreover, by maintaining a positive rapport with the campus community, even in times of stress, they will experience more work satisfaction.

2. On the basis of prior specific policy guidance that is developed by the Administration, enforce rules consistently.

3. Understand clearly the policies and practices of the Berkeley Police Department that could affect on-campus deployment of officers from that Department.

4. Establish and train a 'crowd control team.'

5. As an integral part of preparedness training, develop specific plans and strategies for responding to occupations of campus buildings.

6. Be sure such plans provide for real time communication with all units and agencies (on campus and from off-campus) that might be involved, as well as with decision-makers in the civilian administration.

7. When formulating tactical plans, be detailed and specific, examine underlying assumptions, and determine precisely how many officers will be needed to execute each variant of the plans being considered.

8. When responding to group acts of civil disobedience, consider using the campus' Emergency Operations Plan, its personnel, and/or its equipment.

9. During all major operations, establish and properly staff an effective command post that is not vulnerable to encirclement.

10. During major operations, make sure that one senior commander remains in the field at all times -- and that the attention of senior command staff is not diverted away from field operations for substantial periods.

11. Be well prepared (in training and equipment) to communicate during major incidents of civil disobedience not only with the people who seem to be leaders, but also with their supporters and other demonstrators.

12. During demonstrations, determine which objectives really need to be achieved, then look for alternative means to achieve these ends that would require the least intrusive or provocative interaction with the crowd.

13. During demonstrations, effectively communicate to crowds what you intend to do, and why, before taking action that could affect the status quo, that the crowd might not anticipate, or that the crowd might misunderstand or perceive as threatening or provocative.

14. Secure permission from the Administration before requesting mutual aid (except in truly time-sensitive emergencies).

15. 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.

16. Establish systems to minimize response time by off-duty UCPD officers and to enable command staff to predict reliably how many officers will be on site at any given time.

17. Take visible steps to encourage confidence in demonstrators and observers that the video-taping of events that the Department is doing is even-handed and will generate an objective, reliable record of relevant conduct by both demonstrators and the police.

18. Hold full departmental debriefings within three calendar days of every major operation. De-brief with the civilian Administration within a week of each such operation.

19. In preparing Operational Reviews, (a) seek information from a balanced cross-section of sources, and (b) acknowledge and analyze evidence and views that are not consistent with the Department's proposed findings.

### **THE SPECIAL CHARGE**

Shortly after the occupation of Wheeler Hall and the related demonstration on November 20, 2009, Chancellor Robert J. Birgeneau announced that he would order an independent review of the events of that day by the campus' Police Review Board (referred to sometimes herein as the "PRB" or "Board"). Additional protest activities and an unforeseen need to appoint a new chair of the Board delayed commencement of this special assignment until January of 2010. On January 11, 2010, the Chancellor issued his formal charge to the Board. Emphasizing that the faculty and administration "are committed to fashioning policies and procedures that honor the University's commitments to freedom of inquiry and expression and to maintaining the kind of secure and safe environment without which free inquiry and expression would not be possible," the Chancellor asked the Board to "undertake the following important tasks:

1. A comprehensive and accurate account of the demonstration, including the conduct of the police and of the demonstrators, both inside and outside of Wheeler Hall, building upon the work done by the operational review [to be completed by UCPD], if and as necessary.

2. An evaluation of the possible use of excessive force by the police . . . in establishing and managing crowd control in the context of the actual situation, including the behavior of the demonstrators.

3. An evaluation of the response of UCPD command and campus administrators in managing the demonstration.

4. Recommendations, if necessary, in police training, policy and practice designed to reduce the severity of confrontations with police during demonstrations, including procedures for bringing in outside agencies onto campus and moving them onto the police line.”

The Chancellor understood fully that the kind of holistic review he was asking the Board to conduct could not incorporate all of the procedural tools and process safeguards that individual police officers or demonstrators would be afforded in civil litigation or a criminal prosecution. He also understood that, over many years of evolution, the University’s constituent elements have developed a carefully crafted system to determine, fairly, whether an officer has violated, in a specific instance, an individual’s rights or Departmental policy. Knowing that that system would function independently and could be triggered by any individual filing a complaint against specific officers, the Chancellor made it clear that in conducting its “general review” the Police Review Board was not to attempt to pass judgment on or make findings about specific instances of conduct by individual police officers or by individual demonstrators. The Board has adhered to this admonition.

### **THE BOARD’S PROCESS**

On January 11, 2010, the Chancellor appointed a new chair of the Police Review Board. The Board held its first meeting to consider how to meet its obligations under the Special Charge in early February. When apprised by UCPD of the volume of material that would need to be studied, especially the 160 YouTube videos and the hours of videotape recorded by the Department, the Board decided to retain an independent private lawyer,

Sarah Weinstein<sup>5</sup> to help isolate the instructive evidence and to collect information from additional sources.

On December 4, 2009, and again in early February of this year, the Chancellor's Office and the Board sent messages to the entire campus community describing the Board's Special Charge and soliciting input and information from all sources. In response to these calls, the Board received some useful material that helped shape additional inquiries. On April 8, 2010, the Board hosted a public meeting -- extending an invitation to anyone in the campus community who might want to provide the Board with additional information, to pose questions, or to offer different perspectives on the events the Board was examining. Relatively few people took advantage of this opportunity, perhaps because this meeting was scheduled, inadvertently, for the week campus elections were being held.

The Board received UCPD's "Operational Review" of the November 20th occupation and demonstrations in the latter part of March, 2010. That Review, described and discussed in some detail in a subsequent section, was accompanied by hundreds of pages of exhibits, as well as summaries of interviews of about 45 participants in or witnesses to the day's events. It also identified 160 YouTube videos, hours of video recordings made by officers on November 20th, and reproductions of media coverage.

UCPD provided us with some of this underlying material during February and early March, so members of the Board were able to begin assessing substantial portions of the material from which the Operational Review would draw.

On its own initiative, the Board acquired a large volume of documents from additional sources, including the Administration and the Alameda County Sheriff's Office. The Board also acquired information about relevant policies and procedures from campus

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<sup>5</sup>Ms. Weinstein has been a member of the California Bar since 1998 -- after graduating magna cum laude from Hastings College of the Law. Since then she has served as a law clerk to three federal judges and has worked for two major Bay Area law firms. Between 2006 and 2009 she was law clerk to then Magistrate Judge Wayne Brazil, now chair of the Police Review Board. Ms. Weinstein also has been trained at the Wright Institute, from which she will receive a master's degree in Counseling Psychology in the fall of 2010.

The Board is very grateful to Ms. Weinstein for the excellent work she has done in her capacity as our Independent Investigator.

police departments at the University of Wisconsin (Madison) and the University of Georgia (Athens).

In March, the Board's chair and Ms. Weinstein began conducting additional interviews of people who had played roles on November 20th, or who had information about matters pertinent to the events of that day. We interviewed 25 people as part of this process.<sup>6</sup>

After studying the Department's Operational Review and the exhibits attached to it, and after digesting the information the Board had acquired independently, we began the laborious tasks of piecing together a narrative of the events of November 20th and of analyzing the conduct of and the decisions by the individuals and groups who played significant roles in those events.

After constructing a factual narrative that was as accurate as the information we then had permitted, we received additional factual information from UCPD and the Administration. That additional factual information enabled us to answer some questions that our data had left open and to correct several factual errors we had made, one of which was quite significant.<sup>7</sup> Once we acquired this final set of data, we were able to complete this Report.

### **CONTEXT: HISTORICAL**

The events of November 20th did not take place in a historical vacuum. They took place against a general (long range) and a specific (more immediate) historical backdrop.

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<sup>6</sup>We tried unsuccessfully to interview a few additional people, including Maria Blanco, the lawyer who entered Wheeler late in the afternoon of the 20th, and Judith Butler, a professor who communicated with some of the barricaded protestors during the occupation.

<sup>7</sup>Before developing our first narrative of the day's events, we had been informed by an off-campus law enforcement source that some of the officers from the Alameda County Sheriff's Office who responded to UCPD's call for mutual aid were armed with machine guns. When questions about the accuracy of that information were raised, we went back to our original source and asked that he investigate this matter again. He cooperated fully with our request, conducted a more detailed investigation, then reported to us that the information he had originally provided was wrong. In fact, he stated, no machine guns had been brought on campus by any ACSO officers on November 20th. Instead, the weapons that looked a lot like machine guns were designed only to project "less lethal" rubber balls or bean bags.

To begin to understand the events of November 20th, we first need to understand elements of that backdrop.

For at least half a century, The University of California, Berkeley, has identified itself, and has been identified by others, as a passionate protector of freedom of inquiry and freedom of expression. The University takes great pride in its diversity – of people and ideas – and in its cultivation not simply of tolerance for, but genuine interest in, the widest ranges of questions, ways of searching for answers, values, and views.

Emotional intensity -- passion in commitment – is an integral part of the tradition of free inquiry and expression at Berkeley. Outlets for emotional intensity have become prominent features of Berkeley's history. In the minds of some students and faculty, these facts are an essential component of what it means to attend Berkeley. As some students have told us, one reason they joined the rally outside Wheeler on the 20th was their desire to have what they considered “the Berkeley experience.” That inchoate desire can be expected to enlarge demonstrations and protests on campus – independent of their specific agendas.

The campus' long history of respect for freedom of speech and toleration of demonstrations affects how the Administration and UCPD respond to events like those of November 20th. The authorities do not want to break radically with traditions and with the expectations that those traditions tend to generate in students, staff, and faculty. There is a loose-fitting but real socio-political fabric here that no one wants to tear crudely or unnecessarily.

So initial responses by the Administration and the campus police to what appear to be re-enactments of oft-experienced protest-scenarios tend to be slower and more cautious, tentative, and exploratory than responses to similar events might be in other places. This pattern of giving wide-sway to how political or social views are expressed builds expectations about how demonstrators will be treated. It also tends to dilute, generally, attention to rules – and to obscure from the vision of some people how significantly some violations of some rules can affect the rights and the legitimate interests of other people.



## **CONTEXT: PROXIMATE**

### **Limited Relevant Experience**

The context in which the events of November 20th unfolded included an additional significant dimension. Many of the people who played important roles that day were relatively new to their positions, and some were new to the campus. While the Chancellor and his Chief of Staff had been in Berkeley for several years, neither had been exposed to the kind of civil disobedience that would attend some of the campus demonstrations in the fall and early winter of 2009. The Vice Chancellor for Administration was on essentially full-time loan to the Office of the President (off campus) -- and another administrator had been asked only recently to assume his responsibility to oversee UCPD. The Associate Vice Chancellor for Public Affairs had joined the Administration less than 24 months earlier from the corporate world (so she had virtually no experience in a university setting). Thus, major players on the administrative team had not experienced the kinds of challenges that November 20th would pose.

The capacities of the campus Police Department also were strained by recent transitions and vacancies. The Chief of UCPD had been elevated to his position only a few months earlier. One of the two captains' positions in the Department was vacant -- and that captain would have been responsible for field operations. Two of the three lieutenants were new to their roles. In addition, budget cuts had resulted in the elimination of ten sworn staff positions: Assistant Chief, one lieutenant, one sergeant, and seven front-line officers. This state of affairs compromised the Department's ability to mount and manage an effective response to the occupation and demonstration.

### **September 24, 2009**

The significance of key administrators' relative lack of experience was magnified by the character of demonstrations that formed the more immediate backdrop against which the dramatic elements of the November 20th story played out. Well-publicized reductions in state support for education (at all levels) inspired a large, multi-dimensional, and well-organized rally and march on September 24, 2009. Some 5,000 people participated in this well-managed and orderly event, the leaders of which had worked

closely with UCPD and with the Administration to plan and coordinate the principal activities that occurred that day. .

But at about 5:30 p.m., after the day's organized and at least tacitly sanctioned activities had been completed, a group of 300-400 people, the vast majority of whom apparently were students, walked over to Wheeler Hall, which was open to the public, and peacefully occupied its large auditorium. About an hour and a half later, a custodian notified UCPD that people were locking the doors to Wheeler from the inside with chains and cable locks. When officers arrived, they found all three of the north facing doors and eight of the nine south facing doors illegally locked. As officers arrived, the protestors left the building peacefully through the one unlocked door. Within fifteen minutes of their arrival, the nine officers who had responded to the scene, aided by staff from Physical Plant, had cut off the illegal locks and cleared the building.

The fact that this large group chose Wheeler Hall, the largest classroom building on campus, as the venue for continuing its unauthorized protest, and the fact that this activity included illegally locking virtually all of the doors into Wheeler, should have alerted UCPD and the Administration that future protest activity might include an occupation of Wheeler that would be designed to prevent entry into and normal use of this important campus facility. The fact that this occupation ended peacefully, voluntarily, and promptly also was significant, of course – but there was another aspect of the situation that could have been a source of concern.

### **A Center-less 'Movement'**

While monitoring the departure of the demonstrators from Wheeler auditorium on September 24th, UCPD officers were told by some students that their group had not put the locks on the doors. One officer also overheard some students talking among themselves about how an unnamed group "with a different agenda" had been responsible for locking the Wheeler doors. A short time later, when about 200 of the people who had left Wheeler re-grouped on lower Sproul Plaza, officers who were monitoring that situation were told that the group had no leader or spokesperson -- that "all of them were leaders."

These communications reflect what appears to be a significant fact about the aggregations of people who participated in protest activities on the campus during the fall and early winter of 2009. While often a modest-sized group of people assumed an organizing or leadership role in relation to particular demonstrations, or made calculated efforts to involve and animate others, viewed in the aggregate, the protest activity on campus over the fall was not the product of one coherent movement, was not driven by one coherent agenda, and was not directed or controlled by any one group or cadre of leaders.

Instead of a well-defined ‘movement,’ the protests in the fall of 2009 seem to be more accurately understood as the product of an unsteady and in some measure fortuitous convergence of a wide range of groups and individuals around some shared concerns and general sympathies. As suggested in the previous section, some students who were generally inclined to be sympathetic with the goals of the event were motivated in some measure to participate so they could be part of “the Berkeley experience.” Others were very supportive of only one (or of only some) of the concerns that animated the crowds as a whole.

Moreover, the “General Assembly,” a major umbrella organization for movement-related groups and activities, rejects top-down leadership in favor of a vision of organic democracy under which every individual and every fluidly formed sub-group is entitled, absolutely, to set its own agenda for reform and to mark out its own path forward.

So, in some measure, large demonstrations or protests during this period were likely to be, in a conventional sense, center-less. They were multi-dimensional, changeable, and were likely to move in concerted action not so much as a result of orchestration or direction from a stable central leadership as from a fortuitous convergence of multiple disaffections – or from intelligent capitalization on such convergences by a smaller group of well-placed and skillful activists.

These observations are not meant to suggest that the individuals and groups who have participated in the demonstrations on campus have not been animated by sincerely held beliefs and by real and strongly felt emotions. Rather, we make these observations because they raise serious questions about whether the plans that UCPD and the Administration develop for responding to protests always should emphasize or depend on

identifying and working with the ‘leaders’ of any given activity or demonstration. In particular, the amorphous and changeable character of a protesting crowd may call for very different communication strategies – strategies designed to reach, simultaneously, as many demonstrators as possible.

### **The October Demonstrations**

In October there were three peaceful demonstrations against reductions in taxpayer support for education. The first two were inspired by a decision by the Administration to reduce the number of hours that certain campus libraries would be open. Significantly, student members of the General Assembly coordinated these demonstrations (called teach-ins) in advance with the Administration and with UCPD. Thus, the teach-in at the Kroeber Library on October 9th and 10th, and the much shorter teach-in at Tollman Hall on October 16th, were sanctioned events in which the protestors made and kept promises about how they would behave and when they would leave. Neither teach-in significantly interfered with the use of the affected facilities by others.

The third October demonstration occurred late in the afternoon of the 24th, when some of the people who had been attending a statewide conference to mobilize support to restore funding for all levels of education in California, joined by some members of AFSCME, conducted a peaceful protest at President Yudof’s residence.

### **The Administration's Preparation for the November Strike**

It was against this backdrop, reassuring at one general level, but punctuated with warning signs, that an entity styling itself the “Solidarity Alliance,” working with the General Assembly, called upon “the allied students, workers, and faculty to unite in a system-wide Three Day Solidarity Strike from November 18th to November 20th.” The call encouraged “all members of the UC community in Northern California to converge on the Berkeley campus to strike for these demands [roll backs of student fee increases, reinstatement of laid off University employees, elimination of compelled furloughs, etc.] beginning with a mass rally on November 18th and *a mass action on November 20th to call for escalation and continued struggle.*” (emphasis added).

As promoted (through aggressive and widely disseminated publicity), this “strike” represented what was potentially a significant departure from the demonstrations of September and October. It would have multiple, ambitious purposes and would integrate enthusiasms for multiple causes. Professionals from the world of organized labor would pull lead oars. And it would employ a new and, at least potentially, significantly more disruptive tactic: the general strike.

Appreciating the potential significance of the contemplated three-day strike, Claire Holmes, Associate Vice Chancellor for Public Affairs, arranged a conference call for Friday, November 13, 2009, to which she invited some 25 other high-level administrators, including Captain Margo Bennett of UCPD.<sup>8</sup> No students were included. How many of the invitees actually participated is unclear. Nor is it clear that the group that did participate developed concrete plans for responding to any particular scenarios that might unfold. Because the invited group was so large, it is unlikely that all the participants had an opportunity to make useful contributions – or that the hosts of the group were able to coordinate a detailed discussion of any single topic or issue. The only decision to clearly emerge from this first meeting was to hold a series of monitoring phone conferences the following week.

On the afternoon of Friday, the 13th, Chancellor Birgeneau convened a “mandatory” meeting of about a dozen high level administrators, including the Chief of

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<sup>8</sup>Captain Bennett did not participate in this conference call because she was out of the area at a pre-scheduled training.

UCPD, Mitch Celaya. Again, no students were included; nor were any representatives of any faculty organizations invited.

The agenda was ambitious for a 45-minute meeting. It included an “Overview of Planned/Anticipated Events,” “Campus Impacts,” “Campus Responses/Real Time Decision-Making,” “Campus Spokesperson,” and “Media/Press Conference.” Given the fact that the “Planned/Anticipated Events” already included some 15 separately scheduled activities, it is unlikely that any one of the items on this agenda was discussed in detail -- or that any concrete plans were developed for responding to specific kinds of protest activities. It is not even clear that this group reached all the items on the agenda. If decisions were made about “Real Time Decision Making,” they apparently were neither remarkable nor well executed. In interviews we conducted months later, no one could remember any specifics about this meeting -- or about any of the phone conferences held during the work-week that began on November 16th.

In at least one of these meetings there apparently was some discussion about the possibility of activating the campus’ rather elaborate “Emergency Operations Plan” or its emerging (but not yet finalized) outline for “Response to Limited Emergencies.” It is not clear, however, that this possibility was given substantial consideration, or that significant input was solicited from Stephen Stoll, the Director of the Office of Emergency Preparedness.<sup>9</sup>

The “Emergency Operations Plan” had been developed primarily in contemplation of natural disasters (e.g., earthquakes and fires) or “terrorist threats,” which is probably why no one in the Administration seems to have seriously considered activating it in connection with the events of November 18th - November 20th. By its own terms, however, the EOP may be activated whenever “there is an extraordinary situation on campus that requires specialized communications and/or coordination of multiple activities.”

The Emergency Operations Plan was in at least its fifth iteration when it was revised and re-promulgated in April of 2009, just a few months before the demonstrations

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<sup>9</sup>Mr. Stoll reports to the Chief of UCPD and to the Associate Vice Chancellor for Business and Administrative Services. Given this circumstance, other administrators may have assumed that it was unnecessary to seek substantial input directly from Mr. Stoll.

that autumn. Then Assistant Police Chief Mitchell Celaya and Captain Margo Bennett were among the six management level officials who signed off (literally) on this latest revision of the Plan. The Plan expressly authorizes the Chancellor or his delegee to declare a state of emergency on campus when “a civil disorder . . . poses the threat of serious injury to persons or damage to property, or [when] other seriously disruptive events [occur],” and “[e]xtraordinary measures are required immediately to . . . maintain the orderly operation of the campus.” (p.4)

The plan that is styled “Response to Limited Emergencies” is of considerably more recent vintage (having not been finally approved until mid-January of this year). It apparently was still in the ‘crafting’ stage in November of 2009. This plan defines a “Limited Emergency” as “an unforeseen event or development that affects multiple units, a whole building . . . or a quadrant of campus and requires immediate and sustained action to prevent bodily injury or property damage.” Under this definition, the disruptive and unlawful occupation of Wheeler Hall, preventing its use by thousands of students, faculty and staff, certainly would seem to qualify as a “Limited Emergency.”

It is not clear to us why serious consideration was not given to the possibility -- if things went south during the three-day strike -- of tapping into or using the apparently considerable machinery for coordinating command, logistics, and communication that these plans purport to establish.

The week that began on November 16th featured several more meetings of large groups of administrators. During the first of these, which took place on Monday, the participants again reviewed (presumably only at a general level) the events that were scheduled for the period of the strike. The outline of scheduled events that was discussed at this meeting, however, included significant elements that had not been on the outline that had been discussed the preceding Friday at the meeting called by the Chancellor. Specifically, the new outline included the following: for both Wednesday, the 18th, and Thursday, the 19th: “Possible disruption of classes. Movies in Wheeler Auditorium -- possible efforts to take over the auditorium.” Again, no one can recall whether this group

of administrators (or anyone else) tried to develop any plans for responding to such a possible take-over.<sup>10</sup>

Another phone conference with a large group of administrators was held on Tuesday, the 17th. It lasted less than 45 minutes and yielded only one visible decision: to reduce the number of daily “check-in” calls from three to one on each of the three days of the strike.

Administrators knew (from past experience and by monitoring the internet) that there was a possibility that the strike activities would include marches through campus buildings (both administrative and classroom). On Tuesday, the 17th, staff and faculty were reminded by email that “the majority of our buildings are open to the public” and that, as a consequence, “its [sic] possible your building may be marched through or even have minor disruptions, so it is best to be a little more vigilant for those who may be roaming our halls.” The same message encouraged faculty and staff to review the “standard operating procedures for this kind of eventuality.” In their entirety, these standard operating procedures (which emanated from UCPD) consisted of the following: “If marchers enter your building, let them. Try to carry on business as usual. If the noise becomes too great, or the crowd too large, feel free to close and lock your office doors -- this is a departmental decision. Do not close your building unless the Police advise you to.”

The Administration and UCPD were aware of two additional facts of potential significance before the strike began. First, Media Relations reminded a broad range of administrators that “the *unions* will be on *strike for just two days, Wednesday and Thursday*. The student coalition’s call for a three-day strike (walkout) might lead to some confusion among individuals who work with striking employees.” (emphasis added) This

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<sup>10</sup>The prospect of an attempt to take over Wheeler auditorium might not have provoked much concern because a similar, apparently spontaneous take-over on September 24th had ended peacefully – with demonstrators voluntarily leaving the building when told to do so by UCPD.

On the other hand, the September 24th occupation of the Wheeler auditorium had been accompanied by the unlawful locking of all but one of the 12 doors into the building -- an obviously orchestrated plan, apparently by a splinter group of protestors whose tactics were more aggressive than those of the bulk of the students who occupied the auditorium itself and left it when ordered to do so.



information, presumably originating in Labor Relations, should have played into the Administration's and UCPD's efforts to determine whether the people who occupied Wheeler Hall on Friday, the 20<sup>th</sup> were primarily labor agitators or students.

The second array of potentially significant information that the Administration and UCPD knew before the strike began was set forth in the internet publicized agenda for the three days of activities. This agenda called for "sit-ins" at Dwinelle Hall, beginning at 8:00 a.m., on both the 18th and the 19th, for a "Second Strike Meeting: What's Next?" at 4:00 p.m. on the 19th, and for an undisclosed 'escalation' of the protest on the 20th.

When alerted to the anticipated sit-ins, Vice Chancellor for Student Affairs Harry Le Grande asked Police Chief Celaya if he had "any suggested strategy?" Celaya responded by opining that the sit-ins likely would be "just a gathering point" for a teach-in or to review the events scheduled for the days in question. Noting that the campus police could not prevent students from entering this public building, Celaya told Le Grande that "if the group occupies space that prevents a class from occurring we could take enforcement action then." Otherwise, Celaya seemed content to let events unfold under the watchful eyes of trained campus observers -- but without police intervention.

Thus, it appears that the preparation and planning that the Administration and UCPD did for the strike was conducted only at very generalized levels and did not include trying to develop strategies, protocols, or tactics for responding to any specific kinds of civil disobedience.

It also is clear, from subsequent events, interviews, and reviews of internal communications (subsequently made public) that the Administration had not generated and publicized policies or guidelines "for balancing the right of protest with the right of our students to attend class, and of our faculty to teach them." Despite the formal promulgation, years earlier, of "Regulations Concerning the Time, Place, and Manner of Public Expression," neither the campus as a community nor the Administration as its steward had in fact decided "how much and how long [classroom] buildings should be allowed to be held before the threat of police intervention is made." The Chancellor had made it clear to Chief Celaya that the campus police should take appropriate steps to end acts of civil disobedience that significantly impaired the University's pursuit of its academic mission, but the Administration had not made this policy clear to the larger

campus community. Nor had the Administration attempted to refine or elaborate for that larger community the criteria that it would use to determine when protest-conduct so interfered with academic pursuits that the campus police would take immediate action to end it. Stated differently, there was no consensus, even within the Administration, about what “the scope and limits of acceptable protest” should be.

### **November 18, 2009**

The advisability of developing and publicizing such a consensus became evident on November 18th, the first day of the strike. At about 3:00 p.m., after a day of large but peaceful demonstrations, a crowd of between 200 and 300 people (estimated by UCPD) surrounded California Hall. They were loud, verbally aggressive, tried to force entry, and blocked exit or entry by others. At least one rock was hurled at the front door of the building. One of the protestors (apparently not affiliated with the University) addressed the crowd with a bullhorn, trying to exhort it to break into the building. But he failed to persuade the vast majority of the demonstrators to escalate their protest into a physical assault on the building.

This demonstration ended about 4:00 p.m., when a substantial number of the protestors walked over to Dwinelle Hall for a scheduled “What’s Next” meeting. When that meeting concluded, some 70-80 demonstrators, monitored by UCPD, marched over to the A&E building. Before the police could take preventive action, 37 of these people entered the building. UCPD prevented the remaining 40 or so demonstrators from entering, but the 37 who had entered first closed the door behind them -- attempting to tie it off from the inside to prevent access by anyone else. When Vice Chancellor Ed Denton, who was working in the building, told the protestors that they would be arrested unless they left voluntarily, all 37 sat down in place, refusing to leave.

Presaging the inaccuracy of communication that would bedevil administrators on the 20th, Vice Chancellor Le Grande emailed other high-level administrators at 5:09 p.m. that “a group of about 15-20 students have taken over the 3rd floor of the A&E Building.”

Meanwhile, UCPD had been able to enter the building via a fire escape. When the officers made their presence visible, the occupiers presented no resistance. They cooperated as the police identified them, issued campus exclusions to the non-affiliates

and put the students on notice that their conduct would be referred to the student justice administration.

When the processing was completed (about 6:30 in the evening), UCPD determined that 18 of these protestors were students (4 at UC campuses other than Berkeley) and 19 were non-affiliates. None were arrested. Significantly, eight or ten of the students who participated in this occupation also participated, two days later, in the occupation of Wheeler Hall.

The fact that slightly more than half of the people who occupied the A&E building were not affiliated with the University loomed significant in the minds of high level administrators and Chief Celaya, contributing to their uncertainty on the 20th about who the occupiers of Wheeler were.

By early on the morning of the 19th, Chancellor Birgeneau had reviewed Chief Celaya's report about the occupation of the A&E building. Responding to the Chief's report, Chancellor Birgeneau commended the campus police for having done what appeared to be "a very good job," but his primary message was an admonition that "you must act quickly if there is any sign of violence. Also, we cannot let the protestors, especially outsiders, block the entrances and exits to buildings. You should act quickly to arrest outside agitators who violate our rules."

Given the participation of a significant number of non-affiliates in the take-over of the A&E building, the Chancellor's focus on "outside agitators" was understandable. His message, however, could have been understood as indicating that, informally, the campus had decidedly different policies for students than for non-affiliates, and that the authorities should be considerably more forgiving of the former. Campus rules, he seemed to signal, should be strictly enforced only against non-affiliates.

### **November 19, 2009**

Events on November 19th were, if anything, even less reassuring. A demonstration and carefully orchestrated 'garbage dump' in front of California Hall had long been planned (as part of the strike) for that afternoon. Leaders of unions who were protesting reductions in the numbers of and compensation for staff, including custodians, had planned this event in full, if not official, view of the Administration. The garbage was to

be ‘dumped’ in front of California Hall tidily – in sealed garbage bags, all of which would be dutifully removed at the end of the day by the union picketers.

Shortly after the demonstration got under way, however, things got out of hand. There were considerably more students present than members of unions – and the latter could not control the former. Students (perhaps in concert with some non-affiliates) raced around the building, opened garbage bags, overturned garbage containers, and threw some garbage at windows and walls. Students also surrounded the main entrance to California Hall and tried to push their way inside the building when an employee tried to exit through that door (she was visibly shaken when she was pushed back inside by the crowd).

Realizing that the credibility of their cause was being jeopardized by this kind of conduct, the union demonstrators tried to restrain the students and eventually succeeded in persuading them to leave. But the experience sobered the union leadership, which communicated informally to UCPD that there would be no significant or direct union participation in whatever protest activities were planned for the next day, Friday the 20th. This confirmed the impressions other members of the Administration had been given earlier in the week, when they learned that unions were planning to picket and to participate in demonstrations only on the 18th and 19th.

### **Civil Disobedience on Other UC Campuses**

One additional feature of the context in which the events of the 20th played out warrants comment. Protest activities on this campus were not taking place in isolation. Instead, demonstrations and disruptive protest activities were occurring system-wide. The campuses in Santa Cruz, Davis, and UCLA, at least, were sites of significant group actions -- some of which included civil disobedience in the form of occupying buildings. Given the course of events on other campuses, as well as the occupation of the A&E building here on the 18th, it should not have been a complete surprise that students decided to occupy Wheeler Hall on the last day of the strike, the day the demonstrators had publicly promised to “ESCALATE” the intensity of their protest actions.

## **NOVEMBER 20TH: GENERAL OBSERVATIONS**

Before exploring the events of November 20th in some detail, there are a few broader points we should make and a few important facts we should highlight.

Within Wheeler, for virtually the entire day, things were relatively calm. There was intermittent chanting (e.g., “Whose University? Our University”), occasional yelling, and occasional banging from the inside on the big wooden doors. And there were a few scattered outbursts of intensity, e.g., when the occupying students saw officers testing the security of the doors and feared that the police were about to force entry into the barricaded area. But during the vast majority of the time, there was little interaction between the police and the protestors. For the officers who were stationed inside Wheeler, the day was marked more by boredom and banality than by drama.

There was activity by the barricaded students, but it took the form, for the most part, of discussion and debate within their ranks and of communication with their supporters on the outside. Some of what they communicated was inflammatory and inaccurate. But most of the communication from the students inside Wheeler seems to have been sincerely hortatory or intended either to explain demands or to understand developments beyond their vision.

It was outside Wheeler that the principal story unfolded. It was outside Wheeler where nature conspired to accelerate fatigue and shorten tempers. For substantial periods, the weather was awful. Some of the police officers stood in the rain for hours on end -- as did some of the demonstrators. As the day wore on, these conditions sapped emotional and physical resources, frayed nerves, and weakened powers of restraint.

Despite the challenging conditions, something approximating peaceful coexistence between officers and demonstrators was the principal state of affairs for the vast majority of the time.

For much of the day, the police just watched. Most of the time, demonstrators and on-lookers honored the perimeter line the police had established. There was lots of conversation, some even between officers and members of the crowd. In short, there were substantial periods during which not much was happening.

There also were substantial periods in which the crowd was more animated and vocal, but decidedly non-violent. Chanting was sustained, slogans were yelled (e.g., “No

justice. No peace”)<sup>11</sup>, rallying cries were repeated, speeches were made, exhortations abounded. During these sometimes substantial periods, at least earlier in the day, the tone of the crowd was dominated by seriousness of conviction and passion of belief, but was accompanied by a sense of restraint and reassurance that seemed rooted in an implicit appreciation of the essentialness of civility, broadly understood.

There were times, however, when civility, even broadly understood, was nowhere in sight. There were several violent confrontations between police and demonstrators. For most of the specific instances that we describe in subsequent sections, we do not pretend to understand cause and effect. In most of these incidents we see a dynamic that included (1) intense agitation in the crowd (some of it instigated by calculation),<sup>12</sup> (2) aggressive and sometimes obscene verbal challenges to the police, (3) forceful efforts by police to penetrate or move the crowd, and (4) physical resistance and push back by the crowd.

With sadness, in the pages that follow we chronicle shortfalls in restraint on both sides. By the police, some of these shortfalls seem to have been preceded by arguably unwise (but not unlawful) shows of force, as well as by failures of communication.

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<sup>11</sup>This particular chant had been associated with earlier protests, led by labor organizers, over lay-offs and furloughs. Administrators who heard this chant on the 20th cited it as one of the reasons they suspected that at least a substantial number of the barricaded protestors were non-students.

<sup>12</sup>In one document that purports to report results of a meeting of the General Assembly that occurred some ten days after the occupation of Wheeler, the author states; “We valued to [sic] energizing and polarizing effect of confrontational tactics such as occupations.”

In interviews, we have been told about agitators among the protestors who tried to encourage more aggressive actions by the body of demonstrators, but that such exhortations generally had little effect on the bulk of the crowd.

We also received an email from a student who participated in the demonstration outside Wheeler until becoming disillusioned by the mind-set of some of the more activist protestors. This student reports that “the leaders of the protests were improperly encouraging protestors to lift up barriers and push forward. It was implied that this was being done in order to make the Riot Police feel threatened. I was an active participant in the protests, but I feel that this crossed a line and made the police who were just doing their jobs feel uncomfortable. When I noticed this, I spoke to the person with the microphone and explained that we cannot threaten the police but they persisted. I ceased to protest after this incident.”

Significantly, the almost instantaneous broadcasts of the occasionally considerable use of force by the police apparently attracted more demonstrators to the site. These scenes also intensified fears in the crowd about what the police were doing, or would do, to the barricaded protestors inside Wheeler.<sup>13</sup> Such fears set the stage for more aggressive conduct by some of the demonstrators.

Ironically, it was excesses and errors in communication that characterized and perhaps caused some of the least handsome behavior by demonstrators. Insults were hurled at the police. Obscenities abounded.<sup>14</sup> At least a few calls to initiate violence were openly made, e.g., to storm the barricades and take the entire building. Physical resistance to the movement of police officers or equipment was promoted and orchestrated. Video recordings capture aggressive taunting by some of the demonstrators and sometimes threatening chants, e.g., “They’re losing. They’re desperate,” “We’ve got the cops surrounded,” and “We’ve got you surrounded.” And while a small team was inside Wheeler trying to negotiate with the occupiers, ‘leaders’ on the outside were urging demonstrators to surround the building in dense formations to prevent anyone from leaving it.

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<sup>13</sup>One student we interviewed opined that the violent confrontation with demonstrators on the southwest side of Wheeler that occurred when officers brought in additional barricades shortly after 1:00 p.m. was a turning point in the event – re-directing the demonstrators’ animus from the Administration to the police.

According to this student, the dramatic use of force during this incident inspired demonstrators to send video images to other students and to urge them to come join the demonstration – a message that had more power because of the apparent “police brutality.”

This student also believes that as more confrontations occurred over the course of the afternoon, demonstrators became more fearful that the police would brutalize the barricaded protestors when officers eventually forced their way into Wheeler’s second floor.

At least some of the students felt that they needed to increase the size of the crowd around the building in order to deter police brutality (by increasing the number of adverse witnesses and the size of counter-forces) and, if necessary, to prevent the police from taking arrested protestors out of the immediate area – to sites where there would be no independent witnesses to the way the police treated the arrestees.

<sup>14</sup>For example, demonstrators shouted “Fuck the pigs” during and after some of the confrontations.

These kinds of moments were exceptional. They were not, by any means, the norm. But, accompanied as they were by intense emotion in the crowd, when they occurred they made even sympathetic faculty and students fear that rioting might erupt.

And there were times when the size of the crowd outside Wheeler made the prospect of chaos more than a little unnerving. There are wild inconsistencies between estimates of the size of the crowd by different people at many of the same junctures during the day, but the demonstration apparently included about 2,000 people at its peak in mid and late afternoon, after the worst of the rains had subsided. Earlier in the day, the size and composition of the crowd had varied considerably -- but the consensus is that students always constituted the vast majority of those present.

The police presence also was quite substantial, especially in the afternoon. Initially, there were only about a half dozen officers on the scene (all UCPD). At 7:20 a.m., about a dozen officers from the Berkeley Police Department (BPD) arrived. Additional UCPD officers arrived intermittently over the course of the morning, but it wasn't until mid-afternoon that substantial numbers of officers began arriving from other jurisdictions. Some officers donned riot gear during the first couple of hours of the demonstration -- but by mid afternoon helmets with shields and drawn batons were common.

Over the course of the 15 hour day, some 45 of the 64 sworn officers of UCPD participated in the response to the occupation of Wheeler. The total number of officers who participated from other jurisdictions was much larger: 48 from the Berkeley Police Department, and 178 from, in combination, the Alameda County Sheriff's Office, the Oakland Police Department, and the University of California, San Francisco. All together, upwards of 280 officers took part in the day's events.

## **NOVEMBER 20TH: THE NARRATIVE**

### **The Early Hours**

The story of November 20th began on November 19th. That evening, when the General Assembly convened, its factions apparently could not agree on what kind of



“escalation” of the three-day strike and protest should be launched the next day. After emotional debates, one group of about 45 students decided that they would occupy Wheeler. Other students who had participated in the debate refused to join them.

Because Wheeler was generally left open to the public (primarily so students could study in its classrooms) until at least 10:00 p.m., it may well be that the group of students who had decided to occupy Wheeler simply went into the building that evening and remained there (presumably in hiding) when it was locked for the night.

Once left to their own devices, the students put U-shaped bicycle locks, chains, and straps on the interior side of the doors leading into the building, then piled furniture and chairs into large barricades behind each entrance -- effectively sealing off Wheeler from outside entry.

Operating on normal staffing formulas, UCPD had five officers on duty during this period. The Department had planned not to augment normal staffing until later in the morning -- in time to cover the Big Game rally in front of Sproul and the demonstration around California Hall that were scheduled to begin about noon.

At about 5:55 a.m., [redacted], while on routine security patrol of central campus, noticed that the lights in Wheeler were on. When she stopped to investigate she discovered that tables and chairs had been piled behind each door to Wheeler. Having been told earlier that night that there might be a protest inside Wheeler,<sup>15</sup> she promptly advised UCPD dispatch that there might be a problem in that building.

Then she noticed that there were people outside Wheeler who appeared to be taking photos and acting as lookouts. She immediately radioed this information to the other officers who were on duty, all four of whom, led by [redacted], responded to the scene. Responding officers talked to and “field identified” some of the people who were outside Wheeler. It is not clear whether they determined that these people were students.

Officers noticed that there also were people inside the building, looking out from second floor windows. Some of the people on the outside were yelling to people on the inside and talking on cell phones (perhaps to the people on the inside, perhaps to the media).

When [redacted] saw some of the people who had been milling about in

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<sup>15</sup>[redacted] incident report for November 20, 2009.

front of Wheeler start to move closer to the building, she decided to cordon off the entire perimeter of this large, central campus building with yellow crime scene tape. The words “POLICE LINE DO NOT CROSS” appear at regular, close intervals on this tape. [redacted] believed that by surrounding the building with this tape she was declaring the entire area within its perimeter to be a crime scene and off limits.

Officers told the people in the area in front of Wheeler that they could not cross the tape. The people seemed to understand and comply, permitting the officers to begin trying to figure out how to get in the building.

At this point, [redacted] ordered the dispatcher to call the day shift (another four or five officers) in early. Concerned that this additional small complement of officers would not be enough, at 6:14 a.m. [redacted] (without command approval) had the dispatcher request back-up from the Berkeley Police Department (BPD). When the dispatcher called BPD, she did not specify how many officers should be sent or what equipment they should bring.

At about 6:20 a.m., [redacted] and [redacted] discovered an unlocked basement level window on the westside of Wheeler. They notified [redacted], then climbed into a dark, unoccupied classroom (which turned out to be classroom 24).

[redacted] and [redacted] waited in the dark classroom, which was locked from the hallway, for additional officers to arrive. When they heard students apparently trying to further barricade the doors to the classroom, the two officers drew their batons, opened the door, entered the hallway, and ordered the four protestors they encountered to the ground. Three complied.

According to [redacted] subsequent report, the fourth protestor “charged toward me and attempted to grab me with both his open hands. I sidestepped to my left . . . then applied multiple zone one and two shaft strikes” to his body.[redacted] pushed the protestor to the ground, then had to strike him again with his baton as the protestor, according to [redacted], tried to kick him. Refusing [redacted] orders to remain on the floor, the protestor tried several times to get to his feet. Each time [redacted] struck him with his baton. After several attempts, the protestor managed to get all the way up and sprint off. [redacted] decided not to chase him because he did not want to leave [redacted] alone with the three protestors who were being taken into custody.

If shared with other officers or command staff, [redacted] account of his confrontation with the fourth of these protestors would have done nothing to reassure law enforcement that the people who occupied the other parts of Wheeler were non-violent.

At least two of the three persons who were arrested at this time were students. They were charged (initially) with burglary and transported to Berkeley City jail. Later, these charges were changed to trespassing (consistent with charges subsequently filed against other occupiers of the building).

Shortly after the three suspects had been cuffed, [redacted], having entered Wheeler through the same window, arrived on the scene. A team of UCPD officers then searched the rest of the building and discovered that the other protestors had barricaded themselves into the second floor, securing all four of the heavy fire doors that opened into that floor with chains or U-locks and stacked furniture.

In the meantime, the barricaded protestors had opened classroom windows on the west side of Wheeler, hung banners denouncing the fee hikes and the lay-offs of custodial workers, and had begun addressing the group on the outside. The demands they described to the relatively small crowd consisted of the following: (1) grant amnesty to all the people who had engaged in acts of civil disobedience during the three day strike, (2) rehire the 38 custodial workers who had been laid off, (3) maintain the current business occupants of the Bear's Lair food court, and (4) continue in perpetuity to lease the University-owned Rochdale apartments to a student cooperative for one dollar a year.

The protestors who spoke through the open windows also told the crowd that more supporters were en route and that they (the barricaded protestors) intended to continue their occupation until their demands were met or the end of the semester.

By shortly before 7:00 a.m., media external to campus were on the scene – apparently having been alerted by the students who were occupying the second floor or their compatriots outside the building.

By about 7:00 am, a team of 8 UCPD officers had completed its search of Wheeler and had confirmed that the occupiers were confined to the second floor. Led by [redacted], a group of officers went to each of the four barricaded sets of doors and, through the thin space between them, made essentially the same announcement to the protestors. Concluding that he was not dealing with an “unlawful assembly” (as that

phrase is used in UCPD protocols), but with persons who clearly had violated state law and would, if permitted to continue to do so, prevent students, faculty, and staff from pursuing core academic pursuits, [redacted] did not simply order the barricaded protestors to disperse and offer them a route for doing so. Instead, he identified himself as a police officer, announced that the protestors were violating the laws against trespass, told them they would be arrested, and ordered them to open the doors. In what he subsequently called a “ruse,” [redacted] also “threatened to use pepper-spray on them if they did not open the doors. That did not work.” The doors remained closed.

At about 7:20 a.m., several units from the Berkeley Police Department drove onto campus and up to Wheeler. Led by [redacted], this squad included about ten officers. [redacted] (UCPD) instructed them to park their vehicles on the southeastern side of the plaza in front of Wheeler Hall.

Some of the BPD officers transported the three arrestees to the Berkeley City jail. The remaining officers were stationed on the perimeter around Wheeler.

During the period between about 6:30 a.m. and 7:30 a.m., [redacted] and [redacted] shared responsibility for commanding field operations -- [redacted] on the inside of Wheeler and [redacted] on the outside. No command post (in any meaningful sense of that term) was established. At first, [redacted] patrol car served as the ‘command post.’ Then [redacted] moved the ‘command post’ (still in a patrol car) to the south side of Wheeler. Next, at around 9:30 a.m., the command post was moved into a classroom on the first floor of Wheeler (room 100). The command post, such as it was, remained in this location (even though it was at times surrounded by the crowd) until sometime during the noon hour, when it was moved into UCPD offices in the basement of Sproul.

At about 7:30 a.m., Captain Bennett arrived at the UCPD offices. She learned immediately that the Alameda County Sheriff’s Office (ACSO) already had called (having heard about the occupation through media coverage) to ask if UCPD needed ACSO buses to transport arrestees. Captain Bennett instructed the dispatcher to decline this offer (a decision she later changed).

Captain Bennett arrived at Wheeler at 7:37 a.m., where [redacted] briefed her. At about 7:45 a.m., Vice Chancellor Harry Le Grande and Associate Vice Chancellor Ron Coley arrived outside Wheeler. They briefly discussed the situation with Captain Bennett.

Because they were on their way to a breakfast meeting with the Chancellor at 8:00 a.m., Dr. Coley asked Captain Bennett to call him at 8:30 a.m. with an update.

Between 7:00 a.m. and 8:00 a.m., the crowd continued to expand, but apparently not dramatically, perhaps reaching 100 people spread around the building.

Estimates of the size of the crowd would remain difficult to make, inconsistent, and unreliable throughout the day -- in part because demonstrators were spread all around the considerable perimeter that the police had established, and in part because large segments of the crowd changed locations, fairly frequently, in response to developments at various points around or near the building.

### **Captain Bennett's Communication with the Occupiers**

At 7:50 a.m., [redacted], one of the students barricaded inside Wheeler, telephoned the UCPD office and asked to speak to someone with authority. The office informed Captain Bennett about the call. Captain Bennett returned to UCPD offices a few minutes later to return the call. She reached [redacted] at the number that had been provided – but was not sure who [redacted] was. [redacted] told Captain Bennett that about 60 people were participating in the occupation of the second floor of Wheeler, that none of them were armed, and that all of them were peaceful. [redacted] also told Captain Bennett that the group's demands included amnesty for themselves and reinstatement of the 38 recently laid off custodians.

Captain Bennett does not recall whether she asked [redacted] whether the people participating in the occupation were students, staff, or outsiders.

Twice during this conversation, Captain Bennett, through [redacted], ordered the occupiers to come out of Wheeler. Twice the occupiers refused.

After failing to persuade the barricaded protestors to come out, Captain Bennett said she would call [redacted] back later. Then she asked staff to investigate [redacted] status. It was later confirmed that [redacted] was a student.

Over the course of the morning, Captain Bennett spoke with [redacted] by phone on two additional occasions. In each conversation, Captain Bennett ordered the occupiers to leave Wheeler. Each time the occupiers, speaking through [redacted], refused to do so unless the Administration met their demands.

### **Blocking Sather Road**

Throughout the early morning, the group that remained near the police perimeter around Wheeler was peaceful and respected the line demarcated by the yellow police tape. Another group, however, began forming themselves into a barrier across Sather Road, the wide, paved pathway between Wheeler and Durant. As it turned out, this group of protestors intended to block persons from using this major route between the southern and northern parts of the campus. Apparently one goal of this deployment of protestors was to persuade people who used this route to abandon their other immediate plans and join the demonstration in support of the occupiers of Wheeler.

Sometime around 8:00 a.m., Amanda Carlton, Assistant Director of Campus Life and Leadership, received (by telephone) a complaint about this element of the protest. When Ms. Carlton arrived at the scene at about 8:10 a.m., she saw that a group of students -- some 4-5 people deep -- was indeed blocking the entire width of the roadway and chanting "hold the line." When she tried to get through on the pathway, one of the protestors pushed her back and told her to go around. When Ms. Carlton tried another route, between Dwinelle and Durant, she also met resistance from demonstrators. She later reported seeing other people turned back by the same lines of protestors.

Ms. Carlton contacted [redacted], who met her on the west side of Wheeler. At about 8:30 a.m., he escorted her into the first floor of the building. Presumably [redacted] learned at this time (if not earlier) about the protestors blocking Sather Road.

It is not clear that the authorities took any action in response to this particular part of the demonstration. It is clear that if any action was taken, it was ineffectual. People who wanted to use Sather Road were still being blocked by large groups of demonstrators as late as 4:30 in the afternoon.

### **UCPD Predicts Removal by 11:00 a.m.**

Chief Celaya arrived at Wheeler at about 8:15 a.m. He was briefed by Captain Bennett and [redacted]. These three officers apparently concluded that the police would be able to remove the occupiers by about 11:00 a.m. As subsequent events made clear, this conclusion proved wrong. It was based on (1) an untested assumption about roles

Berkeley Police Officers would agree to play in a removal operation, and (2) a miscalculation about how the size and character of the crowd outside Wheeler might change over the next couple of hours.

Told that Associate Vice Chancellor Coley had asked for an update at 8:30 a.m., Chief Celaya decided to walk over to California Hall to report in person. When he arrived he was escorted into the Chancellor's conference room, where he made a brief presentation to the Chancellor and the Vice Chancellors who had gathered for the previously scheduled breakfast meeting. He advised the group that the police could remove the barricaded protestors by 11:00 a.m., and that they would gain entry to the second floor by removing hinges from the secured doors and re-activating an interior elevator.

The Chancellor endorsed the plan as it had been summarily described by the Chief of Police. The Administration and the police felt that it was important to end the occupation of Wheeler that morning because two rallies had been scheduled for noon: a large rally in Sproul plaza for Big Game (to be played the next day), and a strike-related rally in front of California Hall.

After meeting with the Chancellor and vice chancellors, Chief Celaya returned to Wheeler, where the crowd on the southwest side of the building, according to one officer's report, had grown to "at least several hundred people." Chief Celaya ordered Captain Bennett to call in all available members of UCPD. He also ordered [redacted] and [redacted] to work out the details of the plan to enter the barricaded area of the building and remove the protestors.

### **Insufficient Manpower for the Removal Plan**

As they considered more specific plans, the lieutenants and Captain Bennett realized that UCPD did not have the manpower on scene to both hold the perimeter and execute the removal operation. [redacted] asked [redacted], commander of the officers from the Berkeley Police Department, if some of [redacted] officers could be assigned inside the building to relieve the UCPD officers who were monitoring the fire doors -- thus freeing the UCPD officers to participate in the removal operation. Apparently to the surprise of all the UCPD commanders, [redacted] replied that he would permit his officers

to enter the building only if UCPD officers were being physically over-powered or were in immediate need of emergency assistance.

At this juncture, [redacted] reported to Chief Celaya that “we would not be able to hold the perimeter and make the entry with the number of Officers we had.” Given the need for additional manpower, [redacted] suggested that Chief Celaya request mutual aid. Chief Celaya was reluctant to take this step -- apparently out of concern about how the demonstrators and the campus community would feel about the presence on campus of substantial forces from outside agencies.<sup>16</sup> While the Chief knew that aid had been requested from UCSF and that more UCPD officers had been called in, it is not clear how he expected to execute the removal plan even with these additional forces. It wasn't until 12:30 p.m., that any officers from UCSF arrived here -- and there were only six of them when they did. The additional UCPD officers who had been called in arrived seriatim and at unpredictable intervals.

Between 9 a.m. and 10 a.m., the crowd outside Wheeler continued to grow -- apparently at a faster rate than it had earlier that morning. Protestors on the scene were effectively using a variety of communication devices to encourage supporters to join their ranks. As the size of the crowd grew, parts of it became more vocally and emotionally animated and, unlike earlier in the morning, in at least a few instances pressed into or broke the yellow crime scene tape that fixed the perimeter of the area the police sought to control.

### **The Arrest of Professor [redacted]**

During the fifteen or twenty minutes before 10:00 am, officers near the northwest corner of Wheeler had re-connected the perimeter tape several times after it had been broken. At about 10:00 a.m., Professor [redacted], who had come to observe and support the demonstrators, was standing on the paved pathway between Wheeler and Durant, near that same northwest corner. He heard a surge of some kind of activity in the crowd on the

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<sup>16</sup>Sometime later that morning, [redacted] changed his mind and told Chief Celaya that he would permit his officers to be stationed at the fire doors inside the building. By then, however, the crowd had so grown in size and so changed in demeanor that Chief Celaya believed that he did not have the manpower to execute the original plan even if he could use the BPD officers as originally anticipated.



southwestern corner, so, to get a better view of what was happening, he jumped up on the retaining wall that bordered the Wheeler lawn in that area. As he stabilized his perch on the edge of the planter box, he tore the yellow police tape that was cordoning off the west Wheeler lawn.

An officer responded immediately and, without prior verbal warning, grabbed the professor from behind, twisting him around, and “guiding” him to the ground, where the professor came to rest, face down. The officer then handcuffed the professor, who was led across the lawn in custody in view of a substantial section of the crowd. While the professor was being escorted across the lawn, someone in the crowd yelled “who are you” (or words to that effect), in response to which Professor [redacted] identified himself. This incident intensified the antagonistic mood of the crowd.

At 10:16 a.m., one of the UCPD sergeants radioed the following warning up the chain of command: “group getting combative with police -- notify LTS --- send more units.” At the same time, the Alameda County Sheriff’s Office and the Oakland Police Department contacted Captain Bennett again (by land line) to ask if UCPD needed support or back up. Captain Bennett knew that buses to transport arrestees already were en route and advised that additional personnel were not needed.

### **False Fire Alarms and the Growth of the Crowd**

At 10:28 a.m., a fire alarm in Dwinelle Hall sounded. It turned out to be the first of some fifty false alarms that were triggered that day in various buildings around campus.<sup>17</sup> As is its standard practice, UCPD sent an officer to respond to this first alarm, but just a few minutes later [redacted] advised the Fire Marshal’s office that UCPD did not have the manpower to respond to any subsequent fire alarms.

While the net effect of the many false fire alarms on the size of the crowd outside Wheeler is not clear, several officers later reported believing that many students who had been driven out of nearby buildings by the alarms ended up joining the demonstration. If accurate, these perceptions support our conclusion that the vast majority of the

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<sup>17</sup>As a deterrent to this tactic, the Administration might explore the pros and cons of “inking” some fire alarms – something apparently done in some public schools to discourage misuse of the alarms.

participants in the demonstration were students, not labor agitators or non-affiliates. As important, these reports by the officers about the way the false fire alarms affected the size of the crowd strongly suggest that at least the UCPD officers knew (or should have known) that most of the demonstrators with whom they were dealing were in fact students.<sup>18</sup>

### **An Employee's Observations and Disappointments**

At this juncture we should discuss a complaint that alleges misconduct by police sometime in the middle or latter part of the morning of the 20th. An administrator in the School of Education has reported that she was involved in a meeting in a room in the southwest corner of Old South Hall when the noise from the demonstration on the southeastern corner of Wheeler became particularly intense.

She went to a window and “clearly saw,” in her words, “a City of Berkeley police officer shove his body weight and baton directly into several students who were standing on the periphery of the crowd that had gathered. These students on the front line<sup>19</sup> were not moving forward, were not aggressive in their speech or body language or pushing or shoving in any way. Yet the officer shoved violently into them pushing them back. Then I left the meeting and went to the front line to ask the officers who was in charge of this area of the campus. . . . The officers would not answer me at all. I wanted to report the inappropriate and aggressive behavior of that officer right that moment. When I touched the officer on the arm to get his attention, he told me that if I touched him again, I would be arrested. . . . the officers present refused to help me find who was in charge.”

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<sup>18</sup>Additional indications that students were at least among the barricaded protestors included: (1) the fact that two of the three protestors who were arrested at about 6:00 a.m. on the first floor of Wheeler were confirmed to be students (the status of the third person was not reported), (2) the fact that at 8:27 a.m, one of the officers inside Wheeler identified one of the people who was barricaded inside the second floor as a student who was already known to UCPD, and (3) the fact that staff of the Human Resources office had been on the scene since very early in the morning and had concluded (with on-site input from organized labor) that unions were playing no active role in the occupation.

<sup>19</sup>We note that this complaint puts the affected students both on the “periphery of the crowd” and “on the front line.” We assume that in using the word “periphery” the writer meant the front edge of a protest line – not the rear of a group of protestors.

We do not have sufficient information to assess the accuracy of this account. While we are not aware of any evidence that would call its accuracy into question, the complainant does not purport to know what had transpired in the moments before the action that she witnessed. It is possible, for example, that demonstrators had broken through a clear police line or assaulted (in the legal sense) the officer just before the conduct she saw. If this witness' account accurately captures the material events, however, it is disturbing in three respects.

One is its portrayal of use of force without apparent justification. The second is the attitude of the officer or officers to whom the complainant appealed for information -- an attitude, if accurately described, that feeds negative stereotypes about the insensitivity and defensiveness of law enforcement officers.

Finally, this complaint makes us wonder if one reason "the officers present refused to help [the complainant] find who was in charge" is that they did not know. Other incidents, described below, suggest that the handling of the days' events by the police was compromised by shortfalls in leadership and in the visibility of the chain of command.

### **Barricades: The Morning Confrontations**

It apparently was sometime between 10:00 a.m. and 10:45 a.m. that Chief Celaya decided to bring in metal barricades to secure the perimeter of Wheeler.<sup>20</sup> The crime scene tape clearly was not doing the job: it had been torn or cut repeatedly -- thus creating

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<sup>20</sup>As we discuss in other contexts, we believe that before trying to place additional barricades in crowded areas, UCPD command should have explained to the crowd why so much space (otherwise perceived as "free-speech space") was cordoned off and why it was important to maintain the perimeter. UCPD commanders could have communicated, for example, that they understood that the occupation was an act of civil disobedience that was intended to demonstrate how strongly the protestors felt about the way the Administration was responding to budget cuts, cuts that had cost officers their jobs as well, but that the occupation was not authorized and was preventing thousands of other students, teachers and staff from exercising their rights to learn and to work. Because the occupation was interfering with the rights of so many other people and was unlawful, the police had a duty to try to peacefully bring it to an end. The commander also should have explained that the purpose of maintaining the perimeter line was to prevent additional people from entering the building -- which was important for two reasons: to prevent the occupation from expanding and to protect people from being injured if events got out of control in or near the building.

opportunities for groups of demonstrators to try to inch forward into areas the police were trying to keep off limits. This conduct, and the animation of the crowd, persuaded Chief Celaya that it was necessary to resort to a more effective means of protecting against incursions into the controlled area and against the possibility that some of the demonstrators might try to enter Wheeler to expand the occupation.

UCPD had direct control over few, if any, barricades. Officers knew that some barricades were stored in the ASUC building and that many more were controlled by the Athletic Department. A civilian employee [redacted] of UCPD was sent to retrieve barricades from the ASUC facility. When he returned with barricades loaded in the back of a UCPD truck, he drove up to the edge of the crowd on the northeast corner of Wheeler. Officers placed two or three of these barricades in the intended crowd control line. But the crowd surrounded the truck and its civilian driver before they could retrieve the remaining barricades. Apprehensive about the safety of the driver, officers moved into the crowd, pushing demonstrators back to create a lane that would permit the truck to back out.

[redacted] got into the cab of the UCPD truck to accompany [redacted] as he drove the truck to the southeast corner of Wheeler to try to deliver barricades there. Two officers from the perimeter line went out to meet the truck. They brought one barricade through the crowd without incident, but when they returned to the truck and began carrying a second barricade toward the line, a large crowd of demonstrators surrounded them. Demonstrators grabbed the barricade and the officers, who pushed back, trying to retain control of the barricade. In the struggle, demonstrators lifted one end of the barricade into the air. When it crashed down it landed on [redacted], who fell to the ground underneath part of the barricade. He reports that a demonstrator jumped on the barricade while it was on top of him, pushing some of the structure deeper into his abdomen.

As other officers pushed through the crowd (using open-hand pushes and baton strikes) to assist the surrounded officers, [redacted] was able to get back on his feet and to help other officers carry the barricade forward and put it in place.<sup>21</sup>

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<sup>21</sup>Because of the abdominal injuries he had suffered, [redacted] was sent to the Tang Center, where he was examined and treated. Subsequently, his physician placed him off work

Video footage and documentary evidence clearly show the crowd aggressively interfering, physically and without apparent justification, with officers trying to do their job. There is no evidentiary support for a finding that in this instance the police used unreasonable force. The aggression by the demonstrators in this incident, however, likely made an impression on officers that could have affected the way they handled demonstrators in subsequent interactions.

A second, separate effort to deliver barricades occurred about 30 minutes later, when three Athletic Department trucks, loaded with barricades, arrived on the east side of South Hall. Given the active resistance they had encountered when they last tried to bring barricades on line, the UCPD officers did not want the trucks from the Athletic Department to drive into the areas behind the crowd. But UCPD had no way of communicating with the drivers of the trucks -- so no means to exercise command and control over this (now obviously) very sensitive aspect of their operations.

Having not been warned off, the Athletic Department drivers pulled up, quite visibly to the crowd, on the east side of South Hall. One of these trucks was directed to the northeast corner of Wheeler, where it promptly was met by a crowd of demonstrators, some of whom began to surround the vehicle. As the truck (driven by an employee of the Athletic Department) began to back away from the scene, demonstrators began to lie down in its path. With some force, officers pulled them off the ground and out of the way. The truck then was able to back out on to South Hall Road.

The failure of the attempt to deliver barricades through the crowd on the northeast corner of Wheeler prompted [redacted] to seek an alternative route. By walking the perimeter, he discovered that the crowd was thin in the area between Doe and Wheeler, so he advised the delivery team to take the barricades into Doe (through an entrance on its north side) -- so they could be moved from that protected location through the thin crowd into the lobby of Wheeler. After being staged in Wheeler's lobby, the barricades could be moved through the area the police controlled around Wheeler onto the perimeter line -- without having to go through the demonstrators.

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completely until January 14, 2010. He was not cleared to return to full duty until February 7, 2010.

### **More Barricades for the Southern Perimeter: The 1:05 p.m. Confrontation**

Sometime shortly before 1:00 p.m., Chief Celaya, Captain Bennett, and [redacted] and [redacted] left Wheeler and walked over to the basement of Sproul, where they intended to set up a more effective command post and where, shortly thereafter, Chief Celaya would participate in a meeting whose purpose was to explore the possibility of trying to negotiate with the barricaded protestors (we discuss the meeting separately, infra).

[redacted] remained in command on the officers who were deployed on the North side of Wheeler. But with the departure of all of the other members of the UCPD command staff for Sproul, a lieutenant from the Berkeley Police Department, [redacted], was left in charge of the entire south and west perimeter – the areas of most intense protest activity by the largest crowds. Many of the line officers deployed in this area were from the Berkeley Police Department, so stationing [redacted] with them made considerable sense. But we are less certain that it was wise to leave no command-level officer from UCPD in this area – especially as it was known that the officers in the field would be attempting to install additional barricades on the southern perimeter.

While some barricades had been set up on the southwest corner of Wheeler sometime earlier, only police tape constrained a particularly active segment of the crowd on one section of the line. According to police reports, demonstrators in this area repeatedly cut or pulled down the tape and tried to inch forward until officers could re-attach the thin plastic line. Officers also saw some demonstrators try to sever zip-ties that the police had used to connect the barricades that already had been set out. Against this backdrop, and without input from or supervision by higher command staff, UCPD [redacted] and [redacted] decided to replace the tape in this area with two additional barricades.

Numerous YouTube videos capture much of what happened next. When the police brought up the first of the two new barricades the yellow tape was intact -- the crowd relatively inactive behind it -- and the placement of the barricade along the tape line proceeded without significant incident.

But as the first of the two barricades was being installed, the tape line that extended between the end of the barricade and the low retaining wall at which the tape line ended

went down – straight onto the pavement. When the tape went down, the crowd, some eight to ten people deep, inched forward en masse, advancing some five or six feet into territory that the police clearly had placed off limits. Facing a few officers, the crowd stopped advancing. According to one of the protestors, a “female police officer . . . told us to stop moving forward, and a protestor responded in agreement. The line had stopped moving.” Chants of “hold that line” reverberated.

Then, just moments before the second barricade arrived, officers who were facing the densely packed crowd that had advanced began pushing it back, aggressively. It is not clear whether the officers orally ordered this crowd to move back before they began their coordinated push. If any such orders had been orally issued, it is not clear how much of the crowd could have heard them, as the level of noise at this juncture was high. Moreover, if any orders were issued orally, the officers gave the crowd precious little time to obey them before the officers launched their push-back.

When the crowd did not retreat immediately, as its density likely made impossible, the officers launched an aggressive effort to push the crowd back so that the barricades could be placed on the line that the tape originally had demarcated. It is not clear that anyone ordered this particular action or that it was the product of anyone’s fully self-conscious decision. What is clear is that it resulted in chaos, confusion and considerable violence.

The officers used forceful forward thrusts of their batons, jabbing into the demonstrators abdominal areas, to try to move the crowd. An intense physical conflict between the police and members of the crowd ensued -- with some of the protestors aggressively pushing back in their effort to “hold the line.” The resistance was vigorous and physical -- and the engagement by the police (which included some overhead baton strikes) intensified until the barricade could be placed more or less along the original tape line. But even after the barricade was in place, officers continued to thrust batons through its bars into the crowd, apparently believing that protestors were trying to push the barricade over or back into the officers. One officer reported being spat upon during this brief but extremely intense encounter; other offices reported being hit with umbrellas and grabbed by their clothing. The crowd was extremely agitated and vocal throughout this confrontation.

No UCPD command staff was on scene during any of this activity. At 1:11 p.m., apparently during the most combative moments of this confrontation, an officer in the field issued a Code 3 emergency call for cover that reached the two lieutenants who were in the meeting at UCPD headquarters in the basement of Sproul. At least one of the lieutenants promptly responded, but by the time he arrived on the scene the incident had come to a close.

No one has explained to us why UCPD decided it was necessary to re-take from the crowd (which clearly had stopped inching forward) the five or six feet of territory that the police had previously controlled.<sup>22</sup> It appears that the final barricade would have reached to about the same distance from the low retaining wall that helped establish a boundary (of sorts) for the crowd if it had been placed along the line to which the crowd had advanced, instead of along the original tape line. [redacted] later stated that command staff had given “little instruction” to him or anyone else on the south side line about “where and why we held a specific area for the police perimeter.” [redacted] also noted that even after the barricades were placed along the original tape line, “they would end at an 18" tall planter, where people could just step up and walk around the barricade.”

It was foreseeable and foreseen that the area the police ‘controlled’ between Wheeler and the barricade would remain easily penetrable by the crowd -- which simply had to go around the barricade -- regardless of the line along which it was placed. This fact makes the decision to physically force the crowd back in order to put the last of these barricades on the original tape line all the more incomprehensible. We suspect that the sergeants who oversaw and participated in this event simply assumed that it was their duty, as fixed by orders given earlier in the day, and absent any new directions from command staff, to maintain the perimeter along the line originally set out.

We have not been persuaded that the decision to put the last barricade on the original tape line was reasonable. We also have not been persuaded that reasonable efforts were made to communicate with the crowd before the officers brought up the barricades and before they launched this aggressive action. No officer (on the line or

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<sup>22</sup>Captain Bennett suggested when we interviewed her that perhaps it was only by placing the last barricade on the original tape line that it could be connected to the others in this area. No evidentiary support for this speculation has been provided.



otherwise) appears to have made reasonable efforts to explain to the crowd what the police needed to do or why. No megaphone was used. Almost no time elapsed between any order to move back that might have been given to the crowd and when the officers' launched their assault. Moreover, it was obvious that the crowd was so densely packed in this area that compliance with any orally given orders would be difficult and would take some time.

While the level of resistance and the amount of push back by the crowd, standing in isolation, might have justified use of some force, that resistance and push back did not occur in vacuo. Instead, the crowd's physical resistance was provoked by an apparently unreasonable decision to initiate a physical confrontation whose necessity has not been established.

#### **A Demonstrator's Fingers Reportedly Are Broken**

At some point during or shortly after the events described in the preceding paragraphs (between 1:00 p.m. and 1:30 p.m.), a separate incident occurred that is the subject of a pending complaint. We describe here some of the factual contentions that are relevant to this incident so that the campus community will understand that we are aware of this matter.

One of the officers who was working behind the barricades on the southwest side of Wheeler reports that some members of the verbally aggressive crowd repeatedly put their hands on the top rail of the barricades, shaking them in ways that made him apprehensive that the demonstrators intended to push the barricades over and try to rush into Wheeler, or into the area in front of Wheeler that the police were trying to keep clear.

The protestor who filed the pending complaint admits that she had her left hand on top of a barricade when the officer ordered her to remove her hand, struck the top of the barricade near the place her hand was, and told her that he was not going to tell her again that she had to keep her hands off the barricade. She withdrew her hand for a moment, then put it back on the barricade. When the officer saw her hand where he had ordered her not to put it, he struck her (apparently without further warning) on the hand with his baton. The blow apparently broke two fingers in her left hand – injuries that she reports have required multiple surgeries to address.

Because this incident is the subject of a pending complaint and involves isolable conduct by an individual officer, it is not appropriate for the Board, in this setting, to purport to make assessments of the conduct of either party.

### **The Administrative Side: The First Few Hours**

After the breakfast meeting in the Chancellor's conference room, the administrators turned to the work they already had planned for the day -- assuming that UCPD would, as promised, remove the occupiers and regain control of the Wheeler area before 11:00 a.m.

Linda Williams, the Associate Chancellor whose portfolio includes handling protests and leading the crisis management team, was in Los Angeles (in connection with the meeting of the Regents) all day on November 20th. She learned about the occupation of Wheeler only when she called her office to check-in sometime in the middle of the morning. Over the course of the day, no one sought her advice or input about how the Administration should respond to or handle the occupation and demonstration, and she offered no advice or suggestions.

Ron Coley, Associate Vice Chancellor for Business and Administrative Services, recently had been asked to assume responsibility (temporarily) for oversight of UCPD – as Vice Chancellor Brostrom had been assigned virtually full-time to the Office of the President of the University. AVC Coley had briefly visited the perimeter of Wheeler shortly before 8:00 a.m., talked to Captain Bennett, noticed that the crowd was relatively small, and gone to California Hall for the breakfast meeting in the Chancellor's conference room.

After this meeting, where he had heard Chief Celaya report that UCPD could remove the barricaded protestors by 11:00 a.m., AVC Coley turned his attention to other matters. He remained out of the decision-making loop thereafter. Chief Celaya did not keep him informed of developments on the scene, and Mr. Coley initiated no efforts to contact either UCPD or other members of the Administration until the end of the day.

With Ms. Williams away, and AVC Coley's attention turned to other matters, primary responsibility within the Administration for gathering and disseminating information about the occupation and demonstration fell to Beata Fitzpatrick, Associate Chancellor and Chief of Staff, and Claire Holmes, Associate Vice Chancellor for Public Affairs.

Initially, they got most of their information from outside media sources and internet sites (including Twitter and Facebook). They also occasionally received information from

UCPD (Chief Celaya) and from employees and observers who were on the scene. But there was no regular and reliable flow of information to them.

As the morning hours passed, Ms. Fitzpatrick and Ms. Holmes monitored media and internet sources with growing concern about the state of affairs, and with increasing unease about the apparent inaccuracy of some of the media and internet reports about the conduct of the police around Wheeler. Demonstrators clearly were sending false information to media outlets and to websites.

But neither UCPD nor the Administration had devised effective means to make corrections to or supplement the 'record' that was being created. One source of this limitation was the deployment by UCPD of its only Public Information Officer (PIO) to the front lines at Wheeler. It also didn't help that the Executive Director for Strategic Communications of the campus-wide Office of Public Affairs was absent that day.

Frustrated, Ms. Holmes urged UCPD to hold a press conference to try to balance accounts and introduce a calming perspective. Captain Bennett was asked to host the conference. Unfortunately, some of the information she had been given also was wrong or misleadingly incomplete. She told the press, for example, that two officers (true) but no demonstrators (untrue) had suffered injuries. She also advised the press that most of the occupiers were not students -- an important and erroneous assertion.

### **Faculty Efforts to Get the Administration Involved**

The high visibility arrest of Professor [redacted] shortly after 10:00 a.m. motivated two other professors, who had been present when the officer 'guided' Dr. [redacted] to the ground, to walk over to California Hall to complain about how their colleague had been treated and to advise the Administration that the situation around Wheeler had become volatile and dangerous. The two professors found California Hall locked down and were not able to get anyone to respond to their knocks on the door or their pleas to be admitted.

At 10:12 a.m., Professor Peter Glazer, who had been at a different point on the perimeter around Wheeler, but who also was worried about the increasingly antagonistic dynamic between the crowd and the police, tried to speak by cell phone with Executive Vice Chancellor George Breslauer, but only was able to leave a message with an assistant.

At 10:20 a.m., Professor Glazer called again, but again was not permitted to speak with Dr. Breslauer.

At 10:28 a.m., Dr. Breslauer returned Professor Glazer's call. The Executive Vice Chancellor spoke over the phone with both Professor Glazer and Professor Tim Clark. When he was told by Dr. Glazer that the barricaded protestors demanded amnesty for themselves and the re-hiring of the 38 custodial workers, Dr. Breslauer responded that the Administration could not agree to negotiate the employment status of these workers in this setting. After this phone conversation, Dr. Breslauer, who assumed that UCPD would remove the occupiers by 11:00 a.m., took no further action.

Professor Glazer's concern about the situation around Wheeler intensified again late in the morning. Apparently he had heard at least one call to storm the building. Fortunately, the crowd did not heed the call for this kind of action -- either then or when similar calls were made later in the day.

Dr. Glazer also was worried that the presence of so many police officers in riot gear was aggravating and confusing the students -- and increasing the risk of confrontations. Moreover, the crowd was getting information about what was going on inside Wheeler, and about measures the police allegedly were threatening, only from the occupiers. As far as Professor Glazer could see, no one at the command level from the police department or the Administration was trying to communicate with the crowd -- to ease apprehensions about the fate of the barricaded protestors or about what actions the police planned to take in the areas around Wheeler.

At least as troubling, in Professor Glazer's view, was the fact no one appeared to be exercising overall control over the actions of the law enforcement authorities or providing overall direction to their activities. Professor Glazer feared that the combination of misinformation reaching the demonstrators and the appearance (to the demonstrators) that no one was responsibly controlling the activities of the officers created an extremely volatile situation.

Driven by such concerns, just before noon he began trying, again, to communicate with the Chancellor's office. His call at 11:57 a.m. went unanswered until 12:12 p.m., when an assistant to the Executive Vice Chancellor left a message on his cell phone asking for more information and informing him that the Executive Vice Chancellor was

out of the office during the noon hour, attending a luncheon with other faculty. At 12:20 p.m., Professor Glazer left a message directly on the Chancellor's phone, saying: "Call me. Urgent." At 12:21 p.m., Professor Glazer received a list of demands from the Wheeler occupiers, which he forwarded to the Executive Vice Chancellor at 12:25 p.m.<sup>23</sup>

At 1:13 p.m. the Chancellor tried to return the call from Professor Glazer, but the Professor's phone had gotten so wet he could not hear the message. And because the caller's number was blocked, he had no idea that the call was from the Chancellor. It wasn't until days later that Dr. Glazer heard the Chancellor's message, which consisted of the following: "Hi Peter, it's Bob. I'm here with George Breslauer, giving you a call back as you'd requested. We just got your voice mail. Unfortunately, we're going into a meeting for about an hour and we'll call you back then." Neither the Chancellor nor the Executive Vice Chancellor called Dr. Glazer after that meeting, or at any other time that afternoon, perhaps because they learned that Harry Le Grande, Vice Chancellor for Student Affairs, had begun making plans to try to negotiate with the occupiers.

### **Student Leaders Get the Administration Involved**

What had triggered involvement by Vice Chancellor Le Grande was a visit to California Hall shortly after noon by [redacted], [redacted] and [redacted]. These student leaders had taken the initiative to go to California Hall to try to persuade the Administration to become more visibly and actively involved in responding to the situation at Wheeler, which the two senators believed was fraught with potential danger.

[redacted] told a staff person within California Hall that they had an appointment with George Breslauer or Cathy Koshland, but no such appointment had been made. When Beata Fitzpatrick and Claire Holmes learned that the student senators were at the

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<sup>23</sup>This demand message asserted that the people occupying Wheeler were U.C. students and that they would not leave the building until "you: 1. Rehire all 38 custodial AFSCME workers laid off; 2. Drop all charges and provide total amnesty to all persons occupying buildings and involved in student protests concerning budget cuts; 3. Maintain the current business occupants of the bears lair food court and enter into respectful and good faith negotiations; [and] 4. Preserve Rochdale apartments leased to Berkeley student cooperative for \$1 a year into perpetuity."

door to California Hall and about to be turned away, the two senior administrators located VC Le Grande, who agreed to speak with the two students.

[redacted] and [redacted] persuaded VC Le Grande that the situation in and around Wheeler was unstable and potentially dangerous -- and that it was important for a high level administrator to get involved. Mr. Le Grande declined to go directly to Wheeler to try to communicate on his own with demonstrators or occupiers, preferring first to discuss the situation with Chief Celaya.

### **The Meeting at Sproul and the Decision to Negotiate**

Thus pressed by the students, VC Le Grande agreed to go to Sproul and meet with a group that soon included Dean of Students Jonathan Poullard, several concerned faculty, several student leaders, and Chief Celaya.

This meeting, which began shortly after 1:00 p.m. (and after the UCPD press conference), continued until about 2:30 p.m. -- a substantial period during which the attention of the highest level of UCPD command staff was diverted from Wheeler.

During this meeting, some of the students and faculty exchanged text messages with the students who were occupying the second floor of Wheeler. Some of the information sent by the occupiers was transparently false -- for example, that officers were using tasers.<sup>24</sup> But most of the messaging back and forth was directed toward trying to set up negotiations, or at least exchanges of information and options, that might set the stage for ending the occupation.

These exchanges eventually produced an understanding (at least in the minds of the group of students, faculty and administrators who were working together from UCPD headquarters) that the occupiers of Wheeler would permit a small delegation from the outside ([redacted]), Vice Chancellor Le Grande, Professor Ananya Roy, and Chief Celaya) to enter the second floor of Wheeler in order to try to negotiate a peaceful end of the occupation.

Just after 2:30 p.m., this delegation entered Wheeler, approached the doors to the barricaded second floor, and began what turned out to be upwards of two hours of fruitless efforts to persuade the occupiers to admit them to the barricaded area so they could talk. Thus, there was another protracted period during the afternoon in which Chief Celaya was unable to attend directly to developments outside Wheeler.

### **The Front Lines During the Afternoon: Mutual Aid**

Sometime shortly after 1:00 p.m., perhaps motivated by reports about the struggles over the placement of the barricades, Captain Bennett interrupted the meeting that Chief Celaya was hosting to ask if she could call for mutual aid. When Captain Celaya gave his

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<sup>24</sup>None of the officers then at the scene carried tasers.



permission, Captain Bennett placed the call to the mutual aid coordinator at the Alameda County Sheriff's Office, who, in turn, started the mobilization process.

The decision to call for mutual aid was made by Chief Celaya. It is unclear whether, earlier in the day, he consulted with the civilian administration about this decision or whether he sought or received permission from the Chancellor to bring reinforcements into the campus from outside agencies. Some of the people we interviewed thought they recalled either a phone call or a visit by Chief Celaya in which this issue was discussed with or described for the Chancellor. For his part, the Chancellor does not recall any such interaction or discussion, but says he would have authorized the call for mutual aid if his permission had been sought.

When Captain Bennett placed the call to the mutual aid coordinator she did not specify the number of officers that would be needed, the kind of equipment they should bring, the gear they should wear, or how they would be deployed. Nor did she indicate that any particular kind of equipment or gear should *not* be brought or used.

Under protocols set forth in the Law Enforcement Mutual Aid Plan<sup>25</sup> that is promulgated by the California Emergency Management Agency, the "agency *requesting* [emphasis in original] mutual aid is responsible for the following: 1. Identifying numbers and types of mutual aid resources requested. . . . 3. Advising responders what equipment they should bring. . . . 5. Identifying communications channels compatible with command and control of field resources."

As it turned out, when officers that had been dispatched from the Alameda County Sheriff's Office arrived on scene they were equipped with "less lethal" weapons ("FN 303s") that looked very much like machine guns (but that in fact could be used only to deploy rubber balls or bean bags), as well as "37 mm launchers" for deploying smoke or chemicals. [redacted] ordered the ACSO officers not to deploy any chemical agents or smoke unless specifically ordered to do so from the UCPD command post. No such order was ever given.

Effective communication between UCPD command staff and mutual aid squads from off-campus agencies remained a challenge. One UCPD officer was assigned to each mutual aid squad, so UCPD could communicate by radio with each squad through the

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<sup>25</sup>This document is known in law enforcement circles as the "Blue Book."

UCPD officer who was attached to that squad (as long as the squad was not in one of the radio communication “dead spots” on the Berkeley campus). And one officer from each outside agency (e.g., the Alameda County Sheriff’s Office or the Oakland Police Department) remained with at least one of the UCPD command staff most of the time (so orders could be transmitted from the UCPD commander through the mutual aid officer to the mutual aid unit). But no provision was made for direct radio communication between UCPD commanders and the mutual aid squads in the field. So, if radio communications could not be effected through the UCPD officer who was attached to the mutual aid unit (e.g., because the UCPD officer was momentarily separated for some reason from the mutual aid squad), or through a mutual aid officer who was with the UCPD commander who wanted to give an order, the mutual aid squad would remain undirected.<sup>26</sup>

Off-site officers first arrived shortly after 1:00 p.m., but not in response to Captain Bennett’s call for mutual aid (which had not yet been placed). These officers (perhaps half a dozen) had accompanied the buses that Captain Bennett had ordered from ACSO in mid-morning, anticipating the need to transport the protestors who were barricaded inside Wheeler to Santa Rita jail. When these officers arrived they were hastily briefed, then placed, without incident, on the perimeter line on the southwest corner of the building – near the location of the very recently concluded confrontation between officers and protestors.

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<sup>26</sup>In theory, at least, a means did exist to communicate by radio between units from different agencies. Pointing out that “the problem of communications should be a priority in mutual aid planning before an incident occurs,” the State’s mutual aid “Blue Book” declares that “The State of California has established the California Law Enforcement Mutual Aid Radio System (CLEMARS) with special frequencies for emergency law enforcement mutual aid purposes. . . . This system is intended for command and control purposes among agencies taking part in emergency operations. It is not be used as a primary local channel.”

The Blue Book also states: “In addition to CLEMARS, Cal EMA Telecommunications is able to deploy interoperability communications vehicles to incident command posts. These vehicles are capable of coordinating dissimilar radio frequencies to facilitate communications among responding agencies.”

Chief Celaya has advised us that because communicating with CLEMARS is not always satisfactory, several law enforcement agencies in Alameda County have been developing their own system for radio communication with mutual aid units – a system they hope to have up and running very soon.

### **Escorting Reinforcements Through the Demonstrators: Multiple Confrontations**

Subsequent deployment of off-site officers was much more problematic. It was about 3:00 p.m. when a squad of 12 off-site officers first arrived in response to Captain Bennett's call for mutual aid. Thereafter, at 3:45 p.m. and 3:53 p.m., two additional ACSO squads arrived at Sproul.

In each instance, the squads were hastily briefed, then marched toward points behind the crowd surrounding Wheeler. In each instance, the plan was to march the squad through the crowd and into the area inside the perimeter that was controlled by officers already on scene.

In many instances, the crowd tried to try to prevent the officers from proceeding through it. Demonstrators linked arms, chanted, and urged one another not to let the officers pass through their lines.

In each instance, according to the officers, they orally ordered the demonstrators to open a pathway to let the officers pass. In most instances, the demonstrators refused to comply. In each such instance, the officers then used force to work their way through the crowd. The character and intensity of the crowd's resistance and of the force used by the officers varied from instance to instance.

On one occasion, according to police reports, a protestor "came flying in" to the narrow space through which officers were trying to move through the crowd. The protestor grabbed an adjacent barricade -- from which the officers tried to remove him. In the ensuing struggle, the barricade fell over and the protestor fell on top of it. Officers who were continuing to try to get through the crowd tripped over the protestor. Chaos ensued as the aggravated crowd tried to come to the rescue of the fallen protestor. In the melee a protestor ripped off an officer's shoulder microphone and, reportedly, tried to push the officer to the ground -- while other protestors punched the officer in the back. This same officer further reports that during these scuffles someone kicked him in the knee, causing an injury.

On another occasion a protestor reports that she was standing behind the yellow police tape when she was pushed twice by an officer. When she did not move back (because, she says, there were so many people behind her), she was struck in the face,

without prior warning or command, by an officer. The blow knocked her down and caused her to begin bleeding immediately and profusely from her nose. Seeing her bleeding face intensified the anger of other demonstrators in the area. An officer's report of what might be the same incident states that he used a "palm strike" to the protestor's face because she [or someone next to her] had grabbed the collar of his jacket as he was trying to pass through the crowd.<sup>27</sup>

In a separate incident, an officer leading one of the squads through the crowd on the southeast corner of Wheeler reportedly encountered two females, seriatim, who were in the route the squad intended to use to get through the crowd. The officer pushed the first female out of the way, apparently without first ordering her to move. When he encountered the second female, he also pushed her, again apparently without warning. His first push failed to move her out of the way, so, he reports, he pushed her again, more forcefully. This time the female fell backward down the incline at the top of which she

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<sup>27</sup>In many instances, the officers' accounts of incidents are difficult to reconcile. Sometimes they report different times for what appear to be the same events – or no times at all. Sometimes they describe events inconsistently. Sometimes features of one event seem to be blurred into features of another event.

Our effort to put together an accurate account of the 'nose bleed' incident, described in the text, above, is compromised by these kinds of problems. An officer who was stationed inside Wheeler, but who watched events occurring outside on the northeast corner, provides an account of events that shares characteristics with more than one of the incidents that we have described separately above.

The account by the officer from inside Wheeler, viewing the action from the window, includes the following: as a UCPD sergeant led ACSO deputies "into the area a protestor physically reached across the metal barricade and grabbed [an ACSO] deputy by the collar of his shirt. . . . The deputy responded by using a palm strike to the protestor's facial area, which immediately made the protestor let go of his shirt. . . . The protestor stepped back, appeared to have a bloody nose, and then disappeared into the crowd." Asked to describe this protestor, the officer who had witnessed these events from the window inside Wheeler "said he was a white male in his twenties, but couldn't describe him any further."

Notably, this same reporting UCPD officer opined that the arrival of the ACSO deputies in this area "got the crowd amped up again" and that the deputies had tried to march "into the area in formation" but "the crowd swallowed them up pretty quickly and it became every man for himself."

had been standing. The officer then grabbed her by the coat and pushed her back up the incline into the line of shouting protestors.

Thirty minutes or so after the incident just described there was an additional confrontation between demonstrators and police on the southeast corner of Wheeler. Accounts of this event vary. It is possible that it began when officers inside the perimeter thought the crowd, which had become appreciably denser by this time, was inching forward on the last section of the perimeter line where no barricade had been placed – so only a few officers and the crime scene tape cabined any forward movement the crowd might make. One police officer reported an encounter that might well be this one that started when the agitated crowd pushed over a barricade (presumably the last in the line) and officers used baton strikes to repel demonstrators and to create sufficient room to restore the barricade to its original position.

From video evidence, however, it seems most likely that this confrontation was the product of yet another effort to bring a squad of mutual aid officers through the perimeter line on the southeastern corner of Wheeler. A protestor has complained that he was in a group of students standing on that corner with arms linked, with the police tape to their backs, when, “without any verbal communication or warning, [a group of police officers] charged into the group near the barricades. They used their batons to strike and push the students who were there, including me. There was nowhere to move when the officers swung their batons at us.” According to this same complainant’s account, one officer “swung a baton at my chest and hit [my] camera.” A moment or two later, another officer, using a baton, allegedly pushed this protestor to the ground, causing him to slide down the embankment, where, when he came to rest, another officer allegedly struck him with a baton on the left shin.

However this event started, it resulted in multiple uses of baton strikes by officers and a lot of pushing (perhaps accompanied by punching) by demonstrators.

Two other incidents that occurred during this confrontation were subjects of considerable attention by the media and YouTube videos. The most dramatic consisted of a “confrontational” student (so described by a fellow student who was present) using a stick to strike back at officers, being struck in return, tumbling to the ground, flailing at

officers, then being struck several more times while on the ground and while clambering to his feet to escape into the crowd.

The second highly-publicized feature of this confrontation consisted of a student protestor who was allegedly pushing on the barricade being shot in the stomach with a rubber pellet or projectile. The student suffered no serious injury, but the presence and use of the “less-lethal” weapon, which to the untrained eye looks quite lethal, further inflamed the crowd.

### **The ‘Negotiations’ Inside Wheeler**

While these troubling dynamics between demonstrators and police were occurring outside Wheeler, the small team (one student, one professor, one administrator, and the Chief of UCPD) that had gone into Wheeler at about 2:30 p.m. had gotten nowhere in their efforts to negotiate with the students who were occupying the second floor.

As Professor Roy had understood the agreement that had been reached over the phone before Chief Celaya permitted the small team to enter Wheeler, the occupiers had promised that they would admit the team into the barricaded area on the second floor, present their demands directly to Vice Chancellor Le Grande, then listen to him and to Chief Celaya describe the alternative ways the occupation might be brought to an end. If the occupiers did not agree to any of these alternative courses, the small team would leave the barricaded area and the students would re-establish their barricades.

Once inside Wheeler, when they began communicating with the occupiers through the still barricaded doors, it became clear to the negotiation team that the occupiers were not of one mind about how to proceed. After much back and forth, the view among the occupiers that prevailed was that the police could not to be trusted -- and that permitting the Chief to enter the barricaded area with the other members of the small team would create an opportunity for the police to gain entry in force and to subdue the occupiers.

Professor Roy’s blog, written later that evening, describes concisely what happened next. “As a last-ditch effort, the police chief brought in a student representative that some of the protestors had asked for – [redacted] – as well as Maria Blanco [a local lawyer with

ties to the causes the protestors were pursuing].<sup>28</sup> But time was running out: we had already been there for nearly two hours and had not managed to meet with the students. It may be the case that [redacted] and Maria felt that they were removed from the building. But I had gone into the building knowing already that it was an unusual dispensation and fully aware that the clock was ticking. I was not surprised that at the two hour mark we were asked to leave.”

Feeling frustrated by his inability even to talk to the students (and feeling ‘played’ by them), knowing that darkness would soon be upon them, and realizing that he was likely to lose some of his mutual support before much additional time passed, Chief Celaya decided to implement the entry plan that his lieutenants had devised much earlier in the day.

### **Officers Gain Entry to the Second Floor and Arrest the Occupiers - Peacefully**

It is not clear how much of what had transpired inside Wheeler over the preceding two hours was communicated to the demonstrators outside – but at least some of them understood before 5:00 p.m. that the effort to negotiate had yielded nothing and that the police were likely to begin forcing entry soon. At about 5:00 p.m., Dean Poullard, who had been on the scene much of the afternoon trying to encourage responsible behavior, used a megaphone to advise the occupiers (through the open second floor window) who wanted to leave peacefully to sit down before the police came in. As it turned out, all the occupiers followed this wise advice.

Entry by the police turned out to be remarkably easy – and free of any of the physical confrontations that some had feared.<sup>29</sup> While the crowd outside Wheeler had grown to upwards of 2,000 people and was quite animated, the simultaneous

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<sup>28</sup>Dean of Students Jonathan Poullard had persuaded Chief Celaya to permit the two additional women to enter the building to try to negotiate with the occupiers. Dean Poullard accompanied Ms. [redacted] and Blanco into the building.

<sup>29</sup>[redacted], who was stationed inside Wheeler all day, reported that on the few occasions that officers would try to pull the doors open, the protestors on the inside “got angry, would scream and would pound their fists on the door.” Simultaneously, they would pull the doors completely closed. Conduct like this, if reported accurately, would tend to support apprehension that entry by the police would be resisted.

developments inside the building were anti-climactic. The plan the police had developed for entry into the second floor included sending one squad in through a re-activated elevator while, simultaneously, having mechanics from the physical plant department remove hinges from the 400-pound fire doors, which then could be taken down safely by using a special scaffold-type apparatus that the mechanics had hastily constructed for this purpose.

When this plan was set in motion, the engineers discovered that they could not re-activate the dormant elevator and that the special scaffolding equipment did not work. As it turned out, none of that mattered. An officer stationed at one of the sets of fire doors discovered that, with the occupiers elsewhere, he could manually pry the doors far enough apart to permit other officers to cut the straps that had been holding the doors closed.

Once this one set of doors was opened, all of the officers who had been stationed to enter from other locations raced through this one point of entry. They quickly discovered that all the protestors had gathered in one classroom, which was unlocked, and were sitting on the floor with their hands raised. Two of the demonstrators were videotaping the proceedings, but no one had a weapon<sup>30</sup> and no one resisted as the officers calmly went about the business of effecting arrests and booking the arrestees.

When the identification process dust settled, it became clear that every one of the occupying demonstrators was a student here at U.C. Berkeley. None were the 'outside' agitators or non-affiliates that administrators and police had suspected. None were affiliated with campus labor organizations.

Very unfortunately, the peaceful and respectful character of this process was not promptly communicated to the crowd outside, which was animated during this period by deep distrust of the police and the Administration, and by extreme concern about what was happening or would happen to the students who were occupying Wheeler. This failure to deliver reassuring information to the demonstrators outside the building caused considerable unnecessary anxiety and set the stage for the last and one of the most troubling confrontations of the day.

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<sup>30</sup>Officers searched each of the occupying students and their backpacks and bags – but found no weapons or contraband.



One of the UCPD sergeants who was on the scene during this period later reported that he was “surprise[d] to see that the entire UCPD command staff (Chief, Captain, 3 Lieutenants) on the 2nd floor” during the rather lengthy arrest process -- “instead of having someone oversee the outside and some serve as liaison to mutual aid agencies.”

### **The Decision to ‘Cite and Release’**

Unaware of the state of affairs inside Wheeler, but acutely aware of the exterior crowd’s anxious and intense emotions, at about 5:15 p.m., several members of the faculty and some student leaders walked over to California Hall to plead for some constructive intervention by the Administration. The building was still locked down, and for a few minutes no one responded to the professors’ efforts to hail someone from the inside. A security guard finally came out, asked the professors and students to sign their names on a log and to state their business, then, after a few more minutes, let them in.

What followed was, by all accounts, a respectful, constructive, and productive meeting hosted by the Chancellor and the Executive Vice Chancellor. Chief Celaya attended, as did Vice Chancellor Le Grande, Dean of Students Poullard, and the Chancellor’s Chief of Staff, Beata Fitzpatrick. The faculty and students who participated in the meeting expressed great concern about the level of agitation in the crowd and its volatility. The principal issue at this juncture was what to do with the arrested students. The two options presented by Chief Celaya were to (1) transport the occupiers to Santa Rita jail, or (2) cite and release them.

After some discussion, apparently everyone agreed that it would be a serious mistake to try to march the arrested occupiers through the crowd, load them onto the ACSO buses, and then try to drive the buses, full of arrested students, off the campus to some unknown fate at the Santa Rita jail. Executive Vice Chancellor Breslauer, in particular, felt that such a course of action might well have triggered a riot – and almost certainly would have provoked the demonstrators to try to block the buses’ departure by surrounding them. So a consensus emerged that the best course was to cite and release the occupiers.

Two other significant decisions were made. The first was that two professors (Ananya Roy and Shannon Steen) and [redacted] would be escorted into Wheeler to act as

observers during the remainder of the booking process and to help escort the arrested students, not handcuffed, out of the building in small groups.

The second significant decision consisted of asking two of the professors (Peter Glazer and Gregory Levine), as well as the students who were in attendance, to go into the crowds outside Wheeler and spread the news that the entry and arrest process had been peacefully completed -- without physical altercation or injury -- and that the occupiers would be cited and released that evening.

Some of the student demonstrators outside Wheeler greeted with relief the announcements that Professors Glazer and Levine promptly made. Instructively, however, a visible segment of the crowd greeted these announcements with palpable skepticism -- a skepticism that bordered on hostility. These students apparently feared that the faculty had "sold out" and could not be trusted. Sensing this misplaced but strong amalgam of distrust and hostility, the professors felt waves of anxiety about their own safety during these emotionally charged moments. The intensity of the cynical reaction by some of the protestors graphically reminded them about how volatile and intimidating a crowd like this could be.

### **One Last Barricade, One Last Confrontation**

That the efforts by the two professors and the student leaders to calm the crowd were not entirely effective is dramatically illustrated by the final clash of the day between police (in this instance BPD) and demonstrators. This last significant confrontation occurred on the northeast corner of Wheeler at about 7:10 p.m.

Why this confrontation was necessary escapes us. All the students who had occupied Wheeler had been peacefully arrested an hour and a half earlier. The decision to cite and release them, rather than to transport them to Santa Rita jail, had been made at least 40 minutes earlier and was well known by UCPD command staff, the civilian Administration, key faculty, and some student leaders.

Either because they had not learned about these significant developments, or because of deep distrust of the police and the Administration, some students continued peacefully chanting near the northeast corner of Wheeler. Officers from the Berkeley Police Department, either unaware of the decision to cite and release or believing in any

event that additional measures were necessary for crowd control, continued to bring barricades (one at a time, initially without interference from the demonstrators) into this area to replace the last sections of crime tape.

Video footage shows that before the police brought in the last of the barricades, the demonstrators were orderly and stationery -- making no movement forward, giving no indication that they intended to encroach on the territory placed off limits by the officers.

But, again for reasons not obvious, the police decided that they needed to place the barricades along a line on which the protestors already were standing -- or at least very close to that line. The officers say that they ordered the protestors, orally, to move back. When the protestors either did nothing, or did not move fast enough, the officers began pushing -- initially with their hands and bodies, but quickly resorting to "push strikes" (pushing their horizontally held batons into the chests of the demonstrators).

The crowd pushed back, provoking the officers to become appreciably more aggressive with their strikes, some from overhead. The physical struggle between the officers and the protestors continued very actively, in very tight quarters, for several minutes. It ended only when the officers succeeded in placing the last barricade along the originally targeted line to the corner of the building.

### **The Anti-Climactic End**

Ironically, it was very shortly after this last confrontation between police and demonstrators that the authorities began the process of releasing the students who had occupied Wheeler for so many hours. As planned, Professors Roy and Steen, as well as [redacted], had accompanied Chief Celaya back to the second floor after the meeting in California Hall. They reported that everything was calm inside Wheeler, no one had been injured, and the mood was light. At about 7:30 p.m., the three civilians began escorting the protestors out of the building in small groups. By a few minutes after 8:00 p.m., all of the persons who had been arrested late that afternoon (40 students who were occupying Wheeler and two others who had been arrested by officers from other agencies) had been released.

A crowd of perhaps 500 demonstrators remained to listen to the accounts of the occupiers' day -- and to hear exhortations to continue pursuing the demands that had motivated their actions.

By shortly after 9:00 p.m., only a few people remained on the tranquil scene.

### **THE UCPD OPERATIONAL REVIEW: PROCESS**

At the direction of Chief Celaya, UCPD conducted an "Operational Review" of the events of November 20th and how the Department responded to them. The Review that was eventually completed reflected a great deal of work (described more fully below) -- and yielded separate sets of "Findings" and "Recommendations" that reflect considerable learning by the Department from its own examination of its handling of the day's developments. Under well-established protocols within the Police Department, the Operational Review was not delivered to the Administration until after it was examined and approved by Chief Celaya.

#### **Debriefing**

The informational basis for the Department's learning would have been more reliable if the Department had conformed fully to its own debriefing policy. In the evening of the 20th, the leadership of the Department discussed the day's events informally with some of the sergeants who had been involved. Because the officers were so tired after such a long day, this review was relatively brief and did not purport to be comprehensive.

Ten days later, on December 1, 2009, the UCPD command staff (ranks above sergeant) conducted a debriefing of the November 20th operation. The next day, the sergeants who participated in the November 20th operation were debriefed. No line officers (below the rank of sergeant) were included. About a month after the operation, on December 18th, there was a debriefing among command staff from UCPD, the Oakland Police Department, the Berkeley Police Department, and the Alameda County Sheriff's

Office. No memoranda were prepared memorializing lessons learned, or new agreements or understandings reached, from any of these debriefings.

The Department's "Critical Incident Debriefing Policy" states: "The overall commander should schedule a debriefing immediately upon the conclusion of a critical incident. Normally, the debriefing should occur before personnel involved in the incident have gone off duty. If this is not practical, a debriefing should be scheduled for time next available, and involved personnel notified of the debriefing and encouraged to attend."

The Department's Crowd Management Policy further declares that, after an event involving police management of a crowd has concluded, the Overall Commander should arrange a "debriefing for all supervisors from the event and when possible all staff involved in the event."

Because the day had been so long for so many of the UCPD and BPD officers who were involved, it is understandable that the kind of debriefing contemplated by current departmental policy was not conducted on the evening of the 20th. It is not understandable, however, that no such comprehensive debriefing was ever held.<sup>31</sup>

As the number and significance of the Findings and Recommendations that eventually emerged in the Operational Review make clear, the Department had a great deal to teach itself from what happened on the 20th. That teaching would have been more effective, and the learning richer, if it had been undertaken shortly after the 20th.

It would have been especially instructive to use in a debriefing of sergeants and line officers some of the videos from YouTube and the media, along with video taken by the Department during the event. These videos were rich sources of potential learning about significant events, e.g., the confrontation with the crowd shortly after 1:00 p.m. when officers from UCPD and BPD installed the last couple of metal barricades on the southwest perimeter.

### **Timeliness**

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<sup>31</sup>That the Department's resources soon were diverted again by protest activity does not appear to be a sufficient excuse – especially because more than a week passed between the 20th and the beginning of the next significant protest event -- the "teach-in" at the Wheeler Auditorium. There were three working days after the 20th before the Thanksgiving holiday began.

The officers who were called upon to contribute most to preparing this Operational Review worked very hard under extremely taxing conditions. There were major demonstrations in early December that sapped officer resources. One of two captains' positions was vacant for several months, forcing the one captain who was in place to perform the functions of two senior officers. We know from personal observation that that captain has put in exceedingly long hours for months as she has tried to meet, with full professionalism, the vast array of demands on her time. We also understand, through our own painful experience, how time-consuming and difficult it was to prepare the lengthy report that was necessary in order to address the multiple dimensions of the events of November 20th.

Even as we recognize all of these realities, however, we feel some disappointment that the Department failed to complete its Operational Review until some four months after the events on which it was based. The Police Review Board was instructed not to begin its work in earnest on this special Report until the Operational Review was completed and available for the Board to study. That instruction, however, was premised on an understanding that the Operational Review would be completed by the end of January, 2010. The Department failed to meet that initially projected target date – by a full seven weeks. As each week passed, memories faded and blurred – compromising in some measure the reliability of the information base the Board would be able to develop for its assessment of the Review and for the exercise of its independent judgment about what occurred on November 20th.

We are especially troubled by the amount of time that elapsed between November 20th and some of the interviews the Department conducted as part of its Operational Review. Sixty-two percent (62%) of the interviews of non-officers (16 of 26) were conducted more than two months after November 20th – a few of these not until early March of 2010.

It appears that UCPD succeeded in interviewing only six students -- despite considerable efforts to interview others. The Board also has experienced difficulty securing interviews with student demonstrators, or inputs from them through other vehicles. Relatively few students responded to the calls for input issued by the Chancellor and the Board (even with guarantees of confidentiality); even fewer attended the public

meeting which, as advertised, was called solely to consider the events of November 20, 2009.

While we recognize that it is quite difficult, at least in some circumstances, for the Department to secure the cooperation of students for purposes of assessing an event like this, we urge the Department to make more visible efforts to do so -- and to make such efforts as close in time to the events being reviewed as possible. The passage of time between November 20th and the efforts to persuade students to be interviewed probably is one of the reasons both the Department and the Board found it so difficult to get students to agree to contribute information and their perspectives. The Department, of course, also is handicapped in such efforts by a generalized fear among students that they might expose themselves or their friends to sanctions of some kind if they provide information.

But we remain persuaded that, despite all these difficulties, it is very important for the Department to make visible and sustained efforts to secure information (by interview or otherwise) from students and other participants or witnesses who could be expected to have different perspectives on the events. By visibly trying to secure inputs from diverse and presumptively independent sources, the Department will signal that it is trying to develop as balanced and comprehensive an understanding of the event as possible.

The UCPD Operational Review reached the Chancellor's Office on the Friday afternoon just before spring break (March 19th, 2010), then reached the Police Review Board toward the middle of the next week.

### **Characteristics of the Data Base**

Once delivered, the Operational Review reflected a great deal of work. The summary of the review states that it was based on 46 interviews, 160 You-Tube recordings, substantial media footage and reports, written reports by the six official University "observers" who were called to the scene, written reports prepared by some UCPD officers in the days following the events, the documents accompanying the 45 arrests that were made on the 20th, the many hours of video shot by UCPD that day, recordings from and logs of police communications, internet blogs by professors who had

been at the demonstration, complaints filed by demonstrators and onlookers, and some documents that had been generated by the civilian Administration during the day.

Having reviewed this material ourselves, we can attest to its daunting volume. But the volume is not the principal source of the challenge that this material presents. Rather, that challenge resides in a pervasive inconsistency and imprecision in the accounts of the ‘facts.’ The inconsistency is nothing as simple as a holistic or uniform tension between the views of the police and those civilians. There are significant inconsistencies within and between accounts by civilians -- as there are within and between accounts by officers. In the written accounts of the interviews of the police officers it is particularly difficult to identify the sequence and timing of events, a fact that has made it very challenging to connect reliably specific descriptions with separately identifiable events. We are by no means confident that we always have met this challenge successfully. The considerable effort we have devoted to this task has sobered us about the ultimate reliability of fact finding processes.

The Department chose to respond to some of these difficulties by presenting its narrative of the day’s events primarily in two-hours blocks of time. That form of presentation has made our task more difficult, but we understand why resort to it seemed sensible.

### **Characteristics of the Presentation**

There is a characteristic of the Operational Review, however, that seems to us to limit, unnecessarily, its utility as a tool for learning and teaching -- as well as its effectiveness as a source of reassurance to the public that the Department and its individual officers will approach their work with openness of mind and a real capacity for objective and balanced self-assessment.

There clearly are two sides to the very complicated story of November 20th (probably a lot more than two), but the Operational Review doesn’t directly acknowledge that fact. Perhaps because of the way it is structured, the Operational Review does not squarely acknowledge the inconsistencies in the data on which it is based and the competing (sometimes mutually exclusive) accounts of some of the major events it describes. Given the absence of such acknowledgments, it is not surprising that the



authors of the Review do not tell us how they resolved the conflicts between data points, or how they decided which of the competing accounts was accurate. In short, the Review does not set forth the analytical or reasoning process by which the Department made some of its significant findings or reached some of its important conclusions. In these instances, the invisibility of the underpinnings of the Department's findings can needlessly compromise the public's confidence in them.

We acknowledge that the Department conducts its Operational Review under constraints that could help explain, at least in some instances, this kind of shortcoming. Individual officers are protected by rules that govern the process that must be used when they are accused or suspected of violating Departmental policies or the mandates of the law. Honoring those rules can sometimes inhibit the way the Department conducts a review of a larger operation or series of events. At a minimum, the Department must be careful not to acquire information that would be used against an individual officer in a manner that violates the officer's rights under his or her employment contract and under state law.

The Department also must be careful not to prematurely form judgments about the conduct of an individual officer on a specific occasion, and not to appear to form such judgments prematurely. Thus, if there is any chance that a disciplinary proceeding might be launched, the Department must not begin forming judgments about the specific acts of individual officers until it has acquired and assessed all the potentially relevant information from all reasonably accessible sources. In addition, the Department must provide individual officers with notice and opportunities to participate in at least some aspects of the evidence gathering process.

These kinds of constraints, and the sensitivities they reasonably trigger, do not explain, however, why in an operational review like this, the Department cannot *acknowledge* conflicting information and competing accounts of events. Nor do they explain why the Department cannot explain how, in light of contradictory accounts from other sources, it reached conclusions about how substantial *groups* of officers defined and pursued their objectives in given situations. For example, it is not clear to us why concern about the procedural rights of individual officers should disable the Department from at least acknowledging the competing views about how confrontations were triggered

between police and protestors on some of the occasions when police brought in additional metal barricades, or when fresh squads of officers tried to pass through the crowd into the area the police controlled inside the perimeter.

### **Concerns About the Interviewing Process**

An additional set of observations about the Operational Review is in order here. When we read the summaries of some of the interviews of witnesses or complainants that investigating officers conducted for UCPD, we were surprised to see a considerable amount of what appeared to be cross-examination. This was especially noticeable in the interviews of Professors [redacted], and [redacted].

We also noted that when Professor [redacted] was interviewed for the first time, the officer who was questioning him repeatedly tried to get the Professor to make statements that he obviously feared would be self-incriminating. On one such occasion, after he explicitly expressed concern about compromising his 5th Amendment rights, the interviewer reports that she

*“tried to alleviate his concerns by letting him know that I hadn’t Mirandized him and advised him this was not a custodial interview or interrogation. I told him my intent was not to utilize anything he told me against him in his criminal case, and that I was only trying to interview him because I was conducting an overall operational review of the events that had taken place that day, and to investigate any complaints that had been generated from any police action which took place.”*

This description of what the interviewer told Professor [redacted] raises several serious concerns.

First, the interviewer seems to be purporting to give the professor legal advice – something she is not qualified to do.

Second, the legal advice that she seemed implicitly to give Professor [redacted] was wrong. She implied that his words could be used against him in a criminal proceeding only if he had been Mirandized and the interview she was conducting was

“custodial.” In fact, if the interview was not custodial, Professor [redacted] words could be used against him, whether he was Mirandized or not.

Moreover, the interviewer would have no control over decisions her superiors or a prosecutor might later make about whether to try to use Professor [redacted] words against him. She had no business implying that *her* intentions about how *she* might use Professor [redacted] words would limit a prosecutor’s discretion in deciding whether to use them in a criminal prosecution. Nor could she reasonably have been confident that a prosecutor, using a grand jury subpoena, could not force her Department (regardless of its policies or intentions) to disclose the evidence about what Professor [redacted] had told her. Under the law, in all likelihood her intentions at the time of this interview would play little or no role in determining whether Professor [redacted] words could be used against him in a subsequent criminal prosecution.

Moreover, it was not only in a criminal prosecution that Professor [redacted] words might be used against his interests. Professor [redacted] also had an interest in the disposition of the formal complaint against a UCPD officer that he had filed a week earlier. In reality, the UCPD interviewer had an interest in Professor [redacted] words that was not fully aligned with Professor [redacted] -- but she did not forthrightly disclose that fact. As a representative of UCPD, the interviewer had an interest in protecting her Department and fellow officers from accusations of wrongdoing. While she might well have viewed herself, sincerely, as impartial and objective, and might well have intended only to discover unvarnished facts, the information she was trying to elicit from Professor [redacted] in this interview clearly could and would be used to determine whether Professor [redacted] complaint was valid. She failed to explain this important fact to him.

As it later turned out, she and the Department did use information acquired in this interview when deciding to reject Professor [redacted] claim of excessive force.

In this setting, it is troubling that the interviewer repeatedly pressed Professor [redacted] to tell her whether he had torn or cut yellow police tape on the western side of Wheeler -- when she apparently believed, without telling Professor [redacted], that whether or not he had done so was a key element in determining whether the conduct that Professor [redacted] was challenging was lawful.

We are in no position to make a finding about what was in the interviewer's mind when she was questioning Professor [redacted]. We do not know whether her motives were as pure as the driven snow or were infected by guile. What we do know is that it was foreseeable that what she told him could mislead him about the applicable legal principles and about the scope of the risk that what he said during this interview could come back to bite him – either during a criminal prosecution or in the determination of the excessive force complaint he had filed.

We also believe that it was not appropriate to purport to interview Professor [redacted] as part of the Operational Review at a time when the Department knew he had filed a complaint against one of its officers for conduct that occurred during the events that were the subject of the operational review. UCPD officers appear to be well aware of dangers that blurring two differently animated procedures like this can entail.

Specifically, UCPD officers have gone to great lengths to protect themselves against the possibility that findings would be made or information would be acquired during a general operational review that might create difficulties for them in a subsequent disciplinary proceeding, lawsuit, or criminal proceeding. Given their considerable sensitivity about perceived threats to their own procedural rights in this kind of setting, it is quite curious that the interview of Professor [redacted] reflected no sensitivity to similar concerns he might have or to analogous prejudices he might later suffer.

At a more general level, we question the appropriateness of cross-examining witnesses whom the Department is purporting to interview simply for the purpose of exploring more thoroughly the facts that are relevant to a general operational review. Cross-examination is adversarial. It gives the impression to the person being questioned that the questioner has interests adverse to his and hopes to catch him in some error or misstep in memory. Cross-examination also implies distrust – a need to trick the person being questioned into telling the truth or into saying something that the questioner wants to hear.

Do we want our police department to give any of these kinds of impressions to witnesses from whom they are trying to acquire useful and accurate information? Does cross-examination (which is easily detected by lay persons) increase the likelihood that the Department will acquire reliable information – or does it reduce that likelihood, while

alienating the people the police are to serve and protect? Once sensed, cross-examination is likely to make the person being interviewed play his informational cards much closer to his vest, to inhibit him from searching his memory and perceptions openly and freely for full and accurate answers to the questions.

Shifting gears, we offer one additional suggestion about the way UCPD officers conduct and summarize interviews of witnesses. Many of the interview summaries we have read do not present the acquired information in tight chronological order. Instead, the summaries often jump from topic to topic and from time to time -- without including any clarifying transitional explanations. This form of presentation sometimes makes it extremely difficult for readers to identify the events about which a particular interviewee is speaking -- as well as to determine reliably when different interviewees are talking about the same incident. To increase clarity and reduce risk of interpretative error, we urge the Department to teach its interviewers to have interviewees tell their stories, to the fullest extent possible, in chronological order. When later preparing their written summaries, the interviewers should present the information in chronological order -- taking care to identify, at each juncture, the particular incident or development about which information is being presented.

## **THE “FINDINGS” AND “RECOMMENDATIONS” IN THE OPERATIONAL REVIEW**

It is in the sections of the Operational Review that are devoted to “Findings” and to “Recommendations” that the Department most clearly demonstrates its considerable ability to learn from operational experience and to acknowledge significant shortfalls in how it handled the unfolding events on the 20th.

### **Ten Findings We Endorse**

We agree with the following assessments that the Department made of its operations:

1. The Department did not establish and staff properly an effective command post. A command post should not have been established inside Wheeler or inside the cordoned perimeter.

2. The patrol cars in which BPD officers arrived early in the morning should not have been parked in the area between Wheeler and Moses/Anthony. Leaving the police vehicles in this location forced UCPD to establish a perimeter line that was unnecessarily extended and more difficult to maintain.

3. The decision to request mutual aid was not made as early as it should have been – and the Department should have understood, before the 20th, that significant time was likely to elapse between the request for aid and its arrival.

4. Before mutual aid units are deployed, UCPD should brief them, make sure they understand the circumstances in which they will be working and the objectives of the operations, and identify the kinds of equipment and weapons they have brought. UCPD also should control the use of less-lethal weaponry by mutual aid personnel.

5. When officers from off-campus are deployed, measures must be taken to assure that UCPD command and staff can communicate by radio with them effectively in real time. Steps to ensure this capability must be taken in advance, e.g., by assuring mutual ability to use the CLEMARS systems.

6. Additional “University Observers” should have been requested and some such observers should have been stationed outside Wheeler – ideally at all four corners of the perimeter.

7. UCPD should have developed in advance plans that would enable them to know where metal barricades in sufficient numbers are stored, how to get them, and how to move them promptly to various locations on campus.

8. Civilian employees should not be used to help deliver or set up barricades.

9. The metal barricades should have been set up earlier – and metal barricades should have been used to form the entire perimeter (not just police tape) – at least once the crowd started to grow and the yellow tape was torn several times.

10. UCPD should have communicated more, and much more effectively, with the crowds outside Wheeler. Bullhorns and/or electric sound amplification equipment should have been used.

These are significant lessons to have learned – and the campus community should commend the Department for demonstrating the capacity for operational self-criticism that is reflected in these findings.

### **Findings We Cannot Endorse**

There are aspects of the Department’s “Findings,” however, that the Board cannot endorse. In addition, as we explain in a subsequent section, we believe that the Operational Review fails to include some important findings and to address some important issues from which there is more to be learned. We turn first to the “Findings” in the Operational Review that we cannot endorse.

We preface our discussion of these specific “Findings” with a comment that applies to all of them: we are disappointed by the absence from this section of the Operational Report of any intimation that conduct or actions by police officers, in the aggregate or in localized groups, might have contributed to the unraveling of what in some instances had been relatively stable circumstances, or that conduct or actions by the police might have been responsible in some measure for the chain of events that resulted in the most troublesome confrontations with the crowd.

We begin our discussion of the specific “Findings” that we cannot endorse by noting two non-sequiturs which, viewed in one light, are not especially consequential, but that might reflect an unnecessarily narrow view of cause and effect that could limit departmental self-assessment and compromise the Department’s ability to learn from experience.

### **Patrol Cars and the Perimeter**

One of these non-sequiturs appears in the “Findings” that discuss the failure to establish an effective command post. It reads as follows:

*“As a result of not having a CP Logistical component, the placement of the BPD marked patrol cars and the unmarked UCPD vehicle caused a situation where a collapsed and more manageable perimeter could not be created.”* (emphasis added).

The sequitur that we question is this: how is it that the poor decisions about where to park the police vehicles, and then the failure to decide, relatively early in the morning, that they should be moved, is attributable to “not having a CP Logistical component”? Why wasn’t it obvious to the officers on the scene that the location of the parked police cars would needlessly extend the perimeter?

In fact, the Department’s failure to order the relocation of the Berkeley police cars cannot be attributed to “not having a CP Logistical component,” but to misjudgment, forthrightly admitted, by command staff on the scene at the time. As reported later (with commendable candor) by [redacted], “I am not sure how or why, but the Berkeley Units entered onto Sproul Plaza from Bancroft Avenue and drove directly to Wheeler Hall. The Berkeley Units parked on the south side of Wheeler Hall and I meet [met] with [redacted]. *I should have redirected the Berkeley vehicles to Barrows Lane but I did not. I wanted to get BPD deployed as quickly as possible so the situation could be resolved. I did not anticipate the event growing to the magnitude it did.*”

As a separate matter, we also wonder why the Operational Review does not more forthrightly acknowledge that the perimeter that was originally established was wider than necessary and that its dimensions compromised the ability of the police to maintain it – a development that contributed to the additional problem (discussed below) of inconsistent enforcement of breaches of the line.

We do not suggest that there were not good reasons for establishing a perimeter. There were. The officers had a completely legitimate need to prevent additional demonstrators from joining the occupiers or expanding the occupation to additional parts of Wheeler. The officers also had a duty to try to prevent injuries that might have been



suffered if additional people had entered the building. Especially after the first officers to enter Wheeler encountered violent resistance from one of the four protestors the two officers tried to apprehend, UCPD could not be confident that none of the occupiers of the second floor would commit acts of violence against people inside the building, be they officers or civilians.

On a more formal level, establishing a perimeter also was justified because the entire building was a crime scene – and the officers had a duty to preserve the evidence inside the building (as well as at its points of entry) about the nature and consequences of the crimes, be they trespassing, vandalism, burglary, assault, or some other offenses -- the nature of which the police, excluded from the entire second floor and unable to communicate reliably with its occupants, could not have known.

We are disappointed, however, that UCPD commanders did not make much more effective efforts to explain to the crowd why they needed to establish and maintain a perimeter of reasonable dimensions. To repeat one of the themes of this Report, we believe that explained actions are less likely to be misunderstood and mistrusted than unexplained actions. For that reason, explained actions are less likely to invite challenge or noncompliance.

The need to communicate clearly about the purposes of establishing and maintaining a perimeter was especially substantial in this case for two reasons: (1) the area cordoned off by the perimeter line was quite large -- and the need to secure an area of this size was not especially obvious, and (2) the area cordoned off included or was immediately adjacent to space that traditionally had been considered (by many members of the campus community) almost a sanctuary for the exercise of First Amendment rights. This area had unusually intense symbolic resonance with Berkeley traditions -- and cordoning it off was likely to trigger stronger reactions and fears than cordoning off many other areas on campus. All of these considerations converged to make it important to communicate with the crowd about why the perimeter was necessary.

Given the volatility of the circumstances and the sensitivity of the issues, the Department and the Administration should consider carefully *how* announcements or explanations like these are made. Because the campus community is so large and its student population so transitory, the people who make these kinds of announcements

should identify themselves to the crowd at the outset. Moreover, there are likely to be circumstances in which the wisest course would be to have important announcements made jointly by a visibly high ranking police officer and by a visibly high ranking representative of the Administration. Making sensitive and significant announcements jointly could reassure demonstrators that ultimate control of the use of police power is in civilian hands and that the particular directive being given or explained has been vetted with and approved by this highest levels of civilian authority.

### **Preventing ‘Mob Mentalities’**

The second apparent non-sequitur in the Department’s “Findings” reads as follows:

“A swift conclusion to the occupation was needed *to avoid mob mentality from developing.*” (emphasis added).

There is a real possibility that we detect in the structure of this sentence a meaning that was not intended -- or a view that is not held. We worry, however, that this sentence reflects a notion that the only way to prevent a “mob mentality” from developing when a major campus building has been occupied is to end the occupation early.

In our view, the development of anything that can be characterized fairly as a “mob mentality” was in no sense inevitable on the 20th (even though a small number of agitators in the crowd apparently tried to promote such a mentality). We also believe that there can be many ways of handling an occupation that reduce, dramatically, the risk that a “mob mentality” will develop.

Among many other ways to reduce this risk, leaders of the Administration, clearly identifying themselves as such, and commanders of the police on the scene, also clearly identifying themselves as such, could communicate respectfully with the crowd (through devices that deliver their messages) on a regular basis, (1) providing accurate and reassuring information about what they are considering doing or planning to do (and why), (2) identifying clearly and announcing unequivocally that they are not considering kinds of actions about which the crowd might be especially anxious (e.g., using chemical

weapons or beating arrestees), (3) clarifying their concerns and pointing out the competing values at stake, and (4) emphasizing their respect for the right to disagree and protest lawfully.

We believe that treating demonstrators respectfully and reasonably can be one effective way to disarm agitators and to reduce artificial occasions for crowd anger and misbehavior. We feel especially strongly that the authorities should proceed on this assumption until it is proven, by situation specific failure, to be incorrect.

### **The Reasonableness of the Use of Force**

The “Findings” in the Operational Review that warrant the most extensive discussion are these:

“The use of force, up to and including batons, was legal and proper in terms of attempting to have the demonstrators comply with lawful orders to stay back and not pass the police line.”

“The use of force, up to and including batons, was legal and proper as self defense for the officers who were defending themselves and other officers against an angry crowd.”

For several reasons, we cannot subscribe to these “Findings” as they are articulated in the Operational Review.

### **The Applicable Legal Standards**

A police officer, a professional who possesses considerable physical and legal power, may use force to achieve lawful objectives of law enforcement, but may use only a level of force that a competent officer, facing similar circumstances, could conclude reasonably is an appropriate means to the lawful end.

The test is objective -- its outcome does not turn on findings about the motives or subjective purposes that may have accompanied or inspired the officers’ conduct. While evidence about such motives or purposes may be relevant in determining whether an

officer's description of facts is truthful or accurate, once the facts are determined, the test that applies under the 4th Amendment is one entirely of objective reasonableness. Graham v. Conner, 490 U.S. 386, 397 (1989).

Proper application of this test must be very circumstance specific. It "requires careful attention to the facts and circumstance of each particular case." Id. at 396.

Under well-established doctrine in this arena, officers "are not required to use the least intrusive means available; they simply must act within the range of reasonable conduct." Brooks v. City of Seattle, 599 F.3d 1018 (9th Cir. 2010). Stated differently, the law recognizes that, at least in most situations, there will not be just one course of conduct that will pass constitutional muster. Instead, there may be several such courses of conduct -- creating, in essence, a zone of reasonableness. The law will uphold an officer's actions as long as the technique he chooses falls within the zone whose boundaries are fixed by the range of reasonable options. Cf., Graham v. Conner, supra, at 396-397.

Requiring officers to select the one means to their lawful end that would involve use of the least force would be unfair because it would fail to take into account the fact that officers are called upon to make immediate judgments in "circumstances that are tense, uncertain, and rapidly evolving," Id. Applying such a strict standard also would undermine the requirement that the assessment of the reasonableness of the officer's conduct must be made from the perspective of the officer at the time she had to make the decision -- not with the clearer vision of hindsight. The courts also recognize that holding officers to such a strict standard would too often lock officers into inaction -- and thereby endanger innocent civilians and the officers themselves.

Finally, it is important to acknowledge that an officer's use of force can conform to constitutional norms even if is not preceded by a warning or command. The cases demonstrate that use of force is more likely to survive constitutional challenge if officers first warn the persons against whom they use force. But the cases also make it clear that giving a warning is not a necessary precondition to lawful use of force. For example, the law would not require an officer, before resorting to force, to issue a warning to a suspect who is viciously attacking him from behind.

### **Application of the Legal Standards**

Applying these hardly self-executing standards to the circumstances the officers faced at various junctures over the course of their day outside Wheeler Hall is challenging. Each instance of the use of force must be assessed under this test separately -- a task not obviously undertaken by the Department in its Operational Review.

The test cannot be fairly applied unless, first, all the relevant facts of each separable situation are accurately determined. The process the Board has been constrained to use in developing this Report does not enable the Board to make all the necessary factual determinations with sufficient confidence to pass morally (or legally) defensible judgments on much of what happened on the 20th. But awareness of that same disability should have counseled the Department to be more cautious and restrained when purporting to make and articulate its "Findings."

What follows is what we feel we can say, in the spirit of constructive learning, about some of the major confrontations between police and demonstrators that involved the use of force.

First, in responding to a demonstration on a college campus -- at least in settings where no weapons have been displayed and most of the demonstrators clearly are not criminals, but impassioned students -- whether resort to *any* force is "reasonable" should turn, in part, on how clearly the police have communicated their orders to the people whom they expect to obey them. If the orders or rules are clear and should be clearly understood, but then are disobeyed willfully, some form of coercion may be entirely appropriate (but what form that coercion should take is not a self-answering question).

For some kinds of conduct on the 20th, it is clear that the demonstrators should have known what the rules were -- without any special communication emanating from the police. Most obviously, when demonstrators intentionally tore the perimeter tape and invaded an area the police had cordoned off, they knew or should have known that they were breaking the rules, that they were, in legal effect, disobeying an order.

But it is by no means clear that the demonstrators knew what the orders or rules were every time there was a physical confrontation between the police and demonstrators on the 20th. According to some accounts (not proved with any degree of certainty), there were times, especially when new squads of officers were being marched through the crowd, that demonstrators were completely surprised by uses of force by the police --

having no idea that they had been ordered to do anything (e.g., to clear a path for the entering officers).

We do not agree with the suggestion made in the Operational Review that the police are relieved from responsibility to clearly communicate orders or rules that are not self-evident when noise by the crowd makes communication difficult. At a minimum, the police have a duty to try to communicate effectively in this setting.

It was not reasonable in several of these circumstances for the police to rely on voice commands or hand signals. The police should have known that these methods were not likely to do the communication job, i.e., that they were not likely to deliver the message to all of the people who would be affected by the officers' planned actions. This is especially true when what the officers planned or intended to do was not obvious (so it was known only to them), or when their plans or intentions would have been clear only to some of the people to whom their orders would apply. It is especially unfortunate that officers did not use bullhorns or other methods to amplify the messages they should have been trying to deliver.

We acknowledge that the police would be relieved of a duty to communicate an order in advance when disclosing the officers' intentions or plans would endanger the officers (or others), or when doing so likely would compromise the officers' ability to achieve an important lawful objective. But neither such circumstance obviously applied to most of the confrontations on the 20th. We believe that, in most of the instances where officers used substantial force, they first should have given the demonstrators an opportunity to comply voluntarily. No such opportunity is real unless it is effectively communicated.

By giving demonstrators an opportunity to comply voluntarily with an effectively communicated order, the police occupy the high moral and legal ground -- thus removing at least some of the excuses that might later be used to try to justify unreasonable conduct by demonstrators.

Thus, if they are faced with similar circumstances in the future, our police should make sure they effectively communicate their orders and provide the people at whom they are directed sufficient opportunity to comply.<sup>32</sup>

In addition, we recommend that our officers clearly advise demonstrators what will happen if they do not comply. For this latter purpose, words along the following lines might be used:

“For the reasons we have explained, we are now ordering you to [move back behind X line]. We will give you three minutes to comply voluntarily. If you do not comply voluntarily you will be committing a criminal offense, as well as a violation of campus rules that could affect your academic standing. By refusing to comply, you will force us to use physical means to move you. We don’t want to have to do that, but if we must, we will. We will use only such physical means as your conduct makes necessary. If you do not resist physically, you will not be injured.”

Another factor that can be in play when assessing the reasonableness of the use of force is the consistency or inconsistency with which the police respond to failures to comply with orders or rules. There is substantial evidence that on November 20th the police did not respond consistently to similar kinds of conduct that violated orders or rules. It is far from clear, for example, that the police uniformly insisted that the crowd honor the perimeter line. Especially on the western side (lawn area) of Wheeler, it appears that the police tolerated or failed to promptly respond to obvious and substantial incursions by demonstrators into the area that had been cordoned off.

When the police give orders that they sometimes visibly fail to enforce, they invite demonstrators to conclude that orders of a similar kind are not real -- meaning, that, if violated, nothing will happen. We do not mean to suggest that inconsistency in enforcement eliminates the duty in demonstrators to obey. The demonstrators’ duty under the law is independent. But we do mean to suggest that inconsistency in enforcement

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<sup>32</sup>This principle seems to underlie the model dispersal orders in UCPD’s “Crowd Management Policy.”

might make it less likely to be reasonable for the police to resort to force -- at least without making a special effort to communicate their intentions so as to give the demonstrators an opportunity to comply voluntarily. In several instances on November 20th, the police seem to have concluded that use of force was necessary without first effectively compensating (by clear, situation-specific communication) for the inconsistency, over the course of the day, in their enforcement of orders.

Use of force, or at least use of some kinds or levels of force, can be unreasonable, moreover, even when (1) orders have been consistently enforced, (2) are clearly understood by all the people against whom force will be used, and (3) all those people clearly are violating a directive that is lawful. In determining whether use of force is reasonable, or how much force is reasonable, officers also must take into account both the relative importance of the objective to be achieved (e.g., the seriousness of the crime that has been committed) and the potential harms that the use of force might cause.

As the Supreme Court has reminded us, determining whether a particular use of force offends Fourth Amendment standards “requires a careful balancing of the ‘nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” Graham v. Conner, *supra*, at 396.

We are not confident that the Department went through this kind of analysis with respect to each of the six physical confrontations it identified in its Operational Review. With respect to at least two of these confrontations, we are inclined to the view that a principled application of the standards just described would result in a conclusion that the use of force was not reasonable.

Both of these occasions involved efforts by officers to add metal barricades to the perimeter line. One was the much publicized incident shortly after 1:00 p.m. on the southwest portion of the line. The other was the incident on the northeast corner of the line at about 7:10 p.m.

In both of these violent confrontations, it appears to us that the police decided to place the barricades along particular lines that they believed had been established earlier but over which demonstrators had in some measure encroached. In both instances it appears that the demonstrators were not moving forward -- but intended to try to retain positions they had inched forward to occupy. In both instances it is not clear to us why



the barricades needed to be placed precisely where the boundary lines previously had been set. Rather, in both instances it appears that the police could have achieved their principal objective (keeping the crowd out of a secured space of sufficient dimensions around Wheeler) by locating the barricades on lines directly in front of the areas into which the demonstrators had inched.

Moreover, given the intense animation of the crowd, and the fact that demonstrators had resisted the installation of barricades earlier in the day, it was foreseeable that the crowds would resist if the police tried to push them back so the barricades could be placed on the original line of the tape. In short, the objective that was to be achieved by pushing the crowd back was of no real consequence, but trying to achieve that objective by pushing the crowd back was very likely to provoke physical resistance, perhaps even a riot. In such circumstances, especially when working on a college campus and having an obvious alternative means to achieve the Department's goal, we are not comfortable concluding that the use of force in these two instances was reasonable.

The fact that the officers preceded their action by orally ordering the people in the front of the crowd to move back certainly is not sufficient to support a finding, on these specific facts, that their subsequent use of force was reasonable.

As mentioned above, we are not sure that intelligible orders were given in these two situations, or that, if given, they were understood. But even if orders were clearly given and well understood, the fact that some part of the crowd did not promptly follow those orders is not sufficient, standing alone, to justify using force to achieve an objective whose importance was not clear. When the end pursued is not significant, the means used will be subject to more demanding scrutiny.

We also note that it is entirely possible that, in both instances, at least some of the people to whom force was applied could not have complied with the orders that may have been given even if they had understood them and wanted to comply. Evidence from several sources (video and verbal) suggests that, in each of these two instances, the crowd was so densely packed at the crucial points, and the pressure from the rear of the crowd toward the front was so strong, that the people on the front line literally could not move in the direction the officers wanted them to.

We turn next to the “Finding” in the Operational Review that “The use of force, up to and including batons, was legal and proper as self defense for the officers who were defending themselves and other officers against an angry crowd.”

At the outset, we cannot endorse the notion that officers are entitled, as a generally applicable proposition, to use force to defend against anger. We suspect that the Department did not intend, by the phraseology of this Finding, to suggest that it is proper to use force against anger, standing alone.

Instead, we assume that by this Finding the Department intended to communicate that when officers were being physically resisted or battered by an angry crowd, it was lawful for the officers to use force to defend themselves. In isolation, this proposition is reasonable. But it can’t be considered in isolation. First, while there is ample evidence that in at least some of the confrontations some people in the crowd physically resisted police action -- at least pushed or fought back -- it is much less clear, to use the vernacular, who started it. If the police ended up in a position where they had to defend themselves against physical assaults only because the police unreasonably initiated physical confrontations with the crowd, a finding that the police action was both lawful and proper is less clearly justified.

We hasten to acknowledge that, as a general proposition, it is unlawful for civilians to physically resist police orders even when the orders by the police are later adjudged to have been unlawful from the outset. Cf., California Penal Code sec. 834(a). We do not suggest that this general principle did not apply to the demonstrators outside Wheeler. It did. And violations of it cannot be excused or winked away.

But we cannot end our inquiry by acknowledging these general propositions. Instead, we believe that our Police Department would much more effectively build confidence within the campus community in its methods and in the values by which its conduct is driven if, in its Operational Review, it made “Findings” only after explaining how (on the basis of what evidence and reasoning) it has determined, in the specific circumstances of each incident, that the officers’ objectives were important and that misconduct by the crowd made it reasonable to conclude that the means the officers used to achieve their objectives were appropriate. All of us would be better served if the Department explained what assessments of inconsistent evidence, what weighing of

competing interests, and what line of reasoning supported each of these critical “Findings”?

### **The Role of the Size of the Crowd and the Speed of Its Growth**

One additional comment about the “Findings” the Department made is warranted. The “Findings” section of the Operational Review seems to suggest that some of the shortfalls in the Department’s containment of the demonstration are understandable because of the size of the crowd -- and the fact that it grew faster than anticipated as a result of effective use of electronic communication by demonstrators and the triggering of so many false fire alarms. The last sentence of the “Findings” section reads: “As stated before, the emails from the Chancellor’s office and the extraordinary number of false fire alarms provided *an unanticipated and uncontrollable number of people* to accumulate around the building.” (emphasis added)

It is not clear why it surprised anyone in 2009 that protestors used cell phones, text messages, FaceBook, and Twitter to get the word out that they were occupying a major building and needed supporters. More troubling, however, is the suggestion that shortages of manpower were both unforeseen and unforeseeable -- thus excusing the failure to request mutual aid until the demonstration had been in high gear for several hours.

[redacted] reports that relatively early in the morning, apparently between 9:00 a.m. and 9:30 a.m., “the crowd was rapidly increasing in size and the crowd behavior was becoming more resistant. The need for additional Officers was quickly becoming apparent.” It was during this period that [redacted] informed [redacted] that, unless necessary to protect officers or others from imminent physical injury, he would not permit City of Berkeley officers to enter Wheeler (to free up UCPD officers for the removal effort).

In this setting, at about 9:30 a.m., [redacted] “discussed with Chief Celaya the need for additional staff and mutual aid. I informed Chief Celaya we would not be able to hold the perimeter and make the entry with the number of officers we had.”

This assessment was made before 10:00 a.m. Chief Celaya did not approve making the request for mutual aid until after 1:00 p.m. While prudential and historical considerations may have made postponing this decision understandable (perhaps even

wise), it does not seem accurate to suggest, as the Operational Review does, that the decision was delayed because the Department “did not anticipate the rapidly growing crowds.”

We also note that even at its height the crowd around Wheeler Hall apparently never exceeded about 2,000 people. Over the years, there have been many occasions when demonstrating crowds on this campus have been much larger. While elements in the crowd on November 20th were aggressive and unruly, crowds have been aggressive and unruly during many past demonstrations. Thus, while the Department may not have anticipated the size of the crowd, it is not clear that that shortfall in foresight is understandable. Moreover, it is far from clear that “an uncontrollable number of people” participated in the demonstration. On the contrary, we believe that our police force should have foreseen the need to have in place, well before November 20th, concrete plans and rehearsed strategies for dealing with large and aggressive crowds.

### **FINDINGS NOT MADE AND ISSUES NOT ADDRESSED IN THE OPERATIONAL REVIEW**

In addition to the matters discussed in the preceding pages, there are some events and issues that the Operational Review did not address that warrant comment.

#### **Less Lethal Weapons**

One such event involved the use of a “less lethal” weapon to shoot a rubber projectile into the stomach of a protestor. We believe this incident should have been addressed in the Operational Review – even though the projectile apparently was launched by an officer from an off-campus agency.

The presence and use of less-lethal weapons is a matter of considerable concern and sensitivity. These weapons look to the untutored eye like machine guns. So their visible presence, by itself, can intensify reactive emotions and invite erroneous inferences about the measures to which the police are prepared to resort. For this reason, and because these weapons can inflict serious injuries when misused or when deployed in

chaotic circumstance, the presence or use of less-lethal weapons by any officer in an operation for which UCPD is responsible should be subject to careful control by our police department. And our Department should attempt to investigate thoroughly<sup>33</sup> every use or discharge of any such device – even when the discharge or use was by an officer from an off-campus unit.

We endorse policies adopted for these purposes by the University of Wisconsin-Madison Police Department. Those policies specify, among other things:

1. “Less lethal launch systems and projectiles should only be deployed in crowd control operations after receiving command staff authorization.”
2. “Only the Chief or command staff designee may order the use of less lethal projectiles.”
3. “A suspect struck with a non-lethal projectile should be, if feasible, medically cleared by medical personnel as soon as possible after a non-lethal projectile is used.”

Our department demonstrated awareness of the need to control use of less-lethal devices on November 20th when [redacted] learned that an “ACSO sergeant was considering deploying smoke.” As we noted in a previous section, [redacted] “spoke directly to the ACSO sergeant and told him he was not to deploy any chemical agents, smoke or anything like that without specific direction from our command post. He confirmed that he understood.”

It is not clear that this kind of control was exercised over the officer who deployed the rubber projectile. There is no evidence that he or she received or sought permission from our command staff before doing so. It is not even clear that our command staff knew (at the time) that any officers were carrying such weapons. That troubling possibility exposes one of the risks of using mutual aid units – and underscores the importance of controlling the kind of equipment officers in mutual aid units bring on our campus, as well

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<sup>33</sup>We say “attempt to investigate thoroughly” because there can be significant barriers to conducting a complete investigation when the officer who deployed the less lethal weapon was an employer of another law enforcement agency.

as how or under what circumstances mutual aid officers are permitted to deploy the equipment they have brought.

**The Reliability of the UCPD Video Record  
and How the Department Handled a Complaint About It**

During the course of our examination of the events of November 20th we encountered two separate circumstances that triggered concerns about how the Department created its video-taped record of the demonstration.

One of the sources of such concerns, initially, was videotaping by the Department surrounding the arrest of Professor [redacted]. Only the aftermath of that arrest was captured on the video-taping by the Department. The circumstances that immediately preceded the arrest, and the arrest itself, were not filmed.

During the course of our general review of this matter we noted the following sequence of facts: (1) there is UCPD videotape footage of the arresting Officer from 10:05 a.m. through 10:09+ a.m. (right before the arrest), (2) there is no videotape footage of the arrest, but (3) the Department's videotape footage resumes, in the same location, at 10:12 a.m., showing interaction between other officers and protestors, then showing Professor [redacted] "being walked off in handcuffs."

We hope the Department understands why this sequence of facts would cause an independent reviewer of matters like these to wonder why the critical physical interaction between the Department's officer and the suspect was not captured on the Department's film. Given the second, independent source (described below) of the Board's concern about the Department's video-taping, it should surprise no one that the interruption of the [redacted]-video at the only truly critical juncture gave the Board reason to wonder. The Department needs to attend to appearances as well as to realities -- and when appearances invite an erroneous inference, it is especially important that the Department's Operational Review squarely address and explain those appearances.

Before the Board finalized its Report, UCPD presented us with a perfectly plausible explanation for the interruption in its video tape at the time Professor [redacted] was taken down by the arresting officer. According to the Department, tapes of radio communications between more senior officers and the officer who was video-taping the

events in the area Professor [redacted] was arrested reveal that the videographer was told to redirect his camera from the officer who ended up arresting the professor to the southwest corner of Wheeler right before the professor was taken down. As Professor [redacted] and others have reported to us, there was an outburst of activity to the south of Professor [redacted] position just before he jumped up on the retaining wall and broke the yellow police perimeter tape. In fact, it was that outburst of activity that motivated the professor to jump up on the retaining wall and look to the south -- so he could get a better look at what was going on there.

UCPD radio tapes also evidence a second directive to the same videographer, just moments after he had been told to direct his camera to the south. In that second recorded radio message, the videographer is told that an arrest is being made back in the area he had been taping just moments before, and that he should redirect his camera to that arrest-related activity.

Thus, the Department has provided the Board with evidence that explains the sequence of the scenes that the Department taped -- and that dispels concerns about why the video record appeared to be interrupted at a critical juncture. This part of the much larger story, however, should remind both the Board and the Department how important it is to try to anticipate and address pieces of evidence which, if not understood in full context, can be expected to give rise to negative concerns. To repeat, appearances can be as consequential as realities.

The second source of the Board's initial concern about the reliability of the Department's videotape record has not been satisfactorily explained. The UCPD Operational Review ignores an issue raised by a complainant who alleges that after she was assaulted by police officers while she was standing along the perimeter line, a UCPD officer who had been videotaping the confrontation between the crowd and the police at that juncture refused to make a videotape record of a serious injury she claims to have suffered during the incident.

This complainant asserts that the video-taping officer

“turned around and DID NOT video tape me. I even told him to video tape my [allegedly profusely bleeding] face, but he refused and walked away. I

remember this the MOST vividly. I would like to bring to justice the officer/s who assaulted me as well as the officer VIDEOTAPING as he REFUSED to capture the assault and the fact that I was significantly hurt.”

We don't know whether this complainant's account is accurate. But we also don't know why a complaint about this kind of alleged conduct by an officer on our force was never mentioned in the Operational Review. We understand that it is not appropriate during an operational review to try to determine the factual accuracy of a complaint about specific conduct by a presumably identifiable UCPD officer. But we don't understand why it is appropriate for an operational review to wholly ignore an allegation which raised fundamental questions about the reliability of the Department's accounts of critical events. A reader of the Operational Review would never know that anyone ever contended that the process that UCPD used to make a record of the events on the 20th was not objective and balanced. Because this kind of allegation challenges the factual accuracy of the records on which the Operational Review is based, the Department should be especially careful not to appear to be sweeping it under the proverbial rug.

We hasten to acknowledge that how a matter like this is raised in an operational review is quite sensitive – and that a generalized review process like this should not include an effort to make factual determinations about a specific incident that is the subject of a complaint against an identifiable officer. But the fact that it would require care to draw an appropriate informational line does not relieve the Department of its duty to draw it. We feel strongly that it is imperative at least to alert readers of the Review to the fact that an allegation of this kind has been made. Appearing to ignore a charge that cuts to the core of the process that supports the Operational Review can do serious damage to the confidence the campus community must have in the reliability of its Police Department's self-assessments.

We also are mystified by the way the Department handled this particular complaint. As we noted, the written complaint clearly has two separate elements: in one, the complainant makes allegations of excessive force by some officers, and in the second, the complainant makes the allegations about the videographer that we have described above. In a finding that we have no basis for questioning, the Department concluded that the



officers who were the objects of this complainant's excessive force allegations worked for the Berkeley Police Department, not UCPD. So the Department informed the complainant that if she wished to pursue that matter, she would need to file her complaint with the Berkeley Police Department. Fair enough.

What is not fair enough, however, is the fact that UCPD completely ignored -- both in its response to the complainant and in its Operational Review -- the separate allegation against the videographer -- who admittedly was employed by our police department. The Operational Review includes a section entitled "List of Complainants and allegations." The first complainant and allegation described in this section is the complaint we are discussing. We set forth here the entirety of the description of his complaint (omitting only the name of the complainant):

"[Complainant] alleges that she was pushed twice and hit in the face with a baton when barricades were installed on the north east corner of Wheeler Hall on November 20.

[Complainant's] description of the events allowed us to determine that this matter involved BPD officers and the complaint was forwarded to BPD.

[Complainant] was advised by letter that she should file a complaint with BPD."

How would a reader of this description ever know that there was an additional, separate, allegation in this complaint that challenged the evidentiary predicates of the Operational Review itself?

The Department's letter to the complainant is comparably troubling. In this letter, the Department informs the complainant that "after reviewing your complaint, and reports generated from the November 20th incident at Wheeler Hall, *it appears the officers involved in your complaint actually work for the City of Berkeley Police Department. Based on this information, UCPD will not be continuing to investigate this matter.*" The letter proceeds to advise the complainant that "you must contact BPD if you wish to file a personnel complaint with them."

Through this letter, UCPD announced that it would do nothing further in response to this complaint -- even though the Department knew or clearly should have known that one of its officers was the target of an important and independent allegation. The letter foreseeably would mislead the complainant into believing that not only the officers who allegedly assaulted her, but also the videographer, were employed by the City of Berkeley.

Before leaving this topic, we pause to comment on the way the Department frames the policy instructions that apply to making records of unplanned protest events. The pertinent policy statement reads as follows: “Establish surveillance points to identify individuals committing crimes and individuals who are potential leaders or key players, and to document and report events as they happen. Document criminal acts and rules violations whenever possible by photographs and/or videotape.”

As framed, these instructions signal to officers that the principal purpose of recording events is to generate evidence for use in criminal prosecutions. This purpose obviously is legitimate. But we believe it would be wise to amend this policy statement so that it teaches officers that recordings also are to serve important additional purposes -- one of which is to help the Department and all other interested parties acquire an accurate understanding of how the events being recorded actually unfolded. If that purpose is achieved, but only if that purpose is achieved, the recordings also can (1) serve as valuable resources for departmental learning, (2) help reassure the public that the Department is honestly and seriously committed to self-monitoring and self-assessment, and (3) signal the public that the Department has sufficient confidence in the integrity of its operations to capture them on film for subsequent scrutiny. Officers need to understand that these additional purposes are important and that video recordings of events can contribute to their achievement *only* if the recordings are balanced and faithful to the facts – all the facts.

### **PIO**

Another matter that is not addressed in the Operational Review’s “Findings” or “Recommendations” is the difficulty created by the lack of a dedicated Public Information Officer for this event – and the related failure to establish a press area. While we understand that the day’s events imposed severe strains on the Department’s personnel

resources, it is not clear that it was wise to commit every officer who could have served in the PIO capacity to the front lines.

As the Operational Review concludes, “UCPD was at a loss to address the challenges of demonstrators communicating real-time through the use of social networking mediums (twitter, face book, text messaging, etc.). The supportive protestors outside Wheeler, the general public and the media had no ‘reality’ check to determine if the information coming from the barricaded protestors was, in fact, true.”

Misinformation and imbalanced information likely intensified the crowd’s agitation -- especially when the confrontations outside Wheeler between demonstrators and police seemed to add credibility to claims by some of the barricaded protestors that the police were abusing them or planning to abuse them. Given the role that misinformation played in the levels of agitation that informed crowd behavior, the Department probably would have made better use of its limited resources by dedicating one officer to the PIO position.

Doing so would have conformed to established UCPD crowd control policies, which identify PIO as the third most important priority (after only Field Command and Logistics) when handling crowd control at unplanned events. Those policies also explicitly instruct commanding officers to “[e]nsure establishment and staffing of a press area as soon as resources are available and contact the campus Public Information Office.”

### **Gear**

The Operational Review does not address another issue raised by some of the people who were on the scene during the demonstrations outside Wheeler. That issue involves the kinds of gear officers wore on the 20th. The contention is that it was not necessary for the officers to wear riot gear and that doing so made the emotional dynamic between protestors and police appreciably more volatile and intense.

One theory in support of this contention is that riot gear inflames anti-authority passions -- especially on a campus with a long history of civil disobedience and a reputation for tolerating it. Under this theory, if the police had not worn the riot gear, there never would have been a need for it. But by wearing riot gear, the police essentially created the need to which that gear became responsive.

One knowledgeable student leader we interviewed, who opined that the officers should not have worn riot gear because doing so was, by itself, provocative to students, also opined that the sheer number of officers who were visible on the scene caused some people to become curious about and interested in what was going on -- helping to swell the size of the crowd. And the larger the crowd, the more interest it attracted -- thus feeding its own growth.

In a variation on these themes, some people hypothesize that when police wear riot gear they raise levels of fear and suspicion in the crowd. Under this theory, some demonstrators who would not otherwise believe that the officers intended to do anything aggressive or dangerous become worried, when they see the riot gear, that the officers are wearing it only because they plan physically aggressive actions. Elevated fear and suspicion, in this view, make demonstrators quicker to assume the worst and quicker to resort to physical means to try to protect themselves.

Fear is a notorious source of aggressive behavior -- so one way to reduce the risk of aggression is to reduce the crowd's fear of the police.

The crowd control policy that UCPD adopted a decade ago seems to reflect an acknowledgment of some of these ideas. Under that policy, one of the considerations a commander is to take into account when deciding what kinds of gear to order officers to wear or carry in a given situation is "the message [the commander] wants to send to the crowd and what appearance is appropriate; wearing helmets with batons out conveys a significantly different message than not having helmets visible and batons holstered. The number of officers visible and their deployment also affects the message (creating a formal line vs. two or three pairs of officers spread around)."

Prompted by the last point in this description of UCPD policy, we wonder whether it was wise to have some of the mutual aid squads try to move through the crowd in rigid, formal, militaristic formation.

Judgments about all of these kinds of matters, however, must be made on the basis of the specific circumstances of each contemplated action. They are virtually always likely to be highly subjective, informed by intuitions which, we hope, are informed by careful digestion of experience. We do not feel positioned to second guess the Department's decisions about these matters on the 20th. We have no experience base that might equip us

to make an educationally useful assessment of the decisions about gear that were made by UCPD and by officers from other agencies.

We were not there. Our understanding of the order in which things happened and of the details of relevant behaviors (by demonstrators and by officers) is too infirm to permit us to separate chicken from egg. We believe that at some points during the day officers made poor judgments about how to proceed. We also believe, however, that some people in the crowd (likely a small percentage) were determined to try to provoke confrontations and to encourage irresponsible behavior by others. We know that some people in the crowd at some points made provocative statements and acted in ways that could lead officers reasonably to fear that matters could get out of control. We know that when sympathetic professors tried to calm the crowd near the end of the day the reception they received exposed the intensity and rawness of feelings in the crowd and made the professors fear that there was a real risk that uncontrolled violence might erupt.

Given all these considerations, we will not try to assess the decisions made by command staff about what gear to wear. Instead, we simply ask our officers to consider, on each occasion, the various ways that shows of force, in a campus environment like ours, can make achieving legitimate law enforcement goals more difficult.

### **Communication with the Crowd**

The Operational Review would be more complete if it included discussion of one additional matter. Under the Department's current crowd control policy, the commander of any given operation at an unplanned event is to consider (among many other things) trying to "[i]dentify crowd leaders and attempt[ing] to establish communication with them." Current policy also contains the following admonition: "At such time that it is deemed appropriate to take police action, such as moving a crowd or making arrests at a sit-in, consideration should be given to communicating the intended action to the crowd in advance. While giving such advance notice is often desirable, tactical concerns may preclude it. Police personnel should make such an announcement if it is made."

As suggested earlier in this Report, we have not seen evidence that the Department devoted any significant effort to adhering to this policy with respect to the crowd outside Wheeler. There were numerous efforts over the course of the day, as we have noted, to

establish lines of communication with the barricaded protestors. But it appears that the Department made no concerted effort to identify leaders in the crowd outside the building or to open lines of communication with them. Instead, UCPD largely left communication with the crowd in the hands of the Administration, ASUC senators, and faculty. Two problems attended the decision to follow that course: (1) the efforts to communicate with the crowd outside Wheeler by student leaders, the few faculty on hand, and the Administration were sporadic and visibly ineffectual, and (2) these other possible communicators generally did not know what the tactical or strategic plans of the police were -- so they were in no position to lubricate interaction between officers and demonstrators by explaining in advance what the officers needed to do and why.

If our perception is correct on this score, we suggest that UCPD should have devoted much greater effort to trying to communicate directly with the crowd. At least one student leader we interviewed, who seemed knowledgeable about these matters, reported that she was surprised to see that some of the people she knew to be leaders of some of the protesting groups were in the crowd outside Wheeler -- causing her to wonder who was inside. She surmised that the organizers of the occupation had made a strategic decision in advance to send some of the less dynamic members of the protesting groups into Wheeler as occupiers and to have some of the most effective leaders remain outside, where they could try to muster support from onlookers and mobilize sympathizers.

If this speculation is accurate, there were leaders (or would-be leaders) on the outside -- and it would have been advisable for the leadership of UCPD to try to contact them. Whether such efforts would have yielded anything will remain unclear because none were made (at least none has been reported to us). But even if UCPD had not been able to identify cooperative leaders in the surrounding crowd, it should have tried to communicate directly with the crowd -- through megaphones or some other means. Just the effort, if sufficiently visible, could have helped ease tensions and allayed some apprehensions.

## **THE POLICE REVIEW BOARD'S RECOMMENDATIONS**

To their considerable credit, the Administration and UCPD began trying actively to learn from the events of November 20th on November 20th. Within their own spheres, the Administration and UCPD already have identified many of the shortfalls, and implemented many of the changes, that we identify and recommend in this report. Thus, for some of our recommendations there is no longer a need. But we have elected to err on the side of caution by including in this report all the significant recommendations that arise out of our study -- regardless of whether some are redundant, at least in part, of steps already taken.

### **Recommendations for the Administration**

#### **1. For responding to group acts of civil disobedience: establish clearly, and set forth in writing, the allocation of authority and responsibility between the civilian Administration and UCPD.**

It is not sufficient for the Administration and UCPD to make changes 'within their own spheres.' Through a substantial dialogue that includes input from all of the major components of the campus community, the Administration should prepare a written protocol that lays out the distribution of powers, responsibilities, and roles between it and UCPD for handling demonstrations and acts of civil disobedience by groups.

Such a protocol should begin by identifying as precisely as possible the circumstances in which it will apply.

The protocol should clearly empower the police to take immediate action, without prior authorization from the Administration, in any circumstance in which immediate action is deemed necessary to prevent injury to anyone.

Further, the written protocol should not apply when it is the actions of only a few people that appear to violate campus rules or state law. In such settings, the burdens and delays associated with securing authorization to act from the Administration are not likely to be justified.

Such burdens and delays are likely to be justified, however, when substantial groups of people appear to be violating campus rules or state law. In such settings, the confidence of the campus community will be enhanced if, both in appearance and in fact, civilian authorities control, in broad outlines, the use of police power.

The protocol should identify the office or officers in the Administration from whom the police are required to secure authorization to act. It also should identify, in descending order, at least two offices or officers in whom authority to authorize police action is vested if the office or officer to whom the police are to turn first is not available.

In addition, the protocol should set forth criteria the Administration should apply when deciding what kind of police response, if any, is appropriate in any given instance. Which courses of action generally should be pursued first? Warnings? Providing opportunities for the group to cease its civil disobedience voluntarily? And how much harm to which kinds of competing interests would justify what levels or kinds of use of force? Addressing these and related issues in a public and publicized document would provide the Administration with a vehicle for reminding the community what the rules are and that civil disobedience has consequences (both for those who chose to civilly disobey and for others).

## **2. Rationalize and tighten the Administrative apparatus for responding to group acts of civil disobedience.**

The Administration needs a high-level, relatively compact, easily coordinated emergency management team that clearly has responsibility for handling sizeable demonstrations and acts of civil disobedience by groups – as well as for assuring that accurate information about developments on scene is timely gathered and communicated to all members of the campus community and the external media. This is not news. So, why do we feel the need to make this point so vigorously?

The most obvious reason is the way things were handled on November 20th. We hasten to add that we have been told that, as a result of November 20th, the Administration well-understands the need for significant improvement in this arena --- and that it has taken significant positive steps toward developing machinery for responding more effectively and communicating more accurately when large demonstrations occur.



### **a. The Emergency Operations Plan & Center**

We do not understand what role, if any, the Administration thinks its Emergency Operations Plan and its Emergency Operations Center should or could play in matters like these. An answer to the effect that “Oh, those plans and that center are for different kinds of things” would not be sufficient. Why, we wonder, has the campus spent so much time and money setting up this elaborate machinery, machinery that is designed to handle all the decision-making, management, coordination, and communication tasks that were not handled well on the 20th, but not used it for major disruptions (and potential threats to personal safety and property) that are caused by civil disobedience? We also wonder why it makes sense to set up and support two separate administrative apparatuses for the same general kinds of purposes? We are not sure, of course, that this is what the Administration is doing. But if it is, we suggest that the matter be given a hard second-look.

While we do not have a sophisticated understanding of the Emergency Operations Plan or the Emergency Operations Center that it establishes, the documents that set forth the Plan and describe the operation of the Center provide mechanisms to assure (1) civilian control of the broad contours of responses to major disruptions, (2) prompt and constant integration and coordination of responsive efforts by a wide range of campus units, most notably the police department, (3) procedures for enlisting mutual aid from outside agencies and then managing its deployment, (4) and timely and accurate communication to all potentially affected persons and to the media.

The Chancellor or his designee, and the Vice Chancellor for Administration, have authority to activate the Emergency Operations Plan, and the Chair of the Chancellor’s Emergency Policy Group, or that Group acting as a body, has authority to activate the Emergency Operations Center. The Vice Chancellor for Administration is the Chair of this Emergency Policy Group. Because he or she also is responsible, generally, for supervising UCPD, the Plan places operational responsibility in appropriately knowledgeable hands.

We wonder why the Chancellor’s Emergency Policy Group could not serve as the high-level, relatively compact, easily coordinated emergency management team that the

campus needs for coordinating responses to significant disruptions caused by civil disobedience?

The Plan contemplates operation of the Emergency Operations Center out of specified rooms (appropriately equipped) in the basement of Barrows Hall. It also contemplates setting up, in each emergency situation, an Incident Command Post in the field, “as close to the event scene as practical.” The Incident Command Post normally would be operated by UCPD -- with supervision, support, and coordination from the Emergency Operations Center.

The Plan also calls for regularly training all critical personnel, in part through exercises with simulated emergencies, in order to identify infirmities in the system and to drive home lessons taught in a variety of other ways.

All this sounds pretty good. It also sounds directly responsive to some of the shortcomings in the campus’ response to the developments on the 20th of November. So, we are not sure why more serious consideration was not given to activating the EOP or the EOC on November 20th. Perhaps, until late morning on the 20th, no one (in authority) perceived the occupation of and demonstration around Wheeler to be an emergency. It appears that the Chancellor and his closest advisors believed that the police would have removed the barricaded protestors by 11:00 a.m. It also appears that the information that reached the Chancellor about the circumstances on the ground was uneven and incomplete.

But the word “emergency” should have at least occurred to Chief Celaya after he realized (perhaps as early as 9:30 a.m.) that he did not have sufficient forces to both manage the crowd, which was growing in size and animation, and remove the occupiers. And the term “emergency” would have virtually forced itself on people knowledgeable about the situation shortly after 1:00 p.m., when significant violence erupted between demonstrators and officers, and when the Department decided that it needed to request mutual aid.

Another possible explanation for not activating the EOP or the EOC is some undisclosed shortfall in confidence in its operations. Perhaps some Administrators feel that its appearance on paper exaggerates its capabilities in reality. We speculate here – as

we are forced to by the fact that no one we interviewed during our investigation even mentioned the EOP or the EOC.

In the end, there may be good reasons for not using this machinery in responding to a major disruption caused by civil disobedience. But we do not know what they are.

In sum, we know too little to purport to identify circumstances in which the Administration should activate its Emergency Operations Plan, or its plan for a “Response to Limited Emergencies.” We do recommend, however, that the Administration re-examine the relationship between this substantial apparatus for responding to emergencies and the apparently separate “crisis management team” that the Administration seems to have re-formed and rejuvenated in the wake of November 20th. At a minimum, the relative roles of these two sets of administrative machinery should be made clear. In addition, we recommend that lessons learned, tools developed, and people trained in each sphere be shared with the other.

We also suggest that the Administration consider attaching the word “emergency” (for purposes of activating at least some administrative apparatus) to every situation in which UCPD is compelled to call for mutual aid. Every time such a call is made, UCPD should notify the crises management team or the Chair of the Chancellor’s Emergency Policy Group and the Director of the Office of Emergency Preparedness.

### **b. A Protocol for Responding to Group Acts of Civil Disobedience**

Regardless of whether the vehicle the Administration chooses for managing responses to group acts of civil disobedience is the EOP or a separate crisis management team, we recommend that the principles and suggestions that we set forth in this section guide the development of the details of the system and of the plans it generates.

Because protests, demonstrations, and acts of civil disobedience are so common on this campus, and are so likely to remain common here, and because the challenges that large scale civil disobedience present are so different from the challenges presented by some other kinds of emergencies, we recommend that the Administration develop a specialized “Protocol for Responding to Group Acts of Civil Disobedience.”

We recommend that the group that designs this protocol (the system) for responding to large-scale acts of civil disobedience, as well as the group that implements that system in individual instances, include an undergraduate student, a graduate student, and a member of the faculty. The students who have served on the Board have made valuable substantive contributions. They also have taught us things about what students know and don't know, how they acquire the information they have, and about prevalent attitudes and concerns among students, that are important for understanding the dynamics of demonstrations and for devising ways to respond to protests that carry the greatest positive promise.

We recommend that the system and the plans it produces be, in fact, detailed. We worry that generalities, while seeming to preserve flexibility, disguise emptiness.

The specific roles and responsibilities of each player in the management process should be spelled out – and each player should be identified both by position and by name. A “keeper” of the system should be appointed -- and one of the duties of that “keeper” should be to update the organizational chart every six months -- substituting new names (and new contact information) every time a new person occupies one of the system's positions.

The protocol should identify, again by position and name, the persons with the authority to trigger or activate the system. These persons should be listed in descending order. Go to the Chancellor first. If the Chancellor is not available, go to the Executive Vice Chancellor. If the Executive Vice Chancellor is not available, go to the Vice Chancellor for Administration. If the Vice Chancellor for Administration is not available, go to the Associate Vice Chancellor/Chief of Staff, etc.

Specifically with respect to demonstrations or group acts of civil disobedience, the protocol should (1) identify clearly (in writing) the kinds of circumstances or events that make mobilization of the crisis management team or activation of the EOP mandatory, and (2) delineate the scope of the authority of the crisis management team or the Emergency Policy Group to make decisions about how to respond to evolving situations.

The civil disobedience protocol should identify any kinds of decisions that can be made only by the Chancellor or a specifically designated Vice Chancellor, as well as the

kinds of circumstances or events that must be reported immediately to the Chancellor or a designated Vice Chancellor.

The protocol should set forth the rules and procedures under which the crisis management team or the Emergency Advisory Group is to make decisions. Is a majority vote of a quorum required? Is a majority vote of the members who are accessible sufficient, even without a quorum? May the Chair on his or her own make some or all kinds of decisions ?

Regardless of where located, the leadership of this team or Group should be notified immediately every time an occasion arises that requires the team to function.

The protocol should set forth a clear, well-understood line of succession of responsibility to convene the team, and to assure prompt communication among members, that is at least three offices/persons deep.

The protocol should direct that one civilian member of the crisis management team or of the Emergency Policy Group be present in the UCPD command post or the Emergency Operations Center at all times during major disruptive events.

Similarly, one UCPD officer should be present at all times at the Emergency Operations Center or in any other place where the civilian leaders who are managing the overall response to the event have gathered.

With respect to every demonstration or incidence of large scale civil disobedience, the crisis management team or Group should consult immediately with the Vice Chancellor for Human Relations or the head of the Labor Relations department.

In turn, Human Relations staff should communicate immediately with union leadership to try to ascertain what role, if any, organized labor may be playing (or be interested in playing) in the activity that is underway or in helping to fashion a constructive response to it.

With respect to every demonstration or group act of civil disobedience, the crises management team or Group also should consult immediately with the leadership of ASUC and of the Graduate Assembly, as well as any identifiable leadership of any other group that might be involved in the activity that is underway.

The protocol should set forth the specific systems that will be used to assure that the Administration and the crisis management team or Group acquire, in real time,

accurate information about on-scene developments. Toward this end, the team should identify in advance and be able to deploy immediately ten or more neutral persons (perhaps official university observers or designated employees or students) who will act as the management teams' eyes and ears on the scene, providing accurate information as events unfold. Such persons should remain on scene for the duration of the event.

The protocol should require delivery of updated information every hour to the Chancellor or a designated Vice Chancellor. It also should require the Chancellor or his designee to interrupt their other activities to receive these updates.

Finally, the protocol should establish systems (with multiple channels) that maximize the likelihood that members of the campus community and the media will actually receive timely and accurate information about developments on the scene.

### **3. Develop targeted, detailed plans -- and train the people who are to implement them.**

The planning for November 20th seems to have been of very limited value because it was so generalized and superficial. We cannot afford to commit the valuable time of so many smart people to generalized conversations.

We will most clearly and reliably expose problems, issues, uncertainties, and incompleteness, and we will learn most effectively, when we force ourselves to grapple with specific scenarios and to design micro courses of action. The devil really is in the details. The campus must determine, in advance and in detail, what it will do if 400 people take over all of Wheeler? What will the campus do if 1,000 people surround California Hall and refuse to permit people to enter or exit? And what will the campus do if sets of students, simultaneously and in orchestrated action, take over a large number of classes while they are in session?

We need to develop very specific answers to these kinds of questions – answers that set forth, in detail, at least two alternative courses of action for responding to each situation.

Separate plans should be developed for responding to the occupation of a major classroom building, a building that is used primarily for administration, a building occupied primarily by students, a building (or part of a building) devoted to faculty

offices, a building that contains valuable books or other research resources, or that contains expensive equipment or potentially dangerous materials, etc. Plans also should be developed for group acts of civil disobedience that occur in and disrupt normal use of open areas on or adjacent to campus.

In most (if not all) instances, responsive plans should include roles for and substantial communication and coordination with student leadership, Student Affairs, Human Resources, Public Affairs, and Administrative Services.

The plans should build in a substantial number of foreseeable variables, e.g., weekday or weekend, working hours or non-working hours, daylight or dark, number and character of occupiers, number and character of supporters, extent of impact on University functions, media coverage, behavior of occupiers and supporters, etc.

The plans also should specify means and targets of communication – within the Administration, between the Administration and UCPD, between UCPD and other law enforcement agencies or personnel, between UCPD and the occupiers and their supporters, between the Administration and the occupiers and their supporters, and between the Administration and the broader campus community and the media.

After developing detailed plans, the Administration should require the people who will be expected to implement them to participate in scenario-based trainings. Lessons learned in these training exercises should be used to refine or adjust the plans.

#### **4. During group acts of civil disobedience, communicate with demonstrators and their supporters.**

The Administration should try to identify several different means by which it could communicate to peaceful demonstrators that the Administration wants to learn what their message is and to hear their perspective on the issues that concern them.

As social creatures, people have a fundamental need to feel respected, to be taken seriously. One way to demonstrate respect for someone is to be visibly interested in listening to what she has to say. By being visibly interested we communicate that we see the speaker as someone who is capable of teaching us something and we acknowledge the speaker as sharing a connection or commonality with us at a fundamental level.

Demonstrating an interest in listening to others also evidences an openness of mind that is central to the mission of the University and that might be essential to inspiring others to have confidence in our leadership.

With these views in mind, we recommend that the Administration seriously consider (1) making a visible appearance, **early**, when a sizable group engages peacefully in civil disobedience, and that the Administration (2) do so through well-recognized, high level officials who would try to communicate a message like the following:

“While the legitimate needs of others, and the promises we have made to them, prevent us from endorsing the means you have chosen for pursuing your ends, we acknowledge the passion and the sincerity that inform your concerns. We take you seriously. We share many of your ultimate goals.

But our responsibilities to others require that we not permit you to proceed in the way you have chosen for today.

What we all want to preserve is a University. We will have no University to preserve unless we maintain an environment in which mutual respect permits people of a wide range of views and purposes to follow the paths they have set out for themselves.

Because it is a University that we seek to preserve, we want to hear and consider your views. Toward that end, we will host forums where we can listen to and learn from one another. We will announce next week the time and place of the first of these. It will be very soon – in plenty of time to add momentum to the forces of change.”

We recognize that making an in-person appearance at demonstrations may not be wise or called for in all circumstances – so we urge the Administration to try to identify additional means it might use to encourage demonstrators and their supporters to understand that the Administration acknowledges the substance of their concerns and the sincerity of their feelings.

On November 20th, the Administration used emails to communicate with the campus community at large. This communication suffered from two limitations. First,



the Administration's emails were directed simultaneously to all components of the campus community (with addressees arranged in an apparently hierarchical sequence, beginning with the faculty senate) -- but included no message to the demonstrators or acknowledgment of their aims.

Second, there was a business-like tone (likely intended to encourage calmness) to the emails that (unintentionally) gave some faculty and students the impression that the Administration had little interest in trying to understand the concerns that animated the demonstrators -- or had little sympathy with their ultimate aims.

Communicating with the campus community at large was, of course, necessary. But additional communication, directly with the occupiers and with the demonstrators, likely would serve constructive purposes.<sup>34</sup> We suggest that in the future the Administration attempt (if necessary, repeatedly) to *initiate* such communication -- and that it do so in ways that are *visible* to all interested components of the community.

Initiating communication with occupiers and their apparent supporters does not signal endorsement of anything -- ends or means. It is not an act of legitimization. What it reflects is an openness of mind, an interest in listening and learning, an interest in gathering information and deepening understanding before making decisions about how to proceed. By initiating communication, the Administration demonstrates that the presumption of respect informs its action. In this way, the Administration occupies the high moral ground and removes one basis for criticizing it and for agitating demonstrators and on-lookers.

Thus, we suggest that, in some circumstances, it could be a constructive step for the Administration to attempt (again, visibly) to initiate direct electronic or voice communications with the demonstrators and their supporters. University officials could use not only emails, but text messages, Facebook, Twitter, web sites, Skype -- even cell phones -- to try to establish lines of communication directly with the people who are engaged in protest activities. It is the directness of the communication, and its visible initiation by the Administration, that sends the message of openness and of presumptive

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<sup>34</sup>There was communication between occupiers and UCPD over the course of the morning of the 20th -- but it was initiated by the occupiers and was not visible to others. There also was some communication from faculty on the scene to the Administration -- but, again, that communication was not initiated by the Administration and was not visible.

respect – not respect for or endorsement of means, or for the substance of demands, but respect for the effort to promote sincerely held beliefs.

**5. Specifically for civil disobedience: fix, publicize, and consistently enforce clear policies and rules.**

The Administration should decide what it will tolerate in the arena of civil disobedience and what it won't. Then the Administration should publicize the rules aggressively – identifying clearly the kinds of activities that will not be tolerated and the kinds of consequences that violations can trigger. The Administration should apply consistently the rules it has formulated and publicized. It also should publicize each instance of enforcement.

The Administration may feel that it already has done all this. But the campus' time, manner, and place rules do not appear to be well understood by significant parts of the campus community. And it has been reported to us that large numbers of students do not understand the full range of consequences that can flow from engaging in civil disobedience. In particular, many students reportedly do not understand that disobedience of campus rules (even quite 'civil' disobedience) can affect their academic standing, that it can jeopardize their ability to continue their education here, permanently mar their record, perhaps even prevent them from receiving a degree whose other requirements they have satisfied.

Moreover, the rules as written are not enforced consistently.

Inconsistency in toleration and enforcement eviscerates rules as rules -- and invites feelings of unfairness when enforcement occurs.

We recommend that the Administration identify much more active ways to teach (and regularly re-teach) students (and other members of our community) *(1) the ways they can express their views and solicit support for their positions that are permissible, (2) the kinds of expressive, demonstrative, or solicitive behaviors that violate campus rules, and (3) the kinds of sanctions (criminal, civil, disciplinary) that can be imposed for such violations.*

This teaching should emphasize the University's commitment to providing multiple, effective means for members of the campus community to reach others with

their messages – and the services the campus offers (e.g., through the offices of the Director of Student Involvement) to help achieve these ends without infringing the equally legitimate rights of others.

It is especially important to find ways to teach these things to entering students – at both the undergraduate and graduate levels. Active instruction in these matters should be a featured component of orientation for new students every year. Way too often, passive communication is non-communication. The Administration should not assume that merely making information available, electronically or otherwise, even with prompting to read it, will do the job. Much more active and direct ways of reaching people must be used. And re-used. This is likely to be labor intensive. So was November 20th and its aftermath.

**6. Re-evaluate the size and organization of UCPD to identify levels of staffing sufficient to enable our police force to respond appropriately to large scale group acts of civil disobedience.**

It is more than a little ironic that UCPD’s ability to respond well on November 20th was compromised by effects on the Department of the same budgetary pressures that inspired the occupation and demonstration.

The Police Review Board is in no position, obviously, to develop an informed judgment about the relative priorities the campus should assign to the many compelling needs that compete for dwindling resources. So it would be unbecoming to “recommend” that the Administration increase the number of sworn officers in our force.

We do feel comfortable recommending, however, that the Administration take carefully into account, when making budgetary decisions, the full range of collateral consequences (economic and others) that can follow from under-staffing UCPD.

**7. Support (financially) and require additional training for UCPD command staff.**

To assure that the senior management of UCPD has received the most recent and sophisticated education in approaches to and strategies for managing unruly crowds and large demonstrations, and for responding to group acts of civil disobedience, we

recommend that the Administration send UCPD's Chief, its two captains, and its lieutenants to training programs that feature strong curricula in these fields.

#### **8. Explore the pros and cons of “inking” some or all of the fire alarms on campus.**

The Board has learned that fire alarms are “inked” in some public schools -- and that this fact is made well known to students. An “inked” fire alarm ejects ink when it is pulled. Students are less likely to pull alarms if they know that they are likely to be “inked” if they do.

We don't know what affect “inking” alarms has on fire safety generally, so we are not in a position to make a recommendation about this. We simply note that it might be an idea worth exploring.

### **Recommendations for UCPD**

As a result of its Operational Review, UCPD already has developed a handsome list of recommendations for itself. In an earlier section of this Report, we endorsed ten of these recommendations. In this section we add recommendations that we have developed independently. We also amplify or comment on some of the recommendations that the Department already has formulated.

#### **1. Revamp and reinvigorate attitude training – and require all officers to complete supplemental attitude training every year.**

This sounds patronizing, but the subject is so important that we feel compelled to make this recommendation explicitly.

It is not clear that all of our officers fully understand what phrases like “being polite” or “being respectful” or “being flexible” really mean -- especially in trying circumstances. Nor is it obvious that all of our officers fully understand how much a constructive and respectful attitude can contribute to their effectiveness, or how much easier it can make their work, or how much respect for the law and for themselves they can generate just by the manner in which they interact with civilians.

**2. Improve relations and understandings with the Berkeley Police Department.**

Develop clear understandings with BPD about the circumstances in which its officers will assist UCPD and, when assisting, how they may be deployed or used.

Conduct cross-trainings with BPD.

**3. Command staffing of major operations.**

During major operations, never remove all senior command staff from the field of the operation at one time. Be sure that at least one officer of command staff rank remains on the scene at all times.

Clearly identify for all affected officers who is in charge – at all times.

Never permit most or all of the senior command staff to be distracted or pulled away from an active major operation for substantial periods. During major operations, senior command staff should attend only necessary meetings, and should attend them only briefly.

**4. Formulate specific plans for responding to occupations of campus buildings by demonstrators – and conduct trainings that test mastery of those plans.**

Identify the campus buildings that are most likely to be targeted for occupation and identify more than one way to gain entry to such buildings if demonstrators have barricaded doors and windows.

**5. Establish and train a crowd control team** (as the police department for the University of Georgia has done) that is responsible for developing more detailed plans for handling demonstrations and civil disobedience -- and for training all members of the Department in crowd control matters.

## **6. Command posts for major operations.**

Amend current crowd management policy to emphasize the importance of establishing, staffing, and properly equipping a command post.

a. Personnel in a command post should include, for all major events, a representative of the Administration who has direct communication access to the highest levels of authority within the Administration.

b. Personnel in a command post also should include a representative of any mutual aid units that are participating in the operation; this representative should have direct communication access to the leaders of the mutual aid squads.

c. Never locate a command post inside a crime scene or inside the perimeter of an area that must be controlled but that could be threatened by demonstrators.

## **7. Real time communication with all law enforcement personnel.**

a. Amend current crowd management policy to emphasize the need to assure that communication systems permit real time communication with all deployed officers and units, as well as with dispatch systems that can track their activities and adjust their orders.

b. Learn how to use, and utilize in all major events, the CLEMARS communication system.

c. Every time mutual aid units are involved in an operation, make sure each such unit is equipped to use, and does use, the CLEMARS system.

## **8. Real time communication with the Administration.**

In advance of major events and as a matter of regular training, establish systems that assure that UCPD commanders can communicate in real time during events with the appropriate civilian administrators.

**9. Communicating with demonstrators and their supporters.**

a. Have equipment and conduct training that will enable UCPD officer to communicate effectively with large crowds, dispersed over substantial areas, in noisy settings.

b. During unplanned events, make persistent efforts to identify and communicate with leaders of the protestors or with persons who could communicate effectively with or seem to have credibility with the crowd.

c. Make sensitive announcements civilly and jointly with a high level civilian administrator – to reassure demonstrators that ultimate control is in civilian hands and that moving the crowd has been authorized by the administration. Make plans in advance so that a high level administrator can be enlisted on very short notice for this purpose.

d. When communicating with a crowd or a group of demonstrators, the officer and the administrator should identify themselves clearly, at the outset, to enhance their credibility and to make clear their authority.

e. Before taking action that could affect the status, location, or activities of demonstrators, civilly and effectively communicate to them what you intend to do and why you need to do it. Make sure the crowd hears and understands any orders you give. Then give the crowd sufficient time (and space) to comply with your order.

**10. Communicating with the media and with interested persons who are not at the scene.**

a. For all major operations, dedicate one officer position to the performance, full-time, of PIO functions.

b. Train officers in techniques for acquiring and assessing the reliability of information, and for assuring that reliable information timely reaches the media and the general public.

c. Establish systems for timely sharing event-related and operational information with the Administration – and for acquiring reliable information and clear directives from the Administration.

**11. Before taking action in the field that could affect the status, location, or activities of demonstrators, address each of the following questions in earnest:**

- a. How important is the objective of the action?
- b. What is the magnitude and character of any negative reaction or push-back that taking the action might provoke?
- c. Are there alternative ways to achieve the objective of the contemplated action that would affect the demonstrators less, or less obviously, or less directly?

**12. Perimeter Lines.**

- a. Amend current crowd control policy to emphasize the importance of selecting a perimeter line that is no larger than necessary and that can be maintained by foreseeably available officers.
- b. When deciding how to demarcate a perimeter, consider how it might be challenged or tested, how it will be maintained, and the availability of officers to protect it.
- c. Before (or during the early stages of) an event, consider using metal barricades or other less vulnerable equipment to demarcate the perimeter line if demonstrators might challenge it and too few officers are available to maintain it.
- d. Don't leave vehicles or equipment that could be misused or vandalized within perimeter lines unless adequate security for them can be provided.

**13. Improve response time by off-duty UCPD officers**

Establish new systems for tracking the availability of and for contacting off-duty UCPD officers in order to prevent the staggered and unpredictable pattern of officer arrivals that limited operational alternatives on the 20th. Commanders had difficulty making firm plans on the 20th about how to deal with the barricaded protestors because they could not be sure when off-duty officers would arrive on campus.

**14. Mutual Aid**

- a. Understand the rules and mechanics of the mutual aid system.



b. If mutual aid might be needed, alert the Alameda County coordinator and determine how long it is likely to take to get officers from other agencies to the campus if a request for mutual aid is made.

c. When making a request for mutual aid, specify (1) how many officers are needed, (2) the gear they should wear, (3) the communication capacities and equipment they will need, (4) any gear or equipment they should *not* bring, and (5) any the kinds of equipment they may bring but that they may not use or deploy without permission from specified UCPD command personnel.

d. When mutual aid units arrive, brief them carefully.

Provide them with clear campus maps.

Identify radio-communication “dead spots” for them.

In addition to making sure the units understand where they will be deployed, for what purposes, what equipment they can use and what equipment they cannot use, and who will direct their activities, UCPD should give mutual aid units, who are likely to have little experience with student demonstrators, information about the purposes of the demonstration, how the crowd has been behaving, what kinds of actions by officers are well received by the crowd and what kinds of actions by officers are likely to inflame or scare the crowd, what kinds of activities by protestors have been causing the most difficulty and how officers have most effectively dealt with these kinds of activities.

If there are agitators or leaders in the crowd who seem to want to promote confrontations with the police, warn the new officers about this and tell them not to go for the bait -- not to play into the hands of the few hard core protestors who want to use mistakes or over-reactions by the police to stir up more support for their cause.

e. In deploying mutual aid units (or any units, for that matter), try to avoid formations or modes of movement or ways of doing things that seem overly militaristic or rigid -- because conduct that appears militaristic can interfere with accomplishing the police mission in several ways:

1. Ironically, militaristic conduct projects both defensiveness and a threatening inclination to be aggressive.
2. Militaristic conduct and gear will seem out of place to students and can inflame demonstrators’ emotions and needlessly provoke hostile reactions.

3. It also helps agitators sell the notion that the police are a different, dangerous, and fundamentally loathsome species.

f. Maintain control over mutual aid units at all times.

g. If resources permit, assign a UCPD officer to each mutual aid squad or unit.

Three objectives can be advanced by assigning one of our officers to mutual aid units:

1. Improve command control.

2. Improve communication.

3. Teach the mutual aid unit about the unusual challenges and characteristics of student demonstrations and guide approaches or tactics to better fit our unusual environment.

### **15. Don't be visibly inconsistent in responding to violations of rules or orders.**

Permitting a large group of demonstrators to block Sather Road and to interfere with normal use of other pedestrian pathways early on the morning of the 20th was a mistake – as it sent a signal of tolerance that increased some demonstrators' temptation to break other rules.

Not responding when some demonstrators tore or cut perimeter tape, but responding aggressively when others did, invited suspicion that enforcement decisions were affected by bias or other improper motives. This inconsistency also undermined respect for law enforcement and encouraged more violations of rules.

### **16. Barricades**

Know where they are stored and develop clear plans for retrieving them quickly.

Never permit a civilian to deliver barricades to a scene of active unrest or to help install barricades.

### **17. Videotaping events**

Train officers who are assigned to videotape events to develop a record that is as balanced and comprehensive as possible (without compromising other legitimate purposes of video-taping).

Instruct officers who will be videotaping events that it is unethical and compromises the usefulness of their work if they intentionally fail to record apparent misconduct by officers or evidence of its consequences (e.g., injuries suffered by civilians).

**18. Hold full debriefings of major operations within three calendar days.**

**19. Operational Reviews**

a. Conduct operational reviews as soon after the operations are completed as possible.

b. Train officers who conduct interviews as part of operational reviews not to appear to give legal advice or to offer legal opinions to witnesses.

c. Train officers who conduct interviews as part of operational reviews to ask open-ended, non-leading questions and not to attempt to cross-examine witnesses.

d. Do not use one interview or one interviewer for the two separate purposes of (1) preparing an operational report and (2) investigating a complaint against identifiable officers.

e. Design systems for gathering information that assure that the data ultimately collected will reflect a fair balance of inputs from different perspectives. Try to interview as many people who might be unhappy with the operation as people who might be pleased with it.

f. In preparing the report itself, acknowledge squarely evidence or information that contradicts or is inconsistent with any findings or recommendations that are made – and when explaining findings, explicitly set forth the reasoning by which one set of inferences was rejected in favor of another.

**20. De-brief with the Administration and the PRB.**

Acquire information and perspectives from the Administration for inclusion in the Operational Review.

Shortly after submitting the Operational Review, separately ask the Administration and the PRB for feedback.

### **LOOKING FORWARD**

There is no conclusion to this kind of story. Learning has no end point.

We know full well that we understand quite imperfectly both the events we have tried to describe and the forces that shaped them. For this reason, we hope our Report will serve as only one of many platforms from which the campus can continue to develop deeper understandings of its constituent communities and of the dynamics between them.

We ask these communities to approach one another with respect and with open minds, to listen (really) to one another, and to participate jointly in the challenging and rewarding task of finding ways to enrich and strengthen the connections between them.

## APPENDIX A

### SOURCES

#### **Documents reviewed by the Board:**

UCPD's Operational Review and the hundreds of pages of attachments thereto.

Hundreds of pages of emails, meeting agendas, and notes produced by the Administration.

Emails from students, faculty, and staff (some accompanied by requests for confidentiality) in response to the Chancellor's and the Board's open calls for submissions on December 4, 2009, and in early February of 2010.

Complaints about conduct of police made to UCPD and/or to the Board

Letters and emails submitted independently by people who participated in or observed the demonstration.

General Orders and statements of policies and procedures from the Alameda County Sheriff's Office

The Alameda County Sheriff's Office "Call Out Report" for UCPD's request for mutual aid on November 20, 2009

The California Emergency Management Agency's Law Enforcement and Mutual Aid Plan (The Blue Book, 2009 Edition)

University of Wisconsin - Madison, policies and procedures for crowd control and

for responding to protests and demonstrations

University of California, Berkeley, Emergency Operations Plan

University of California, Berkeley, Policy on Response to Limited Emergencies

UCPD policies and procedures

UCPD arrest reports from November 20, 2009

Thirteen UCPD Use of Force Reports for November 20, 2009

UCPD's CAD log for November 20, 2009

Narratives (full recountings) of **46 interviews** (conducted by UCPD) of administrators, students, staff, faculty, observers, and police officers.

Official University Observers' Reports for November 20, 2009

Internet blogs by professors

**Video/electronic/visual sources:**

>160 YouTube videos

Many hours of video recordings by UCPD of November 20th events

Multiple local media stories and footage re November 20, 2009

Photographs (some taken by UCPD)

UCPD Dispatch Tape for November 20, 2009

**Interviews conducted independently by PRB**<sup>35</sup>

**Faculty:**

Professor Peter Glazer  
 Professor Tyrone Hayes  
 Professor Shannon Steen  
 Professor Gregory Levine

**Students:**

[redacted]  
 (Some students also submitted information confidentially)

**Law Enforcement:**

[redacted]  
 Chief, UCPD, Mitchell Celaya  
 Captain, UCPD, Margo Bennett  
 A former local police officer

**Administrators:**

Chancellor Robert Birgeneau  
 Executive Vice Chancellor and Provost George Breslauer  
 Former Vice Chancellor for Administration Nathan Brostrom  
 Associate Chancellor and Chief of Staff Beata Fitzpatrick  
 Associate Chancellor for Government, Community, & Campus

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<sup>35</sup>The Board attempted, without success, to arrange interviews with Professor Judith Butler, as well as with Maria Blanco, the lawyer who tried to facilitate negotiations inside Wheeler late in the afternoon of November 20th.

Liaison Linda Williams  
Vice Chancellor for Student Affairs Harry Le Grande  
Vice Provost for Teaching, Learning & Academic Planning &  
Facilities Cathy Koshland  
Associate Vice Chancellor for Public Affairs Claire Holmes  
Associate Vice Chancellor for Business and Administrative Services  
Ron Coley  
Assistant Vice Chancellor for Human Resources Jeannine Raymond  
Director of Labor Relations, Human Resources, Debra Harrington  
Dean of Students Jonathan Poullard  
Director of Student Involvement, Office of the Dean of Students,  
Amanda Carlton  
Student Involvement Program Coordinator, Office of the Dean of  
Students Marissa Reynoso

**Public Hearing:** some information was provided to the Board orally during the public hearing it sponsored on April 8, 2010



**APPENDIX B****AERIAL COLOR PHOTOGRAPH OF WHEELER HALL  
INDICATING  
LOCATION OF PERIMETER AND POLICE CARS**

Note: Just inside the perimeter line on the south side of Wheeler (the perimeter line is marked by orange squares on this photo) there are four small red rectangles on which the letter “B” appears. These rectangles depict where the police cars were parked during the occupation and demonstration on November 20, 2009.

