

**UC DAVIS NOVEMBER 18, 2011
“PEPPER SPRAY INCIDENT” TASK
FORCE REPORT**

“THE REYNOSO TASK FORCE REPORT”

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Introduction

Our overriding conclusion can be stated briefly and explicitly. **The pepper spraying incident that took place on November 18, 2011 should and could have been prevented.**

On November 18, 2011, University of California, Davis, police officers used pepper spray on students sitting in a line in the midst of a protest and “occupation” on the campus quad. Viral images of the incident triggered immediate and widespread condemnation of the police action.

To assist the Task Force with fact finding and the identification of best practices in policing, the University engaged Kroll, Inc., an internationally known risk management firm. Kroll completed the final draft of its report on Feb. 22, 2012 (the “Kroll Report”). The Kroll Report describes at length the events leading up to this incident. In brief, at approximately 3:00 p.m. on Thursday, November 17, 2011, tents were erected on the Quad at the Davis campus. The Administration decided to remove the tents, instructing police to do so at 3:00 p.m. on Friday, November 18, 2011. While attempting to remove tents, the police arrested several individuals. Subsequently, in the midst of a growing group of people, the police officers employed pepper spray to remove several students linking arms in a line across a walkway in the Quad.

The UC Davis protest focused on and drew strength from widespread discontent among students about the increase in tuition and fees at the University of California. The incident also took place against the backdrop of worldwide student protests, including demonstrations by the Occupy Wall Street movement, which triggered similar events across the nation. These protests presented challenges for all affected universities and municipalities in attempting to balance the goals of respecting freedom of speech, maintaining the safety of both protesters and non-protesters, and protecting the legitimate interests of government and the non-protesting public.

In the immediate aftermath of the UC Davis incident, University of California President Mark G. Yudof announced the appointment of former California Supreme Court Justice Cruz Reynoso to chair a Task Force to address the pepper spraying of UC Davis students. This was a result of a request from Chancellor Katehi for an independent investigation to review the incident and report findings and recommendations to enable peaceful and nonviolent protests. All Task Force members are either currently or were once affiliated with UC Davis and most were nominated by relevant campus organizations.

Charge from the President

The President established the following charge to the Task Force:

- Receive and review the fact-finding report from Kroll concerning the events that took place on November 18, 2011;
- Based on that review, and subject to available information, issue findings regarding responsibility for the events of November 18;
- Provide recommendations to Chancellor Katehi and the President on improvements to police procedures, command protocols, and campus policies and oversight structures that will help ensure the rights and safety of nonviolent protesters and the entire campus community.

Kroll provided to the Task Force a lengthy description of the discussions and decisions leading up to the Nov. 18 incident. It also evaluated the decision-making process and substantive conduct of campus administrators and police in comparison to a best practices standard for dealing with situations involving the deployment of police in response to protests. To avoid redundancy and to make the analysis and conclusions of the Task Force more accessible to readers, the Task Force report incorporates by reference the description of the evidence described in the Kroll Report.

The Charge to the Task Force did not include requesting recommendations for disciplinary action. An Internal Affairs investigation is running concurrent with the work of the Task Force which would address disciplinary action for police officers. Subject officers (those directly subjected to the Internal Affairs investigation) declined to be interviewed by Kroll. As of the date of this report, the Yolo County District Attorney has declined to charge arrestees who were cited for unlawful assembly, failure to disperse, or illegal camping. The Task Force was directed to issue findings assigning responsibility for these events. This Report includes such findings as well as recommendations designed to ensure the rights and safety of nonviolent protesters and the entire campus community are protected.

Furthermore, the Task Force has not been asked to evaluate nor did we receive from Kroll any information regarding communications from UCOP to the campus.

Background

The Leadership Team's Focus on the Occupy Movement Influenced its Perception of the Encampment at UC Davis

According to Kroll, the UC Davis Leadership Team originated in 2009, in response to student protests over high and rising tuition costs at the University of California. As fees increased sharply so did the frequency and size of protests.

Demonstrations against fees drew sufficient support from a large number of students and came so often that by 2009 they began to overwhelm the ordinary capacity of the Office of Student Affairs to handle protests, which provided the occasion for the Office to create a force of volunteers, to stay in contact with demonstrators and to provide information about protests to the administration.

Concern over tuition inspired the numerous protests including the protests at Berkeley on November 9 and the occupation of Mrak Hall on November 15.

This existing discontent over tuition merged with the tactics of the national Occupy movement in the fall of 2011.

The decision of the Occupy movement, which originated in New York City in the fall of 2011, to use long term encampments as a primary protest strategy confronted municipalities, and later universities, with a new situation – one that they had seldom encountered in earlier protests. As the movement spread to over 100 cities, many municipal leaders became concerned that the movement's encampments created health and safety risks to the public. In many situations, city officials ordered the dismantling of the encampments. These events attracted national media attention. As municipal authorities challenged city encampments, encampments were increasingly located on university campuses.

The UC Davis administration was well aware of these developments. Indeed, a member of the campus Leadership Team sent an e-mail to Campus Police Chief Spicuzza in Nov. 2011 alerting her to a New York Times article describing the “growing concerns” of municipal authorities “over health and safety” issues involving the encampments and the fact that “protesters have begun to erect more tents on college campuses.”

An Occupy encampment in Central Park in the City of Davis was started on Oct. 15, 2011. City officials took no steps to take down the protesters' tents. The challenge to an Occupy encampment that probably received the most media attention in Northern California was the dismantling of the Occupy Oakland encampment by police on Oct. 25, 2011. Vice Chancellor Meyer sent an e-mail to Chancellor Katehi, Provost Hexter, and other administrative staff on that same day. Referring to a possible protest at the UC Davis campus, he wrote that if protesters attempted to camp on the Quad, “Camping is not allowed on the quad, however, the removal of occupants may create a scene with Police removing individuals and property that could be troublesome. We do worry that if camping persists it could attract individuals that have no affiliation with the campus which raises other security issues. We are assessing our legal options and are not inclined to allow tents or structures.”

Oakland authorities permitted the Occupy Oakland protesters to rebuild their encampment. Police dismantled the encampment a second time on Nov. 14. This second police action responded to media accounts reporting drug use and violence in the encampment including the shooting of an individual participating in the encampment nearby.

On Nov. 9, 2011, responding to an attempt to set up an encampment at UC Berkeley, police wearing riot gear used batons to clear protesters from the area and take down the few tents that had been erected. The police use of force at Berkeley drew substantial criticism. On Nov. 15 thousands of protesters held a rally at UC Berkeley and erected new tents in Sproul Hall Plaza. Newspapers reported that “Hundreds of occupiers displaced Monday from the Occupy Oakland Camp joined forces with a resurgent Occupy movement at UC Berkeley.” Police in riot gear moved in to dismantle the UC Berkeley encampment at 3:30 a.m. on Nov. 17. Police raided and dismantled a similar Occupy encampment at UCLA at 5:15 a.m. on Nov. 18.

When tents went up on the Quad on Nov. 17, the longstanding protest against high and rising tuition and fees in the UC found expression through the tactics of the national Occupy movement. Campus administrators focused on the relation of this event to other Occupy movement encampments. Political demonstrations are not uncommon at Davis and the Quad occupies a unique status as the traditional location where protests occur. It is a central and highly visible location which makes it an ideal location for speakers to reach the audience they are addressing, the university community. It is also a location where robust expressive activity can occur without unreasonably interfering with the University’s ability to perform its duties of teaching and research or unduly burdening the interests of non-protesting students, staff, and faculty. The administration did not consider the Occupy movement encampment to be a conventional campus protest. The Leadership Team appeared to perceive it as a vehicle through which non-affiliates might enter the campus and endanger students.

During an interview conducted by Kroll staff with Chancellor Katehi on Dec. 20, 2011, about a month after the pepper spray incident, the Chancellor explained her concerns about the involvement of “non-affiliates” with the UC Davis Occupy movement and encampment. Chancellor Katehi stated, “We were worried at the time about that [non-affiliates] because the issues from Oakland were in the news and the use of drugs and sex and other things, and you know here we have very young students . . . we were worried especially about having very young girls and other students with older people who come from the outside without any knowledge of their record . . . if anything happens to any student while we’re in violation of policy, it’s a very tough thing to overcome.”

Vice Chancellor Meyer expressed similar concerns in an interview conducted on Dec. 7. He explained, “our context at the time was seeing what’s happening in the City of Oakland, seeing what’s happening in other municipalities across the country, and not being able to see a scenario where [a UC Davis Occupation] ends well . . . Do we lose control and have non-affiliates become part of an encampment? So my fear is a long-term occupation with a number of tents where we have an undergraduate student and a non-affiliate and there’s an incident. And then I’m reporting to a parent that a non-affiliate has done this unthinkable act with your daughter, and how could we let that happen?”

When explaining their decisions on Nov. 17 and 18, UC Davis administrators repeatedly referenced this concern about individuals not affiliated with the university at Occupy movement protests and encampments on campus, and the security risks created by their presence. Indeed, in Chancellor Katehi's letter distributed to campus protesters on Nov. 18, the day of the pepper spray incident, the Chancellor wrote "We are aware that many of those involved in the recent demonstrations on campus are not members of the UC Davis community. This requires us to be even more vigilant about the safety of our students, faculty and staff." As our report will indicate these concerns were not supported by any evidence obtained by Kroll.

Section I – Deficiencies in the Decision- Making Process and Substantive Mistakes at the Administrative Level

A. There Was a Failure to Investigate Whether or Not “Non-Affiliates” in the UC Davis Occupy Encampment Were Present

As detailed below, the Task Force concludes that the failure to conduct any additional investigation into the presence of non-affiliates in the encampment was a significant error in the Leadership Team’s decision-making process.

UC Davis campus administrators identified the security risks created by non-affiliates participating in the Occupy encampment as a critical factor influencing their decision to remove the tents erected in the Occupy UC Davis encampment. One source for their concern was the information reported by news media regarding drug use and violence at municipal encampments, particularly the Occupy Oakland encampment, and the presence of non-affiliates at protests and encampments at other universities, such as UC Berkeley.

Campus police reports supported the conclusion that a substantial number of the Occupy movement protesters on campus were not students. One UC Davis police officer who spent the night at a Mrak Hall protest on Nov. 15 wrote that “the majority (of protesters) were NOT affiliated with the University [but were] part of the ‘Occupy’ movement.” UC Davis Police Chief Spicuzza informed the Leadership Team that her officers suggested that 80% of the protesters participating in the encampment on the Quad were not students.

This information was directly challenged by Student Affairs staff and volunteers. One student volunteer suggested that all of the protesters at Mrak Hall on the night of Nov. 15 were either students or faculty. Assistant Vice Chancellor Castro informed the Leadership Team that based on her observations of the Occupy encampment on the Quad on Nov. 17, “the only non-affiliates I saw were people from the interfaith communities providing food . . . and they were not spending the night.” Assistant Vice Chancellor Castro explicitly challenged Chief Spicuzza’s report that a substantial number of the protesters at the encampment were non-affiliates and the Police Chief conceded that Castro’s information was more credible than the reports of her officers. The Chancellor addressed Castro’s report, asking if she could “prove” that the protesters were mostly students. Castro replied, “I didn’t ask for IDs. It’s just from my sense of what I know.” The Leadership Team did not discuss the matter further.

To date, the assertion that many non-affiliates were involved in the Occupy movement encampment on the Quad has not been substantiated. The status of the protesters arrested on Nov. 18 does not support the contention that many non-affiliates were involved in these events.

Because the presence of non-affiliates on campus in the encampment was the expressed foundation of the Leadership Team’s safety concerns, an accurate determination of the number of non-affiliates in the encampment would substantially support or undermine any immediate need to order the tents on the Quad to be taken down. Yet, notwithstanding the conflicting intelligence presented to the Leadership Team, the Task

Force has seen no evidence that any further inquiry was conducted to resolve this question. While the Leadership Team may have worried that the continued existence of the encampment would attract non-affiliates to the campus over time, this concern would not justify ordering the immediate dismantling of the encampment.

B. The Administration Decided to Deploy Police to Remove the Tents on Nov. 18 before Considering Other Reasonable Alternatives

As noted, the Leadership Team's conclusion that the presence of non-affiliates in the encampment posed a risk to students was challenged as to its accuracy. Still, one might reasonably decide that even when confronted with uncertainty as to the existence or extent of risks to students, the prudent course would be to intervene immediately to ensure student safety. That decision presupposes that there were no reasonable alternative means available to the administration other than ordering the tents to be removed immediately to adequately ameliorate the risk to students.

Possible alternatives for protecting students in the encampment seem almost self-evident. For example, police officers could have been posted to monitor and provide security for the encampment overnight, an alternative suggested by Vice Chancellor Castro. There is a financial cost to such arrangements, and providing security for the encampment might not be feasible as a long term solution to the problem. The question here, however, is not whether this approach is practical long term, but rather whether it could have been utilized at least for a few days.

Delaying the deployment of police to remove the tents for even a few days would have provided campus administrators more time to carefully evaluate the nature and scope of the problem, more time to carefully evaluate the costs and consequences of different university responses to the encampment and more time for discussion, negotiation, and mediation with the protesters to attempt to defuse the situation. Also, and importantly, it would have created the opportunity to expand the decision-making process by reaching out to the campus community more broadly. Conversely, requiring immediate action provided limited opportunities for consultation with other campus stakeholders and constrained decision-makers' opportunities to rigorously evaluate their reasoning and plans. The Task Force concludes that there was no immediate need to order the police to take down the tents on Friday, Nov. 18.

The Task Force has received no information describing the extent to which the Leadership Team considered alternatives to the immediate deployment of the police. It is difficult to avoid the conclusion that the Leadership Team's analysis of alternatives seems inconsistent and incomplete.

C. The Scope of the Police Operation to Remove the Tents Was Ineffectively Communicated, Not Clearly Understood by Key Decision-Makers, and, Accordingly, Could Not Be Adequately Evaluated as to Its Costs and Consequences

Chancellor Katehi explained in interviews after the fact that she envisioned the deployment of police on Nov. 18 to be a limited operation in which police would demand that the tents be taken down but would use no other force to accomplish their mission if the protesters resisted their efforts. The chancellor did not effectively communicate this expectation to other members of the Leadership Team. During a conference call on Nov. 17, Provost and Vice Chancellor Hexter stated that “We don’t want it [the police operation] to be like Berkeley.” Chancellor Katehi immediately agreed with that comment. We have no other explicit evidence of any other statement describing the scope of the police operation or the manner in which it was to be carried out by the Chancellor, Provost Hexter, or Vice Chancellors Meyer or Wood.

It is clear that different members of the Leadership Team understood the scope and conduct of the police operation differently. Vice Chancellor Meyer explained that “he did not understand that Chancellor Katehi believed that no force at all would be employed in taking down the tents until her comments following the November 18 police action.”

Police Chief Spicuzza, at least initially, argued to her officers that the police operation was to be limited in various respects. She attempted, unsuccessfully, to dissuade her officers from using batons and pepper spray or to prevent them from wearing “riot gear” during the operation. There is also evidence that she wanted her officers to withdraw if they encountered resistance. Because Chief Spicuzza was not available to be interviewed, we have no way to determine the basis for her concern that the police operation be carefully constrained.

The Police Department’s pre-event November 15 operations plan, however, stated that “the use of force is highly likely in this type of situation based on past events,” and it forecast the potential use of pepper ball guns and pepper spray (although not the MK 9 canister that they actually used in the event). Senior officers in the Department also believed that the use of physical force might well be required to conduct the operation.

No members of the Leadership Team took responsibility for ensuring that all the members of the Team including the Police Chief had a common understanding of the scope and conduct of the police operation to be executed on Nov. 18. We have no indication that members of the Leadership Team other than the Police Chief were aware of or reviewed the campus police department’s operations plan. The Police Chief never brought the concerns expressed by her officers to the attention of the Leadership Team. No attempt appears to have been made by either the Chief or Vice Chancellor Meyer, her most direct superior, to confirm that the understanding by the police as to how the operation was to proceed was consistent with the goals of the civilian administration of the University. As the Kroll Report concludes, there was a “significant gap between the instructions that Chancellor Katehi believed the Leadership Team had provided to

campus police ('no violence') and the police operation that was planned, mounted, and finally carried out by the campus police under her authority.”

At no time in this process did the Leadership Team activate standardized emergency management planning protocols. There are both statewide and national emergency services standards for decision-making by governmental agencies, including university campuses, when dealing with extraordinary events. The National Incident Management System (NIMS) is modeled on California's Standardized Emergency Management System (SEMS) which includes within its scope the use of the Incident Command System (ICS) for managing actual events. NIMS/SEMS are designed “to give standard response and operation procedures to reduce the problems and potential for miscommunication on such incidents”

(http://www.calema.ca.gov/PlanningandPreparedness/Documents/SEMS_%20Foundation_ver_01-2010.pdf) and are flexibly designed to be available for all forms of government including universities. NIMS/SEMS procedures are specifically designed to support pre-event planning. Elements addressed within NIMS/SEMS include a formal organizational structure and decision-making process, standardized processes for developing incident objectives to ensure uniform understanding, expectations for internal and external communication strategies and divisions specifically charged with gathering intelligence and planning for alternative scenarios. Failures identified within the Leadership Team's processes including miscommunication, ineffective communication with relevant stakeholders, inadequate intelligence regarding the actual event and an apparent failure to plan for alternative strategies are examples of the types of activities NIMS/SEMS is specifically designed to address.

Given the uncertainty as to the scope of the police operation to remove the tents and the manner in which it would be carried out, it is difficult to understand how the costs and risks of the operation could be meaningfully balanced against the goals the Leadership Team sought to accomplish. The Leadership Team clearly believed that the removal of the tents served the goal of maximizing safety. It is less clear how they could effectively evaluate the costs and risks of conducting the police operation when there was no common understanding of what that operation would entail. Similarly, comparisons between the costs of providing security to the encampment for a few nights and the risks associated with a confrontation between police and protesters would be difficult to evaluate when the scope and kind of police operation under consideration remained so ambiguous.

Again, the utilization of NIMS/SEMS protocols should have mitigated if not avoided these problems. A key unit within the NIMS/SEMS structure is a Planning Division. The Planning Division is charged with gathering intelligence. In a scenario such as November 18, the work of a Planning Division might have included accurately assessing the number of students versus non-affiliates, identifying potential health and safety risks and then working with the operations division to develop appropriate strategies to mitigate risks, such as temporary restroom facilities or enhanced policing to ensure student safety. The NIMS/SEMS structure was not activated for the November 18 event.

Instead, the Leadership Team as noted above was influenced by concerns derived from the Occupy incidents occurring elsewhere. There appeared to be a near universal assumption that not only would non-affiliates be a significant participant in any protests

at UC Davis but also that allowing tents would encourage additional non-affiliates and potential criminal activity such as seen at other Occupy events. These assumptions do not appear to be tested or validated. In addition, there is no evidence that the Leadership Team considered alternative strategies to mitigate the aforementioned risks and allow the protest and tents to continue.

D. There Were No Clear Lines Delineating the Responsibility for Decision-Making between Civilian Administrators and Police

As described above NIMS/SEMS is specifically designed to clarify roles and responsibilities in planning for and addressing extraordinary events. In the absence of NIMS/SEMS on November 18, however, the roles and responsibilities were not defined and not well understood. One significant example is the decision to remove the tents at 3:00 pm. This decision became a primary tactical event objective, yet the Leadership Team offered conflicting viewpoints on how it was determined. What is clear is, as Kroll notes, it was “a process where the police department failed to express its objections and concerns adequately, while the administration failed both to hear the police and to understand that they were ‘heard’ to be issuing an order.”

Kroll notes that “the evidence indicates that it was Chancellor Katehi who chose this time frame...and that police leadership opposed this time frame but failed to register a strong objection to it with the Leadership Team.” Furthermore, Kroll views the “timing of any police operation is a key tactical consideration” to be determined by the Police Chief. Chancellor Katehi did in fact make a tactical decision: that the tents would be removed during the day. Kroll notes, however, that there was no objection by the Police Chief to this tactical intrusion stating “Meyer stated that there was no ‘push back’ regarding the 3:00 pm Friday afternoon time from Chief Spicuzza or anyone else on the conference call” and that “Chief Spicuzza did not raise any strategic or tactical objections to the 3:00 pm operation.” There is conflicting evidence on this point, however. Dispatch Supervisor Garcia-Hernandez stated in an interview conducted on Feb. 1, 2012 that during a conference call on Nov. 18, 2011, Chief Spicuzza did raise objections to the 3:00 p.m. time of the operation and argued “we should go in at night.” No member of the Leadership Team recalls such concerns being communicated to them by Chief Spicuzza.

The above example is illuminating in that it showcases a process where a major incident objective was determined in an ad hoc setting and where the principal decision maker, Chancellor Katehi, did not realize her statement was both viewed as an “executive order” and a “tactical decision.” It is worth noting that in a NIMS/SEMS system, not only is there a clear delineation between policy objectives and tactical strategies but also event action plans and associated objectives are written and recorded.

E. There Was Confusion as to the Legal Basis for the Police Operation

As of the writing of its report, Kroll indicates that it has been “unable to identify the legal basis for the decision of the Leadership Team to act against the protesters and for the operation mounted by the UCDPD.” There is a record of continuing questions and

dialogue about the University's legal authority to support tent removal with police action. At different times, various statutes and administrative regulations have been cited to support the University's authority in this matter. Kroll notes "At the time the operation was mounted (and continuing until the present) it was not clear what legal authority existed for the campus police to remove the tents and arrest those who opposed them."

The police officers in charge of the police operation were uncertain as to the legal grounds for the action they were taking and consulted with University Counsel on the issue. Even on November 18, Police Department leadership continued to question their legal authority to remove tents during the day in order to implement legal prohibitions against overnight camping.

This confusion as to the legal basis for the police operation to remove the tents had several consequences. First, and most obviously, if there was no legal basis for deploying the police to take down the tents, the operation should never have taken place. Second, a clear understanding of the legal support for the operation might have helped to clarify (and possibly narrow) the scope of the operation and its mission. Third, without a clear understanding of the legal foundation for the operation, the University could not communicate effectively to the protesters. Protesters have a right to be told what laws they are alleged to be breaking. When there is ambiguity as to whether or not the police action is lawful or not, it is foreseeable that there will be an increased likelihood that protesters will resist police demands.

F. The Leadership Team's Informal, Consensus-Based Decision-Making Process Was Ineffective for Supporting a Major Extraordinary Event

As Kroll explains, "It was the systemic and repeated failures in the civilian, UC Davis Administration decision-making process that put the officers in the unfortunate situation in which they found themselves shortly after 3 p.m. [on Nov. 18, 2011]." The Leadership Team is described as operating under an informal, consensus based, decision-making process that is flexible in its configuration. As Kroll describes it, "The Leadership Team did not have a formal name or roster of members, met via conference call, and did not have an agreed upon method to communicate or record decisions." This structure failed to effectively support managing the events of November 18.

NIMS/SEMS calls for a formal organizational structure and decision-making process when preparing for or managing major events. The process by which incident objectives are determined is clearly defined and recorded. The very purpose of this formal structure is to ensure uniform understanding and reduce miscommunication. Failure to activate a NIMS/SEMS structure left the Leadership Team acting in their normal loose structure. As Kroll states, the outcome is that "key decision-makers on the Leadership Team held conflicting views on what decisions were made, when they were made and the basis on which they were made."

It is also true that even short of implementing NIMS/SEMS, campus organizations and governing bodies routinely keep records of decisions made. It would not be extraordinary to expect the same of the Leadership Team.

As noted above, the Leadership Team was providing guidance that the Police Department was interpreting as an “executive order.” Two significant decisions, the decision to remove the tents and the timing of tent removal, originate from the Leadership Team. The Leadership Team, however, appears to have made these decisions with incomplete information. Key sources of information, such as Student Affairs’ concerns that the encampment and protest were comprised primarily of students and that the use of police to remove the tents was premature and counterproductive, failed to generate robust or compelling discussion within the Team. Important decisions such as the afternoon timing of the operation were not rigorously vetted as to their consequences. In a NIMS/SEMS environment, the Planning Division would be specifically charged with gathering, verifying and reporting intelligence on issues such as the ratio of students to non-affiliates. Similarly, the Operations Division would be charged with discussing the advantages and disadvantages of operational strategies including timing. Unfortunately, in the absence of NIMS/SEMS these pivotal issues remained unaddressed.

Even as decisions were emerging from the Leadership Team, conflicts in understanding existed. As Kroll says, “When decisions were made, they were often not sufficiently articulated, and key decisions were often understood to mean different things to different people.” The picture that emerges is of a decision-making structure and process where, based on incomplete information, the Leadership Team made significant tactical and policy decisions that were not uniformly understood even among Leadership Team members. These poorly understood decisions were then communicated to the Police Department as “executive orders”.

Section II – The Conduct of the Police Operation

The Kroll report provides substantial detail regarding the conduct of UCDPD leadership and officers related to this event. Needless to say, there were many breaches of protocol and procedures and a considerable lack of leadership. This section is intended to detail the most serious issues in this regard and not set forth all issues contained in the Kroll report.

Notwithstanding that the police had expressed reservations about a 3:00 pm action to remove the tents, they planned for and executed a plan to do so. They entered the Quad at 3:15 pm in a skirmish line. At 3:29 pm the first dispersal order was given. A total of six dispersal orders were given over the next several minutes. They advanced to remove the tents at approximately 3:35 and made several arrests in the process. At approximately 3:47 pm the crowd surrounded the police and arrestees as they waited for transportation for the arrestees. Sometime before 4:00 pm, the pepper spray was applied and all of the arrestees were transported from the Quad by 4:15 pm.

A. The UCDPD Failed to Plan for the Intended Action According to Standard Operating Procedures

Once again, UC Davis police did not following national or state-mandated rules regarding incident/event planning (NIMS/SEMS). There are specific law enforcement rules and regulations about mutual aid and joint response to emergencies. The operations plans that were created by the UCDPD did not follow the appropriate and normal format. They lacked signature blocks for creation, review and approval. Large portions of the operations plans were left blank.

There were operational elements described that the police did not execute. The plan failed to account for prisoner transport from the scene of the event/operation to the site of prisoner processing. Kroll notes, “A key flaw of the police operations plan prepared by Lieutenants Swartwood and Pike is that the plan failed to address prisoner transport.” The Department Operations Center (which is referred to in the plan) was not set up in an appropriate fashion. Kroll notes as well the failure to pre-brief the Davis Police Department, the closest quick-reaction force in the event of a problem, was a significant oversight.

Perhaps most importantly, the operations plan did not clearly define or inappropriately defined the roles of the supervisors of the police in the field. For example, Lieutenant Pike was not given a role in the Operations Plan for November 18. Moreover, the assignment of the two lieutenants to the actual dismantling of the tents by the Chief of Police was an inappropriate role for supervisors, especially for the Incident Commander. As Kroll observes, “the roles of the supervisors were either unclear or inappropriate.”

B. Notwithstanding the Deficiencies in the Operations Plan, the Incident Was Not Managed According to the Plan

As Kroll reports, “The actions of the Chief of Police caused confusion during this operation. She was not present at the pre-event briefing and is not listed in any form on the operations plan. Her role in the field, where she was present on the Quad but not with the police, and was calling in directions via the command post, was problematic and added to the confusion already present in the operation. Indeed, at least one officer stated in his interview that during the most turbulent minutes of this operation, he observed the chief standing opposite him in the crowd filming the police actions with her cell phone.”

The Operations Plan identified Lt. Swartwood as the incident commander and defined no role for Lt. Pike. Yet Lt. Pike appears to have made the command decision to use pepper spray. No one in a command position was in the Department Operations Center, which impaired coordination and communication.

C. The Decision to Use Pepper Spray Was Not Supported by Objective Evidence and Was Not Authorized by Policy

The Kroll report states, “The video that went viral and sparked the international concern about this event was the pepper spraying of the seated line of protesters by Lieutenant Pike and then of a smaller portion of them by Officer Lee acting at Lieutenant Pike’s direction. This leads to the obvious question: Why did Lieutenant Pike deploy pepper spray?”

Interviews with officers involved in the incident indicate that they apparently felt that they were surrounded by a hostile mob and that the use of pepper spray was necessary to create a path for the officers and arrestees to leave the Quad. While there is some support for this conclusion, a detailed review of the objective evidence undermines this conclusion.

First, and foremost, the apparent reason for the officer and arrestees remaining on the Quad after the tents were down was because there had been no arrangements made to transport the arrestees from the Quad. The lack of timely decision-making by Lts. Pike and Swartwood to respond to this unplanned situation caused an escalation of an already volatile situation.

There are a number of other factors that undermine the belief that there was no alternative to use of pepper spray. Specifically, the following belie the conclusion:

- Sgt. Beermann was able to walk arrestees through the crowd to a waiting squad car for transport to the Police Station;
- Lt. Swartwood was able to step over the line of seated protesters and walk through the crowd to meet with the Davis PD who arrived to provide mutual aid.

He led the Davis PD contingent back through the crowd to the protesters without incident;

- Lt. Pike's actions and body language include stepping over the seated protesters to get to their faces, a move that would not generally be undertaken with a hostile crowd.
- Approximately 20 minutes after the pepper spray was used, Lt. Pike and one other officer returned to Quad without riot gear and asked protesters to remove additional tents that had been erected. The tents were removed without incident.

On balance, there is little factual basis supporting Lt. Pike's belief that he was trapped by the protesters or that his officers were prevented from leaving the Quad. Further, there is little evidence that any protesters attempted to use violence against the police. The Kroll report did note that Sgt. Sutera felt a protester was attempting to "attack" another officer and they had a brief altercation.

Kroll concludes, "Considering all the available evidence - while recognizing that Kroll investigators were not able to interview Lieutenant Pike to learn and report on his state of mind at the moment he used the pepper spray - the deployment of pepper spray does not appear to have been an objectively reasonable use of force." The Task Force agrees.

D. The Pepper Spray Used, the MK-9, First Aerosol Projector, Was Not an Authorized Weapon for Use by the UCDPD

UCDPD General Order No. 559 provides that pepper spray can be used, but specifically refers to the MK-4 (a smaller canister). Furthermore, the investigation found no evidence that any UCDPD officer had been trained in the use of the larger MK-9.

Kroll supported their conclusion that use of pepper spray was not reasonable use of force by stating, "This conclusion is buttressed by the facts that the MK-9 was not an authorized weapon under UCDPD guidelines and that UCDPD officers were not trained in its use." The Task Force agrees.

E. There is a Breakdown of Leadership in the UCDPD

The command and leadership structure of the UCDPD is very dysfunctional. Lieutenants refused to follow directives of the Chief. This breakdown is illustrated by the heated exchanges between the Chief and her Lieutenants as to the scope and conduct of the operation and the Chief's apparent concession that her officers will do things their own way and there is nothing she can do about it.

F. Other Police Procedural and Tactical Irregularities

"The actual crowd control formations used by UC Davis Police did not comport to contemporary policing practices", according to Kroll. The use of an inverse wedge as a skirmish line is very unorthodox. While Sgt. Beermann successfully removed arrestees from the site, there is no evidence that he communicated with the Incident Commander.

If Lts. Pike and Swartwood had been aware of Sgt. Beermann's success, they may have considered a different tactic.

There is no evidence that standard debriefings occurred after the incident or that after-incident reports were appropriately prepared. The lack of standard, after-incident reports impede a thorough review of what happened from the police perspective.

Section III – Individual Responsibility

A. The Chancellor Bears Primary Responsibility for the Decision to Deploy the Police at 3 p.m. Rather than During the Night or Early Morning, Which is a Tactical Decision Properly Reserved for Police Authorities

Initially, the police operation to remove the tents on the quad was set to occur at 3 a.m. on the morning of Friday, Nov. 18, 2011. That plan remained in place until approximately 6 p.m. on Nov. 17, 2011, when Chief Spicuzza and Lt. Swartwood, the Incident Commander for the operation, called Vice Chancellor Meyer to tell him that there would be too few police officers available to implement the plan on Friday morning. Chief Spicuzza wanted to postpone the operation to 3 a.m. on Saturday, Nov. 19, 2011.

Later, either during a conference call at 10 p.m. on Nov. 17, 2011, or one the following morning, members of the Leadership Team (at least including the Chancellor, Vice Chancellors Meyer and Wood, and Chief Spicuzza) adjusted the timing of the operation – on the Chancellor’s proposal – from 3 a.m., Nov. 19, to 3 p.m., Nov. 18. Several reasons for changing the time of the police deployment from early morning to late afternoon were discussed. The Chancellor was concerned that Friday night was a “party night” and that the encampment might “become a place for fun [and] the use of alcohol and drugs and everything.” Leadership Team members on the call other than Chief Spicuzza worried that conducting the operation in the dark might be unsafe.

The initial suggestion to change the time of the police operation to 3 p.m. was presented by the Chancellor and it is clear that she expressed concerns about deploying police to take down the tents on a weekend night. Chancellor Katehi’s subordinates heard her suggestion of a 3 p.m. operation and concerns about a Saturday morning operation as an executive order. As noted in the Kroll Report, the timing of a police operation is an important tactical decision. Conducting the operation during the daytime may have jeopardized the legal basis for the operation. More importantly, it may well have contributed to the size of the crowd responding to the police action, a factor that increased the likelihood of a confrontation between the protesters and the police.

No one can know for certain what would have happened if the police operation had been conducted in the early morning on Saturday, or a day or two later on Sunday or Monday night. What is clear is that the timing of a police operation is a tactical decision that should be determined by police officers rather than civilian administrators.

B. The Chancellor Bears Primary Responsibility for the Failure to Communicate Her Position that the Police Operation Should Avoid Physical Force

On Nov. 17, 2011, at 8:30 a.m. and 1 p.m. respectively, the Chancellor held two conference calls with members of the Leadership Team to plan the campus’s response to the protest and encampment expected the next day. The decision to remove the tents before the weekend was clearly stated and understood during those calls. Indeed,

different members of the Leadership Team had been recommending as early as Oct. 25 that any tents that protesters might set up on the Quad should be taken down.

However, as noted previously, Chancellor Katehi failed to express in any meaningful way her expectation that the police operation was to be sharply limited so that no use of force would be employed by police officers other than their demand that the tents be taken down. The lack of effective communication by the Chancellor at this time not only contributed to misunderstandings that made it difficult to evaluate the decision to use police to take down the tents. This communication failure also substantially undermined the goal of avoiding a physical confrontation between the police and protesters. The decision to limit the conduct of the police to verbal demands that the tents be taken down and nothing more should have been stated explicitly. The Police Chief should have been required to acknowledge her understanding of those constraints and to evaluate their feasibility and consequences. Instead, the only message communicated to the police was the ambiguous suggestion that the Chancellor and the Provost did not want the police operation “to be like Berkeley.”

C. Many Members of the Leadership Team, Including the Chancellor, Vice Chancellor Meyer, and Vice Chancellor Wood, Share Responsibility for the Decision to Remove the Tents on Friday and, as a Result, the Subsequent Police Action Against Protesters

The members of the Leadership Team, including Chancellor Katehi, Vice Chancellor Meyer, Vice Chancellor Wood, Police Chief Spicuzza, and others, share responsibility for many of the decisions discussed and criticized in this report. Vice Chancellor Meyer, for example, was an early advocate for the position that tents on the quad would have to be taken down. He also understood that the deployment of police on Nov. 18 would require the use of physical force and supported this decision. Accordingly, he bears some significant responsibility for the decision to use the police and to risk a confrontation with protesters on Nov. 18. Vice Chancellor Meyer also exercised administrative responsibility over UCDPD. In that capacity, he, more than other members of the Leadership Team, should have taken steps to determine if police leadership had concerns about the contemplated operation and to ensure that those concerns were understood and evaluated by the Leadership Team.

Vice Chancellor Wood also bears substantial responsibility by failing to respond to Assistant Vice Chancellor Castro’s warnings about removing the tents and her report that few if any of the protesters were non-affiliates. On the 10 p.m. Leadership Team conference call of Nov. 17, 2011, Assistant Vice Chancellor (AVC) for Student Affairs Griselda Castro spoke for nearly forty minutes, detailing her conversations with protesters, counseling caution on the part of the Leadership Team, and advocating against removal of the tents. As Vice Chancellor for Student Affairs and AVC Castro’s immediate supervisor, Vice Chancellor Wood would be expected to ensure that AVC Castro’s concerns were carefully considered and evaluated. Instead, AVC Castro’s statement was met with silence.

D. Chief Spicuzza Bears Individual Responsibility for Failing to Challenge the Leadership Team’s Decision on the Time of the Police Operation and for Not Clarifying the Role the Police were Expected to Play During the Operation. She is also Responsible for Numerous Deviations from Best Police Practices Both Before and During the Operation as Detailed in the Kroll Report

Many of Chief Spicuzza’s actions both with regard to the Leadership Team (her superiors) and the Lieutenants in command of the operation (her subordinates) were critically flawed. In terms of the Leadership Team, those mistakes contributed to the imprudent decisions to deploy police at all, as well as to do so during the day. As Kroll explained and we discussed above, the decision to launch the operation in the afternoon “was a key factor in the growth of the crowd which resulted in the encirclement of police and the decision to use pepper spray.” In terms of the police operations, the Chief’s mistakes led to poor tactical decisions and, in Kroll’s words, reflected a failure to “perform in the manner that police commanders during such an incident should . . . conduct[] themselves.” For example, the Chief did not attend the department’s operational briefing for its Nov. 18 response, and yet — without assuming actual command responsibility — “from the moment her officers were deployed on the Quad, [the Chief] began relaying orders to them via her cell phone.”

At the Leadership Team level, the Chief failed to challenge effectively the Chancellor’s proposal of a 3 p.m. operation instead of a 3 a.m. operation. Whether she voiced objections to the proposal is unclear; however, even if she had, “it appears that the objections were not clearly expressed to the . . . Leadership Team.” As the highest ranking officer on UCDPD, she must have known of the tactical significance of the timing of the operation, and it was her duty to “affirmatively resist” the Chancellor’s misguided tactical direction. Her Lieutenants, Pike and Swartwood, made sure she knew the timing was a problem — voicing concerns about the operation’s timing from the moment they learned of the change to immediately before the operation began. None of the UC Davis administrators Kroll interviewed, however, recalled the Chief conveying those concerns to the Leadership Team. Had Chief Spicuzza objected forcefully to the timing of the police operation or the Chancellor making a tactical decision, the entire Leadership Team might have hesitated to go forward with a 3 p.m. operation.

Chief Spicuzza also failed to clarify the role police would play during the operation itself with the Leadership Team. The Chief neglected to insist that there be a valid legal basis for police involvement in the tent removal operation before its commencement. Apparently it was only “because of Lieutenant [Pike and Swartwood]’s continued concern over the legal basis for removing the tents” that the Chief sought legal advice on enforceability of the no camping policy just “[a] few hours before the operation commenced.” She also failed to convey adequately to the Leadership Team the probability of escalating use of force in such an operation. The Chief’s experience, “the recent events involving encampments at UC Berkeley and Oakland,” Lieutenant Pike and Swartwood’s insistence on wearing riot gear despite her contrary instructions, and the information in the related operations plans, all “suggested that the use of force would be difficult to avoid.” Notably, the Department’s Nov. 15, 2011, operation plan expressly stated that use of force was “highly likely” in a situation where police are removing tents

from the quad. In short, the Chief should have been well aware of the risk and made that risk clear to the policymakers to whom she reported.

E. Lt. Swartwood Bears Individual Responsibility for Abdicating his Duties as Incident Commander

Nominally at least, Lieutenant Swartwood was the designated Incident Commander for the Nov. 18 operation. As detailed above and by Kroll, Lt. Swartwood did not act “in the manner that [a] police commander should.” He failed to follow basic ICS/SEMS protocol from planning the incident to commanding it, resulting in unclear operational parameters and an unclear command structure, both of which contributed to his inability to command the operation effectively. His involvement with taking down the tents precluded him from obtaining an overview of the entire operation, a prerequisite to making informed command decisions.

F. Lt. Pike Bears Primary Responsibility for the Objectively Unreasonable Decision to Use Pepper Spray on the Students Sitting in a Line and for the Manner in Which the Pepper Spray Was Used

We agree with Kroll’s conclusion that Lieutenant Pike’s use of force in pepper spraying seated protesters was objectively unreasonable.

Some of the officers Kroll interviewed reported their subjective belief that, during the Nov. 18 incident, the crowd was hostile, they were surrounded, and they were at risk of losing their prisoners. On cursory review, the testimonial, photographic, and video evidence showing that in fact a crowd had partially encircled the police and was shouting chants like “If you let them go, we will let you leave” may appear to support that contention. However, a more careful review reveals several facts that conflict with that belief and which the commanders should have known. For instance, there were breaks in the circle around the officers. Where the circle was unbroken, the line was often still only one- or two-people deep, some of whom were seated, and many of whom may have been observers — crowding around to see what would happen — not protesters. Also, the more hostile chants were cut off by the majority of the crowd almost as quickly as they had started. Nor did they appear to reflect an actual intent by the crowd to prevent police from leaving with their prisoners. In fact, it was during one of the “If you let them go, we will let you leave” chants that Sgt. Beermann was able to leave, escorting an arrestee to an awaiting police car by simply walking him straight through the crowd, without incident or force escalation. Sgt. Beermann then returned and escorted another arrestee out through the crowd, again without incident. Both of the ranking officers in charge of the operation, Lt. Pike and Lt. Swartwood, were also able to move through the crowd freely, stepping over seated protesters on at least three occasions and just minutes before Lt. Pike sprayed those same protesters with pepper spray. Nor did Kroll identify objective evidence of any attempt by a protester to use violence. We agree with Kroll: on balance, the evidence does not provide an objective, factual basis for Lt. Pike’s purported

belief that he was trapped, that any of his officers were trapped, or that the safety of their arrestees was at issue.

Lt. Pike is also responsible for the specific pepper spray weapon he used, the MK-9, and the manner in which he used it. The MK-9 is not an authorized weapon under UCDPD guidelines. UCDPD officers were not trained in how to use it correctly. And Lt. Pike did not use it correctly. The MK-9 is a higher pressure type of pepper spray than what officers normally carry on their utility belts (MK-4). It is designed for crowd dispersal rather than field applications and “[t]he recommended minimum distance for . . . application of the MK-9 is six feet.” Lt. Pike appeared to be spraying protesters at a much closer distance than 6 feet.

Section IV - Recommendations

The Task Force expects that the following recommendations will be implemented through a consultative process with various stakeholders throughout the campus community. Campus administration should develop interim actions until all stakeholder groups are consulted. All recommendations should be vigorously pursued and continually evaluated as to effectiveness and intended objective.

A. Recommendations for the Administration and Leadership Response

Administration and Leadership Response Recommendation No. 1

The Task Force recommends the campus develop a broadly accepted agreement on rules and policies that regulate campus protests and instances of civil disobedience. This broadly accepted agreement should be grounded in our campus culture and regularly communicated to students. These rules and policies should be subject to regular review. Campus rules should:

- Be consistent with free speech doctrine;
- Recognize the unique circumstances of a university community and the importance of open and vigorous debate to our institutional function and identity;
- Respect the rights and interests of non-protesting students, faculty and staff;
- Respect the legitimate needs of the University to fulfill its educational function and operate its programs without undue interference;
- Recognize that the legitimate purpose of protest in a campus setting is to inform and persuade, not to coerce;
- Determine and define “non-violent” versus “active resistance” and “violent” protests and clarify the use of force and the force continuum as recommended by Kroll;
- Accurately identify and clearly describe and communicate the legal basis for the University’s response to any protest or instance of civil disobedience;
- Identify the consequences for breaches of the rules and policies.

Administration and Leadership Response Recommendation No. 2

The Task Force recommends the Leadership Team engage in (1) proactive communication and consultation with the Academic Senate, Academic Federation, Staff Assembly, Graduate Student Association, Associated Students of UC Davis, and student governments of professional schools to build relationships and identify issues early; (2) invest in prevention through engagement in community dialogue and community-building; and (3) develop a structure for campus constituents to raise issues (such as holding regular office hours).

Administration and Leadership Response Recommendation No. 3

The Task Force recommends that campus leadership develop NIMS/SEMS compliant procedures and protocols in order to achieve standardized procedures for planning, managing, communicating, and collaborating to manage a large scale event or incident. The procedures and protocols will include:

- Delineation of the appropriate engagement of University administrative procedures as opposed to law enforcement engagement, clearly defined thresholds for activating and leadership roles in ICS (Incident Command System), and regular meaningful rehearsals (outside of state mandated training) of emergency preparedness including rigorous after action analysis of ICS. In particular, all members of the Leadership Team, including the Chancellor, should become familiar with NIMS/SEMS standards;
- Designation by the Chancellor of a senior administration official who has explicit responsibility for managing all matters related to incidents of this nature. This management responsibility includes protocols and procedures for collecting and validating information on the nature of the incident and participants. The official should be the direct liaison with the police department and the portal through which other senior officials funnel information;
- Establishment by the Leadership Team of clear and concise procedures that delineate policy decision-making from tactical implementation. Related training for both administration and police leadership must be undertaken on this issue.

Administration and Leadership Response Recommendation No. 4

The Task Force recommends the Leadership Team devote itself to healing processes for the university community, including steps to operationalize the Principles of Community, and that the administration consider Restorative Justice among other tools to address behavior that negatively impacts the campus climate.

B. Recommendations for the UC Davis Police

UC Davis Police Recommendation No. 1

The Task Force recommends the Chancellor employ outside assistance to review UC Davis police department protocols and procedures. Once the review is completed, specialized training should occur with all members of the PD to assure compliance with modern and contemporary practices for a campus-based police department. This review should include:

- Recommendations related to all manner of PD operations including appropriate levels of oversight and review;
- Recommendations related to an evaluation of how the police requirements for our campus can be fulfilled including an analysis of the number of officers needed and the ratio of sworn officers (authorized to carry weapons) to other personnel;
- Determination of the appropriate command structure, how incident command is managed, coordination related to mutual aid, and procedures and protocol for

- use of all manner of force consistent with our campus culture. The protocol for use of force should include provisions for conditions for which riot gear is used;
- A review of the job description of the Chief of Police to ensure that the scope of practice as defined reflects the current campus needs and that the qualifications and experience reflect campus acuity. In addition, there should be a review of staffing and skill mix, benchmarking with other UC campuses and national university benchmarks if available. Any officer recruitment should consider the skills necessary to fit with the campus culture;
 - Recommendations for annual competency trainings and annual performance evaluations.

UC Davis Police Recommendation No. 2

The Task Force recommends the Chief of Police evaluate the appropriate role of student involvement in police functions such as increasing the size and utilization of the Aggie Hosts. The focus should be on fostering a deeper sense of community.

UC Davis Police Recommendation No. 3

The Task Force recommends the UC Davis police department should strive to be a model of policing for a university campus and ensure best practices are followed.

C. Recommendations for System-Wide Consideration

System-wide Recommendation No. 1

The Task Force recommends the University of California study, evaluate, and adopt policies involving the training, organization, and the operation of UC Police Departments to ensure that they reflect the distinct needs of a university community and utilize best practices and policing adapted to the characteristics of university communities.

System-wide Recommendation No. 2

The Task Force recommends the University of California adopt a system-wide policy for inter-agency support that requires responding agencies to respect the local campus' rules and procedures, including specifically those for the use of force.

System-wide Recommendation No. 3

The Task Force recommends The Office of the President should review provisions of the Police Officers' Bill of Rights that appear to limit independent public review of police conduct and make appropriate recommendations to the Legislature. The Task Force did not have access to the subject officers. This limitation does not serve the police or the public. When information necessary to understand and evaluate police conduct is unavailable to the public, the public has less confidence in the police and the police cannot perform their duty without public confidence.

D. Recommendation for the Campus Community

Campus Community Recommendation No. 1

The Task Force recommends that all members of the campus community adhere to the Principles of Community, respecting members of the campus community and acting with civility towards others.

Appendix 1 – Terminology and Nomenclature

Because they are central to the analysis and recommendations, the Task Force uses some phrases repeatedly in its report. In order to communicate clearly, we want to take a moment to clarify these phrases.

The Leadership Team

Administrative decisions at UC Davis are made by an informal group of administrative and police officers, not all of whom participate in the discussion of every issue considered by the group. The Kroll Report describes this group as the “Leadership Team.” We have adopted that descriptive title for this report as well. The members of the Leadership Team are as follows:

- Linda P.B. Katehi, Chancellor
- Ralph J. Hexter, Provost and Executive Vice Chancellor
- John Meyer, Vice Chancellor – Administration and Resource Management
- Fred E. Wood, Vice Chancellor – Student Affairs
- Karl M. Engelbach, Associate Chancellor and Chief of Staff
- Michael F. Sweeney, Associate Campus Counsel
- Steven Drown, Campus Counsel
- Annette M. Spicuzza, Campus Police Chief
- Griselda Castro, Assistant Vice Chancellor – Student Affairs
- Cynthia Harrison Barbera, Executive Director of Strategic Communications
- Claudia Morain, News Service Director

NIMS/SEMS

Both the Kroll Report and the Task Force Report make frequent references to the acronyms NIMS and SEMS. Indeed, a recurrent theme in both reports is that SEMS protocols were not activated or followed in this event.

Universities are placed in the local government organizational level of SEMS and are expected to employ SEMS for major events. SEMS can both be used to respond to unexpected disasters and to proactively plan for planned activities ranging from major sporting events, to parades, to protests such as the November 18 event.

SEMS stands for Standardized Emergency Management Systems. It is described in California Emergency Management Agency’s (CAL EMA) website, <http://www.calema.ca.gov/planningandpreparedness/pages/standardized-emergency-management-system.aspx>, as follows:

“SEMS has been established to provide effective management of multi-agency and multijurisdictional emergencies in California. By standardizing key elements of the emergency management system, SEMS is intended to: facilitate the flow of information within and between levels of the system, and facilitate coordination among all responding agencies.

Use of SEMS will reduce the incidence of poor coordination and communications.

Local governments are required to use SEMS when their emergency operations center is activated or a local emergency is declared or proclaimed in order to be eligible for state funding of response-related personnel costs.”

NIMS stands for The National Incident Management System (NIMS). It is a national model for emergency services management. NIMS was developed partly on the SEMS model and expanded upon SEMS to build a national framework for responding to emergency events. In California, the focus is generally on SEMS since it is specific to our state and includes the same principles.

ICS stands for the incident command system (ICS). It is a component of both SEMS and NIMS. ICS describes the structure and command system used for the field response. The Incident Commander in an ICS structure is usually the most qualified police or fire representative on site, in the field, at an event.

A key component of SEMS is written action plans for preparing for and responding to events. The CALEMA website describes the two standard types of action plans relevant to this Report.

“Incident Action Plans: At the field response level, written or verbal incident action plans contain objectives reflecting the overall incident strategy and specific tactical action and supporting information for the next operational period. Incident action plans are essential and required element in achieving objectives under ICS.”

“EOC Action Plans: At local, operational area, regional and state levels, the use of EOC action plans provide designated personnel with knowledge of the objectives to be achieved and the steps required for achievement. Action plans not only provide direction, but they also serve to provide a basis for measuring achievement of objectives and overall system performance. Action plans can be extremely effective tools during all phases of a disaster.”

Appendix 2 – The Kroll Report

February 22, 2012

Office of the President, University of California

Report Concerning the Events at UC Davis on November 18, 2011

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1

1. INTRODUCTION

Kroll was retained by the Office of the President, University of California, to investigate the November 18, 2011 pepper spray incident at the University of California, Davis (“UC Davis”).

Kroll was asked to prepare a report detailing the facts and circumstances that led to the confrontation between campus police and activists and onlookers on the UC Davis Quad, and the application of pepper spray on seated activists there, and to provide analysis and recommendations related to those facts.

This report will be provided to the UC Davis Task Force, chaired by retired California Supreme Court Justice Cruz Reynoso, which is charged with issuing recommendations to UC Davis Chancellor Linda Katehi and UC President Mark Yudof.



2

2. SCOPE OF WORK & LIMITATIONS

On November 22, 2011, Kroll was retained by the Office of the President, University of California (“UC”), to undertake an independent fact-finding investigation of the November 18 pepper spray incident at UC Davis.

Kroll’s mandate is to serve a university-created Task Force in its review of the event and its subsequent recommendations. Kroll’s investigation is not intended to be used for administrative sanction; an Internal Affairs investigation is running separate and apart from Kroll’s investigation.¹ The report of the Internal Affairs investigation will be confidential, pursuant to California law, while the Kroll report is intended to be public.

After being retained, Kroll provided UC with a formal request for documents on November 29. On December 1, the Kroll team arrived at UC Davis and began its investigation. On December 9, as the Kroll team completed its initial round of interviews, an email was sent to the UC Davis campus community asking witnesses to the November 18 incident to contact Kroll investigators.

From December 2 through December 20, Kroll investigators identified a total of 96 potential witnesses and interviewed a total of 49 individuals, including UC Davis administrators, faculty, staff, student activists, and other students who had witnessed the November 18 incident.² During this period, Kroll was unable to interview any of the 21 UC Davis Police Department (“UCDPD”) officers that were identified as relevant to the investigation, any of the

¹ We must stress at the outset that the Kroll Team has had virtually no contact with the Internal Affairs (IA) investigative team. The IA investigative team has not provided or shared any information with the Kroll Team, including a witness list. Kroll’s report does not address the issue of discipline to be imposed, if any, on individual officers for any use of force that occurred on November 18. As personnel investigations are deemed confidential under California law, this report does not include information obtained from any interview of any officer whose use of force is being reviewed or who has been deemed a potential subject of discipline; only witness officers have been interviewed.

² Several UC Davis employees were not formally interviewed but provided valuable guidance to Kroll investigators throughout the investigation, including Chief Campus Counsel Steven Drown and Senior Campus Counsel Michael Sweeney.

ten individuals arrested during the incident, and a total of 16 other witnesses who either refused to be interviewed or did not respond when contacted.

On December 28, Kroll submitted a second formal request for documents.

Extensive discussions regarding legal issues related to interviewing police officers resulted in Kroll ultimately being allowed to interview 14 of the 21 UCDPD officers identified as relevant to the investigation on January 19 and 20, 2012. Several other relevant officers, including Lieutenant John Pike and Chief Annette Spicuzza, declined to be interviewed by Kroll investigators.³

Also in mid-January, Kroll interviewed five additional UC Davis staff members who had been identified from the review of documents produced by UC Davis and conducted two re-interviews of UC Davis administrators.

In gathering the documents requested by Kroll, UC Davis staff stated that they followed their customary practices used to respond to Public Records Act requests, other University administrative investigations, and litigation discovery requests. Documents were provided to Kroll starting on November 30, 2011 and continued to be provided in several waves, including as late as February 2, 2012. Kroll was ultimately provided with over ten thousand pages of records. Several requested documents were either not produced or produced with redactions, including the following: certain communications between UC Davis employees and campus counsel that were identified as attorney client communications and were withheld on the basis of attorney-client privilege; records withheld on the basis of peace officer personnel record provisions; telephone records that were redacted to protect private confidential information; and, text messages,⁴ which were not produced.

Additionally, Kroll reviewed numerous media reports and information available online, including over 50 videos of the November 18 incident that were uploaded to portals such as YouTube or provided directly to Kroll investigators. Kroll has downloaded and stored these videos.

³ Kroll was provided with a lengthy statement by Lieutenant Pike regarding the November 18 incident.

⁴ The expense and forensic expertise required to obtain text messages were deemed to outweigh the potential probative value of these documents.

The fact-gathering in Kroll's investigation was limited by several factors, including Kroll's inability to interview many of the student activists involved in the November 18 incident,⁵ several key UCDPD officers,⁶ and the UC police officers from sister campuses to Davis who participated in the November 18 incident. Kroll has also relied upon UC Davis in the area of document production; it was deemed infeasible for budgetary, timing, and other reasons for Kroll to conduct an independent, systemic forensic review and analysis of UC Davis servers, hard drives, and electronic devices.

Kroll will provide the Office of the President of the University of California and the UC Davis Task Force with the evidence collected in this investigation, which has been stored electronically.

5 None of the ten arrestees or eight possible pepper spray targets identified by Kroll agreed to be interviewed, for instance.

6 Chief Annette Spicuzza and Lieutenant John Pike declined to be interviewed for this report.

3

3. EXECUTIVE SUMMARY

This investigation and review stem from the highly public and widely condemned use of pepper spray by UC Davis police officers on seated activists on November 18, 2011. The image of Lieutenant John Pike spraying the activists has gone beyond viral to the point of being iconic, with Lieutenant Pike's image inserted into videos, cartoons, famous paintings, etc. Soon after the incident, Kroll was engaged to investigate and determine the facts surrounding the event and to analyze those facts using the best policing and administrative insight and expertise that could be brought to bear.

On November 18, 2011, the UC Davis Police Department ("UCDPD") mounted a planned police operation that was sanctioned by UC Davis' civilian leadership. The aim of the police operation was to remove tents that had been placed on the campus as part of a protest linked to both the national "Occupy" movement and to student activism on other UC campuses. To understand what happened in those few minutes when the activists were sprayed, Kroll investigators started with the first mergers of student activism and the Occupy movement at UC Davis in October 2011. Kroll carefully reviewed the subsequent demonstrations on the UC Davis campus and the deliberations of and responses from the UC Davis Administration and campus police that led up to the decision to mount this ill-fated police operation.

In response to the increasing number of demonstrations against funding cuts and tuition increases on UC campuses in 2009, the UC Davis Administration formed a "Leadership Team" to respond to demonstrations and other campus events. The Leadership Team did not have a formal name or roster of members, met via conference call, and did not have an agreed upon method to communicate or record decisions. As a result, Kroll investigators found it difficult to identify the "who, what, where, when, why and how" of decision-making by the Leadership Team. In fact, key decision-makers on the Leadership Team held conflicting views on what decisions were made, when they were made and the basis on which they were made. When decisions were made, they were often not sufficiently articulated, and key decisions were often understood to mean different things to different people.

Nonetheless, Kroll identified several key, flawed decisions by the Leadership Team that set the stage for the use of pepper spray, including:

1. *The decision to mount a police operation to remove the tents.* At the time the operation was mounted (and continuing until the present) it was not clear what legal authority existed for the campus police to remove the tents and arrest those who opposed them. Members of the Leadership Team referred to a UC Davis policy against overnight camping on University property in emails, but no legal basis for campus police removing tents was stated.

Questions regarding the legal authority for campus police to remove tents from the Quad were raised by UCDPD leadership in calls to Campus Counsel just hours before the operation was commenced as well as by the activists themselves, who repeatedly challenged the legal basis of the police operation before and during the event.

2. *The decision to remove the tents in the afternoon.* Even if the campus police had the legal authority to remove the tents, the timing of the operation was ill-chosen and directly led to the gathering of the crowd and the encirclement of the police. A major police operation that confronts protesters and activists should be mounted during a time when the number of supporters can be minimized, not maximized. Three o'clock in the afternoon on a sunny fall day at the center of the campus Quad seems guaranteed to bring the maximum number of onlookers and protesters to the scene, and in fact that is exactly what occurred. The timing of this operation was in direct contrast to the majority of operations nationwide to remove Occupy encampments: most have been conducted during early morning hours.

The evidence indicates that it was Chancellor Linda Katehi who chose this time frame, and that police leadership opposed this time frame but failed to register a strong objection to it with the Leadership Team. The dynamics of the conversations and decision-making resulted in a flawed decision—to remove the tents at 3:00 p.m.—in a process where the police department failed to express its objections and concerns adequately, while the administration failed both to hear the police and to understand that they were “heard” to be issuing an order.

Chief Annette Spicuzza was the representative of the UCDPD on the Leadership Team and communicated her understanding of the guidance from the Leadership Team to Lieutenants Pike and Swartwood, including that the operation was not to be “like Berkeley” and was to be conducted on Friday afternoon.⁷ When her Lieutenants questioned the legal basis for the operation, she joined them for a call with Campus Counsel. When her Lieutenants called the 3 p.m. time frame a “bad idea,” she told them that this direction came directly from the Chancellor’s office. At UCDPD headquarters, during the 24 hours leading up to the police operation on November 18, the legal basis for the operation, the timing of the operation and the use of force options were questioned by Lieutenants Pike and Swartwood and other officers.

The police operation and police leadership on November 18 were flawed in both planning and execution. The UCDPD Operations Plan did not comply with basic standards of incident command and failed to account for key eventualities, such as the transport of prisoners from the scene to the police station. Chief Spicuzza failed to attend the operation briefing and then, from the moment that her officers were deployed on the Quad, began relaying orders to them via her cell phone. Lieutenants Pike and Swartwood behaved more like officers than supervisors and leaders: the Lieutenants personally removed the tents; Lieutenant Pike used the pepper spray; and Lieutenant Swartwood, nominally the Incident Commander, was moving throughout the scene, confronting protesters, and leaving the area to meet the newly arrived Davis Police Department (“DPD”) reinforcements. In short, none of the three performed in the manner that police commanders during such an incident should have conducted themselves.

The actual deployment of pepper spray by Lieutenant Pike and by Officer Lee at Pike’s direction was flawed and unnecessary. Kroll did not have access to either of these officers to hear first-hand their state of mind at the time of the deployment. Nonetheless, the facts of the incident as depicted on video and the fact that several officers were able to leave the encircled crowd without the use of force, including Sergeant Beermann, who led two prisoners through the encircled crowd at the height of the confrontation, do not support the objective reasonableness of deploying pepper spray to clear the seated protesters.

The UCDPD officers interviewed by Kroll reported that the crowd was hostile and acted like a mob. Some officers and one onlooker reported seeing members of the crowd pick up rocks.

⁷ Chief Spicuzza declined to be interviewed by Kroll.

At times the chants took on a more adversarial tone. In the hours of video reviewed by Kroll, however, not a single violent act on the part of the activists was captured.

Having said that, our key finding bears repeating. While the deployment of the pepper spray on the Quad at UC Davis on November 18, 2011 was flawed, it was the systemic and repeated failures in the civilian, UC Davis Administration decision-making process that put the officers in the unfortunate situation in which they found themselves shortly after 3 p.m. that day.

We hope that this report and its recommendations can serve as a roadmap for the needed changes in policing the university environment that this incident has brought to light. We see room for improvement at the university leadership level and within the UC police departments, and hope that this report will generate the impetus to make these changes.

4

4. BACKGROUND

The events at UC Davis on November 18, 2011 are best understood in the context of the institution and leadership of UC Davis, the appearance of the Occupy movement two months earlier, and the recent history of activism related to fee increases and budget cuts on University of California campuses.

4.1 UC Davis: Organizational Structure and Key Actors

University of California, Davis (“UC Davis”) was founded in 1905, with the first students admitted in 1908.⁸ As of 2010, UC Davis had 32,290 enrolled students and approximately 18,000 non-student employees.⁹ UC Davis is an “open campus” and no identification is necessary to walk onto the campus.¹⁰

UC Davis is under the leadership of Chancellor Linda Katehi, who was appointed on August 17, 2009. Chancellor Katehi is advised by a 15-member Cabinet that includes Provost and Executive Vice Chancellor Ralph Hexter, five vice chancellors, four vice provosts, an associate chancellor/chief of staff, a publicity executive and others.¹¹ The UC Davis Chief of Police is not a member of the Cabinet, but rather is a department head who answers to a vice chancellor.¹² In addition, Chancellor Katehi is also advised by two student advisory boards, the Chancellor’s Graduate and Professional Student Advisory Board and the Chancellor’s Undergraduate Advisory Board.

8 http://facts.ucdavis.edu/general_statistics.lasso

9 http://facts.ucdavis.edu/employee_population_by_fund_source.lasso; including additional employees at the UC Davis Medical Center in Sacramento, the combined population of UC Davis is over 60,000.

10 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 18, line 25. [Exhibit 1]

11 <http://chancellor.ucdavis.edu/about/cabinet.html>

12 In October 2009, the UC Davis administration was restructured to create the Office of Administrative and Resource Management and a number of groups, including police and fire, were brought under the oversight of Vice Chancellor Meyer. The UC Davis Chief of Police and “about a dozen” other campus leaders report directly to Meyer.

According to members of the UC Davis administration, decisions regarding student protests and other issues are made by an informal group of officials that includes Chancellor Katehi and usually meets via conference call. The group does not have a formal name or members; it was variously described as the “crisis team”¹³ or “senior leadership team.”¹⁴ This group, which will be referred to as the “Leadership Team” in this report, generally included the following individuals, subject to their availability for each conference call:¹⁵

- Linda P.B. Katehi, Chancellor
- Ralph J. Hexter, Provost and Executive Vice Chancellor
- John Meyer, Vice Chancellor – Administration and Resource Management
- Fred E. Wood, Vice Chancellor – Student Affairs
- Karl M. Engelbach, Associate Chancellor and Chief of Staff
- Michael F. Sweeney, Associate Campus Counsel
- Steven Drown, Campus Counsel
- Annette M. Spicuzza, Campus Police Chief
- Griselda Castro, Assistant Vice Chancellor – Student Affairs
- Cynthia Harrison Barbera, Executive Director of Strategic Communications
- Claudia Morain, News Service Director

4.1.1 *Decision-making by the Leadership Team*

Chancellor Katehi described the decision-making process on the Leadership Team conference calls as follows: “These are consensus-building phone calls. We try to get as much information ... and as many points of view as possible, so we don't make a mistake.... People speak their point of view. We talk about what everybody has to say and then we try to come to a decision as a group. If anyone raises an objection to something ... then we come back and we discuss it again.”¹⁶

According to Chancellor Katehi's Chief of Staff, Karl Engelbach, a group consensus is reached on the Leadership Team calls and the Chancellor “reaffirms” the group decision.

13 Transcribed interview of John Meyer, December 7, 2011, Volume I, page 13, line 9. [Exhibit 2]

14 Transcribed interview of Ralph Hexter, December 8, 2011, page 8, line 23. [Exhibit 3]

15 Not everyone on the University's management team was involved in every conference call. Associate Campus Counsel Michael Sweeney referred to the conference calls as “catch-as-catch-can.”

16 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 19, lines 7-15. [Exhibit 1]

Engelbach said that he uses the word “reaffirms” rather than “approves.” Engelbach stated, “If you’re asking like who officially approves the group think, I guess technically it’s her but ... I think we come together more as a group.”¹⁷

According to Vice Chancellor Meyer, there were in fact several key decision-makers within the group: “For some of these primary decisions, it would always be Chancellor, my position, Fred Wood’s position, and Mike Sweeney would typically be there as a resource. Provost [Hexter] would typically be on the call even though he was off-campus” on November 18.¹⁸ According to Meyer, there are also “support folks” such as Student Affairs representatives like Assistant Vice Chancellor Castro and Chief Spicuzza “providing advice.”¹⁹ “So you have a broad group, but key decision-makers are there.”²⁰

4.1.2 *Student Affairs is Re-organized and Student Activism Increases*

In the fall of 2009, the UC Davis “Office of Student Programs and Activity Center,” which had overseen the administration’s response to student demonstrations and rallies from the civilian side, was restructured as the “Center for Student Involvement.”²¹ The staff, which had reported to Assistant Vice Chancellor Castro, was reduced from a director and 14 employees to “three activities advisors” to serve “500 student organizations.”²² The three staff members are Anne Myler, Associate Director, Paul Cody, Coordinator, and Lori Fuller, Coordinator.²³

As students began organizing an increasing number of demonstrations against funding cuts and tuition increases in 2009, Assistant Vice Chancellor Castro and her staff found it difficult to help with demonstrations and take care of the more routine aspects of their jobs.²⁴ To provide additional support, volunteers were recruited from UC Davis employees in “housing, from the financial aid office, the student success center” to form the “Freedom of Expression

17 Transcribed interview of Karl Englebach, December 12, 2011, page 12, lines 10-25. [Exhibit 4]

18 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 4, line 9 through page 5, line 1. [Exhibit 2]

19 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 4, line 9 through page 5, line 1. [Exhibit 2]

20 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 4, line 9 through page 5, line 1. [Exhibit 2]

21 These departments were part of UC Davis’ Student Affairs unit, headed by Vice Chancellor Fred Wood, and reported to Assistant Vice Chancellor Griselda Castro. Transcribed interview of Griselda Castro, December 8, 2011, page 9, line 19 through page 10, line 25. [Exhibit 5]

22 Transcribed interview of Griselda Castro, December 8, 2011, page 10, lines 22-25. [Exhibit 5]

23 http://campusunions.ucdavis.edu/?page_id=930

24 Transcribed interview of Griselda Castro, December 8, 2011, page 11, line 18-23. [Exhibit 5]

Support Team” (initially named the “Student Activism Response Team”) which would maintain contact with student activists and report to Castro, who would report to the administration.²⁵

At the same time, the UC Davis administration was “trying to develop [a process for getting] information to the decision-making” administrators so that they could respond to the often-unpredictable events that resulted from student activism.²⁶ The administration began to have Leadership Team conference calls and Castro sometimes joined the calls so that she could communicate directly with the Leadership Team.²⁷

At the beginning of the 2011 academic year, there was a Leadership Team meeting in anticipation of protest activity at UC Davis. According to Vice Chancellor Meyer, the Leadership Team designated support staff from the UC Davis Police Department (“UCDPD”) to run an Emergency Operations Center and to help with logistics and a second team within Student Affairs to conduct outreach with protest groups and work to “have things end well and safely, not trying to get in the way of free speech.”²⁸ According to Meyer, Student Affairs representatives had successfully facilitated safe and successful endings to volatile situations in recent years. Meyer also stated that alerts and mediation provided by the Student Affairs representatives resulted in less confrontations between activists and both City of Davis and UC police.²⁹

In the event of a student demonstration, Vice Chancellors Meyer and Wood each had “folks on the ground” under their authority, with campus police under Meyer and Student Affairs staff and Freedom of Expression Support team volunteers under Wood.³⁰ Meyer described the two groups as “parallel efforts with complementary, but little different missions [sic].”³¹ Meyer and Wood are “sort of partnered” and were “taking competing views and ... sharing those competing views with the Chancellor and Provost.”³²

25 Transcribed interview of Griselda Castro, December 8, 2011, page 13, line 19-24, and page 14, lines 15-22. [Exhibit 5]

26 Transcribed interview of Griselda Castro, December 8, 2011, page 11, line 18-23. [Exhibit 5]

27 Transcribed interview of Griselda Castro, December 8, 2011, page 13, line 19-24, and page 14, lines 15-22. [Exhibit 5]

28 Transcribed interview of John Meyer, December 7, 2011, page 31, lines 14-15. [Exhibit 2]

29 Transcribed interview of John Meyer, December 7, 2011, page 29, line 22 through page 30, line 8. [Exhibit 2]

30 Transcribed interview of John Meyer, January 20, 2011, page 11, lines 2-3. [Exhibit 40]

31 Transcribed interview of John Meyer, January 20, 2011, page 11, lines 2-3. [Exhibit 40]

32 Transcribed interview of John Meyer, January 20, 2011, page 11, line 8 and page 12, line 9. [Exhibit 40]

4.2 The Occupy Movement

The Occupy movement began in the financial district of New York City in September 2011 under the banner of Occupy Wall Street. As the name implies, a central tactic of the movement is the occupation of space, and the first encampment was established in Zuccotti Park, a privately-owned, publicly-accessible park near Wall Street. The Occupy movement subsequently spread to more than 100 cities in the United States and actions in over 1,500 cities globally.³³ As the Occupy movement has grown, its slogan “we are the 99 percent,” its messages related to economic inequality and corporate power, its occupation of public spaces and clashes with police have received wide-spread media attention—in both traditional media and new forms of social media—and have been credited with changing the national discussion about domestic and international economic challenges.

According to an Occupy-affiliated website, the movement promotes “methods, techniques and knowledge about peaceful occupation of public spaces while developing sustainable ways of living based on participatory democracy.”³⁴ The Occupy movement is widely understood to be a leaderless movement and ‘Occupations’ are organized using a “non-binding consensus based collective decision making tool known as a ‘people’s assembly.’”³⁵

In the weeks leading up to the incident that is the subject of this report, Occupy encampments around the United States were being challenged by city governments. According to a November 13 *New York Times* article, “as city officials around the country move to disband Occupy Wall Street encampments amid growing concerns over health and public safety, protesters have begun to erect more tents on college campuses.”³⁶ (This article was emailed by Chief Spicuzza to members of the Leadership Team on Monday, November 14).³⁷

The Occupy Oakland encampment, to cite a nearby example, was erected in early October and dismantled by police on October 25. Clashes between police and activists during the eviction resulted in more than 100 arrests and multiple injuries, including an Iraq war veteran and activist who suffered a skull fracture receiving wide-spread attention. The camp was

³³ <http://occupywallst.org/about/> [Exhibit 6]

³⁴ <http://occupywallst.org/about/> [Exhibit 6]

³⁵ <http://occupywallst.org/about/> [Exhibit 6]

³⁶ “Occupy protesters shift focus to campuses,” *The New York Times*, November 14, 2011. [Exhibit 7]

³⁷ Email from Spicuzza to Meyer, Hexter, Drown, Castro, Benson, Wood, Barbera, Morain, November 14, 2011 at 12:39 p.m. [Exhibit 8]

subsequently allowed to rebuild. After an Occupy participant was fatally shot near the encampment and media reports of “increasing drug use and violence” were published, the encampment was cleared by police in the early morning hours of November 14.³⁸ The eviction of the Oakland encampment, located less than six miles away from UC Berkeley, occurred just days after the Occupy movement arrived at UC Berkeley.

An Occupy encampment was created in the City of Davis on October 15, 2011.³⁹ It was erected in Davis’ Central Park, close to where a farmer’s market is held, and was allowed to stay “despite the fact that the encampment [violated] a city ordinance that prohibits any type of camping in public parks.”⁴⁰ According to an article in the *Davis Enterprise*, Davis Mayor Joe Krovoza said that “city leaders decided they would support the protesters’ First Amendment rights by allowing them to camp in the park even though city ordinance prohibits it.”⁴¹ After the first “month or two,” however, the city’s comfort level with taking “a strong 100 percent free-speech attitude ... started to wane.”⁴²

According to media reports, several UC Davis students were involved with the Occupy Davis encampment before Occupy UC Davis was established.⁴³ When the UC Davis Occupy encampment was re-established following the events of November 18, “the two camps [were] in communication, and occupiers [spent] time at both sites, [but] they identify as separate Occupations, with separate facebook pages and websites.”⁴⁴

4.3 Occupy comes to UC Berkeley

The Wednesday, November 9 Occupy demonstration at UC Berkeley is a pivotal event for this report because the use of batons by police against activists that day brought the issue of “police brutality” to equal footing with tuition increases and budget cuts, and heightened

38 “Oakland, Cal brace for Occupy troubles,” *The San Francisco Chronicle*, November 14, 2011. [Exhibit 9] Media reports of problems at Occupy encampments have been criticized for failing to report the positive achievements of these communities, as well as failing to take into account that these communities welcomed the most marginalized members of society, such as the homeless and the unemployed.

39 <http://occupydavis.org/about-us/> [Exhibit 10]

40 “City weighs First Amendment rights and breaking the law with Occupy Davis,” *Davis Enterprise*, December 1, 2011. [Exhibit 11]

41 “City weighs First Amendment rights and breaking the law with Occupy Davis,” *Davis Enterprise*, December 1, 2011. [Exhibit 11]

42 “City weighs First Amendment rights and breaking the law with Occupy Davis,” *Davis Enterprise*, December 1, 2011. [Exhibit 11]

43 “Occupy Davis has moved, but still standing in Central Park,” *The California Aggie*, November 22, 2011. [Exhibit 12]

44 “The ‘other’ Occupy camp gets warned by police,” *Davis Patch*, November 30, 2011. [Exhibit 13]

concern among the UC administration and police leadership about potential conflicts and potential violence.

The Occupy movement could be said to have arrived at UC Berkeley on November 9, as students prepared for walkouts and demonstrations leading up to a planned meeting of the UC Board of Regents in San Francisco the following week. The occupation of campus buildings and outdoor spaces by student activists, however, has been a commonly utilized tactic by activists on University campuses for several decades.

The central issue of the walkouts and demonstrations held on November 9—tuition increases for students attending public universities in California—had been the cause of rallies and civil disobedience by student activists on University of California campuses for several years. According to *Contra Costa Times* article, “some say the Occupy movement was born at UC Berkeley last year, when students and others repeatedly staged sit-ins at campus buildings” and numerous activists were arrested.⁴⁵

Days before the demonstration, UC Berkeley Chancellor Robert Birgeneau “warned students”⁴⁶ that encampments were not allowed on campus and stated that “the present struggles with entrenched encampments in Oakland, San Francisco and New York City led us to conclude that we must uphold our policy.”⁴⁷ Student organizers responded by asserting that encampments were important expressions of free speech.⁴⁸

On November 9, “students voted to set up an encampment in defiance of university orders, and as soon as they had three tents erected in front of Sproul Hall, baton-wielding police moved in on them.”⁴⁹ The tents were erected at approximately 3:00 p.m., after a protest and a march that had started at noon.⁵⁰ Students linked arms to defend the tents and numerous hand-held video cameras captured images of UC police and Alameda County sheriff’s deputies clad in riot gear swinging and ramming batons against activists. The videos were soon uploaded to YouTube and viewed by a worldwide audience.

45 “UC Berkeley students face down police over tents set up near Sproul Hall,” *Contra Costa Times*, November 9, 2011. [Exhibit 14]

46 “UC Berkeley students plan to set up Occupy camp,” *Associated Press*, November 9, 2011. [Exhibit 15]

47 “Occupy protesters shift focus to campuses,” *The New York Times*, November 14, 2011. [Exhibit 7]

48 “UC Berkeley students plan to set up Occupy camp,” *Associated Press*, November 9, 2011. [Exhibit 15]

49 “Occupy heads to UC,” *The San Francisco Chronicle*, November 10, 2011. [Exhibit 16]

50 “UC Berkeley students face down police,” *Contra Costa Times*, November 9, 2011. [Exhibit 14]

After the officers removed the tents and withdrew, activists “quickly set up their tents again, declaring that they would try to stay all night.”⁵¹ Vice Chancellor for Student Affairs Harry Le Grande attempted to negotiate with the activists, saying that they could stay “but only with certain conditions, such as not sleeping at the site or using sound amplifiers.”⁵² Officers “forcibly removed” the tents again at approximately 10:00 p.m. “Over two days, 40 protesters were taken into custody, including 32 students, one professor and seven people not affiliated with the campus,” according to media reports.⁵³ Most were released within a day, “many complaining of bruises and lacerations.”⁵⁴

Responding to the controversy that ensued, UC Berkeley Chancellor Robert Birgeneau and UC Berkeley police maintained that the activists who linked arms to prevent the police from tearing down the tents were not acting nonviolently. In an email to faculty, students and university employees, Birgeneau stated that he “honored” those activists who “acted in the tradition of peaceful civil disobedience” but that those who had formed a human chain were not engaged in “nonviolent civil disobedience.”⁵⁵ UC Berkeley police Captain Margo Bennett was quoted as saying that “the individuals who linked arms and actively resisted, that in itself is an act of violence.”⁵⁶ Others, including the ACLU and the National Lawyers Guild, objected to these assessments, however, saying that “the officers tactics appeared to be a severe overreaction.”⁵⁷

Local criticism of UC Berkeley’s methods also preceded the events of November 9. On November 8, the Berkeley City Council voted to refuse to sign a mutual aid agreement with UC Berkeley police, citing excessive force and free speech violations during previous events/clashes.⁵⁸ UC Berkeley Police Chief Mitch Celaya later responded by saying that it was “unfortunate” that the City of Berkeley had refused a mutual aid agreement with his department and commented on the November 9 demonstration, saying that the video only show one perspective and does not show “the posturing, the yelling, the screaming and the physical threats to the police.” Celaya was quoted as saying “the protesters had a choice to

51 “Occupy heads to UC,” *The San Francisco Chronicle*, November 10, 2011. [Exhibit 16]

52 “Police move to disband UC Berkeley ‘Occupy’ camp,” *Associated Press*, November 9, 2011. [Exhibit 17]

53 “UC Berkeley police defend Occupy crackdown,” *Contra Costa Times*, November 10, 2011. [Exhibit 18]

54 “UC aims to avoid repeat of clash,” *The San Francisco Chronicle*, November 13, 2011. [Exhibit 19]

55 Demonstrators at UC vote for general strike Tuesday,” *The San Francisco Chronicle*, November 11, 2011. [Exhibit 20]

56 “Tensions high in East Bay,” *The San Francisco Chronicle*, November 11, 2011. [Exhibit 21]

57 “Tensions high in East Bay,” *The San Francisco Chronicle*, November 11, 2011. [Exhibit 21]

58 “Berkeley leaders refuse mutual aid agreements,” *Contra Costa Times*, November 9, 2011. [Exhibit 22]

move, and they chose not to and they chose physical confrontation. I would have preferred there not be acts of violence by the protesters.”⁵⁹

On November 13, *The San Francisco Chronicle* published an article that began as follows: “Mocked and criticized UC Berkeley administrators are softening their defense of the violent response by campus police against protesters, and say they hope to avoid similar aggression this week at a planned student walkout. At the same time, campus police say they are investigating their response and considering whether pepper spray and tear gas might be used in future protests.”⁶⁰ Celaya said “there are tough questions to be asked. Protesters don’t appear in the video to be aggressive. What were we trying to accomplish?” Celaya said officers chose not to use pepper spray and tear gas on protesters last week because the effects can be worse than using batons.⁶¹ But as police planned for future protests, Celaya said, “I’m looking at it.”⁶²

On Monday, November 14, the UC Board of Regents cancelled their meeting scheduled for Wednesday in San Francisco, after UC law enforcement officials provided “credible intelligence” which indicated that “rogue elements intent on violence and confrontation with UC public safety officers were planning to attach themselves to peaceful demonstrations expected to occur at the meeting.”⁶³

On Tuesday, November 15, as many as 10,000 activists rallied at UC Berkeley and tents were erected on Sproul Plaza at around 9:30 p.m. “Hundreds of occupiers displaced Monday from the Occupy Oakland camp joined forces with a resurgent Occupy movement at UC Berkeley, where they rallied into the night and voted overwhelmingly to establish an encampment at the campus. Police did not immediately respond, and instead “regularly warned [the activists] through the day Wednesday that the tents had to go,” according to media reports.⁶⁴

59 “UC police chief pledges to work with Berkeley,” *The Oakland Tribune*, November 14, 2011. [Exhibit 23]

60 “UC aims to avoid repeat of clash,” *The San Francisco Chronicle*, November 13, 2011. [Exhibit 19]

61 This is a controversial comment and would be disputed by most use-of-force experts in the law enforcement community.

62 “UC aims to avoid repeat of clash,” *The San Francisco Chronicle*, November 13, 2011. [Exhibit 19]

63 Board of Regents, Press Release, November 14, 2011. [Exhibit 24]

64 “Police clear Sproul Plaza encampment in quiet raid,” *The San Francisco Chronicle*, November 18, 2011. [Exhibit 25]

An apparently unrelated incident caused "tensions" to surge at Sproul Plaza on Tuesday afternoon, "when campus police shot ... a man who ... appeared to be carrying a weapon in a computer lab at the Haas School of Business a half a mile from the protest site."⁶⁵

At 3:30 a.m. on Thursday, November 17, police in riot gear raided the encampment in Sproul Plaza. More than 100 officers surrounded the approximately 40 campers and gave them 10 minutes to disperse; all but two did, and these two were arrested. UC Berkeley police were accompanied by members of the Alameda County Sheriff's Department and police departments from Oakland, Emeryville, Newark and Union City.⁶⁶

At 5:15 a.m. on Friday, November 18, police evicted an encampment at UCLA, where students had staged coordinated rallies with Berkeley and other UC campuses.⁶⁷ Police arrested 13 students and one alumnus while breaking the encampment of 25 tents on UCLA's Wilson Plaza. Approximately 40 activists left after police ordered the crowd to disperse.⁶⁸

4.4 Pre-Occupy Activism at UC Davis

Like UC Berkeley and many other university campuses, both public and private, occupations of university buildings by student activists had occurred before at UC Davis. Kroll has conducted only limited research regarding the history of student activism at UC Davis, but identified several relevant events during the tenure of Chancellor Katehi.⁶⁹

In November 2009, approximately three months after Katehi arrived at UC Davis, 52 activists were arrested—47 of them students—after they refused to leave Mrak Hall. After students demanded amnesty for those arrested, UC Davis administrators agreed not to pursue disciplinary action against the students who had been arrested. Chancellor Katehi reportedly left a message for the Yolo County District Attorney in which she asked him "to consider that

65 "University students vent frustration," Los Angeles Times, November 16, 2011. [Exhibit 26]

66 "Police clear Sproul Plaza encampment in quiet raid," *The San Francisco Chronicle*, November 18, 2011. [Exhibit 25]

67 "14 arrested in anti-Wall Street protests at UCLA," *Associated Press*, November 18, 2011. [Exhibit 27]

68 "14 arrested Occupy UCLA members to referred to first amendment rights program," *Daily Bruin*, January 6, 2012. [Exhibit 28]

69 No protest-related events at UC Davis prior to Chancellor Katehi's arrival in August 2009 are included in the research and analysis contained in this report. Research regarding events since August 2009 has been mostly limited to media reports and to selected, publicly-available video footage.

the students who had occupied the university's administration building Nov. 19 in protest of fee hikes were respectful, well-behaved and had done no damage."⁷⁰

Following this event, the administration attempted to change its tactics in responding to student protests. According to Katehi, "since 2009, we have decided whenever students take over a building we give them a night to somehow settle and then for us to get to find out how to speak with them and try to understand what the demands are."⁷¹

In February 2010, students organized a demonstration at the UC Davis library, in which they staged a "study-in" after the library was supposed to close. Administrators responded by keeping the library "open around the clock for the weekend."⁷² Vice Chancellor Meyer called the administration response to the library action "a huge success."⁷³

In March 2010, hundreds of students rallied against "fee hikes and mismanagement of the UC administration," marching through the UC Davis campus and "pulling fire alarms" in eight buildings.⁷⁴ The students continued to march, blocking intersections and a bus terminal, before finally moving toward an on-ramp to the I-80 freeway. Activists tried to "push past" 120 officers from 10 law enforcement agencies, who stood shoulder-to-shoulder "in full tactical gear" to block the path of the demonstrators. Police "fired pepper balls at the ground in front of the protesters" and "at one point, used batons to beat back a throng of students pushing forward."⁷⁵ A single demonstrator was arrested "on suspicion of inciting a riot and resisting arrest" and activists "left the scene after police agreed to cite and release" the arrestee.⁷⁶

According to Assistant Vice Chancellor Castro, her staff of three activities advisors "were in the middle of the [California Highway Patrol] and the students" when the activists attempted to march onto the freeway. Castro, who was attending a funeral that day, said that her staff "prevented a calamity out there. But they said we never want to be put in this situation again ... It was clear that I couldn't ... tap them all the time and take them away from their jobs." According to Castro, this incident contributed to the formation of a volunteer "Student

70 "UCD chancellor speaks up on behalf of protesters," *The Sacramento Bee*, November 26, 2009. [Exhibit 29]

71 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 10, lines 3-6. [Exhibit 1]

72 "Budget protests spread in state, nation," *The Sacramento Bee*, February 28, 2010. [Exhibit 30]

73 Transcribed interview of John Meyer, December 7, 2011, Volume I, page 24, line 11. [Exhibit 2]

74 "March 4 campus rally culminates at freeway entrance," *California Aggie*, March 8, 2010. [Exhibit 31]

75 "Protesters clash with police in attempt to block I-80," *California Aggie*, March 5, 2010. [Exhibit 32]

76 "March 4 campus rally culminates at freeway entrance," *California Aggie*, March 8, 2010. [Exhibit 31]

Activism Team” (later renamed the “Freedom of Expression Support Team”) to monitor campus demonstrations and report to the administration and to campus police.⁷⁷

In May 2010, a small group “set out to ‘reclaim the Quad’ ... with the pitching of tents on the north end” of the Quad and “a half dozen or so people” camped on the Quad on Tuesday and Wednesday nights, “according to the campus Police Department.”⁷⁸ The small demonstration took place as larger demonstrations were held to “protest the elimination of four sports teams” and “budget cuts in ethnic studies,” and no disciplinary action was reported.

In March 2011, UC Davis students accused administrators of spying on their activist movement after receiving documents obtained through a Public Records Act request with the university.⁷⁹ According to a *California Aggie* opinion article, “a network of student leaders, high-ranking administrators and police leadership” was formed in 2010-2011 to “keep peaceful protesters under the administration’s control through direct communication with university leadership, including Chancellor Linda Katehi.”⁸⁰ While the author of the opinion article did detect “a heart-felt desire to protect first amendment rights” in administration’s efforts, he wanted to “point out the significance of an administration treating its students, many of whom will be burdened by student debt for years after graduating, as untrustworthy thugs.... The real issue here is respect.”⁸¹

In an April 2011 *California Aggie* article, Assistant Vice Chancellor Castro defended the Student Activism Team, saying that “having a presence at student protests isn’t anything new” and that “administrators recruited volunteers and formalized the team in August of 2010” after realizing that “the budget crisis would likely stir more action this year.”⁸² According to the article, “while members of [the Student Activism Team] view it as a way of ensuring student safety and promoting free speech, others deem it a breach of trust as well as an infringement of first amendment rights.”⁸³

77 Transcribed interview with Griselda Castro, December 8, 2011. [Exhibit 5]

78 http://dateline.ucdavis.edu/dl_detail.lasso?id=12730 [Exhibit 33]

79 “Students say UC Davis violates their free speech by spying on protests,” *The Sacramento Bee*, April 12, 2011. [Exhibit 34]

80 “UC Davis police and administration infiltrate peaceful student protest,” *California Aggie*, March 10, 2011. [Exhibit 35]

81 “UC Davis police and administration infiltrate peaceful student protest,” *California Aggie*, March 10, 2011. [Exhibit 35]

82 “Administrators formalize team to monitor activism,” *California Aggie*, April 5, 2011. [Exhibit 36]

83 “Administrators formalize team to monitor activism,” *California Aggie*, April 5, 2011. [Exhibit 36]

5

5 OCCUPY COMES TO UC DAVIS

Members of the UC Davis administration took notice when an Occupy encampment arrived in the City of Davis; on October 5, Chief Spicuzza sent an email to Vice Chancellor Meyer and others on the Leadership Team with a link to a *Davis Patch* article about a planned encampment at Central Park in the City of Davis.⁸⁴ As discussed above (see **The Occupy Movement** section), the encampment was allowed to exist by city officials “despite the fact that the encampment [violated] a city ordinance that prohibits any type of camping in public parks.”⁸⁵

In the weeks that followed, the administration became aware that the first Occupy UC Davis events had been scheduled, in coordination with other public universities in California, for Thursday, October 27 and Wednesday, November 9.

5.1 Planning for the Arrival of Occupy at UC Davis

On Tuesday, October 25, Vice Chancellor Meyer wrote an email to Chancellor Katehi, Provost Hexter, and other officials, in which he alerted them to the planned protest on October 27 and provided recommendations for the following two scenarios:

- If Mrak Hall is occupied: “We believe the most effective manner in which to remove protesters from Mrak Hall (assuming all is peaceful) is to remove them at 5:00 p.m.” on the day following the Occupation. “This allows us to work with other agencies to obtain mutual aid resources in a reasonable manner that does not overextend their resources or budgets. If occupants are not peaceful, then Police would remove protesters sooner as appropriate.”

⁸⁴ Email from Spicuzza to Mohr, Meyer, Trauernicht, Dickinson, Sandy, October 5, 2011 at 3:29 p.m. [Exhibit 37]

⁸⁵ “City weighs First Amendment rights and breaking the law with Occupy Davis,” *Davis Enterprise*, December 1, 2011. [Exhibit 11]

- If protesters camp on the Quad: “Camping is not allowed on the quad, however removal of occupants may create a scene with Police removing individuals and property that could be troublesome. We do worry that if camping persists it could attract individuals that have no affiliation with the campus which raises other security issues. We are assessing our legal options and are not inclined to allow tents or structures.”⁸⁶

Approximately fifteen minutes later, Chancellor Katehi replied to the group, stating “this is a good plan.”⁸⁷

According to Vice Chancellor Meyer, his recommendations were the result of conversations between “Fred and I and Student Affairs folks and police ... so everyone’s sort of gathering this intelligence and this was just my attempt to do the initial frame ... for the Chancellor or Provost.”⁸⁸ At the time, members of the Leadership Team were getting information from administration at other UC campuses “within our silos,” so that Meyer would hear from various Vice Chancellors and campus police would hear from other UC police departments.⁸⁹

According to Katehi, “the first thing ... we normally do [in responding to a student activism] is to ask Fred Wood’s office [Student Affairs] ... to start the process of ... approaching the students. They have staff to do that.”⁹⁰ In the case of the student activists associated with the Occupy movement, Katehi said that the Student Affairs staff was asked to find out “what they want” and “get them to understand that they cannot have the tents.”⁹¹ The Student Affairs staff informed the Leadership Team that “it was very hard to approach the students,” according to Katehi.⁹²

86 Email from Meyer to Katehi, Hexter, Wood, Spicuzza, Carmichael, Barbera, Benson, Swartwood, Castro, Loessberg-Zahl, Raycraft, Carter-Dubois, Dickinson, Engelbach, Parker, October 25, 2011 at 12:09 p.m. [Exhibit 38]

87 Email from Katehi to Meyer, Hexter, Wood, Spicuzza, Carmichael, Barbera, Benson, Swartwood, Castro, Loessberg-Zahl, Raycraft, Carter-Dubois, Dickinson, Engelbach, Parker, October 25, 2011 at 12:09 p.m. [Exhibit 39]

88 Transcribed interview of John Meyer, January 20, 2011, page 18, lines 21-25. [Exhibit 40]

89 Transcribed interview of John Meyer, January 20, 2012, page 19, lines 20-24. [Exhibit 40]

90 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 14, line 24 through page 15, line 6. [Exhibit 1]

91 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 16, lines 1-2. [Exhibit 1]

92 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 16, lines 7-8. [Exhibit 1]

Katehi's goal was to obtain "a list of demands ... so we can have that discussion [with a smaller representative group] and then ... have them take the tents away."⁹³ According to Katehi, Vice Chancellor Wood had informed the Leadership Team that the Occupy group was "leaderless" and that it was "very difficult to speak with them," but that there were "students who wanted to speak with me or us."⁹⁴ Katehi did not comment further on the tensions between her approach and the well-publicized characteristics of the Occupy movement, in which there are no specific demands and occupation of space is asserted both as a core message and organizing tactic. According to Katehi, "there were a lot of ... discussions [about] how to make sure that we can get the students to work with us and remove the tents."⁹⁵

5.1.1 *Discussion of Non-Affiliates*

In planning its response to Occupy-related activism, the Leadership Team discussed the presence of "non-affiliates" in the Occupy group. According to Chancellor Katehi, "We had noticed that this group, this year specifically, has people—even when they came to Mrak—who were not students."⁹⁶ "We were worried at the time about that because the issues from Oakland were in the news and the use of drugs and sex and other things, and you know here we have very young students ... we worried especially about having very young girls and other students with older people who come from the outside without any knowledge of their record ... if anything happens to any student while we're in violation of policy, it's a very tough thing to overcome."⁹⁷

According to Vice Chancellor Meyer, "our context at the time was seeing what's happening in the City of Oakland, seeing what's happening in other municipalities across the country, and not being able to see a scenario where [a UC Davis Occupation] ends well ... Do we lose control and have non-affiliates become part of an encampment? So my fear is a long-term occupation with a number of tents where we have an undergraduate student and a non-affiliate and there's an incident. And then I'm reporting to a parent that a non-affiliate has

93 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 17, lines 21 through page 18, line 2-5. [Exhibit 1]

94 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 17, lines 21 through page 18, line 2-5. [Exhibit 1]

95 Transcribed interview of Chancellor Linda Katehi, page 19, lines 1-2. [Exhibit 1]

96 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 17, lines 15-17. [Exhibit 1]

97 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 18, lines 6-17. [Exhibit 1]

done this unthinkable act with your daughter, and how could we let that happen?”⁹⁸ According to Meyer, “My concern wasn’t non-affiliates in the Mrak Hall group. My concern was playing the chess move forward and you got an occupation for four weeks and people are attracted.”⁹⁹

During the week leading up to November 18, “there was a sense [among members of the administration] that all these non-students had arrived” on campus, but Student Affairs staffers who spent time with the activists that week did not observe any significant presence of non-affiliates, according to Associate Director Anne Myler.¹⁰⁰

Andrew Wells, a Freedom of Expression Support Team volunteer who spent the night at Mrak Hall when it was occupied on November 15, estimated that the 50 activists that spent the night in Mrak consisted of 98 percent students and a single faculty member. He was not sure if there were any non-affiliates there, and said “there might have been a couple,” although he admitted that he had no way of knowing for sure.¹⁰¹ Wells reported to the Leadership Team through Assistant Vice Chancellor Castro, who also spent time with the activists. On the evening of Thursday, November 17, Castro observed the activists who had erected the encampment that afternoon, and reported to the Leadership Team later that night that “the only non-affiliates I saw were people from the interfaith communities providing food ... and they were not spending the night.”¹⁰²

This assessment was not shared by campus police, who reported to the Leadership Team through Chief Spicuzza. According to a UC Davis officer who also spent the night at Mrak Hall on November 15, “through conversation with the occupants, it was determined that the majority were NOT affiliated with the University [but were] part of the ‘Occupy’ movement.”¹⁰³ On the Leadership Team conference call on the night of November 17, Chief Spicuzza said that her officers believed that 80 percent of the activists in the encampment on the Quad were not students, according to Assistant Vice Chancellor Castro.¹⁰⁴ When Castro challenged this assessment, Spicuzza replied that she believed Castro’s assessment was more accurate

98 Transcribed interview of John Meyer, December 7, 2011, Volume I, page 26, lines 4-15. [Exhibit 2]

99 Transcribed interview of John Meyer, January 20, 2011, page 15-, line 25 through page 16, line 2. [Exhibit 40]

100 Transcribed interview of Anne Myler, January 19, 2012, page 33, lines 16-17. [Exhibit 41]

101 Transcribed interview of Andrew Wells, January 19, 2012, page 22, lines 17 through page 23, line 15. [Exhibit 42]

102 Transcribed interview of Griselda Castro interview, December 8, 2011, page 33, lines 5-8. [Exhibit 5]

103 Email, Danny Sheffield (who was advised by Sgt. Beermann, who had stayed overnight at Mrak Hall) to Spicuzza, Swartwood, Carmichael, Pike, November 16, 2011 at 6:02 a.m. [Exhibit 43]

104 Transcribed interview of Griselda Castro, December 8, 2011, page 33, line 18-21. [Exhibit 5]

than that of her own officers.¹⁰⁵ Castro told Kroll investigators that she then proceeded to make a long argument to the Leadership Team on the advantages of not removing the encampment on the following day, and her remarks were met with “silence.”¹⁰⁶ According to Castro, “I didn’t say ‘don’t do anything’ because I’m not the risk management ... I have to be respectful of the people on the call who have the risk management on their shoulders if something goes wrong.”¹⁰⁷

The view that non-affiliates had a significant presence among the Occupy activists survived this discussion. The letter from Chancellor Katehi that was distributed to activists on the Quad at approximately 11 a.m. on Friday, November 18 stated:

“We are aware that many of those involved in the recent demonstrations on campus are not members of the UC Davis community. This requires us to be even more vigilant about the safety of our students, faculty and staff.”

Indeed, in a January 13, 2012 letter to Kroll investigative staff, Senior Campus Counsel Michael Sweeney noted “several Kroll investigators have asked questions about the laws that apply to camping on the quad, and the laws that were cited in the police arrest citations. I will use this opportunity to briefly clarify this topic. The law that most clearly applies is California Code of Regulations, title 5, section 100005, enclosed, which prohibits **non-affiliates** [emphasis added] from camping on University property.”¹⁰⁸ Thus, in response to questions about the legal basis for the police action¹⁰⁹ the administration cites legal authority that *only* applies to non-affiliates.

5.2 **Occupy Demonstrations at UC Davis**

5.2.1 *Occupy Demonstration on October 27*

On Thursday, October 27, a demonstration was held on the UC Davis Quad and activists marched through campus and ended the demonstration at the Occupy Davis encampment in

105 Transcribed interview of Griselda Castro, December 8, 2011, page 33, line 18 through page 34, line 4. [Exhibit 5]

106 Transcribed interview of Griselda Castro, December 8, 2011, page 34, lines 6-12. [Exhibit 5]

107 Transcribed interview of Griselda Castro, December 8, 2011, page 36, lines 15-17. [Exhibit 5]

108 Letter from Sweeney to Berkow, January 13, 2012. [Exhibit 44]

109 A topic discussed in detail below.

Central Park.¹¹⁰ Talking points were circulated by the administration for the demonstration, which, in addition to statements on “fee increases” and “student debt”, included the following statements:

“We respect students’ free speech and the importance of lawful protest to our democracy.”

“Student activism is recognized as a legitimate exercise of freedom of expression and an important learning opportunity.”

“Safety is the top priority at protests.”

“University policy prohibits the use of university property for overnight camping. And it also has specific requirements for booking space on campus, using amplified sound and creating symbolic structures on campus.”¹¹¹

An Operations Plan was prepared by Lieutenant Swartwood of UCDPD for the October 27 demonstration.¹¹² In the event of a “building occupation,” the Operations Plan detailed a potential scenario in which students would “secure doors from the inside” of a campus building, “encourage others to join via an electronic network” and then “mass outside the occupied building.” The Operations Plan provided the “tactical considerations,” including the creation of a skirmish line to effect arrests and provide for the “safe extraction” of arrestees, the use of “helmets with face shields” and “pepper ball available,” and the “control [of the] entire perimeter around [the] building.” If the occupation occurred after hours, students would be arrested for trespassing; for “open air events, or during normal course of business,” the police would “utilize the dispersal order and 409 PC notification.”¹¹³

No non-police member of the UC Davis administration told Kroll that they reviewed, or were aware of, this or any other UCDPD Operation Plan; Meyer stated that he did not review the Operation Plan.¹¹⁴ The Operations Plan obtained by Kroll was not visibly authorized by Chief

110 Email from Castro to Leadership Team members, October 27, 2011 at 2:25 p.m. [Exhibit 45]

111 Email from Morain to Barbera, Benson, Engelbach, October 27, 2011 at 1:00 p.m. [Exhibit 46]

112 October 27th 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, October 27, 2011. [Exhibit 47]

113 October 27th 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, October 27, 2011. [Exhibit 47]

114 Transcribed interview of John Meyer, January 20, 2012, page 25, line 5. [Exhibit 40]

Spicuzza or anyone else and Kroll did not determine if Chief Spicuzza reviewed it or authorized it.¹¹⁵

On Wednesday, November 2, Chief Spicuzza wrote an email to Leadership Team members (Chancellor Katehi was not included) saying “I’m sure we are all very happy as to how October 27th turned out for the campus” and suggesting that planning begin for the planned demonstrations starting November 9.¹¹⁶ Chief Spicuzza also raised the question of whether a “definitive answer” was reached as to whether tents would be allowed on the Quad. Vice Chancellor Wood and Meyer subsequently emailed each other confirming their opinion that tents would not be allowed. Wood emailed Wood to confirm his understanding that “if the tents stayed up for some period of time then Police [are] going to take them down.”¹¹⁷

In the exchange of emails between Wood and Meyer, they passed as an attachment a statement on the “Use of University Properties.”¹¹⁸ This document restated the policies relating to use of University property, referring to the UC Davis Policy and Procedure Manual Chapter 270, Properties Use and Extracurricular Activities Section 20, Use and Reservation of University Properties/Event Arrangements. This policy states simply that “[u]se of University properties for overnight camping is prohibited.”

5.2.2 *Occupy Demonstration on November 9*

On Monday, November 7, Chief Spicuzza emailed Leadership Team members to set up a conference call and stated that “no setting up of tents or ‘camping’ will be allowed on campus” and that police would be used to “remove” activists from Mrak Hall if an Occupation occurred.¹¹⁹

The decision by UC Davis administrators to disallow encampments on campus was consistent with other UC campuses at the time: on Tuesday, November 8, Provost Hexter

115 As Chief Spicuzza is currently on administrative leave and considered a possible subject of discipline, Kroll investigators were not authorized to interview her.

116 Email from Spicuzza to Meyer, Wood, Hexter, Drown, Sweeney, Engelbach, November 2, 2011 at 11:52 a.m. [Exhibit 48]

117 Email from Meyer to Wood, November 2, 2011 at 12:13 p.m. and email from Wood to Meyer, November 2, 2011 at 12:21 p.m. [Exhibit 49]

118 Use of University Properties, University of California, Davis. This pamphlet was compiled from information from the following source: <http://manuals.ucdavis.edu/ppm/270/270-20.pdf> [Exhibit 50]

119 Email from Spicuzza to Wood, Drown, Sweeney, Engelbach, Meyer, Swartwood, Carmichael, Pike, Yahnke, Parker, Myler, Crossley, Ealy, Hull, Green, November 7, 2011 at 6:58 p.m. [Exhibit 59]

emailed Chancellor Katehi and other members of the Leadership Team the statement that Chancellor Birgeneau had emailed to the UC Berkeley community. Birgeneau asserted that UC Berkeley shared “many of the highest principles associated with the OWS movement” and was a “model of the right to free speech, assembly and activism,” but outlined “basic expectations” that included that “encampments or occupation are not allowed on our campus.” The statement equated “setting up encampments” with “pulling fire alarms ... graffiti, or other destructive actions that disrupt or interfere with anyone’s ability to conduct regular activities ” such as going to class, studying and carrying out research.¹²⁰ The statement cited the costs of encampments: “in these challenging times, we simply cannot afford to spend our precious resources and, in particular, student tuition on costly and avoidable expenses associated with violence or vandalism.”¹²¹ The statement did not mention the possible use of force by police or arrests, but instead said that violations would be “subject to the campus Code of Student Conduct.” As noted above (see **Occupy comes to UC Berkeley** section), police confronted activists immediately after tents were erected on UC Berkeley’s Sproul Hall on November 9 and videos captured the use of batons against activists who were linking arms to defend the encampment.

Throughout Wednesday, November 9, Chief Spicuzza, Lieutenant Pike and Lieutenant Swartwood received updates about the demonstration at UC Berkeley, including an 11:32 a.m. message that the “first OCCUPY OAKLAND protesters have arrived on campus” and a 2:59 p.m. message that “UCPD engaging protesters trying to set up encampment on Sproul Plaza area.”¹²²

In contrast with UC Berkeley, the demonstration held at UC Davis on November 9 took place without incident. A demonstration was held at noon on the UC Davis Quad and lasted about an hour, with approximately 50-60 participants who discussed plans for further demonstrations at the upcoming Board of Regents meeting, according to Chief Spicuzza.¹²³

Kroll’s email review shows that, in the days that followed, members of the UC Davis administration were aware of the violent confrontation that had occurred at UC Berkeley. Not all members of the administration had detailed knowledge of this event, however; Chancellor

120 “Message to Campus Community,” by Robert J. Birgeneau, Chancellor, Geroge Breslauer, Executive Vice Chancellor & Provost and Harry Le Grande, Vice Chancellor, Student Affairs, November 7, 2011. [Exhibit 51]

121 “Message to Campus Community,” by Robert J. Birgeneau, Chancellor, Geroge Breslauer, Executive Vice Chancellor & Provost and Harry Le Grande, Vice Chancellor, Student Affairs, November 7, 2011. [Exhibit 51]

122 Email from Leticia Garcia-Hernandez to Spicuzza, Swartwood, Pike, Carmichael, Souza, November 9, 2011 at 11:32 a.m. and 2:59 p.m. [Exhibit 56]

123 Email from Spicuzza to a UC Police Chief listserv, November 9, 2011 at 5:05 p.m. [Exhibit 52]

Katehi told Kroll investigators that she did not view video footage of the UC Berkeley incident in the week leading up to November 18, even though this incident was an important reference point in the administration's planning for November 18. Kroll's email review identified the following communications:

- On November 10, Vice Chancellor Meyer was emailed a link to the San Francisco Chronicle article on the “two violent confrontations with student protesters that prevented them from building an Occupy encampment on the campus” by a colleague in the UC Davis Office of Community Engagement.¹²⁴
- The following Monday, November 14, Birgeneau sent another email message to the UC Berkeley community, stating that he had reviewed the videos of the November 9 protest and found them to be “very disturbing,” and said that “they point to the dilemma that we face in trying to prevent encampments and thereby mitigate long-term risks to the health and safety of our entire community.” Birgeneau stated that he would “move forward by granting amnesty from action under the Student Code of Conduct to all Berkeley students who were arrested and cited solely for attempting to block the police in removing the Occupy Cal encampment.” The message was sent to Assistant Vice Chancellor Emily Galindo who forwarded it to Vice Chancellor Wood on November 15.¹²⁵

5.2.3 UC Davis Police Plan Response

On November 15, 2011, the UCDPD established a Departmental Operational Center (DOC) in the main conference room of the police department to respond to planned demonstrations at UC Davis that week. The DOC was under the control of Lieutenant John Pike.¹²⁶

Lieutenant Swartwood prepared an Operations Plan for the November 15 demonstration that anticipated the potential for the occupation of campus buildings and camping on the Quad.¹²⁷ On November 15 at 9:31 a.m., Lieutenant Swartwood emailed the Operations Plan to

¹²⁴ Email to Meyer, November 10, 2011.

¹²⁵ Email from Galindo to Wood, November 15, 2011 at 3:43 p.m. [Exhibit 53]

¹²⁶ Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

¹²⁷ November 15, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, November 15, 2011. [Exhibit 55]

Lieutenant Pike.¹²⁸ To date, Kroll has not learned whether anyone else reviewed this document.

The November 15 Operations Plan included the same scenario and tactical considerations for a building occupation as the October 27 Operations Plan and added a quote from Vice Chancellor Meyer's October 25 email regarding what to do "if Mrak Hall is occupied."¹²⁹

Under the heading "Camping on the Quad," the Operations Plan stated that encampments "will not be allowed" and continued:

- **"The use of force is highly likely in this type of situation based on past events.** Once a structured area has been established, the following tactics will apply:
 - It will take approximately 40 officers to deploy about the structured area. Once the perimeter is established the order will be given for an unlawful assembly. Instead of trying to fight through protesters to remove structures, all those remaining in the area will be systematically taken into custody with the final outcome of removing all structures. The decision will then be made to cite and release or book into Yolo County jail."
- **"Officer Safety (Use of force highly likely)**
 - Protesters will typically move their backpacks to the front of their body rendering baton strikes ineffective.
 - The use of the pepper ball and *the MK 9* [pepper spray] should be considered. [Emphasis added]
 - Protesters recently have thrown blunt objects such as rocks, bottles, shields and the use of liquid bombs."¹³⁰

Although the November 15 Operation Plan does not state which "past events" its assessment was based on, it is likely that the confrontation between Occupy activists and police at UC Berkeley and in Oakland were being referenced.

According to the Operations Plan, custody of arrestees would be accomplished "by utilizing a 'jail bus' from the Yolo County Sheriff's Office if necessary."¹³¹

128 Email from Swartwood to Pike, November 15, 2011 at 9:31 a.m. [Exhibit 57]

129 November 15, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, November 15, 2011. [Exhibit 55]

130 November 15, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, November 15, 2011. [Exhibit 55]

5.3 Occupation of Mrak Hall

On Tuesday, November 15, “several hundred people” marched through campus and held a rally on the UC Davis Quad (estimates of the crowd at its peak ranged from 500 to 2,000).¹³² At the rally, speakers “linked protests against tuition hikes to the broader Occupy Wall Street movement decrying corporate greed” and “denounced the use of batons by police” at UC Berkeley the previous week “to keep protesters from setting up an Occupy Cal encampment.”¹³³

The administration was informed by Student Affairs staff that there was “considerable faculty involvement” with the rally and Chief Spicuzza reported that she was “being told [that] instructors are telling students to attend the Quad event and receive extra credit.”¹³⁴ Spicuzza followed up with an email that UCDPD officers had received from a UC Davis student, in which a professor offered extra credit to students who attended the noon rally on that day and wrote a two page report “on what you learned/saw.” Chief Spicuzza forwarded this email to Wood, Meyer and Hexter, writing “kept [sic] it to just the three of you at this time.”¹³⁵

Speakers on the Quad addressed not only confrontation between police and activists at UC Berkeley, but the response of the UC Berkeley administration to that confrontation, including criticisms of the UC Berkeley Chancellor for reportedly declaring “linking arms [to be] an act of violence.”¹³⁶

At 1:57 p.m., Lieutenant Swartwood reported that he had received a complaint “re profanity and noise from [the] protest.”¹³⁷

At 3:00 p.m., 150-200 people marched from the Quad to occupy Mrak Hall, the primary administration building at UC Davis.¹³⁸ The students “filled the second floor landing area of

131 November 15, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, November 15, 2011. [Exhibit 55]

132 “Rally ties tuition fight to Occupy movement,” The Davis Enterprise, November 15, 2011. [Exhibit 58]

133 “Rally ties tuition fight to Occupy movement,” The Davis Enterprise, November 15, 2011. [Exhibit 58]

134 Email from Spicuzza to Wood, Katehi, Hexter, Meyer, Barbera, Morain, Drown, Castro, November 15, 2011 at 12:04 p.m. [Exhibit 60]

135 Email from Spicuzza to Wood, Hexter, Meyer, November 15, 2011 at 12:33 p.m. [Exhibit 61]

136 <http://www.youtube.com/watch?v=Z8A6D-deN8c&feature=related>, according to information supplied with the video on the YouTube website, the speaker was Sarah Juliet Lauro, PhD. See <http://english.ucdavis.edu/people/directory/slauro> [Exhibit 62]

137 Swartwood to Spicuzza, November 15, 2011 at 1:57 p.m. [Exhibit 63]

138 Email from Morain to Fell, Benson, Easley, November 18, 2011 at 10:51 a.m. [Exhibit 64]

Mrak, and then the stairs, and then all of the first floor lobby,” according to Wells, who had accompanied them on as they marched, and stayed with them in Mrak Hall through 6 a.m. the following day.¹³⁹

At 3:24 p.m., Chief Spicuzza emailed the Leadership Team to report that the group occupying Mrak Hall “is now stating they are not leaving.” During the next hour, Student Affairs staffers discussed their ability to stay at Mrak Hall after the building closed, along with Freedom of Expression Team volunteers. When Chief Spicuzza was asked if Aggie Hosts would be available to stay with the activists, she replied “not sure what the Aggies would be doing?”¹⁴⁰

Leading up to 5:00 p.m., an administrator for Mrak, Bob Loessberg-Zahl, made an announcement, saying that “you are going to hear some sirens pretty soon. The Fire Department is responding to a hazardous chemical situation over in the Chemistry Building ... they’re not responding here. They’re not going to hurt you.... But I just want to let you know you’re probably going to hear sirens pretty soon.”¹⁴¹

After this announcement, Professor Joshua Clover spoke to the group, warning them about cooperating with the administration, urging them to take matters into their own hands and stating, “right now, we’re the law.”¹⁴² According to Wells, the activists “went back and forth” about what to do next. At approximately 4:45 p.m., the activists used consensus-style decision-making to reach the decision to continue to occupy Mrak Hall after it closed at 5:00 p.m. and to “use bike locks and chains to lock the building doors open.”¹⁴³ According to Wells, “the logic that they used was that we are afraid the police are going to come to the building, lock the doors shut, to trap us into the building, and then come in and arrest us ... so they arrived at the conclusion that we need to lock the doors open. And they kept those

139 Transcribed interview of Andrew Wells, January 19, 2012, page 12, lines 14-16. [Exhibit 42]

140 “Aggie Host Security Officers are non-sworn, student security officers who provide a variety of public safety services to the campus,” including free “security escort services;” “special event security for concerts, athletic and theater events and large-scale campus events;” and “site surveillance at various locations on campus to deter vandalism, fire damages or burglary.” “Aggie Host Security Officers are trained in risk mitigation, threat assessment, access control and crowd management. They can be identified by their black shirts with gold lettering and departmental equipment.” (see <http://police.ucdavis.edu/aggie-host-security-service/aggie-host-program-escort-service>).

141 Andrew Wells interview, January 19, 2012, page 12, line 21 through page 13, line 10. 2011. [Exhibit 42]

142 http://www.youtube.com/watch?v=FwtesQzF_bk [Exhibit 65]

143 Transcribed interview of Andrew Wells, January 19, 2012, page 13, lines 14 through page 15, line 3. [Exhibit 42]

doors open all night long. I was with them in the building from 3:00 p.m. to 6 a.m. Wednesday morning. And it got cold in there.”¹⁴⁴

The decision to chain the doors open was not consistent with the expectations of campus police, who had anticipated that students would barricade themselves inside a campus building by chaining the doors closed, according to the November 15 Operation Plan.¹⁴⁵

Leading up to 5:00 p.m., there was a lot of discussion about “what are we going to do when the police show up?” according to Wells.¹⁴⁶ The students “were having a lot of ... peer to peer education about what to do if you’re arrested, what your rights are, what to say, who to call.”¹⁴⁷ They were discussing, “Are we going to link arms? Are we going to huddle? ... What’s going to be our strategy? And that theme of what to do when the police get here, that was [a] conversation that they had throughout the week.”¹⁴⁸

The Leadership Team decided to allow the activists to remain on the first floor and the stairs leading up to the second floor on Tuesday night. According to Bob Loessberg-Zahl, Chief Spicuzza expressed on a Leadership Team call that she did not have sufficient officers to remove the group from Mrak Hall.¹⁴⁹ Also on that call, the possibility of moving the students out of Mrak Hall the following day after many of the activists left to attend rallies in the Bay Area was discussed.¹⁵⁰ Katehi said that “usually when students come [to Mrak Hall] we allow them to stay ... overnight because that gives us more time to talk things [about] with them.”¹⁵¹ According to Meyer, allowing the students to stay overnight gave the campus police time to “manage their staffing and their overtime costs” and provides “the double benefit of more time for conversation [with activists].”¹⁵²

UC Davis Sergeant Bill Beermann was present during the night at Mrak Hall and reported that the initial number of activists was 75 to 100, but the numbers had dwindled to about 40

144 Transcribed interview of Andrew Wells, January 19, 2012, page 13, lines 14 through page 15, line 3. [Exhibit 42]

145 November 15, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, November 15, 2011. [Exhibit 55]

146 Transcribed interview of Andrew Wells, January 19, 2012, page 16, lines 5-7. [Exhibit 42]

147 Transcribed interview of Andrew Wells, January 19, 2012, page 16, lines 16-18. [Exhibit 42]

148 Transcribed interview of Andrew Wells, January 19, 2012, page 16, lines 19-22. [Exhibit 42]

149 Transcribed interview of Bob Loessberg-Zahl, December 12, 2011, page 15, lines 5-22. [Exhibit 66]

150 Transcribed interview of Bob Loessberg-Zahl, December 12, 2011, page 15, line 25 through page 16, line 13. [Exhibit 66]

151 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 9, lines 4-6. [Exhibit 1]

152 Transcribed interview of John Meyer, January 20, 2012, Volume II, page 23, line 1-3. [Exhibit 40]

as people came and went throughout the night.¹⁵³ Sergeant Beermann reported that, “through conversation with the occupants, it was determined that the majority were NOT affiliated with the University [but were] part of the ‘Occupy’ movement.” Sergeant Beermann reported that “there were no criminal incidents.”¹⁵⁴ According to a chronology of Occupy UC Davis subsequently created by a member of the University’s news service, at 11:00 p.m. there were “about 50 protesters in Mrak lobby; many of them non-students.”¹⁵⁵

These assertions about the presence of non-affiliates at Mrak Hall conflicted with the assessments of Student Affairs staff. When asked to break down the proportion of students, faculty, staff and non-affiliates in the crowd that occupied Mrak Hall on Tuesday, Wells estimated “70 percent undergraduate students, probably 28 percent, 29 percent graduate [students] and then Professor Clover. I don’t know that there were any [non-]affiliates there. There might have been a couple. But there in Mrak, I think it was mostly students.”¹⁵⁶ When pressed on whether there were representatives from the larger Occupy movement at the event, Wells said “there were people wearing hats that were some sort of legal advisors, or legal observers ... I don’t know what their role was, and for all I know those were students that have gone to the Bay Area for special training.”¹⁵⁷

According to Wells, “as the night of the 15th progressed ... the protesting, and the demonstrating, and the speaking, kind of evolved into studying.”¹⁵⁸ According to Wells, during the occupation of Mrak, “I had a lot of really good conversations with a lot of students. And I had a lot of opportunities to explain to them why I was there, and ... what my role was.”¹⁵⁹ Wells said that the activists were friendly, but challenged him about the ethics of his decision to work with the administration. Regarding the potential for police intervention:

“Their assumption was [that] we should anticipate that if we are engaged in nonviolent protests the police are still going to use violence against us. Because from the students’ perspective, the presence of police on campus is intrinsically violent. Their belief, before the pepper spray incident, and their statement beforehand, had been that we want police off campus because police are military, and they are violent, and look what they do at

153 Transcribed interview of Andrew Wells, January 19, 2012, page 13, lines 14 through page 15, line 3. [Exhibit 42]

154 Email from Sheffield (who was advised by Sgt. Beermann, who had stayed overnight at Mrak Hall) to Spicuzza, Swartwood, Carmichael, Pike, November 16, 2011 at 6:02 a.m. [Exhibit 43]

155 Email from Morain to Fell, Benson, Easley, November 18, 2011 at 10:51 a.m. [Exhibit 64]

156 Transcribed interview of Andrew Wells, January 19, 2012, page 22, lines 16-20. [Exhibit 42]

157 Transcribed interview of Andrew Wells, January 19, 2012, page 22, line 23 through page 23, line 3. [Exhibit 42]

158 Transcribed interview of Andrew Wells, January 19, 2012, page 19, line 22-2. [Exhibit 42]

159 Transcribed interview of Andrew Wells, January 19, 2012, page 15, lines 12-15. [Exhibit 42]

Berkeley, look what they do at UCLA. We don't want this here. This is not what we envision in a University campus."¹⁶⁰

Also on Tuesday night, the activists set up two tents on the north side of Mrak Hall. Wells "texted" Assistant Vice Chancellor Castro about this and she provided him with a stack of flyers that summarized the campus policy prohibiting camping overnight.¹⁶¹ Wells went out to the tents and spoke with the activists there, but nobody would tell him who the tents belonged to, so he left some flyers and asked them to let the owners know that the tents were not allowed. Ten minutes later, the tents were put away and it was not an issue for the rest of the night, according to Wells.¹⁶²

At 7:32 p.m., Chief Spicuzza alerted the Leadership Team to this event with an email that stated "the tents came down voluntarily. That's good news."¹⁶³ She did not specify whether it was police or student affairs took the steps to achieve this result, and Meyer subsequently told Kroll investigators that campus police had requested the tents come down.¹⁶⁴ At 7:33 p.m., Chancellor Katehi responded "Excellent!" and at 8:05, Provost Hexter wrote "Bravo." At 8:59 p.m., Vice Chancellor Wood responded "I am very proud of the student affairs staff for professionally asking them to take them down. I am also proud of our students for responding well to the request."¹⁶⁵

Vice Chancellor Wood, who stayed at Mrak Hall on Tuesday night until 1:30 a.m., referred to the activists as "my children" and said that in the morning they were "very polite, they were gathering their stuff, you know being sure they weren't getting in the way of doorways and what have you."¹⁶⁶

At 10:27 p.m. on Tuesday night, Vice Chancellor Wood forwarded to the Leadership Team an email from Chancellor Birgeneau to the UC Berkeley community, in which he stated "we all share the distress and anger at the State of California's disinvestment in public higher education" and called for "the political leadership from Sacramento" to come to UC Berkeley

160 Transcribed interview of Andrew Wells, January 19, 2012, page 17, lines 3-12. [Exhibit 42]

161 Use of University Properties, University of California, Davis. This pamphlet was compiled from information from the following source: <http://manuals.ucdavis.edu/ppm/270/270-20.pdf> [Exhibit 50]

162 Transcribed interview of Andrew Wells, January 19, 2012, page 30, line 14 through page 31, line 3. [Exhibit 42]

163 Email from Spicuzza to Katehi, Wood, Meyer, Hexter, Castro, Engelbach, November 15, 2011 at 7:32 p.m. [Exhibit 67]

164 Transcribed interview of John Meyer, December 7, 2011, Volume I, page 31, lines 21-24. [Exhibit 2]

165 Email from Wood to Hexter, Katehi, Spicuzza, Meyer, Castro, Engelbach, November 15, 2011 at 8:59 p.m. [Exhibit 68]

166 Transcribed interview of Fred Wood, December 8, 2011, page 11, line 5-17. [Exhibit 69]

to “debate the future of public higher education.”¹⁶⁷ In forwarding the email, Wood wrote: “Linda and Ralph, FYI – I wanted to be sure you knew about this note, which is circulating widely.” No response appears to have been sent by Chancellor Katehi or Provost Hexter.

5.4 **Occupiers Voluntarily Leave Mrak Hall and Plan Encampment**

On Wednesday morning, November 16, the UC Davis Police Department formally requested that Yolo County agencies be placed on standby for mutual aid assistance of approximately 40 officers.¹⁶⁸

At 10:18 a.m., Chief Spicuzza emailed the Leadership Team saying that the activists were planning a rally at Mrak Hall after the “bus people” had returned and when the building was scheduled to be closed at 5:00 p.m.¹⁶⁹ Chief Spicuzza stated that her staff were “working up three plans” to evict the students at 2:00 p.m., 5:00 p.m. or 11:30 p.m. and suggested that the 2:00 p.m. time might be optimal because the number of activists could be “as low as 20” and her officers would have a chance of removing them “without arrest” and without much media coverage.¹⁷⁰ The Leadership Team held a conference call at 1:00 p.m.

As expected by Chief Spicuzza, most of the activists at Mrak Hall boarded buses on Wednesday morning to attend rallies in the Bay Area. Chief Spicuzza suggested to the Leadership Team that the remaining activists in Mrak Hall be cleared out before the buses returned.¹⁷¹

The UCDPD, assisted by the Davis Police Department (“DPD”), were deployed to remove the activists occupying Mrak Hall at approximately 2:30 p.m. Further mutual aid from Yolo County was not utilized.¹⁷² According to one Leadership Team member, there were 14 police officers at Mrak Hall, including seven from UCDPD and seven from DPD, but activists claimed that there were 25 police officers present.¹⁷³

167 Email from Wood to Katehi, Hexter, Meyer, Barbera, Morain, November 15, 2011 at 10:27 a.m.

168 Email from Torres to Carmichael, et al., November 16, 2011 at 9:39 a.m. [Exhibit 71]

169 Email from Spicuzza to Wood, Meyer, Drown, Hexter, Katehi, Engelbach, Benson, Barbera, Castro, Morain, November 16, 2011 at 10:18 a.m. [Exhibit 72]

170 Email from Spicuzza to Wood, Meyer, Drown, Hexter, Katehi, Engelbach, Benson, Barbera, Castro, Morain, November 16, 2011 at 10:18 a.m. [Exhibit 72]

171 Email from Spicuzza to Wood, Meyer, Drown, Hexter, Katehi, Engelbach, Benson, Barbera, Castro, Morain, November 16, 2011 at 10:18 a.m. [Exhibit 72]

172 Email from Torres to Carmichael, et al., November 16, 2011 at 1:27 p.m. [Exhibit 73]

173 Email from Morain to Fell, Benson, Easley, November 18, 2011 at 10:51 a.m. [Exhibit 64]

At 2:00 p.m., Chief Spicuzza emailed Loessberg-Zahl, requesting that he announce that the “building is closed and they need to leave” at 2:25 p.m., giving him five minutes to negotiate with the activists before the police arrived.¹⁷⁴ According to Loessberg-Zahl, who serves as an unofficial “building manager”¹⁷⁵ for Mrak Hall, he proceeded to ask the activists to leave, without a visible police presence, and the activists agreed. As the activists were voluntarily gathering their belongings and signs, a group of officers with helmets and riot gear entered the building, according to Loessberg-Zahl.¹⁷⁶

Activists later expressed their frustration to UC Davis public information representatives that police been summoned to clear Mrak Hall after the University had indicated that it would not respond forcefully to peaceful protests.¹⁷⁷

Wednesday afternoon, Provost Hexter received the following email from Brian Riley, a UC Davis graduate student, activist and member of student government:

Ralph,

Between you and me, we need a new police chief here. Two years ago during a town hall that was held after the big walk-out she said something that really shows naivete [sic] on her part, saying “...because I choose to be a law abiding citizen...” In other words she doesn’t really have a good grasp of concepts which transcend narrow police-centric views.

I am ex-officio in student gov’t, so I believe I have standing on such an issue ...

What happened today [at Mrak Hall] was a huge blunder from the admin’s point of view. The students were literally on the verge of leaving the building (!) So in effect, the admin kicked them out, using riot cops, before they could manage to leave on their own accord. Because of this there are now at least a dozen more students who have been face to face with riot police who had never come face to face with them before. They will not forget this experience. It will serve to motivate them to become leaders in the Occupy UCD movement. Personally, I’m glad it happened that way, but we still need a new police chief.¹⁷⁸

174 Email from Spicuzza to Loessberg-Zahl, November 16, 2011 at 2:00 p.m. and 2:06 p.m. [Exhibit 74]

175 Transcribed interview of Bob Loessberg-Zahl, December 8, 2011, page 3, line 10. [Exhibit 66]

176 Transcribed interview of Bob Loessberg-Zahl, December 8, 2011, page 20, line 23 through page 21, line 13. [Exhibit 66]

177 Transcribed interview of Katherine Kerlin, December 6, 2011, page 14, lines 11-22. [Exhibit 75]

178 Email from Riley to Hexter, November 16, 2011, 3:19 p.m. [Exhibit 76]

On Wednesday night, Provost Hexter forwarded the email to Chief of Staff Engelbach, characterizing it as coming “from the point of view of one student with well-known views.” Engelbach forwarded the email to Chancellor Katehi, who responded, “I am not surprised that this comes from Brian!”¹⁷⁹

Vice Chancellor Wood said that following the closure of Mrak Hall, he expressed to Vice Chancellor Meyer his concern about the number of police with batons that were deployed for the closure of the building.¹⁸⁰ Wood said “that’s as engaged in tactics as I have ever been ... it’s just as a Student Affairs person knowing that the students will react to that.”

At 3:27 p.m., Communications Director Barbera forwarded “talking points” to the Leadership Team to serve as “guidelines for all of us internally and externally.” According to the talking points:

We understand the frustrations of the students have [sic] about the state’s budget cuts, the current economic conditions and rising tuitions and we try at all times to provide them with a safe environment to express this frustration.

However, based on available information and in response to concerns about safety, the administration decided to close Mrak Hall today at 2:30.¹⁸¹

A conference call for the Leadership Team was scheduled for 4:00 p.m. on Wednesday, November 16.

At 5:00 p.m., 150-200 activists held a “general assembly” on the north steps outside of Mrak Hall where they decided to hold a noon rally on Thursday “and then camp indefinitely on the Quad.”¹⁸²

At 5:16 p.m., Morain emailed the Leadership Team to report that the “assembly just now voted to set up tents in quad after noon rally tomorrow and to occupy quad ‘in support of rally

179 Email from Katehi to Engelbach, November 16, 2011 at 9:52 p.m. [Exhibit 77]

180 Transcribed interview of Fred Wood, December 8, 2011, page 31, line 17 through page 32, line 4. [Exhibit 69]

181 Email from Barbera to Engelbach, Katehi, Wood, Drown, Spicuzza, Hexter, November 16, 2011 at 3:27 p.m. [Exhibit 78]

182 Email from Morain to Fell, Benson, Easley, November 18, 2011 at 10:51 a.m. [Exhibit 64]

indefinitely.”¹⁸³ The decision was made by “50-70 people” and resulted in “consensus and applause.”¹⁸⁴

Later that night, Loessberg-Zahl sent an email to employees who worked at Mrak Hall stating that Mrak Hall would be open for business the following day, but that “only staff who work in Mrak Hall will be permitted to enter” and “students with Registrar, Admissions or Grad Studies business will be redirected to another location or escorted in and out of the building by staff.”¹⁸⁵

A Leadership Team conference call scheduled for 8:00 p.m. was not held that night.¹⁸⁶

5.5 Tents are Erected on the Quad and Administration Plans Eviction

The Quad is a picturesque green space in the center of the UC Davis campus. Concerts and student assemblies are regularly held there, but require approval from grounds and a reservation permit.¹⁸⁷ From noon to 1 p.m., amplified sound is permitted on the South Patio of the Memorial Union, on the northern edge of the Quad, and that is where rallies are often held.¹⁸⁸

5.5.1 Use of Force Discussed on Conference Calls

Leadership Team conference calls were held at 8:30 a.m. and 1 p.m. on Thursday, November 17th.¹⁸⁹ On these calls, Chancellor Katehi made it clear that, if tents were erected, they should be removed “before the weekend,” according to Provost Hexter.¹⁹⁰

183 Email from Morain to Barbera, Engelbach, Katehi, Wood, Hexter, Spicuzza, Benson, Drown, November 16, 2011 at 5:16 p.m. [Exhibit 79]

184 Email from Morain to Barbera, Engelbach, Katehi, Wood, Hexter, Spicuzza, Benson, Drown, November 16, 2011 at 5:16 p.m. [Exhibit 79]

185 Email sent on behalf of Loessberg-Zahl, from @ucdavis.edu to mrakcoordinators@ucdavis.edu on November 16, 2011 at 7:09 p.m. [Exhibit 80]

186 Email from Meyer to Spicuzza, November 16, 2011 at 8:04 p.m. [Exhibit 81]

187 Transcribed interview of Anne Myler, January 19, 2012, page 26, lines 23-24. [Exhibit 41]

188 Transcribed interview of Anne Myler, January 19, 2012, page 5, lines 10-25. [Exhibit 41]

189 Transcribed interview of Ralph Hexter, December 8, 2011, page 18, lines 3-15. [Exhibit 3]

190 Transcribed interview of Ralph Hexter, December 8, 2011, page 18, lines 5-8. [Exhibit 3]

Specific police tactics and options for the use of force by police were not discussed on the Leadership Team conference calls.¹⁹¹ The use of batons, pepper spray or hands-on physical force was never discussed.

The only specific guidance provided by the Leadership Team to Chief Spicuzza regarding the use of force by police occurred on the 1 p.m. call, when Provost and Vice Chancellor Ralph Hexter said, "We don't want it to be like Berkeley," meaning that UC Davis did not want their officers to engage in force like the UC Berkeley officers employed on November 9 at Sproul Plaza.¹⁹² Chancellor Katehi "immediately agreed," according to Hexter.¹⁹³

The Leadership Team did not discuss any specifics about how this guidance should be interpreted. Ralph Hexter said "In fact ... there wasn't even a drill down, even though we had invoked Berkeley on the 9th, there was not even, 'What do we do if they link arms?'"¹⁹⁴

According to Chancellor Katehi, Hexter's guidance regarding Berkeley meant that there should be "no violence. That's what it meant to me, to tell you the truth." Chancellor Katehi stated that she did not view the "video clips from Berkeley" but understood that there was a "violent interaction with the police," and that students, faculty and police were "hurt."¹⁹⁵ Furthermore, she did not want to have arrests.¹⁹⁶ According to Katehi, "it was clear in my mind and others ... that we wanted to remove the tents ... and we wanted to do it without any violence – safely."¹⁹⁷

Chancellor Katehi said that she did not provide direction on how to achieve these goals. She expected "that Annette [Spicuzza] with John [Meyer], or with Fred [Wood] or by herself ... will go and make the appropriate decisions to make this happen."¹⁹⁸

191 Transcribed interview of Linda Katehi, December 20, 2011, page 56, lines 3-7; transcribed interview of John Meyer, December 7, 2011, Volume II, page 27, line 16 through page, 28, line 4; transcribed interview of Ralph Hexter, December 8, 2011, page 22, lines 1-25; transcribed interview of Fred Wood, December 8, 2011, page 31, lines 4-7. [Exhibits 1, 2, 3, 69]

192 Transcribed interview of Ralph Hexter, December 8, 2011, page 21, lines-19-25 and page 23, lines 4-25. [Exhibit 3]

193 Transcribed interview of Ralph Hexter, December 8, 2011, page 23, lines 27. [Exhibit 3]

194 Transcribed interview of Ralph Hexter, December 8, 2011, page 27, lines 19-21. [Exhibit 3]

195 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 24, lines 7-21. [Exhibit 1]

196 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 24, lines 22-23. [Exhibit 1]

197 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 25, lines 1-7. [Exhibit 1]

198 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 25, line 8 through page 26, line 5. [Exhibit 1]

Chancellor Katehi's understanding that "no violence" would be employed in the removal of the tents was not clear in the mind of Vice Chancellor Meyer, however. Meyer's interpretation of the Berkeley guidance was that some use of force by police would be acceptable in taking down the tents. When the Berkeley reference was mentioned, Meyer understood that to mean that the Leadership Team did not want the police to use batons.¹⁹⁹ John Meyer said "That was our symbol and direction ... If we we're going to do it, we have to do it in a manner that doesn't create that outcome. We can't go there. I mean ... you're with the Chancellor, and the Leadership Team, the Chief, all sort of understanding ... that is the line we can't cross ... I think in the Chancellor's mind that might be of no use of force. I think in my mind, I think ... if you're taking people out of tents, you might put some hands on ... there's some relativity there that you might have to actually do hands-on, which technically, you know, should define it. But the line drawn – and I think ... in the Chancellor's comments ... he [sic] gave direction of, 'It can't go to that place', or really that level of force, I think is very clear."²⁰⁰

According to Meyer, he understood that "there's an escalation of uses of force" and that "if I'm trying to bring someone out of the tent or ... break a line physically by grabbing your arm and moving you apart ... I think I understand that that was still allowable."²⁰¹ Meyer said that he did not mention "hands-on" or other specifics regarding his understanding of what type of force might be permissible on the Leadership Calls, and that Chief Spicuzza asked no questions regarding how to interpret the Leadership Team's guidance.²⁰² According to Meyer, he did not understand that Chancellor Katehi believed that no force at all would be employed in taking down the tents until her comments following the November 18 police action.²⁰³

Several participants on the calls said the consensus of the calls was that confrontation was to be avoided, and that the police would back off if there was resistance.²⁰⁴

None of the participants on the Leadership Team calls interviewed by Kroll said that Chief Spicuzza ever spoke about the challenges that her officers would encounter in creating a different outcome than that at UC Berkeley. Kroll has not determined if Chief Spicuzza

199 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 16, lines 14-21. [Exhibit 2]

200 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 16, line 23 through page 17, line 13. [Exhibit 2]

201 Transcribed interview of John Meyer, January 20, 2012, page 4, lines 1-9. [Exhibit 40]

202 Transcribed interview of John Meyer, January 20, 2012, page 6, line 21 through page 7, line 25. [Exhibit 40]

203 Transcribed interview of John Meyer, January 20, 2011, page 42, line 14 through page 43, line 4. [Exhibit 40]

204 Transcribed interview of Claudia Morain, December 6, 2011, Volume II, page 34, lines 12-15; Transcribed interview of Emily Galindo, page 30, line 23 through page 31, line 3; Transcribed interview of Fred Wood, December 8, 2011, page 17, lines 11-19. [Exhibits 82, 83, 69]

reviewed the Operations Plan that her officers wrote for the November 15 her command staff believed that the use of force was “highly likely” when removing tents from the Quad, and that the use of both batons and pepper spray were being considered.²⁰⁵ For the officers, the recent events involving encampments at UC Berkeley and Oakland suggested that the use of force would be difficult to avoid.

5.5.2 Administration Prepares for Encampment

On Thursday morning, Student Affairs representatives and UCDPD officers were sent to observe the Quad for signs of an encampment being erected. Also that morning, Communications Director Barbera and Provost Hexter were discussing plans for a “campus-wide symposium regarding the Occupy Movement here and around the world.”²⁰⁶

At 10:38 a.m., Chief Spicuzza and Vice Chancellor Meyer were forwarded a link to a Twitter message from Occupy Davis that stated: “ATTENTION: Police have arrived at Central Park and are seeking to remove the encampment. It is imperative that YOU get down here NOW!”²⁰⁷ Chief Spicuzza emailed Meyer, “now they will come to our neck of the woods....let’s hope not!”²⁰⁸

A rally began on the South Patio at noon on Thursday. At 1:43 p.m., Assistant Vice Chancellor Castro emailed Vice Chancellor Wood to describe the rally, saying that it “started with about 50 but it grew to about 100 after they marched to the Bank” and described an incident in which a separate group “was gathered to talk about the series of hate incidents directed at students of color and the occupy group tried to join in. One student declared we are not into occupying, we are into decolonization.”²⁰⁹

At 1:51 p.m., Chief Spicuzza emailed Davis Police Chief Landy Black (“Chief Black”) asking if he planned to remove the Occupy encampment from Central Park, saying “I am wondering if

205 November 15, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, November 15, 2011. [Exhibit 55]

206 Email from Barbera to Hexter, November 17, 2011 at 9:38 a.m. [Exhibit 84]

207 Email from Mohr to Spicuzza and Meyer, November 17, 2011 at 10:38 a.m. This message was incorrect; Davis police distributed rules for the encampment to protesters in Central Park, but did not issue any citations or seek to remove the encampment, according to media reports. [Exhibit 85]

208 Email from Spicuzza to Meyer, November 17, 2011 at 11:25 a.m. [Exhibit 86]

209 Email from Castro to Wood, November 17, 2011 at 1:43 p.m. [Exhibit 87]

they will come over to my neck of the woods if they are displaced.”²¹⁰ This email followed up on the Twitter message that Spicuzza had received that morning, that suggested that the Davis Police Department was planning to remove the City of Davis Occupy encampment.

At 2:57 p.m., Chief Black replied with a brief message, “No plan to move them. Just getting them to cooperate with some stuff (fire safety, etc.).” At 6:17 p.m., Chief Black replied in much greater detail to Spicuzza, saying that there were no current plans to remove the encampment, and further stating, “regarding folks leaving Central Park for campus: we have heard that the young and student members of the Occupy Davis folks are thinking about pulling up stakes (literally) and joining the Occupy UCD group on your Quad. I don’t believe

we are the impetus behind that decision since we were pretty low-key today.”²¹¹ Chief Spicuzza replied, “thanks, but I’m told some of your [sic] are now mine” and Chief Black replied, “that could very well be.”²¹²

5.5.3 *Tents are Erected on the Quad*

Despite the advance concern over the erecting of tents on the campus and the deployment of both Student Affairs personnel and UCDPD personnel to prevent this from occurring, tents were set up on the Quad at approximately 3:00 p.m.

According to Vice Chancellor Meyer, “we had police out on the Quad ... thinking we were going to prevent tents ... and the students were so incredibly organized.”²¹³ “They were so smart ... they brought little carts from the housing co-op ... full of tents, full of provisions. They had 15 tents set up in ten minutes on the quad ... They were up in a flash. It was a work of art.”²¹⁴ The Leadership Team had decided that tents would not be allowed on the Quad before they were erected, but “they were up before ... anyone could engage.”²¹⁵

210 Email from Spicuzza to Black, November 17, 2011 at 1:51 p.m. [Exhibit 88]

211 Chief Black also discussed his strategy for the dealing with the Occupy encampment in Central Park, saying “I suspect [our City Council doesn’t] have the stomach for what would very likely be the outcome of attempts to confiscate tents or enforce the 10:00 p.m. park closure. (That may make my job easier, but [we’d] all be dealing answering a lot more irate citizen calls) ... If we do take action, right now, I’m leaning toward using citations first, not arrests, which we think will get the townies that are part of the protests to be more concerned with their pocket-books than the protest and go home. After some time with that strategy, we expect the ranks to thin to just the hard-cases, which should be less of a problem, if we up the ante.”

212 Email from Black to Spicuzza, November 17, 2011 at 6:54 p.m. [Exhibit 89]

213 Transcribed interview of John Meyer, January 20, 2012, page 13, lines 19-23. [Exhibit 40]

214 Transcribed interview of John Meyer, January 20, 2012, page 5, line 18 through page 6, line 22. [Exhibit 40]

215 Transcribed interview of John Meyer, January 20, 2012, page 5, line 18 through page 6, line 22. [Exhibit 40]

Immediately after the tents were erected, Freedom of Expression volunteers, Student Affairs staff and “some campus police” reacted by distributing flyers stating that encampments were against campus policy.²¹⁶ At 3:34 p.m., Assistant Vice Chancellor Castro emailed Vice Chancellor Wood, stating that the handouts regarding camping “have been given out and disregarded ... we have a tent city.”²¹⁷ In addition, that same afternoon, two UC Davis Police officers advised the activists that they might be arrested if the tents were left in place.²¹⁸

Kroll identified a video of two officers approaching activists on the Quad on November 17.²¹⁹ When the officer begins to speak, the activists “mic checked” the officer, inviting him to speak to them “in our method of speech, in our home.” A selective transcription of the video is as follows:

Officer: *“You understand that by doing this you are violating University policy, right?”*

Activist: *“In that case, then University policy is defying our constitutional rights.”*

Officer: *“You understand that you are subject to arrest?”*

Activist: *“We are not subject to arrest for our right to peaceably assemble.”*

Activist2: *“What’s our crime?”*

Officer (motions to a yellow flyer): *“Has anybody read this thing?”*

Activist: *“Officer, what is the crime that we are committing right now?”*

Activist: *“Is this an order to disperse?”*

Officer: *“Not at this time.”*

(Activists cheer)

Officer: *“What I am trying to do here is let everybody know that they are in violation of University policy. Does everyone understand that?”*

216 Email from Morain to Fell, Benson, Easley, November 18, 2011 at 10:51 a.m. [Exhibit 64]

217 Email from Castro to Wood, November 17, 2011 at 3:34 p.m. [Exhibit 87]

218 Transcribed interview of Thomas Zolot, December 13, 2011, page 6, lines 11-16. [Exhibit 90]

219 http://www.youtube.com/watch?v=sasQIHUU60&feature=channel_video_title [Exhibit 91]

Activists: *No.*

Activist: *"We were told that we are actually in compliance with the University policy right now."*

Officer: *"Well you understand that the University policy is that camping is not allowed on University property."*

Activist: *"How do you define camping?"*

Officer: *"Erecting tents and staying here."*

Activist: *"We are using this space for organizing."*

Officer: *"Ok"*

Activist: *"According to this piece of paper, under article five of section two, 'use of University property for OVERNIGHT camping.'"*

Thus it is clear that the University was aware of the tents from virtually the moment they were erected and it is equally clear that the activists were well aware from the time that they set them up that the University was concerned with the existence of the tents and wanted them removed.

5.5.4 *Student Affairs Staff Engage with Activists*

Assistant Vice Chancellor Castro and Wells were on the Quad with the activists starting at approximately 5:00 p.m. on Thursday.²²⁰

According to activist Thomas Zolot, he had a conversation with Assistant Vice Chancellor Castro at six or seven in the evening on Thursday in which he asked that the administration "let the First Amendment right override whatever ordinance [applies to] the Quad" and "she nodded her head and said, 'well, I'm not really in charge.'"²²¹ According to Zolot, he told Castro that they were "willing to compromise on any point but taking the tents down."²²²

220 Transcribed interview of Griselda Castro, December 8, 2011, page 30, lines 9-14; transcribed interview of Andrew Wells, January 19, 2012, page 34, lines 1-5. [Exhibits 5, 42]

221 Transcribed interview of Thomas Zolot, December 13, 2011, page 4, lines 8-15. [Exhibit 90]

222 Transcribed interview of Thomas Zolot, December 13, 2011, page 5, lines 3-11. [Exhibit 90]

According to Wells, the activists told him that they were attempting to not break any campus rules, with the exception of the “camping thing.”²²³

Wells raised safety concerns with the activists, and they responded by showing him that they had already set up “a watch rotation with people that are going to stay up all night.”²²⁴ Wells noted that although “they had set an expectation that ... aside from the camping thing, [they were] not going to break any campus rules, this is a drug and alcohol free event,” he saw people “smoking joints.”²²⁵ When he brought this up to the activists, they replied, “oh yeah, well you know, we’ll address that.”²²⁶ According to Wells, “at the same time ... they set up their own compost heap, and their own recycle bin ... there are some things about which this group is very conscientious. They are very careful about making sure everybody’s involved in the decisions. They’re very careful about making sure everybody’s rights are respected. But, you know, they pick and choose what rules to follow.”²²⁷

During the conversations with Wells and the activists, the issue of “non-affiliates” was discussed. According to Zolot, he and Wells counted the number of outside people, “and it was lower than the ratio for clubs. Like there’s a certain ratio [of UCD students to non-UCD students] that clubs have to have.”²²⁸ Zolot’s comments appear directed at the UC Davis policy for Registered Student Organizations (“RSOs”), which states that UC Davis students must comprise at least three-fourths of an RSO’s membership and “retain decision-making authority and control over its programs and finances.”²²⁹ Non-student members of RSOs “may attend the RSO meetings and events, teach, participate in discussions, serve as guest speakers on an occasional basis, and perform incidental tasks for the University.” This rule does not apply to the current situation, however, in that neither the activists nor the encampment were actions of any registered student organization.

As he spent time with the activists on Thursday evening, Wells was beginning to feel that he had “developed some connections with some of the ... stronger personalities in the group. Because this whole Occupy movement, they don’t have leaders ... but there are certainly

223 Transcribed interview of Andrew Wells, January 19, 2012, page 41, lines 1-4. [Exhibit 42]

224 Transcribed interview of Andrew Wells, January 19, 2012, page 40, lines 10-15. [Exhibit 42]

225 Transcribed interview of Andrew Wells, January 19, 2012, page 41, lines 1-7. [Exhibit 42]

226 Transcribed interview of Andrew Wells, January 19, 2012, page 41, lines 1-7. [Exhibit 42]

227 Transcribed interview of Andrew Wells, January 19, 2012, page 41, line 21 through page 42, line 2. [Exhibit 42]

228 Transcribed interview of Thomas Zolot, December 13, 2011, page 60, lines 22-25. Wells said that this discussion sounded familiar, but that he may not have pursued it with the student because he was not familiar with the policies governing RSOs. [Exhibit 90]

229 “Registered Student Organizations (RSO),” Section 270-05, Exhibit B, October 12, 2011.

some students, either by virtue of their self-confidence, or their passion for the issues, or their lack of fear, kind of rise to the top in terms of the loudest voices. And I managed to connect with some of those students.”²³⁰

According to Vice Chancellor Meyer, Student Affairs staffers and campus police “were trying to have conversations” with the activists, but “you’re going to negotiate with the leader, but there isn’t a leader.”²³¹

5.6 Planning the Eviction of the Encampment

The next scheduled Leadership Team conference call was not held until 10:00 p.m. Thursday,²³² but the erection of the tents on the Quad resulted in a flurry of calls between members of the Leadership Team throughout the afternoon and evening on Thursday. While the times and participants for these calls have not been definitively established, there reportedly were calls at approximately 3 p.m., immediately following the establishment of an encampment, and at approximately 6:00 p.m., after Chief Spicuzza reported to Vice Chancellor Meyer that the UCDDP was unable to secure enough officers to conduct an early morning operation on Friday. There was no formal recordation of the content of the discussion on these calls (or on any of the Leadership Team conference calls) and no definitive schedule for the calls has been provided to Kroll.

5.6.1 Initial Plan for a Friday Morning Operation at 3:00 a.m.

The initial plan was to dismantle the tents at 3:00 a.m. on Friday morning, and was consistent with the tactics employed by other UC campuses that week (UC Berkeley removed the encampment from Sproul Plaza early Thursday morning and UCLA would remove an encampment early Friday morning).²³³ At approximately 6 p.m., however, Chief Spicuzza and Lieutenant Swartwood informed Vice Chancellor Meyer that the campus police would not be

230 Transcribed interview of Andrew Wells, January 19, 2012, page 34, lines 15-25. [Exhibit 42]

231 Transcribed interview of John Meyer, January 20, 2012, page 13, line 24 through page 14, lines 8-9. [Exhibit 40]

232 Transcribed interview of Ralph Hexter, December 8, 2011, page 18, lines 13-16. [Exhibit 3]

233 At 10:12 a.m. on Friday, November 18, Chief Spicuzza forwarded an email to Lieutenant Swartwood, Lieutenant Pike and Lieutenant Carmichael that she had received from UCLA’s police chief, James Herren describing the eviction of the encampment at UCLA at approximately 5:00 a.m. Members of the Leadership Team were also copied on the email. According to Herren, “the event went very smoothly with no uses of force.”

able to muster the appropriate number of officers for a Friday morning operation.²³⁴ Chief Spicuzza wanted to extend the operation another 24 hours from 3:00 a.m. Friday to 3:00 a.m. Saturday in order to seek mutual aid from sister campuses. She stated that she felt more comfortable obtaining aid from other UC campuses than from regional police.²³⁵

5.6.2 *Subsequent Plan for a Friday Afternoon Operation*

According to Vice Chancellor Meyer, he subsequently “had a phone call with the Leadership Team” reporting that the early Friday morning operation was not possible and that Chief Spicuzza was proposing an early Saturday morning operation instead. (This call appears to have taken place before the 10 p.m. Leadership Team call, but Kroll has not determined the exact time or participants for this call).

On the 10 p.m. call, Chancellor Katehi expressed her concern that Friday night was a “party night” and the bars would be closing just prior to the time of the operation, according to Vice Chancellor Meyer.²³⁶ According to Chancellor Katehi, she had observed that “there are a lot of kids who go out to private parties very late ... as you go to Saturday. And we thought ... we did not want this to become a place where people come for fun. We worried about the use of alcohol and drugs and everything.”²³⁷ Chancellor Katehi “was adamant that she didn’t want them to stay one more night” and “was worried, since it was a Friday night that it would become a party and impossible for us to do what was asked of us...remove the tents,” according to a document attached to an email sent by Chief Spicuzza.²³⁸

According to Vice Chancellor Meyer, Chancellor Katehi suggested that they “move it up to 3 p.m. and ... the group didn’t object.”²³⁹ According to Chancellor Katehi, she was “not sure that I rejected that [3 a.m.] time,” but was concerned, along with Vice Chancellor Wood, “about that weekend.”²⁴⁰ According to Assistant Vice Chancellor Castro, a “variety of people” on the Leadership Team calls voiced concerns that taking down tents “in the dark” was not safe.²⁴¹

234 Transcribed interview of John Meyer, January 20, 2012, page 8, line 4 through page 9, line 14. [Exhibit 40]

235 Transcribed interview of John Meyer, January 20, 2012, page 9, lines 5-14. [Exhibit 40]

236 Transcribed interview of John Meyer, January 20, 2012., page 9, lines 14-21. [Exhibit 40]

237 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 23, lines 1-9. [Exhibit 1]

238 Untitled Microsoft Word document attached to an email from Spicuzza to ascy88@sbcglobal.net, November 20, 2011 at 7:12 p.m. This email address appears to belong to a friend or family member of Chief Spicuzza. [Exhibit 92]

239 Transcribed interview of John Meyer, January 20, 2012, page 37, lines 1-2. [Exhibit 40]

240 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 29, lines 3-5. [Exhibit 1]

241 Transcribed interview of Griselda Castro, page 48, lines 9-14. [Exhibit 5]

Castro did not identify who specifically voiced these concerns, but said that the concerns did not come from Chief Spicuzza.

According to Wood, he understood that an early morning operation on either Friday or Saturday was not possible because Chief Spicuzza did not have sufficient officers available for those times.²⁴² This additional rationale for the 3 p.m. time was also voiced by UCDPD officers who were not present on the Leadership Team calls. According to Sergeant Beermann, “another ... I’ll use the word excuse, because that’s what I felt it was, [regarding the 3:00 p.m. time was] that they wouldn’t be able to get the allied agencies to supply people at two o’clock in the morning, which I find is a very weak excuse.”²⁴³

According to Meyer, Chief Spicuzza did not raise any strategic or tactical objections to the 3:00 p.m. operation, and stated, “well, that would be better than making us, having us do it tonight [3:00 a.m. Friday], if we could get that much time.”²⁴⁴ Meyer stated that there was no “push back” regarding the 3:00 p.m. Friday afternoon time from Chief Spicuzza or anyone else on the conference call.²⁴⁵

By the end of day Thursday, however, the timeframe for the operation was still not clear to every Leadership Team member. In the draft letter to the activists that Communications Director Barbera wrote late that night, she called for tents to be removed by the end of the day.²⁴⁶ Vice Chancellor Wood said that he understood that the decision to move at 3 p.m. on Friday afternoon was made Friday morning, but that he was not involved in the relevant phone call.²⁴⁷ At 6:31 a.m. on Friday morning, Vice Chancellor Meyer edited the letter drafted by Barbera to include a 3:00 p.m. deadline for the tents to be removed, based on his understanding of the consensus from the 10 p.m. Leadership Team conference call the night before.²⁴⁸ At 9:04 AM, the Chancellor responded to the group noting that she likes “the document very much with the exception I would address the readers as ‘Dear UC Davis students’ and not as ‘friends’.”²⁴⁹

242 Transcribed interview of Fred Wood, December 8, 2011, page 16, lines 20-21. [Exhibit 69]

243 Transcribed interview of Bill Beermann, January 20, 2012, page 13, lines 16-20. [Exhibit 92]

244 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 10, lines 12-18. [Exhibit 2]

245 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 25, lines 12-16. [Exhibit 2]

246 Attachment to email from Barbera to Engelbach, Katehi, Wood, Drown, Meyer, Benson, November 18, 2011 at 2:22 a.m. [Exhibit 93]

247 Transcribed interview of Fred Wood, December 8, 2011, page 15, line 23 through page 16, line 7. [Exhibit 69]

248 Transcribed interview of John Meyer, January 20, 2012, page 36, line 15-17. [Exhibit 40]

249 Email from Katehi to Benson, Meyer, Barbera, Engelbach, Wood, Drown, November 18, 2011 at 9:04 a.m. [Exhibit 94]

5.6.3 Chief Spicuzza and Her Lieutenants Plan Operation

Note: Due to legal constraints, Kroll investigators were unable to interview Chief Spicuzza, Lieutenant Pike or Lieutenant Swartwood. Kroll was provided with reports prepared by Pike and Swartwood concerning the events on November 18th. Pike submitted his report on December 13 and Swartwood on November 30. Both reports were submitted an extended time after the event in question and certainly the authors were aware of the controversy surrounding this event and their respective roles at the time that these documents were written. Indeed, Lieutenant Pike had been relieved of duty several weeks before he submitted his report.

On the evening of Thursday, November 17, before the 10 p.m. Leadership Team conference call, Chief Spicuzza, Lieutenants Pike and Swartwood, and Dispatch Supervisor Garcia-Hernandez met in the main conference room of the UCDPD.²⁵⁰ According to Lieutenant Pike's Supplemental Narrative Report, they "discussed our departmental staffing, tactics legal matters and logistics for the operation."²⁵¹

According to Garcia-Hernandez, Chief Spicuzza informed Lieutenants Pike and Swartwood, "I don't want what happened at Berkeley. Oh my God."²⁵² The Lieutenants replied that "we don't know the full story of what happened in Berkeley. Of course the images that you see on TV will always be one-sided." They also said, "we don't want anyone to get hurt [and] that includes the officers."²⁵³

Chief Spicuzza and the Lieutenants discussed the use of batons and pepper spray, with Spicuzza saying that she didn't want them to be used.²⁵⁴ According to Garcia-Hernandez, "Both the Lieutenants echoed back to her, "nobody wants to do that. But we can't predict if we're gonna have to use them."²⁵⁵ Although she cautioned that she couldn't speak for Chief Spicuzza, Garcia-Hernandez believed that the Lieutenants made Chief Spicuzza aware that

250 Supplemental Narrative Report, by John Pike, December 13, 2011 and transcribed interview of Leticia Garcia-Hernandez, January 20, 2012. [Exhibits 54, 95]

251 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

252 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 16, line 24 through page 17, line 1. [Exhibit 95]

253 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 17, lines 5-12. [Exhibit 95]

254 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 5, line 2 through page 6, line 2. [Exhibit 95]

255 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 6, lines 7-9. [Exhibit 95]

both pepper ball guns and pepper spray were among the less-lethal weapons that they would have at their disposal.²⁵⁶ In response, Chief Spicuzza “lifted her hand up off the table, waved to them, like, ‘No, no. We don’t wanna use that kinda thing.’”²⁵⁷ The Lieutenants replied “we know we’re not supposed to use it, but ... it’s the less lethal tool that we have.”²⁵⁸ Spicuzza replied “Yeah, yeah, I understand” and the conversation moved on to the mutual aid response.²⁵⁹

Garcia-Hernandez was familiar with the small canisters of pepper spray that the officers carried on their waist, but had never seen the larger MK-9 canister “until the day of the video.”²⁶⁰ Garcia-Hernandez was not aware that the Lieutenants specified which pepper spray they were referring to during the conversation; she stated “I just assumed that pepper spray meant whatever kind of spray that they had.”²⁶¹

Also that night, Chief Spicuzza told the Lieutenants that she didn’t want them wearing helmets and face shields, or “riot gear, as she called it,” according to Garcia-Hernandez.²⁶² The Lieutenants replied, “you cannot tell somebody to walk into a situation like that without their safety gear” and called her suggestion “ridiculous.”²⁶³

At 9:45 p.m., Pike emailed Spicuzza and Swartwood a “skeleton ops plan, more to follow in the morning.” Although the document included an “operational timeline” with a police action against the encampment beginning at 3:45 p.m., Pike believed that they were still planning an early morning operation when he came to work on Friday morning, but stated that he may have “misunderstood.”²⁶⁴ Additionally, it does not appear that Spicuzza and the Lieutenants had resolved their differences regarding the use of equipment such as helmets, face shields, batons, pepper ball and pepper spray on Thursday night, since these issues continued to be

256 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 7, lines 5-7. [Exhibit 95]

257 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 7, lines 7-8 and page 9, lines 11-13. [Exhibit 95]

258 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 8-10 and page 9, lines 13-15. [Exhibit 95]

259 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 7, lines 11-12. [Exhibit 95]

260 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 7, line 22 through page 8, line 10. [Exhibit 95]

261 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 8, lines 11-16. [Exhibit 95]

262 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 10, lines 9-12. [Exhibit 95]

263 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 10, lines 12-15. [Exhibit 95]

264 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

debated through Friday afternoon according to Garcia-Hernandez and as documented by Pike in his supplemental report.²⁶⁵

5.6.4 *Non-Affiliates Discussed on 10:00 p.m. Leadership Conference Call*

After having spent several hours with the activists on the Quad, Assistant Vice Chancellor Castro called in to the 10:00 p.m. Leadership Team conference call. According to Castro, Chief Spicuzza “reported that her officers had told her that 80 percent of the people out there weren’t students, that we had non-affiliates here. And so I said no ... that’s not what I saw ... I was out there ... the only non-affiliates I saw were people from the interfaith communities providing food ... and they were not spending the night.” Chancellor Katehi then asked Castro if she could “prove” that the activists were mostly students and Castro responded that she could not, saying, “I didn’t ask for IDs. It’s just from my sense of what I know.” Chief Spicuzza then remarked that she believed Castro’s assessment was more accurate than that of her own officers.²⁶⁶ According to Vice Chancellor Wood, “students for us range all the way from eighteen ... through the graduate post doc, they could be 30 and be a student.... I want to be fair that someone might see a pretty scruffy older person [and] presume them not a student.”²⁶⁷

Castro then proceeded to speak for about 40 minutes and the response “was dead silence.”²⁶⁸ According to Castro, “what I said to them was that this had to be very careful. That we were in this moment in time where there was this massive cultural shift. There is a lot of support for this movement. And that we had to land on the right side of history on this one. And so, I said, you know, I’ve talked with them ... I offered alternatives. They said ‘yes, interesting, come talk to us, but [you should understand that] Occupy is the strategy. If you take the tents down, we will be back with more the next day. And if you take those down, we’ll be back the next day with more. And we’ll merge with the Davis.’ They [also] told me [that Davis and UC Davis are] separate encampments because they wanted that student space and they had different issues than the city ... they didn’t want the anarchists here. They said ... ‘we voted the black block anarchists out.’ ... I asked about non-affiliates. They

265 Supplemental Narrative Report, by John Pike, December 13, 2011 and Transcribed interview of Leticia Garcia-Hernandez, January 31, 2012. [Exhibits 54, 95]

266 Transcribed interview of Griselda Castro, December 8, 2011, page 32, line 24 through page 34, line 4. [Exhibit 5]

267 Transcribed interview of Fred Wood, December 8, 2011, page 14, line 21 through page 15, line 6. [Exhibit 69]

268 Transcribed interview of Griselda Castro, December 8, 2011, page 34, lines 6-11. [Exhibit 5]

said [they were] students, you know, there might be a couple of alumni, but then again I saw religious groups out there supporting them.”²⁶⁹

According to Castro, “I didn’t say ‘don’t do anything’ [on the Leadership Team call] because I’m not the risk management ... I have to be respectful of the people on the call who have the risk management on their shoulders if something goes wrong.” According to Castro, “but when people said ‘but it’s costing the University,’ I said ... that it’d be cheaper to put two porta-potties and have the police patrol, than if something goes wrong, the months of litigation that could follow ... it’s going to be Thanksgiving, it’s going to rain, the finals are coming. It’ll blow over. Following these comments, the Leadership Team call “was very, very silent,” according to Castro.²⁷⁰

According to Vice Chancellor Meyer, while he did not believe that the ratio put forward by Chief Spicuzza’s officers was accurate, he did believe that non-affiliates had been involved in the recent demonstration.²⁷¹ Furthermore, he was concerned that an established encampment would serve to attract additional non-affiliates. According to a document emailed by Chief Spicuzza, “the concern was that those involved were not all UC Davis student, faculty or staff, but individuals from the outside to cause problems or commit crimes.”²⁷²

According to Chief of Staff Engelbach, “there was a lot of concern about the safety of students, particularly from non-campus affiliated folks coming on to the campus,” such as people from Occupy Davis.²⁷³ Some on the Leadership Calls, including Student Affairs people, said that “all of them are students” while “others said no, I went over and I saw, I think some of them don’t look like students,” according to Engelbach. “Nobody really knew exactly how many were or were not,” according to Engelbach.²⁷⁴

According to Vice Chancellor Wood, “there was a lengthy conversation on Thursday night” in which Student Affairs staff explained that while some activists might take down their tents,

269 Transcribed interview of Griselda Castro, December 8, 2011, page 34, line 21 through page 35, line 4. [Exhibit 5]

270 Transcribed interview of Griselda Castro, December 8, 2011, page 36, line 15 through page 37, line 3. [Exhibit 5]

271 Transcribed interview of John Meyer, January 20, 2012, page 40, lines 7-14. [Exhibit 40]

272 Untitled Microsoft Word document attached to an email from Spicuzza to ascy88@sbcglobal.net, November 20, 2011 at 7:12 p.m. This email address appears to belong to a friend or family member of Chief Spicuzza. [Exhibit 92]

273 Transcribed interview of Karl Engelbach, December 8, 2011, page 18, lines 20-22. [Exhibit 4]

274 Transcribed interview of Karl Engelbach, December 8, 2011, page 19, lines 16-24. [Exhibit 4]

“there were also some that would probably not.”²⁷⁵ According to Chancellor Katehi, “it became clear ... from Griselda [Castro] that [the activists] did not want to talk, at least there was a big group ... that was not interested in being engaged. Then we said, ‘All right, well, how can we remove the tents?’ That was the discussion.”²⁷⁶

According to Chancellor Katehi, “in all of these phone calls [leading up to November 18], I never felt that I made an executive decision where people disagreed. I felt that we were coming to a decision as a group.”²⁷⁷ Katehi was not sure when the final decision was made to remove the encampment from the Quad.²⁷⁸

Based on the accounts of several officers, including Lieutenant Pike, Chief Spicuzza informed her officers that key and controversial decisions, including the 3 p.m. time for the operation, had been made by Chancellor Katehi herself.²⁷⁹

5.6.5 *Drafting of Letter from Chancellor Katehi to Activists*

Communications Director Barbera worked late into the night on Thursday writing a first draft of a letter from Chancellor Katehi to the activists and several members of the Leadership Team provided edits the next morning. The letter was distributed to activists on the Quad at approximately 11 a.m. on Friday.

Chancellor Katehi told Kroll investigators that Student Affairs wrote the letter and that she did not review it before it went out.²⁸⁰ The record contradicts both of these statements, as detailed below. Katehi did review the letter, provided an editorial change and approved it.²⁸¹ Student Affairs did not write the letter; Vice Chancellor Wood did not have time to review the letter and Assistant Vice Chancellor Castro’s edits to the letter were not incorporated into the

275 Transcribed interview of Fred Wood, December 8, 2011, page 14, lines 9-13. [Exhibit 69]

276 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 23, lines 11-16. [Exhibit 1]

277 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 20, lines 6-16. [Exhibit 1]

278 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 20, lines 6-16. [Exhibit 1]

279 Supplemental Narrative Report, by John Pike, December 13, 2011; Transcribed interview of Bill Beermann, January 20, 2012, page 11, lines 23-25; Supplemental Narrative Report, by Raymond Sutera, November 29, 2011. [Exhibits 54, 92, 96]

280 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 32, lines 10-14. [Exhibit 1]

281 Email from Katehi to Benson, Meyer, Barbera, Engelbach, Wood and Drown, November 18, 2011 at 9:04 a.m. [Exhibit 94]

final draft. According to Wood, the media staffers who wrote and edited the letter “report now directly to the Chancellor.”²⁸²

At 2:22 a.m., Communications Director Barbera emailed members of the Leadership Team a first draft of the letter, stating that she “tried to hit all the major points [that we discussed on the previous night’s conference call] and find a soft but firm tone.”²⁸³ Barbera’s draft called for the tents to be removed by “the end of today.”

At 6:31 a.m., Vice Chancellor Meyer emailed the Leadership Team a substantively edited version of the letter. He changed the deadline for the tents to be removed from the “end of today” to “by 3:00 p.m.” and changed the language quantifying the presence of non-affiliates (“we are aware that a number of those involved in the recent demonstrations are not UC Davis students” was changed to “we are aware *that many* of those involved ...”)²⁸⁴

At 8:42 a.m., a more polished version of the letter was emailed by a member of University Communications staff.

At 9:04 a.m., Chancellor Katehi wrote “I like the document very much with the exception that I would address the readers as: ‘Dear UC Davis Students’ and not as ‘Friends’” and signed “Best, Linda”²⁸⁵

At 9:05 a.m., Vice Chancellor Meyer forwarded the draft letter to Assistant Vice Chancellor Castro. At 9:15 a.m., Vice Chancellor Wood emailed Castro, saying “Okay? This is moving quickly and I can’t read it right now.”²⁸⁶

At 9:36 a.m., Associate Vice Chancellor Castro emailed a draft of the letter in which she “adjusted the sentence about non-affiliates based on my observations last night” and “entered a sentence that referred [sic] to the global economy because their concern extends beyond the impact to UC Davis.”²⁸⁷ The language proposed by Castro regarding non-affiliates is not clearly presented in the “track changes” document she attached; the proposed

282 Transcribed interview of Fred Wood, December 8, 2011, page 27, lines 2-5. [Exhibit 69]

283 Email from Barbera to Engelbach, Katehi, Wood, Drown, Meyer, November 18, 2011 at 2:22 a.m. [Exhibit 93]

284 Email from Meyer to Barbera, Engelbach, Katehi, Wood, Drown, Benson, November 18, 2011 at 6:31 a.m. [Exhibit 97]

285 Email from Katehi to Benson, Meyer, Barbera, Engelbach, Wood and Drown, November 18, 2011 at 9:04 a.m. [Exhibit 94]

286 Email from Wood to Castro, November 18, 2011 at 9:15 a.m. [Exhibit 98]

287 Email from Castro to Barbera, Benson, Meyer, Wood, November 18, 2011 at 9:36 a.m. [Exhibit 99]

language appears to include the statement, “We recognize that an unsanctioned encampment of this type may include individuals who are not members of the UC Davis community.”

Associate Vice Chancellor Castro’s suggestions were not incorporated into the letter, however, and Castro was tasked with coordinating the distribution of the letter starting at approximately 11:30 a.m.²⁸⁸

The letter continued to be fine-tuned until 1 p.m., when a spelling error was corrected.²⁸⁹

5.6.6 *UCDPD Officers Raise Questions about the Legal Basis for a Daytime Operation*

According to Lieutenant Pike’s Supplemental Narrative Report, both he and Lieutenant Swartwood were “not in agreement” with Chief Spicuzza regarding the feasibility of removing the tents during the day, especially in light of an email chain provided by Lieutenant Swartwood “discussing the legal issues and opinions surrounding the enforcement of the identified laws and codes as presented by the Office of Campus Counsel.”²⁹⁰

On Friday morning, November 18, Lieutenant Pike and Lieutenant Swartwood contacted Campus Counsel Sweeney and discussed their concerns with him. Sweeney told them he would get back to them, and at around 1:00 p.m., a conference call was conducted in Chief Spicuzza’s office with Pike, Swartwood, Sweeney and Steven Drown. Both Swartwood and Pike “had several questions about the legality of conducting a planned operation during the middle of the afternoon versus the early morning hours.”²⁹¹ Pike’s description of the subsequent discussion on the conference call was redacted, apparently due to attorney-client privilege.²⁹²

When asked by Kroll investigators if there was any discussion about how the administration could enforce a policy regarding “overnight camping” during the daytime, Vice Chancellor

288 Email from Barbera to Engelbach, Castro, Meyer, Wood, Katehi, Spicuzza, November 18, 2011 at 10:16 a.m. [Exhibit 93]

289 Email from Hubbard to Benson, Engelbach, Barbera, Castro, Meyer, Wood, Spicuzza, November 18, 2011 at 1:00 p.m. [Exhibit 100]

290 This email chain was marked as a confidential attorney client communication, according to Pike, and has not been provided to Kroll. Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

291 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

292 Supplemental Narrative Report, by John Pike, December 13, 2011. See also January 13, 2012, letter from Sweeney to Berkow. [Exhibits 54, 44]

Meyer said “I think by definition it would have been violated already, because they were there the night before.”²⁹³ When asked how the administration planned to determine who was there the night before, Meyer stated that “the argument was ... anyone can assemble, but we’re going to ... remove the implements of the encampment.”

According to all three Operations Plans that Pike and/or Swartwood created in response to Occupy-related activism, the use of a dispersal order and 409 PC notification was anticipated for “open air events” and the removal of tent structures.²⁹⁴

The need for a dispersal order was apparently not understood by several key decision-makers: Vice Chancellor Wood stated that on Friday, the “decision is made the tents need to come down, we are not going to disperse the crowd ... they are free to still demonstrate.”²⁹⁵ According to Vice Chancellor Meyer, “What we were after was the encampment, read the tents. The implements that allow you to really put stakes down literally, and have that growing community. That was the target of the action.”²⁹⁶

5.6.7 *Spicuzza Tells Leadership Team about Her Lieutenant’s Views*

A Leadership Team conference call was held at 1 p.m. on Friday, November 18, according to Chancellor Katehi’s calendar.²⁹⁷

Chief Spicuzza joined the call from the DOC that had been set up in the conference room of at the UCDPD.²⁹⁸ Chief Spicuzza usually joined Leadership Team calls from her office; because she joined this call from the DOC, however, Dispatch Supervisor Garcia-Hernandez and Lieutenant Pike were present during the call.²⁹⁹

293 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 10, line 19 through page 11, line 13. [Exhibit 2]

294 November 18, 2011 Protest, Operation Plan; November 15, 2011 Protest, Operation Plan; and October 27, 2011 Protest, Operation Plan. [Exhibits 101, 55, 47]

295 Transcribed interview of Fred Wood, December 8, 2011, page 19, lines 12-15. [Exhibit 69]

296 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 11, line 12 through page 12, line 2. [Exhibit 2]

297 Chief of Staff Engelbach allowed Kroll investigators to view Chancellor Katehi’s calendar on December 20, 2011. The calendar showed Leadership Team calls scheduled for 8:30 a.m., 1 p.m. and 10 p.m. on Thursday, November 17 and 1 p.m. and 5 p.m. on Friday, November 18.

298 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 7, line 21 through page 8, line 2. [Exhibit 148]

299 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 7, line 21 through page 8, line 2. [Exhibit 148]

According to Garcia-Hernandez:

Chief Spicuzza told the Leadership Team, “My Lieutenants are telling me that this is a bad idea, that this timeframe [of 3 p.m.] is not good, we should go in at night.”³⁰⁰ Vice Chancellor Wood responded, “No, no. We shouldn’t ... do this. This is a peaceful situation. We should try talking to them.” Next, a man that Garcia-Hernandez believed to be Vice Chancellor Meyer said, “This is an operational situation for police at this point. We shouldn’t be telling police how to do their jobs.” Chancellor Katehi then stated, “I agree. I can’t tell police how to do their jobs. This is something for them to work out, but ... I absolutely do not want those students staying overnight on a Friday where there could be a party or something could happen to them.”

Lieutenant Pike was sitting across the table from Chief Spicuzza, who had the conference call phone directly in front of her. After Vice Chancellor Wood suggested “talking” to the students, Pike suddenly spoke up, saying “Student Affairs should talk to them rather than bringing in the PD at this point” and Chief Spicuzza “waved him off, like ‘no, no,’ with her hand.”³⁰¹ Pike’s statement may have overlapped with the statement from Chancellor Katehi that “she didn’t want it to be an overnight party,” and may not have been heard by the participants on the conference call.³⁰² In response to Spicuzza’s rejection, Pike “looked like he almost got disgusted with the conversation” and left the room for a brief period of time.³⁰³

None of the UC Davis administrators interviewed by Kroll said that Chief Spicuzza relayed her officers’ concerns about the timing of the operation to the Leadership Team or anyone else. Vice Chancellor Wood told a Kroll investigator that he did not recall Chief Spicuzza voicing her Lieutenant’s concerns on the Friday afternoon conference call, or any other Leadership Team call, but that he understood that she viewed an early morning operation as the better option, but had encountered problems with securing enough officers for that time.³⁰⁴

300 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 9, line 17 through page 10, line 6. [Exhibit 148]

301 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 7, lines 9-10. [Exhibit 148]

302 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 7, lines 15-18. [Exhibit 148]

303 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 4, line 25 through page 5, line 1. [Exhibit 148]

304 Telephone Re-Interview of Wood, February 7, 2012. [Exhibit 102]

5.6.8 Pike and Swartwood Reject Tactical Direction from Chief

According to Dispatch Supervisor Garcia-Hernandez, after the 1 p.m. Leadership Team call ended, there was a “heated” discussion between Chief Spicuzza and Lieutenants Pike and Swartwood, with Spicuzza again saying that “she didn’t want sticks, she didn’t want them going in with helmets, and both the Lieutenants chimed in at her at the same time basically saying ... ‘We can’t tell another Mutual Aid agency not to protect themselves. These are the tools of the trade, they’re designed to protect us.’” At this time, Pike also “mentioned something about ... pepper ball,” Spicuzza answered, “We don’t want to use any of that,” and the Lieutenants replied, “Of course, we don’t want to use any of it. They’re tools of the trade. They’re less lethal.”³⁰⁵

Lieutenant Pike’s Supplemental Narrative Report also states that Chief Spicuzza discussed tactical issues with Pike and Swartwood around this time, but does not mention a Leadership Team conference call.³⁰⁶ According to Pike’s account, the discussion followed a 1:00 p.m. call with Chief Campus Counsel Drown and Campus Counsel Sweeney in Chief Spicuzza’s office.³⁰⁷ Garcia-Hernandez said that the call with Campus Counsel was “a separate call” from the Leadership Call that she described.³⁰⁸

According to Pike’s Supplemental Narrative Report:

UCDPD was monitoring Facebook and Twitter and had “assertively identified that the occupiers on the Quad were preparing for a police action in response to the Chancellor’s letter.” Both he and Swartwood emphasized to Chief Spicuzza that a night time/early morning operation was “in the best interest of the university, our agency, and the safety of our officers.”³⁰⁹ Pike reminded Chief Spicuzza of the email that she had forwarded to him that described the success of a nighttime/early morning operation at UCLA the night before.³¹⁰ Chief Spicuzza agreed that the success of that operation was a good example but said that the order for a 3:00 p.m. operation was “from the Chancellor directly” and that the Chancellor “did not want a party atmosphere to occur on the Quad.”³¹¹

305 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 16, line 25 through page 17, line 9. [Exhibit 148]

306 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

307 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

308 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 5, line 20. [Exhibit 148]

309 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

310 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

311 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

According to Garcia-Hernandez, there was a “collaborative effort” both within the UCDPD and with the media people in the administration to monitor Facebook, Twitter and other Internet-based sources for information about the activists’ plans.³¹² According to Garcia-Hernandez, it was clear from this research that the activists would not agree to take down the tents and were planning to put up resistance.³¹³ Additionally, “There was [sic] a lot of discussions being had in and out of the [UCDPD DOC] in regards to the time, that the Chancellor did not want this to be a party ... on the Quad.”³¹⁴ According to Sergeant Beermann, when he questioned the timing of the operation at the UCDPD briefing, he was informed that the Chancellor and Chief of Police were “concerned about students going out and partying and coming back and conflict between the Occupy people and the students.”³¹⁵

According to Pike’s Supplemental Narrative Report:

“During our meeting with the Chief of Police, the Chief stated that she did not want the officers carrying their wood batons or wearing their ballistic/protective helmets. The Chief referenced the incidents from the previous week at UC Berkeley wherein the UCBPD officers were videotaped [sic] using their batons against the resisting student activists/occupiers. The Chief of Police opined that the sight of riot gear could increase the potential of the use of force or resistance from the protesters.”³¹⁶

According to Pike’s Supplemental Narrative Report, he responded by suggesting that “maybe Student Affairs should be handling this and not us.”³¹⁷

312 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 26, line 21. [Exhibit 148]

313 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 27, line 15 through page 28, line 15. [Exhibit 148]

314 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2011, Volume I, page 11, lines 13-16. [Exhibit 95]

315 Transcribed interview of Bill Beermann, page 11, lines 19-2. [Exhibit 92]

316 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

317 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

According to Pike's Supplemental Narrative Report:

"The Chief of Police adamantly stated that she did not want excessive force to be used to remove the tents and she ordered that Lieutenant Swartwood and I handle the removal of the tents personally. The Chief directed us not to get into a 'tugging match' with the protesters/occupiers and that if the protesters began to tussle with us over the tents to let the protesters just have the tents."³¹⁸

According to Pike, he and Lieutenant Swartwood persuaded Chief Spicuzza to allow the officers to carry their batons in their belts and to wear their ballistic/protective helmets, arguing that "the potential for our officers to encounter resistance passive and physical was already heightened by the deadline imposed by the Chancellor in her letter as well as the networking of the Occupiers and their use of social media."³¹⁹ Pike told Chief Spicuzza that he "did not believe this operation would be carried out without some level of resistance or agitation on the part of the student activists/occupiers" and stated that Spicuzza "agreed and dismissed us to further our preparations."³²⁰

According to Garcia-Hernandez, the discussion ended with Chief Spicuzza stating, "All right, I get it ... I just don't want another Berkeley," and she walking out of the room.³²¹ The two Lieutenants looked at each other and then looked at Garcia-Hernandez, who said to them, "was that a bad thing?" What Garcia-Hernandez meant by that comment was that Spicuzza had "dismissed" the Lieutenant's concerns without having resolved the issues being discussed; it was as if Spicuzza had said "I don't really care what you say" and walked out.³²²

The Lieutenants also left and then Chief Spicuzza came back and told Garcia-Hernandez, "I can't make them understand. They just don't get it," and Garcia-Hernandez replied "who are you talking about?" and Spicuzza said, "the administration."³²³ Garcia-Hernandez said that she believed that Spicuzza "didn't try hard enough" and "didn't articulate" her concerns when communicating with members of the administration on the Leadership Team.

318 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

319 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

320 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

321 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 17, lines 23-25. [Exhibit 148]

322 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 18, lines 2-10. [Exhibit 148]

323 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 7, lines 9-10. [Exhibit 148]

According to Garcia-Hernandez, Chief Spicuzza seemed “upset” and “frustrated” before she left to go to the Quad.³²⁴ Before he left for the Quad, Lieutenant Pike seemed nervous and stated “this is a bad idea.”³²⁵ Garcia-Hernandez was left alone at the DOC, “which is kind of weird because that normally shouldn’t happen ... usually my incident commander ... or the top dog stays with me.”³²⁶

According to Dispatch Supervisor Garcia-Hernandez, the need for the police action to occur at a nightly or early morning hour “was the hot topic” for “most” of the discussions between Chief Spicuzza and Lieutenant Pike and Swartwood leading up to the November 18 operation.³²⁷ Garcia-Hernandez recalled another conversation in which Pike and/or Swartwood said that the afternoon was “a bad time” and “recommended that they go in at night or early morning [and] over the weekend when there’s less people to get involved and they could plan their resources better.”³²⁸ Regarding the afternoon time, “the Lieutenants were adamant that this was a bad idea.”³²⁹ Chief Spicuzza replied “Too bad, the decision’s been made ... we don’t have a choice in the matter now. We need to remove these people.”³³⁰

5.6.9 UCDPD Gathers Intelligence Regarding Encampment

On Friday morning, Chief Spicuzza received emails from officers reporting on the Occupy UC Davis encampment. At 6:53 a.m., Spicuzza was informed that there were 30 to 35 tents with an unknown number of occupants. Spicuzza was also informed that the activists had gained access to electricity from an adjacent light pole and defeated the locks to “the 24-hour reading room” to access to bathrooms.³³¹

At 7:49 a.m., Sergeant Danny Sheffield reported that he had “walked through the encampment” and found that “the group is VERY organized with a sentry schedule posted for

324 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 20, line 14-15. [Exhibit 148]

325 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 21, line 4-5. [Exhibit 148]

326 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 21, lines 13-18. [Exhibit 148]

327 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2011, page 4, line 18 through page 5, line 15. [Exhibit 95]

328 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2011, page 6, lines 20-22. [Exhibit 95]

329 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2011, page 12, lines 3-6. [Exhibit 95]

330 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2011, page 12, lines 10-12. This is also documented in Pike’s Supplemental Narrative Report of December 13, 2011. (The Chief of Police stated she “the order she had received was from the Chancellor directly and that the Chancellor did not want the encampment on the Quad on Friday night.” [Exhibits 95, 54]

331 Email from Sheffield to Spicuzza, Swartwood, Carmichael, Pike, November 18, 2011 at 6:53 a.m. [Exhibit 103]

night time guard duty and contact information for resources posted on a chalk board” and that “they have already begun to receive food and beverage from various people dropping items off for breakfast.”³³²

5.6.10 *Operations Plan for Eviction*

The Operation Plan, named “Eco-Friendly,” was prepared by Lieutenants Pike and Swartwood, according to the typed document.³³³ Lieutenant Swartwood was named the Incident Commander and Lieutenant Pike’s role is undefined in the document.³³⁴ According to the Operation Plan:

“Mission:

The mission of the operation is to cease the occupation of the quad:

1. Remove the tent structures erected by the protestors.
2. Provide security for facility workers doing clean up.
3. Restore order to the campus.

Execution:

The UC Davis Police Department has requested mutual aid from ... UC campuses for the removal of the protestors and the occupying encampment located on the UC Davis quad.”³³⁵

The Operations Plan provides a timeline of how the operation would proceed, with an admonishment given by Lieutenant Pike at 3:50 p.m., “detail moves in on encampment” at 3:53 p.m., and then, from 3:53 p.m. till 5:30 p.m., “detail secures Quad ending Occupation Encampment.”³³⁶

332 Email from Sheffield to Spicuzza, Swartwood, Carmichael, Pike, November 18, 2011 at 7:49 a.m. [Exhibit 104]

333 There are no signature blocks that depict either the author or any reviewing/approval authority.

334 November 18, 2011 Protest, Operation Plan “Eco-Friendly,” prepared by Lieutenants Barry Swartwood and John Pike, UC Davis Police Department Operations, November 18, 2011. [Exhibit 101]

335 November 18, 2011 Protest, Operation Plan “Eco-Friendly,” prepared by Lieutenants Barry Swartwood and John Pike, UC Davis Police Department Operations, November 18, 2011. [Exhibit 101]

336 November 18, 2011 Protest, Operation Plan “Eco-Friendly,” prepared by Lieutenants Barry Swartwood and John Pike, UC Davis Police Department Operations, November 18, 2011. [Exhibit 101]

Tactical considerations included “pepper ball available” and “helmets with face shields,” but made no mention of pepper spray or batons. An additional tactical consideration mentioned was to “control entire perimeter around the encampment.”³³⁷

According to the plan, “for open air events ... utilize the dispersal order and 409 PC notifications” and “allow those inside the encampment opportunity to leave and tell them where the exit is.” Subjects who remained after the dispersal order would be arrested for violation of 409 PC or “for trespass if subjects refuse to leave ... 602q PC.” Additionally, “Arrest Team Sergeants will monitor crowd activity to identify those inciting the crowd. If appropriate, these subjects will be immediately arrested for violation 404.6 PC.”³³⁸

Under the heading “Tactical Considerations / Custody”, there were subheadings titled, “No Resistance,” “Passive Resistance,” and “Aggressive Resistance.” Pepper spray was not mentioned as an option under the subheadings in the operations plan. The operations plan indicated that “No Resistance” meant the arrestee would be escorted and cuffed with flex cuffs. “Passive Resistance” meant pain compliance would be administered and as a “last resort, [the arrestee would be] placed in a wheel chair and cuffed with flex cuffs.” “Aggressive Resistance” meant cuffed with flex cuffs, pain compliance and administering the W.R.A.P. The operations plan provided no further information related to force options available other than the officers understanding of the use of force policy.³³⁹

According to officers involved in the operation, the Operations Plan was discussed but not distributed to the officers.³⁴⁰ Sergeants were provided with a copy of the Operations Plan.

337 November 18, 2011 Protest, Operation Plan “Eco-Friendly,” prepared by Lieutenants Barry Swartwood and John Pike, UC Davis Police Department Operations, November 18, 2011. [Exhibit 101]

338 November 18, 2011 Protest, Operation Plan “Eco-Friendly,” prepared by Lieutenants Barry Swartwood and John Pike, UC Davis Police Department Operations, November 18, 2011. [Exhibit 101]

339 November 18, 2011 Protest, Operation Plan “Eco-Friendly,” prepared by Lieutenants Barry Swartwood and John Pike, UC Davis Police Department Operations, November 18, 2011. [Exhibit 101]

340 Transcribed interview of Manuel Guerrero, January 19, 2012, Volume 1, page 4, lines 12-15; transcribed interview of Brian Halley, January 20, 2012, Volume II, page 12, lines 12-16. [Exhibits 105, 106]

6

6 POLICE OPERATION ON THE QUAD

At approximately 2:00 p.m. on Friday, Assistant Vice Chancellor Griselda Castro became concerned that there were too many students in the area of the Quad for the removal of the encampment to be conducted successfully. The tent removal operation was only an hour away and Castro noticed that there was a lot of activity at the Memorial Union. Because of her concern, she called Vice Chancellor Wood and asked him if the tent removal operation could be delayed. Wood informed her that the operation could not be delayed because it would be too risky in the dark, according to Castro.³⁴¹

According to UCDPD officers, the start time of the operation was in fact moved forward “at the direction of the Chancellor.”³⁴²

6.1 Preparing for the Police Action

Among the officers preparing to participate in the removal of tents from the Quad at 3 p.m., the view that it was a “bad idea” to attempt to remove the tents during the day weighed heavily.³⁴³ According to Sergeant Beermann, “Sometimes there’s an elephant sitting in the room. And the elephant for that day was—and it was verbalized—why are we doing it at this time of the day?”³⁴⁴

6.1.1 Dispatch Supervisor Garcia-Hernandez at DOC

On Friday, November 18, Garcia-Hernandez “was asking ‘who’s gonna stay with me [at the DOC] and make incident command decisions?’ and the Chief says, ‘Well ... I’m gonna go out to the Quad and scope it out myself.’ And she disappeared. And then ... the Lieutenants are

341 Transcribed interview of Griselda Castro, December 8, 2011, page 43, line 2 through page 48, line 19. [Exhibit 5]

342 Supplemental Narrative Report, Raymond Sutera, November 29, 2011. [Exhibit 96]

343 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 12, lines 3-6. [Exhibit 95]

344 Transcribed interview of Bill Beermann, January 20, 2012, page 48, lines 16-18. [Exhibit 92]

kind of scrambling in the room with me, to figure out who went where and who's making notification. And the next thing I know, the Lieutenants are now out of the room."³⁴⁵

As the police operation commenced on the Quad, Chief Spicuzza proceeded to call Garcia-Hernandez on multiple occasions from her cell phone, asking her to relay messages to Lieutenant Swartwood, and Garcia-Hernandez relayed the messages "as best I could ... given that they're in the field doing their operations, I would come up on either the radio or call him on his cell phone."³⁴⁶

6.1.2 UCDPD Conduct Briefing and Prepare for Operations

On November 18, 2011, at approximately 2:30 p.m., Lieutenant Pike held the operational briefing at the DOC. Present for the briefing were approximately 17 officers from UCDPD, and approximately 18 additional officers from other UC campuses: UC Santa Cruz (UCSC), UC Berkley (UCB) and UC San Francisco (UCSF).³⁴⁷ Also in attendance was Ben McNulty, a non-sworn UCDPD employee who video recorded the operation, members from the UC Davis Fire Department (UCDFD), and two UC Davis Aggie Hosts to watch the police vehicles and equipment.³⁴⁸ The Yolo County Sheriff's Department, Animal Services Section, was requested but not present for the briefing.

Chief Spicuzza was not present at the briefing.³⁴⁹

According to Sergeant Beermann, the briefing lasted approximately 20 minutes and "the plan was ... we were going to ... go to the park and request ... the Occupy people to leave. And then we were to stand by and basically be security so that facilities could take the tents down in an orderly manner and package them so that they could be booked as evidence or retained so that they could be returned to the owner of the tents if they can be determined."³⁵⁰ (Beermann was the only officer interviewed by Kroll who said that facilities had a role in the operation, as stated in the Operation Plan. During the operation, Lieutenant Swartwood

345 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 13, lines 8-16. [Exhibit 95]

346 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 13, line 21 through page 14, line 1. [Exhibit 95]

347 The number of officers from other UC campuses was taken from the November 18 Operations Plan and has not been independently confirmed. [Exhibit 101]

348 The presence of these additional individuals was identified in the November 18 Operations Plan and has not been independently confirmed. [Exhibit 101]

349 Transcribed interview of Bill Beermann, January 20, 2012, page 22, line 9-12. [Exhibit 92]

350 Transcribed interview of Bill Beermann, January 20, 2012, page 6, lines 2-10. [Exhibit 92]

requested that facilities come to the Quad only after the initial arrests were made, and then seconds later cancelled the request when activists began taking down the tents.)

UCDPD officers provided Kroll investigators with a wide range of explanations regarding the mission of the operation. At one extreme was the explanation provided by Officer Barrera, who said “what I got out of that briefing was ... our mission was to remove the occupants from the Quad, that set up tents and were camping out”³⁵¹ and Officer Arias, who said that “our mission was to eliminate the Quad area of the tents and the occupiers that were there.”³⁵² At the other extreme was Officer Sotelo, who stated, “We weren’t to disperse the students. We weren’t to limit or prohibit the amount of protesting that was happening. We were just there to take down the tents.”³⁵³ Officers Ahmad, Zekany, Halley, Kwong and Guerrero also understood that the operation’s goal was to remove just the tents.

According to Officer Kwong, he was told at the briefing to use only reasonable force according to department guidelines.³⁵⁴ According to Officer Sotelo, the message was that “the use of force would be determined at the scene.”³⁵⁵ Other officers, including Arias, said that no guidance was offered about what sort of force was acceptable.

Pike and Swartwood also held a second briefing for sergeants in a separate room where specific assignments were discussed.³⁵⁶ According to Sergeant Beermann, there was supposed to be another, “more complete briefing” at 3 p.m., which would include him “giving a brief description of what type of crowd control we were going to use,” but it was never held.³⁵⁷

At the briefing, there was no discussion of the transportation of arrestees or the exit strategy for the operation, according to Sergeant Beermann.³⁵⁸ According to the Supplemental Narrative Report by Sergeant Sutera, he asked about prisoner transport and “was told that patrol would handle the transport of any arrestees to the holding facility at the PD.”³⁵⁹

351 Transcribed interview of Jason Barrera, January 19, 2011, page 3, lines 23-24. [Exhibit 107]

352 Transcribed interview of Ruben Arias, January 19, 2011, page 7, lines 3-4. [Exhibit 108]

353 Transcribed interview of Robert Sotelo, January 19, 2011, page 3, lines 20-22. [Exhibit 109]

354 Transcribed interview of Vincent Kwong, January 20, 2012, Volume I, page 3, lines 18-20. [Exhibit 110]

355 Transcribed interview of Rubert Sotelo, January 19, 2011, page 8, lines 19-20. [Exhibit 109]

356 Transcribed interview of Bill Beermann, January 20, 2012, page 10, line 12 through page 11, line 10-19. [Exhibit 92]

357 Transcribed interview of Bill Beermann, January 20, 2012, page 14, lines 4-20. [Exhibit 92]

358 Transcribed interview of Bill Beermann, January 20, 2012, page 24, line 23 through page 25, line 4. [Exhibit 92]

359 Supplemental Narrative Report, by Raymond Sutera, November 29, 2011. [Exhibit 96]

The officers were then divided into teams and given their assignments. According to the Operation Plan, the four officers assigned to the pepper ball detail were under the direct supervision of Sergeant Danny Sheffield. The two arrest teams were supervised by Sergeants Paul Henoach and Ray Sutera. The officers were directed to the station parking lot to prepare for the operation and then dismissed. Once there, the officers entered police vehicles and drove single file to Hart Hall.

The officers were directed to bring and holster their batons and advised not to remove them unless ordered to do so. In addition, helmets were to be carried until they were advised to put them on.

6.1.3 *Chief Spicuzza Requests the Tents be Removed*

At 2:23 p.m. on Friday, November 18, Chief Spicuzza, Lieutenant Swartwood, Senior Public Information Representative Andy Fell, and UCDPD Analyst II Ben McNulty, approached the Occupy activists in the campus Quad.³⁶⁰ According to McNulty, there were approximately 20-25 tents and approximately 70-75 activists present.³⁶¹

Chief Spicuzza spoke to the group and asked them to remove the tents by 3:00 p.m. She was met by an Occupy facilitator who informed her that on behalf of the general assembly, police presence was not welcome and asked her to leave. Chief Spicuzza then read the following letter to the Occupy activists ordering them to remove their tents:

“It is now 2:30, and in accordance with that letter, I am ordering you to remove these items, tents, by 3:00 p.m. If you do not remove these tents, we will have to remove them, and we cannot guarantee that your property will be returned. Please ensure that you collect all your personal items prior to leaving the immediate area by 3:00 p.m. If you do not remove your tents, you must leave the immediate area while we do so. You may remain on another area of the Quad. If you do not comply with police instructions, you may be subject to arrest. It is our hope that there will be no arrests. You should understand the consequences of such an action. You are all adults, and an arrest can stay with you throughout

360 Ben McNulty is a non-sworn member of the police department. He was present to video the police action.

361 Transcribed interview of Ben McNulty, December 8, 2011, page 25, line 24 through page 26, line 4. [Exhibit 111]

your career. We do not want to have to arrest you. We are hopeful that you will be respectful of both the Chancellor's request and the Police Department's order to remove these tents by 3pm. Thank you for your time.”³⁶²

Chief Spicuzza provided the activists with a copy of the order and then monitored the group to see if they would comply.

After addressing the activists, Chief Spicuzza telephoned Vice Chancellors Meyer and Wood and advised them of the situation on the Quad, according to Meyer and Wood.³⁶³ According to Wood, Chief Spicuzza informed him that there were still tents on the Quad and that the police were getting ready to take them down.³⁶⁴ Wood then directed Chief Spicuzza to go back to the activists and ask them to take the remaining tents down again. Chief Spicuzza responded that she would and then terminated the call, according to Wood.³⁶⁵

Within a few minutes, Chief Spicuzza telephoned Vice Chancellors Meyer and Wood and told them that it had worked because quite a few of the tents came down.³⁶⁶ Wood then told Spicuzza, “Annette, go again, try again and this time order them to take down the tents.” Wood told Spicuzza that it had worked in the past and he wanted her to give it one more try.³⁶⁷ After only a few minutes, Spicuzza telephoned Wood and Meyer and told them that her requests appeared to have worked because the tents were coming down, according to Wood.

In fact, the activists were only moving the tents to the center of the Quad and, by linking arms, created a human chain around the tents. Chief Spicuzza then informed Wood and Meyer of this and told them she had to go.³⁶⁸

362 Video footage by Ben McNulty for UCDPD, starting at 0:00. [Exhibit 112]

363 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 15, lines 8-11; Transcribed interview of Fred Wood, December 8, 2011, page 19, lines 11-22. [Exhibits 2, 69]

364 Transcribed interview of Fred Wood, December 8, 2011, page 19, lines 20-22 through page 23, line 7. [Exhibit 69]

365 Transcribed interview of Fred Wood, December 8, 2011, page 19, line 22 through page 20, line 2. [Exhibit 69]

366 Transcribed interview of Fred Wood, December 8, 2011, page 20, lines 2-5. [Exhibit 69]

367 Transcribed interview of Fred Wood, December 8, 2011, page 20, lines 6-17. [Exhibit 69]

368 Transcribed interview of Fred Wood, December 8, 2011 attachment, page 23, lines 8-12. Chief Spicuzza did not provide a statement for this report. [Exhibit 69]

6.1.4 *Communication between Chief Spicuzza and the Lieutenants*

Kroll did not have the opportunity to interview Chief Spicuzza, Lieutenant Pike or Lieutenant Swartwood; furthermore, all or most of the communications by these individuals were made via cell phone instead of police radio; therefore, the details of what occurred are based on interviews of other parties to the events, emails and phone records.

According to Deborah Hammond, the executive assistant to Chief Spicuzza, she was sitting with the chief in her car on the edge of the Quad before the police action. Hammond overheard a conversation between Chief Spicuzza and Lieutenant Swartwood in which he told her, “‘we’ll be in formation, we’ll be wearing shields’ ... and she was very upset. She asked, ‘why do we need to be in formation?’ He responded with something about ‘regulation or procedure.’”³⁶⁹

According to Karen Nikos, a senior public information representative for UC Davis who was assigned to stay with Chief Spicuzza on November 18, while the officers were staged on Shields Avenue West, the Chief called them on her cell phone and said, “that looks really bad, I don’t want to come in here like an army. Could you change that?”³⁷⁰ And they apparently told her, “no.” Then Chief Spicuzza said “this looks bad. I don’t want to come in here forcefully. I want this to be very”—Nikos was unsure if she used the word “gentle” but she was kind of indicating that.³⁷¹ Then Chief Spicuzza turned to Nikos and said, “you know, there’s a limit to what I can do, because they have training that tells them to do things a certain way.”³⁷²

According to Nikos, Chief Spicuzza called the officers a second time, saying “could you spread out a little at least please?”³⁷³ As the students circled the tents, they were saying to each other “we’re keeping the police out.” Chief Spicuzza said “oh dear.”³⁷⁴

In his Supplemental Narrative Report, Pike did not report on these alleged conversations, other than to say that Chief Spicuzza instructed the officers to “slow down” as they moved

369 Transcribed interview of Deborah Hammond, December 8, 2011, page 10, lines 24-25. [Exhibit 113]

370 Transcribed interview of Karen Nikos, December 8, 2011, page 26, lines 8-9. [Exhibit 114]

371 Transcribed interview of Karen Nikos, December 8, 2011, page 26, lines 11-16. [Exhibit 114]

372 Transcribed interview of Karen Nikos, December 8, 2011, page 26, lines 19-20. [Exhibit 114]

373 Transcribed interview of Karen Nikos, December 8, 2011, page 27, line 3. [Exhibit 114]

374 Transcribed interview of Karen Nikos, December 8, 2011, page 30, lines 16-22. [Exhibit 114]

onto the Quad.³⁷⁵ Lt. Swartwood also did not report on these alleged conversations in his Supplemental Narrative Report.³⁷⁶

According to Garcia-Hernandez, Chief Spicuzza called her at the UCDPD command numerous times during the police operation, asking her to “relay” messages “to the Lieutenants.”³⁷⁷ Garcia-Hernandez recalled relaying the following messages to Lieutenant Swartwood from Spicuzza, presented in chronological order:

“Stand back, I’m making contact [with the activists],”

“The tents are coming down,”

“Move in, but slow it down ... Give these people time to take the tents down,”

“Go ahead and have them move in. The tents aren’t coming down, they’re just ... toying.”³⁷⁸

A review of Chief Spicuzza’s cell phone records on November 18 shows that she called Garcia-Hernandez at the UCDPD command post four times in the half hour before the police engaged with activists surrounding the encampment at 3:15 p.m. (at 2:47 p.m., 2:49 p.m., 3:09 p.m. and 3:14 p.m.). [See Appendix A]

According to Sergeant Beermann, as the officers approached Hart Hall, information was “given out over the radio that ... the protestors agree that when we get into the park, that they will ... disband and not be confrontive [sic].”³⁷⁹ According to Officer Guerrero, “the word was that just our presence was going to be enough ... they were just going to pack up and leave.”³⁸⁰ No radio broadcasts of this nature were identified in Kroll’s review of police radio broadcasts. Both Garcia-Hernandez and Vice Chancellor Wood speculated that it was

375 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

376 Supplemental Narrative Report, by Barry Swartwood, November 30, 2011. [Exhibit 115]

377 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 23, lines 14-16. [Exhibit 95]

378 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 24, lines 4-23. [Exhibit 95]

379 Transcribed interview of Bill Beermann, January 20, 2012, page 18, lines 6-9. [Exhibit 92]

380 Transcribed interview of Manuel Guerrero, January 19, 2012, Volume I, page 5, lines 4-8. [Exhibit 105]

possible that the source of this information was Chief Spicuzza, since she was optimistic that the tents were coming down in one or two of her phone calls to them.³⁸¹

This information made the officers “confident” that their presence would cause the activists to disperse and a confrontation would be avoided.³⁸² According to Sergeant Beermann, when the activists did not disperse, “quite frankly it surprised me and I’ve got 30 plus years of experience.” According to Officer Barrera, “It was discussed that we were going to give ... dispersal orders ... we would set up skirmish lines, and ... hopefully that they would depart when we gave out those orders.”³⁸³

Beermann said that the information had provided the officers with “a little bit of false security” and he believed that it was “one of those things that ... in my mind would have been better kept at the command staff level. And then if it occurred great, if it didn’t there was no expectation.”

6.1.5 *Discussion of Legal Framework and Tactical Ground Rules*

As detailed above, both activists and UCDPD officers raised questions regarding the legal basis for the police action. The activists believed that police officers had not answered their question about what crime they committing, and asserted that their actions were legally protected by the First Amendment. Kroll was not provided access to the conversation between UCDPD officers and UC Davis legal counsel regarding the legal basis for the operation.

Video footage provided by UCDPD to Kroll shows an activist (who was subsequently interviewed by Kroll and who identified himself only as “A.J.”) asking Lieutenant Pike, as the officers prepared to enter the Quad, “what actual law are the students breaking?” Lieutenant Pike replied “a series of policies ... with regards to ... occupying public property ... with regards to camping, disorderly conduct, [California Penal Code] 647(e).”³⁸⁴ A.J. interjected “What’s the disorderly conduct charge?” and Lieutenant Pike replied “647(e) ... it covers ...

381 Transcribed interview of Leticia Garcia-Hernandez, January 31, 2012, page 24, lines 10-16; Telephone re-interview of Fred Wood, February 7, 2012. [Exhibits 95, 102]

382 Transcribed interview of Bill Beermann, January 20, 2012, page 25, lines 6-25. [Exhibit 92]

383 See transcribed interview of Jason Barrera, page 4 and 5. [Exhibit 107]

384 California Penal Code Section 647: Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: ... (e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.”

occupying ... camping ... on public or private property without the permission of the person responsible [inaudible]." A.J. again interjected, "So 647?" and Pike confirmed and stated, "there are also University policies and procedures in regards to that." A.J. then nodded and sprinted away towards the encampment on the Quad.³⁸⁵

A.J. declined to provide his full name to Kroll investigators or be recorded, but agreed to be interviewed. A.J. said that he is a graduate student at UC Davis and a representative for the lawyers' guild.³⁸⁶ According to A.J., he asked Lieutenant Pike if he was planning to use chemical agents on the students and Lieutenant Pike answered, "Not unless force is used against us." While the video footage does not include this conversation, Kroll notes that a break in the video indicates that it may not have captured the entire conversation between Lieutenant Pike and A.J.³⁸⁷ Video footage also shows A.J. speaking with Pike a second time after the officers had walked onto the Quad and were assembled in an inverted wedge formation. The video does not capture the contents of the conversation.

A.J. later led the activists in a statement that included that the police "consider linking arms as passive resistance" and "they will only use chemical weapons if you use force against them."³⁸⁸

As noted above, the question of whether "linking arms" constitutes passive or active resistance, or can constitute a violent act in some situations, was being actively discussed by UC Berkeley administrators and police, due to the events on November 9. To date, Kroll has not identified any additional information on what, if anything, Pike said to A.J. on this subject.

Video footage shows that the questions regarding the legal basis for the police action contributed, to some extent, to the decision of the activists to stand their ground on the Quad. As the officers approached the activists at the center of the Quad and Lieutenant Pike announced an unlawful assembly, at least one activist is heard shouting loudly and repeatedly, "*How is this unlawful?*" and "*This is not an unlawful protest!*"³⁸⁹

385 Video footage taken by Ben McNulty of UCDPD, starting at 6:00. [Exhibit 112]

386 A.J. was interviewed by Kroll investigators on December 9, 2011 at 2:10 p.m. He declined to provide his full name or be recorded.

387 While the video footage reviewed by Kroll does not include the discussion of chemical agents, there does appear to be a break in the video footage and it may not have captured the entire conversation between Lieutenant Pike and A.J.

388 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> from 0:00 to 3:00. [Exhibit 116]

389 <http://www.youtube.com/watch?v=wetiOOK9AaA&feature=youtu.be> [Exhibit 117]

On January 13, 2012, Senior Campus Counsel Sweeney provided Kroll with a letter in which he states that “the law that most clearly applies is California Code of Regulations, title 5, section 100005 ... which prohibits non-affiliates from camping on University property.” According to Sweeney, “this provision applies 24 hours a day, and is not limited to sleeping hours. Of course, if more than 2 individuals are violating this provision, it is an unlawful assembly and the police may lawfully issue a dispersal order.”³⁹⁰

6.1.6 *Pepper Spray*

In addition to “pepper ball” rifles and batons, the police on the Quad also carried canisters of Defense Technology MK-9 pepper spray (“MK-9”). This product is not listed in the UCDPD Authorized Weapons and Tools policy³⁹¹ and was not named in the operation plan for November 18 (although it was named in the operation plan for November 15).

Kroll identified a reference to this product in an email sent to Acting Chief Carmichael: on December 15, 2010, Lieutenant Barney Rivera of the UC San Francisco Police Department emailed Acting Chief Carmichael the product information in an email related to a planned Regents meeting in January 2011. He also sent the product information to Captain Kelly Richardson of the UC San Diego Police Department, saying “here are the spec’s for the OC we use.”

According to Sergeant Sheffield, who is a UCDPD trainer regarding the use of chemical agents, he has never trained anyone in the use of the MK-9 pepper spray.³⁹² When asked if there were different requirements with the MK-9 as opposed to the MK-4 that the officers carry on their utility belts, Sheffield answered “the MK-9 is just a slight increase” in minimum deployment distance and “it’s a five gallon gas can versus a one gallon gas can.”³⁹³ Sheffield said that he had “reviewed the video” of the November 18 incident and determined that the “distance for deployment appeared appropriate.”³⁹⁴

390 Letter from Sweeney to Berkow, dated January 13, 2012. [Exhibit 44]

391 As described in General Order 559, dated April 1, 2009.

392 Transcribed interview of Danny Sheffield, January 20, 2012, page 6, lines 21-23. [Exhibit 118]

393 Transcribed interview of Danny Sheffield, January 20, 2012, page 6, line 24 through p.7, line 13. [Exhibit 118]

394 Transcribed interview of Danny Sheffield, January 20, 2012, page 7, line 17 through page p.8, line 3. [Exhibit 118]

According to Product Specifications issued by Defense Technology, the manufacturer of the MK-9, the minimum recommended distance is six feet.³⁹⁵



Video footage suggests that Lieutenant Pike deployed the MK-9 at less than the minimum recommended distance of six feet from his targets.³⁹⁶

When asked if the situation on the November 18 was one in which an officer would typically deploy pepper spray, Sergeant Sheffield replied “Absolutely. It ... falls well within our policy to my understanding and like I said, I'm the department trainer for chemical agents and part of that training is a review of our use of force policy in where [sic] this tool fits in that policy.”³⁹⁷

According to Officer Ahmad, who is one of UCDPD’s less-lethal instructors, he was not provided with “any training on the MK-9 ... they're still kind of a new thing that we have at the department, and we're still in the process ... of working out what kind of training we need to do, 'cause it's essentially the same as the little pepper spray can, it's just in lot higher volume form. So we're still working out the kinks in that.”³⁹⁸

According to Officer McCullough, he has carried it in past protests but had never had cause to use it.³⁹⁹

395 http://www.defense-technology.com/pdfs/specs/MK-9_Aerosol%20Projector%20Rev%2012_10.pdf [Exhibit 119]

396 <http://www.youtube.com/watch?v=wuWEx6Cfn-I> starting at 2:26. [Exhibit 120]

397 Transcribed interview of Danny Sheffield, January 20, 2012, page 8, line 23 through page 9, line 5. [Exhibit 118]

398 Transcribed interview of Moaz Ahmad, January 20, 2012, page 6, lines 11-18. [Exhibit 121]

399 Transcribed interview of Mikio McCulloch, January 20, 2012, page 12, lines 17-19. [Exhibit 122]

6.2 Police Action Commences

At approximately 3:06 p.m., officers entered their police vehicles and drove to Hart Hall in single file arriving at approximately 3:09 p.m. The UC police officers assembled adjacent to Hart Hall with their helmets in their hands. According to Sergeant Beermann, the officers held their helmets in their hands for “about four or five minutes” before they were given a verbal command (not over the radio), “we’re getting ready to go, go ahead and helmet up.”⁴⁰⁰

The officers were divided into two skirmish lines along with a rear guard and four officers were equipped with pepper ball guns. Hart Hall is southwest of the Quad. The police vehicles were parked on Shields Avenue and were watched by Aggie Host security officers.

6.2.1 Chief Spicuzza Authorizes Operation to Begin

At approximately 3:15 p.m., Chief Spicuzza directed the officers to begin the operation.⁴⁰¹ The officers walked onto the quad in squad formation and assembled with two skirmish lines in reverse wedge formation. As the officers approached the encampment at the center of the Quad, activists chanted and shouted messages including:

“Tell me what democracy looks like -- This is what democracy looks like”

“You’re sexy, you’re cute, take off your riot suit.”

“We have no weapons, let us assemble”

“We are fighting for your children’s education”

“Shame on you, we are not afraid”

“Ain’t no [sic] power like the power of the people because the power of the people don’t stop.”⁴⁰²

400 Transcribed interview of Bill Beermann, January 20, 2012, page 19, lines 4-11. [Exhibit 92]

401 Incident Report – Narrative, UC Davis Police Dept., OCA # C11-1258, November 29, 2011. [Exhibit 123]

402 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> from 0:00 to 3:00. [Exhibit 116]

At 3:29 p.m., the officers stopped their movement within approximately 40 yards of the activists and Lieutenant Pike gave the first dispersal order without amplification, because the bullhorn was not working.⁴⁰³

As Lieutenant Pike read the dispersal order from a card, with the non-working bullhorn at his side, an activist with a working bullhorn stated the following to the officers and the gathering crowd:

“We are not in violation of University policy. We have a right to be here right now. We are not in violation of University policy. At this moment, we are assembling peacefully, and have a right to be here....”

Next, A.J. employed the “human microphone” to announce the following, with widespread participation from the crowd:

“The police will not use violence – once they march – if you are not violent – they consider linking arms – as passive resistance – they will only – use chemical weapons – if you use force – against them – I would encourage – a position of non-violence.”⁴⁰⁴

The activists continued to stand with locked arms in a circle around the tents in the center of the Quad.

A portion of the second dispersal order given at 15:30:23 was captured on the police radio:

“ ... Section 409 of the Penal Code, I hereby ... as an unlawful assembly. If you remain in the area, which was just described, regardless of your purpose or ... you will be in violation of Section 409 of the Penal Code. A full route of dispersal is available directly northeast. You now have two minutes to disperse.”⁴⁰⁵

403 UCDPD Call Number 11-063695. [Exhibit 124]

404 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> from 0:00 to 3:00. [Exhibit 116]

405 UCDPD Call Number 11-063695. [Exhibit 124]

Several members of the crowd replied:

“What law have we broken?”⁴⁰⁶

According to UCDPD communications logs, a total of six dispersal orders were given by Lieutenant Pike, at 15:29:51, 15:30:23, 15:31:23, 15:33:30, 15:34:20 and 15:35:29 hours.

Starting at 3:31 p.m., Lieutenant Pike gave dispersal orders with a working bullhorn, declaring an unlawful assembly and warning them that if they failed to leave the area, they would be subject to arrest.⁴⁰⁷

6.2.2 UCDPD Engage with Activists and Make Arrests

As Pike gave these admonishments, he observed that “the numbers of the crowd had significantly risen” and he “could not readily discern between spectator and activist/occupier,” according to his Supplemental Narrative Report.⁴⁰⁸

As the officers advanced towards the center of the Quad, a crowd of approximately 150 student onlookers had accumulated to the rear of the advancing officers, according to Sergeant Beermann, who was tasked with keeping a buffer between this crowd and the officers’ skirmish line.⁴⁰⁹

The activists began to chant “*Cops off campus*” and “*Weapons off campus.*”⁴¹⁰

The activists were standing with linked arms in a single-file line around the tents at the center of the Quad.

Video footage captured one of the final dispersal orders made by Pike:

“I am Lieutenant Pike of the UC Davis Police Department. You have been advised that your actions constitute a violation of the law. You have been given several

406 Video footage taken by Ben McNulty of UCDPD, starting at 18:00. [Exhibit 112]

407 UCDPD Call Number 11-063695. [Exhibit 124]

408 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

409 Transcribed interview of Bill Beermann, page 24, lines 17-22. [Exhibit 92]

410 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 7:30. [Exhibit 116]

opportunities to voluntarily cease your actions and leave this area. This is your last warning. Should you use to remain, you do so understanding that a peace officer shall place you under arrest for a violation of the law. Any resistance, either passive or physical, shall result in additional charges. You shall be arrested, handcuffed and may be transported to and incarcerated at the Yolo County Jail. Will you leave at this time?"

"I say for the third time. Section 409 of the Penal Code, prohibits remaining present at an unlawful assembly. If you remain in the area which was just described, regardless of your purpose in remaining, you will be in violation of Section 409. The following routes of dispersal are available. You have been given three minutes to leave."⁴¹¹

Lieutenant Pike then stated *"Skirmish lines, move forward."*⁴¹²

Following this statement, the crowd chanted *"Shame on you"* and *"Books not batons."*

Members of the crowd continued to yell, *"How is this unlawful?"*

As the officers approached the activists, Lieutenant Pike stopped the officers and gave another warning to the activists, informing them they would be arrested if they did not disperse. The group remained.

While the number of bystanders and spectators had grown, the group of activists largely consisted of a single line of people with linked arms encircling the tents at the center of the Quad. As the skirmish line advanced forward, the crowd of students behind the skirmish line moved forward as well and became "more dense."⁴¹³

According to Pike, "no order from the Chief of Police came in to me to stand down or pull out" at that time.⁴¹⁴

411 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 8:30. [Exhibit 116]

412 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 10:00. [Exhibit 116]

413 Transcribed interview of Bill Beermann, January 20, 2012, page 29, lines 10-13. [Exhibit 92]

414 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

At approximately 3:35 p.m., Lieutenant Pike directed his officers to advance on the tents and several of the students were arrested as they resisted the officers' attempts to breach their circle to get to the tents.⁴¹⁵

At around this time, the crowd of students behind the skirmish line "surged forward ... almost like an ocean surge ... into the buffer area that we had tried to keep" behind the arrest teams.⁴¹⁶ It was at this point, according to Sergeant Beermann, "I really felt that we were starting to become encircled."⁴¹⁷

Kroll has not interviewed or reviewed statements by the UC officers from sister campuses who participated in the operation, and it was primarily these officers who were stationed on the skirmish line that breached the circle of protesters to get to the tents. As a result, Kroll has not obtained first-hand accounts of this action.

Sergeant Sutera, who was stationed directly behind the skirmish line, provided the following description of an altercation he had with a man who was subsequently arrested:

I observed a WMA [sic] wearing a back pack come out from the crowd of on-lookers, go around the far left skirmish line and attempt to come up behind the officer whose attention was directed on the demonstrators in front of him. At that point, I felt this suspect might be attacking the officer because his attention was directed to the resisting demonstrators in front of him. I went forward and confronted this individual and attempted to push him back into the crowd but he came back and attacked me, attempting to shove me away. At this point I grabbed him, but he then attempted to flee by violently pulling from my grasp to run into the crowd. I still had hold of him and felt my right shoulder seem to give way resulting in a burning sensation in my right shoulder and down my right arm. There were several people in the crowd that had almost encircled me, but Officer Skaife came to my assistance and we both wrestled this individual to the ground. I could feel being pulled upon from behind by unseen persons and had to release my grasp on the suspect to maintain positive control of my firearm and other weapons on my belt.

At this point, I was very concerned for my safety because my back was to the hostile crowd. This suspect ... kept violently resisting until Officer Skaife was able to get flex cuffs applied.... This individual suddenly went limp, jerking my already painful right shoulder and arm. We

415 UCDPD Call Number 11-063695. [Exhibit 124]

416 Transcribed interview of Bill Beermann, January 20, 2012, page 29, lines 21-24. [Exhibit 92]

417 Transcribed interview of Bill Beermann, January 20, 2012, page 30, lines 6- 7. [Exhibit 92]

dragged/carried this individual to an area where we were collecting prisoners awaiting transportation.⁴¹⁸

While Kroll was unable to interview Sergeant Sutera, video footage was identified of the incident in question. Video footage shows a man with a backpack (“Backpack Man”) being pushed behind the scrimmage line by the officers on the scrimmage line towards the arrest teams, along with several other activists that had been standing around the tents with linked arms. Several of these activists were taken into custody, including Backpack Man, while other activists were allowed to escape into the crowd.⁴¹⁹ Video footage shows Backpack Man being directed toward the ground by two officers, one of them apparently Sergeant Sutera, and then a third officer quickly joining in to pin the man against the ground.⁴²⁰ As he lay on the ground, Backpack Man’s arms and legs were sometimes situated between his torso and the officers taking him into custody, but no “violent resistance” was identified in the available video footage.⁴²¹ Although there was a second activist being taken into custody beside Backpack Man, available video footage does not show any non-officers in the area directly behind Sergeant Sutera as Backpack Man was handcuffed.⁴²²

As the arrestees were taken into custody, activists continued to chant and individuals shouted comments such as:

*“You are violating his rights.”*⁴²³

*“What law is that?”*⁴²⁴

*“You gonna beat the same people that put food on your table?”*⁴²⁵

*“We pay your fucking salary.”*⁴²⁶

*“This is not what school is about.”*⁴²⁷

418 Supplemental Narrative Report, by Raymond Sutera, November 29, 2011. [Exhibit 96]

419 Video footage taken by Ben McNulty of UCDPD, starting at 23:19. [Exhibit 112]

420 Video footage taken by Ben McNulty of UCDPD, starting at 23:24. [Exhibit 112]

421 Video footage taken by Ben McNulty of UCDPD, starting at 23:24. [Exhibit 112]

422 Video footage taken by Ben McNulty of UCDPD, starting at 23:24. [Exhibit 112]

423 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 11:20. [Exhibit 116]

424 Video footage taken by Ben McNulty of UCDPD, starting at 25:24. [Exhibit 112]

425 Video footage taken by Ben McNulty of UCDPD, starting at 26:00. [Exhibit 112]

426 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 11:20. [Exhibit 116]

When an arrestee was flipped onto the ground by an officer as he was taken into custody, the screaming and yelling from the crowd surged to a roar for several seconds.⁴²⁸

Around this time, Sergeant Beermann began escorting arrestees off the Quad “as fast as possible ... [to] try to diffuse the situation.”⁴²⁹

6.2.3 *Tents are Taken Down*

According to Pike’s Supplemental Narrative Report, as the officers on the skirmish line engaged with the activists, he and Lieutenant Swartwood walked past the activists and into the encampment and began pulling the tents down without incident.⁴³⁰

At 3:38 p.m., Lieutenant Swartwood requested assistance from the Davis Police Department (DPD).⁴³¹

At 3:39 p.m., Lieutenant Swartwood requested via radio, “call facilities to come this way and standby at the end of the Quad” and police dispatch acknowledged the request. Seconds later, Swartwood radioed “You can [cancel] that, they are removing the tents.”⁴³²

As activists began to pull tents down as well, Pike did not prevent them from doing so.⁴³³ As Lieutenant Pike and Lieutenant Swartwood were breaking down tents, video footage shows an activist, holding a bull horn at his side, asking the surrounding crowd “hey, can anyone help out and pull some tents, just start pulling tents” and several members of the crowd rushed into the encampment and begin breaking down tents.⁴³⁴

The police did not take custody of any tents or camping gear during the operation.

According to a UC Davis student who claimed to have been present at the demonstration and who emailed Chief Spicuzza after the police action, he spoke to Chief Spicuzza after the

427 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 11:20. [Exhibit 116]

428 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 11:40. [Exhibit 116]

429 Transcribed interview of Bill Beermann, January 20, 2012, page 36, lines 5-line 6. [Exhibit 92]

430 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

431 UCDPD Call Number 11-063695. [Exhibit 124]

432 UCDPD Call Number 11-063695. [Exhibit 124]

433 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

434 http://www.youtube.com/watch?v=nCxmH-hTyO4&feature=channel_video_title at 2:05. [Exhibit 125]

tents were “broken down” and was told that the police would leave after the tents were gone. In an email to Chief Spicuzza after the event, the student stated that “me and a group of two others loaded up the tents in the bed of flatbed cart and drove them away” but that the police did not leave as promised, and the pepper spray was subsequently used.⁴³⁵

At approximately 3:39 p.m., Lieutenant Pike walked away from the tents toward the crowd of spectators that had assembled, made a statement that started, “*Ladies and Gentleman, my officers ...*” and made arm movements indicating that he wanted to create an exit route through the crowd to the southwest.⁴³⁶ No exit of officers in this direction at this time was observed on available video footage and Pike then walked back to the area where the tents had now been cleared.

6.2.4 Officers on Police Skirmish Lines Pull Back to Surround Arrestees

At approximately 3:39 p.m., the tents were completely cleared from the center of the Quad. The crowd chanted “*Books not batons*,” “*We’ll be back*” and then “*We’re here to stay*.”⁴³⁷ Several arrestees seated on the walkway just south of the center of the Quad, but the left flank remained facing the activists who had now sat down in the area where the tents were previously situated.

Members of the crowd continued to question the legal basis for the police action. At approximately 3:41 p.m., Lieutenant Pike spoke to a man in the crowd and then walked away.⁴³⁸ The man called after him “*How is it unlawful? How is it unlawful?*” and “*Officer, could you repeat that law?*” and “*This is a peaceful protest on public university grounds*.”⁴³⁹

At 3:41 p.m., Pike called for two patrol cars on Centennial Walkway for pickup.⁴⁴⁰ No cars appear to have responded immediately to this request; UCDPD radio logs show that after the first three arrestees were transported from the Quad at 3:46 p.m., it was not until 3:48 p.m. that Officer Guerrero arrived at the walkway in his police vehicle and broadcast that he was

435 Email from Altenberg to Spicuzza, November 19, 2011 at 11:32 p.m. [Exhibit 126]

436 Video footage taken by Ben McNulty of UCDPD, starting at 26:20. [Exhibit 112]

437 <http://www.youtube.com/watch?v=DjXk9wYWIE8> starting at 0:00. [Exhibit 127]

438 Video footage taken by Ben McNulty of UCDPD, starting at 28:45. [Exhibit 112]

439 Video footage taken by Ben McNulty of UCDPD, starting at 28:45. [Exhibit 112]

440 Incident Report – Narrative, UC Davis Police Dept., OCA # C11-1258, November 29, 2011. [Exhibit 123]

“ready for one.”⁴⁴¹ As detailed below, the officers and their arrestees were encircled by the crowd by this time.

At approximately 3:42 p.m., the crowd began to chant “*Let us stay*” and Lieutenant Pike directed the officers on the left flank to move toward the right flank at the southern walkway.⁴⁴² The crowd responded by cheering and urging the crowd on the other side of where the left flank had been standing to “*Come join us.*”

The ranks of the activists began to double and triple. As the officers stood expressionless on the Quad, many with hands in their pockets, activists began to chant “*Set them free,*” referring to the arrestees.⁴⁴³

The officers formed a circle that provided a barrier between the arrestees and the activists, where they “awaited for transportation units/marked police units to assist with the removal of the arrestees,” according to Pike⁴⁴⁴

6.2.5 *Karl Engelbach Leaves Quad to Update Chancellor Katehi*

Chief of Staff Engelbach walked over to the Quad at approximately 3 p.m. and stayed there until approximately 3:45 p.m. Engelbach was standing with Communications Director Barbera when Chief Spicuzza approached and said, “You guys probably don’t want to be on the Quad. You might move to the side or get out of the way ‘cause the police are going to be coming in soon.” Engelbach moved to the edge of the Quad, where he saw the tents come down and at one point saw someone being led away with plastic handcuffs, but he did not see any of the arrests take place first hand,. After seeing that all the tents were down, Engelbach assumed that the operation was complete and left the Quad at approximately 3:45 p.m.⁴⁴⁵

Engelbach left the Quad to report to Chancellor Katehi, who was meeting with the executive committee of the Academic Senate, to report that the tents were down. Katehi stepped out of

441 UCDPD Call Number 11-063695. [Exhibit 124]

442 <http://www.youtube.com/watch?v=DjXk9wYWIE8> from 2:20 to 3:00. [Exhibit 127]

443 <http://www.youtube.com/watch?v=EscJpEsOR3I&feature=youtu.be> [Exhibit 128]

444 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

445 Transcribed interview with Karl Engelbach, December 8, 2011, page 26, line 15 through page 27, line 10. [Exhibit 4]

the meeting and Engelbach told her that the tents were down, that there may have been arrests and that “seeing the cops walk across the Quad, that was ... what word did I use? I don’t want to say startling image, but it was quite an image or something like that.”⁴⁴⁶ According to Engelbach, Katehi did not ask for more specifics regarding the incident and Katehi returned to the meeting.⁴⁴⁷

According to Chancellor Katehi, before Engelbach arrived, she had told the executive committee that the administration had decided to “remove the tents” and had “advised the police to do it peacefully.”⁴⁴⁸ When Engelbach arrived at the meeting location, Katehi met him outside the meeting room and he told her that the tents had been removed but that they had arrested “three to five students.” The news of arrests “worried” Katehi because she had told Chief Spicuzza “that we did not want students to be arrested. But I did not know the circumstances.”⁴⁴⁹ Katehi then returned to the executive committee and told them, “we removed the tents. I understand we removed them peacefully. Katehi added, “I need to find out what happened,” according to Katehi.⁴⁵⁰

According to both Engelbach and Katehi, they both only learned about the use of pepper spray after their conversation.⁴⁵¹

6.2.6 *Activists Encircle Officers on Quad*

At approximately 3:43 p.m., as officers stood south of the activists waiting for a patrol vehicle to transport the remaining arrestees, the activists began to chant “*Set them free.*”⁴⁵² At approximately 3:46, the activists were led in a chant by a seated activist⁴⁵³ as follows:

*“We are going - to support our friends - who were unjustly arrested - for participating in their rights - let’s march peacefully - as one - towards where they are being held.”*⁴⁵⁴

446 Transcribed interview with Karl Engelbach, December 8, 2011, page 35, line 23 through page 36, line 4. [Exhibit 4]

447 Transcribed interview with Karl Engelbach, December 8, 2011, page 36, lines 8-25. [Exhibit 4]

448 Transcribed interview with Chancellor Linda Katehi, December 20, 2011, page 34, lines 14-22. [Exhibit 1]

449 Transcribed interview with Chancellor Linda Katehi, December 20, 2011, page 35, lines 5-22. [Exhibit 1]

450 Transcribed interview with Chancellor Linda Katehi, December 20, 2011, page 35, lines 5-22. [Exhibit 1]

451 Transcribed interview with Chancellor Linda Katehi, December 20, 2011, page 36, lines 3-6. [Exhibit 1]

452 <http://www.youtube.com/watch?v=lkoEbrUp0-Q&feature=related> at 7:40. [Exhibit 129]

453 Video footage taken by Ben McNulty of UCDPD, starting at 33:36. [Exhibit 112]

Video footage shows that the activists, now accompanied by many of the spectators, then stood with locked arms and walked forward together. The crowd initially walked southwest, but gradually turned south; video footage shows the leader of the chant pointing west and asking “are they still over there?” and the woman next to him nodding south toward the walkway and replying, “no, they are over there now.”⁴⁵⁵ The crowd eventually surrounded the officers who were standing on the southern part of the walkway. The activists continued to chant “*Set them free*” and “*This is what democracy looks like.*”⁴⁵⁶

As the crowd closed in around the officers, Pike announced, “*Officers, draw batons.*”⁴⁵⁷ The officers withdrew their batons and held them in a diagonal across their chests. According to Pike, he ordered the officers to draw their batons after he “received information that a couple of male subject [sic] in the crowd were seen holding and passing out rocks.”⁴⁵⁸

At 3:47 p.m., Swartwood placed an urgent call for DPD to arrive on the police radio, saying “we need Davis officers now.” Dispatch replied, “copy, requesting Davis officers expedite.”⁴⁵⁹

At some point during the police operation, Chief Spicuzza called Garcia-Hernandez and said, “Tell them not to use their sticks.”⁴⁶⁰ When she relayed this message to Lieutenant Swartwood, he said, “We have a whole ‘nother problem here that ... she’s not aware of.”⁴⁶¹ Garcia-Hernandez replied, “Well, she’s there” and he said “I don’t see her.” Garcia-Hernandez remembered “the urgency” in Lieutenant Swartwood’s voice “when he told me I didn’t know what was going on. It was really bad out there.”⁴⁶²

The activists continued to shout “*Set them free.*” Although the crowd had now completely surrounded the officers, there were still many gaps between the activists that would allow the

454 <http://www.youtube.com/watch?v=DjXk9wYWIE8> at 5:30. [Exhibit 127]

455 Video footage taken by Ben McNulty of UCDPD, starting at 34:00. [Exhibit 112]

456 <http://www.youtube.com/watch?v=DjXk9wYWIE8> at 5:30. [Exhibit 127]

457 <http://www.youtube.com/watch?v=xNxER57VnIY&feature=related> at 0:00. [Exhibit 130]

458 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

459 UCDPD Call Number 11-063695. [Exhibit 124]

460 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 14, line 3. [Exhibit 95]

461 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 14, lines 5-6. [Exhibit 95]

462 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 14, line 7 through page 15, line 20. [Exhibit 95]

officers to leave at that time, according to video footage.⁴⁶³ The officers continued to stand in a circle around the arrestees as the crowd encircling the officers began to fill in the gaps.

According to Pike, one of the arrestees “refused to walk and stated that we would have to carrying [sic] him out.” Pike did not believe that he had enough officers to support walking the arrestees out of the area as well as carrying one arrestee and providing ample protection for his officers.⁴⁶⁴

6.2.7 *Lieutenant Pike Warns Seated Activists about Potential Use of Force*

Officer Ahmad, a member of the Pepper Ball Team supervised by Sergeant Sheffield, was standing with Lieutenant Pike when the activists encircled the officers and sat down. According to Officer Ahmad, Lieutenant Pike told him and another “pepper baller,” “if we have to ... use force against them to get out, just be prepared ... on my command ... to shoot the protestors with the pepper balls.”⁴⁶⁵

Video footage shows Pike warning the seated activists on the walkway, one at a time, with statements including “you are subject to force, pepper ball guns will be deployed” and “you understand that if you stay here ... you are going to be subject to the use of force.”⁴⁶⁶ At the time, a single line of seated activists blocked the pathway.⁴⁶⁷ In his Supplemental Narrative Report, Pike stated that he advised the activists sitting on the walkway south of the officers that they would be “subject to use of force if they remained and blocked the officers” from leaving the Quad.⁴⁶⁸

Following these warnings, activists stated via the human microphone, “*If you let them go - we will let you leave – if you let them go – we will continue to protest peacefully.*”⁴⁶⁹ As he heard this message, Pike “became more concerned that the mob mentality of the group would lend

463 <http://www.youtube.com/watch?v=CD97TZ2fdYg&feature=related> starting at 0:00. [Exhibit 131]

464 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

465 Transcribed interview of Moaz Ahmad, January 20, 2012, page 13, lines 5-10. [Exhibit 121]

466 <http://www.youtube.com/watch?v=GZsLQGlcZA&feature=related> and http://www.youtube.com/watch?v=MGagKL_tvS8&feature=related [Exhibits 132, 133]

467 http://www.youtube.com/watch?v=MGagKL_tvS8&feature=related [Exhibit 133]

468 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

469 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 11:25 and <http://www.youtube.com/watch?v=DjXk9wYWIE8> at 8:50. [Exhibits 134, 127]

way to hostile acts that would force our hands,” according to his Supplemental Narrative Report.⁴⁷⁰

In Supplemental Narrative Reports written after the incident – most were written more than a week after the incident – several officers expressed their concern about the events that were transpiring. Officer Brewer wrote: “the entire crowd then suddenly encircled and trapped us officers inside a locked-arm ring, their repeated chants very clear now ... I became very concerned about who was leading the crowd and what was to come. They had been instructed somehow to immediately surround the police officers and had done so in a very fast manner. I was concerned by their chants and actions that they may suddenly attempt to lynch⁴⁷¹ our prisoners or attack officers.”⁴⁷²

According to Officer Halley, “I was in shock. This was my first time dealing with an incident [involving] this many people. I think I was just kind of wondering what next ... I started thinking if I do use force what kind of force am I going to use ... I was ... really nervous, wondering what to do, how was I going to do it. I was afraid the officers [or] people were going to get hurt.”⁴⁷³

According to Officer Sotelo, the encircled officers “were looking towards the greater command staff to start making decisions. I mean from where I was standing...15 to 20 yards from me was the Chief of Police staring at me with her camera, videotaping me with her iPhone.”⁴⁷⁴ Other officers said that they observed Chief Spicuzza outside of the encircled crowd observing the events.

As the activists shouted the “*If you let them go*” chant, Pike yelled commands to the officers and pointed to the walkway where he would later deploy pepper spray. According to Pike, “a couple of the [activists] moved from the sidewalk only to be replaced by others.”⁴⁷⁵ After Pike’s commands, several activists who had been seated on the walkway stood up and left

470 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

471 California Penal Code Section 405a, Lynching - the taking by means of a riot of any person from the lawful custody of any peace officer, a felony crime.

472 Supplemental Narrative Report, by Justin Brewer, November 29, 2011. [Exhibit 135]

473 Transcribed interview of Brian Halley, January 20, 2012, Volume II, attachment, page 8, lines 18-25. [Exhibit 106]

474 Transcribed interview of Robert Sotelo, January 19, 2012, page 18, line 25 through page 19, line 3. [Exhibit 109]

475 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

an opening on either sides of the walkway, with approximately three students remaining in the center of the walkway.

Video footage shows that, for the one minute and 45 seconds⁴⁷⁶ that followed, the southern walkway was not completely blocked by a single line of activists, and that the crowd behind the seated activists mostly lined the walkway:⁴⁷⁷



During this time, the crowd began chanting “Don’t shoot them” and the activists turned to face away from the officers.⁴⁷⁸ The picture below shows the pathway 68 seconds after the picture above:⁴⁷⁹



476 <http://www.youtube.com/watch?v=CD97TZ2fdYg&feature=related> from 2:12 – 3:57. [Exhibit 131]

477 <http://www.youtube.com/watch?v=DjXk9wYWIE8> at 9:42. [Exhibit 127]

478 <http://www.youtube.com/watch?v=DjXk9wYWIE8> at 10:42. [Exhibit 127]

479 <http://www.youtube.com/watch?v=DjXk9wYWIE8> at 10:50. [Exhibit 127]

As the activists resumed their chant of “*Let them go!*” two UCDPD officers with pepper ball guns stepped forward on either side of Lieutenant Pike and raised their guns to ready position.⁴⁸⁰

Onlookers began commenting on the possibility that the officers would fire on the crowd.⁴⁸¹ At approximately 3:51 p.m., the activists began chanting “*Don’t shoot them*” and the three people sitting on the walkway then each pulled a hood onto their head, apparently in case the pepper ball was deployed.⁴⁸² The seated arrestees were brought to a standing position by officers and were positioned behind the pepper ball gunners, apparently in anticipation of an exit on the southern walkway.⁴⁸³

Several activists then moved to sit on the walkway and complete the line of seated, linked-arm activists sitting on the walkway. The activists began chanting “*cops off campus.*”⁴⁸⁴

Video footage at this time shows that while the crowd had completely encircled the officers, there were visible breaks, for instance in the northeast corner:⁴⁸⁵



At approximately 3:53, activists began chanting “*From Davis to Greece, fuck the police.*”⁴⁸⁶ This chant immediately drew a response from the gathered crowd, with several people saying

480 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> from 11:00 to 13:00. [Exhibit 134]

481 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> from 11:00 to 13:00. [Exhibit 134]

482 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 13:00. [Exhibit 134]

483 Video footage taken by Ben McNulty of UCDPD, starting at 38:40. [Exhibit 112]

484 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 13:40. [Exhibit 134]

485 http://www.youtube.com/watch?v=S_AC2w9b6-A&feature=channel_video_title at 2:07. [Exhibit 125]

“no, no” and urging the activists to “keep it non-violent” and “peaceful.”⁴⁸⁷ After three repetitions, or about 15 seconds, the chant faded.

The activists then began to chant “*You use weapons, we use our voice.*”

6.2.8 *Arrestees are Led through Encircled Activists and Onlookers without Incident*

Pike was apparently unaware that Sergeant Beermann had continued escorting arrestees through the encircled crowd without incident throughout this period of time.

At approximately 3:49 p.m., Sergeant Beermann spoke to a seated arrestee, a male wearing a black jacket, and helped him to stand. Beermann surveyed the encircled crowd and then pointed to the northwest.⁴⁸⁸ As the crowd chanted, “*If you let them go, we will let you leave*” Beermann led the arrestee out of the northwest side of the encircled crowd without incident.⁴⁸⁹ According to Beermann, he directed the arrestee “with my right hand under the crutch of his elbow and we started going through the crowd, him tailing behind me, slightly to my right and me spreading the crowd with my hand and saying let me through, let me through, in a very loud ... yelling voice, trying to get people to comply and generally they did.”⁴⁹⁰ Beermann escorted the arrestee to the police car that Officer Guerrero had parked south of where the officers were encircled by protesters and loaded him into the car without incident. The police car, which now held two arrestees, left the Quad at 3:52 p.m.⁴⁹¹

Sergeant Beermann returned to the officers within the encircled protesters, entering from the northeast side of the circle.⁴⁹² First he spoke with the male arrestee who was lying on the sidewalk, and then, at approximately 3:53 p.m., he escorted a female arrestee out of the same northwest side of the encircled crowd, this time accompanied by a second officer.⁴⁹³ This time, the crowd reacted by saying “*Boo*” and “*Shame on you.*”⁴⁹⁴ The second arrestee

486 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 15:05. [Exhibit 134]

487 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 0:00. [Exhibit 136]

488 Video footage taken by Ben McNulty of UCDPD, starting at 37:06.[Exhibit 112]

489 <http://www.youtube.com/watch?v=CD97TZ2fdYg&feature=related> starting at 2:05. [Exhibit 131]

490 Transcribed interview of Bill Beermann, January 20, 2012, page 37, lines 20-25. [Exhibit 92]

491 <http://www.youtube.com/watch?v=xNxER57VnIY&feature=related> at 2:15 and UCDPD Call Number 11-063695. [Exhibits 130, 124]

492 <http://www.youtube.com/watch?v=zZHimnbvqOU&feature=related> at 0:27. [Exhibit 137]

493 <http://www.youtube.com/watch?v=zZHimnbvqOU&feature=related> at 1:30. [Exhibit 137]

494 <http://www.youtube.com/watch?v=zZHimnbvqOU&feature=related> at 1:30. [Exhibit 137]

was led out of the encircled crowd approximately 30 seconds after the “*Davis to Greece*” chant.⁴⁹⁵

Beermann then “trotted back to our line of cars and got a car, because I realized we needed more transportation cars.”⁴⁹⁶ The next arrestees would not be transported from the Quad until 4:04 p.m., after the pepper spray was applied and the walkway was cleared, when Beermann and Guerrero each transported two additional arrestees to the station.⁴⁹⁷

According to Beermann, “during that time when I was taking these prisoners out, you know I really felt very claustrophobic because you have the line of officers in confrontation with the demonstrators and all the screaming and yelling ... it was frightening because there was really no control ... I felt we were surrounded ... The only reason I was able to get in and out with prisoners is because I believe my persistence and the fact that I didn’t hesitate to go through the crowd. It was either get out of the way or I’m going to mow you down.”⁴⁹⁸

According to Beermann, “when I went in the second time to get my second prisoner, it was a little bit, more congested with the accumulation of people to the southwest of us ... I felt uncomfortable. I felt a little bit scared. I was concerned for, not so much myself, but for the other officers. I don’t know whether that’s my training [or] my personal confidence, but I felt they were in more danger than I was.... The reason I went in the second time was because I ... felt the need to get the prisoners out so we could start to break this situation down.”⁴⁹⁹

None of the Supplement Reports written by officers involved in the action mention these exits by Beermann. Several officers mentioned Beermann’s exits through the encircled crowd in interviews with Kroll investigators. According to Officer Brewer, “I remember Sergeant Beermann going in and out through the crowd with one or two prisoners and ... I thought ‘Holy moley! Why is he going in through the crowd like that?’ I would be too scared that people are going to grab my equipment or ... push me down and start attacking me or grab the prisoner away from me.”⁵⁰⁰

495 <http://www.youtube.com/watch?v=CD97TZ2fdYg&feature=related> starting at 6:15. [Exhibit 131]

496 Transcribed interview of Bill Beermann, January 20, 2012, page 38, lines 89-10. [Exhibit 92]

497 UCDPD Call Number 11-063695. [Exhibit 124]

498 Transcribed interview of Bill Beermann, January 20, 2012, page 38, lines 12-21. [Exhibit 92]

499 Transcribed interview of Bill Beermann, January 20, 2012,, page 50, lines 2-12. [Exhibit 92]

500 Transcribed interview of Justin Brewer, January 19, 2012, Page 20, lines 17-23. [Exhibit 135]

6.2.9 Pike Again Warns Seated Activists about Potential Use of Force

About a minute after the “*Davis to Greece*” chant appeared, Lieutenant Pike approached the activists seated on the walkway, put his hand on the shoulder of one of the seated activist and said something to him.⁵⁰¹ The man responded, “Well, we’re sitting here,” several other seated activists laughed, and Pike walked back to the pepper ball gunners.⁵⁰² Pike turned away and walked back to the officers grouped at the center of the circle.

The crowd then began to chant “*Whose university? Our university.*”

Several “mic checks” followed as the officers remained inside the encircled crowd. First, someone announced that “*If someone has lost a beanie [phonetic], I have it,*” several in the crowd laughed and a woman answered, “*It’s Enosh’s, he was arrested,*” and the crowd cheered.⁵⁰³ Lieutenant Pike is seen holding his radio and looking over the crowd toward the south end of the Quad.⁵⁰⁴

The crowd then proceeded to engage in impromptu consensus-based decision-making: at approximately 3:56 p.m., an activist stated, “*I propose – that we pass a resolution –to demand the cops – off the Quad*” and the proposal was met by cheers.⁵⁰⁵ The proposal was then announced to have “passed.” A female seated activist yelled, “Proposal passed, you gotta go!”⁵⁰⁶ A subsequent (and inaudible) proposal was rejected by the crowd. The crowd assembled on the southern walkway joked with each other and laughed.⁵⁰⁷

At 3:57 p.m., DPD arrived at the Quad, according to UCDPD radio transmissions.⁵⁰⁸

As the activists engaged in this discussion, Lieutenant Swartwood was speaking on his cell phone and then, with the phone still to his ear, spoke briefly with Lieutenant Pike.⁵⁰⁹

501 <http://www.youtube.com/watch?v=DjXk9wYWIE86u2fTYUjpmU&feature=related> at 13:45. [Exhibit 127]

502 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 1:02. [Exhibit 136]

503 Enosh Meir Baker was arrested on the Quad on November 18;
<http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 2:15. [Exhibit 136]

504 http://www.youtube.com/watch?v=S_AC2w9b6-A&feature=channel_video_title at 6:00. [Exhibit 125]

505 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 18:24. [Exhibit 134]

506 Video footage taken by Ben McNulty of UCDPD, starting at 44:20. [Exhibit 112]

507 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 3:40. [Exhibit 136]

508 UCDPD Call Number 11-063695. [Exhibit 124]

509 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 3:35. [Exhibit 136]

Lieutenant Swartwood then took his cell phone from his ear and walked through the encircled activists to the southeast.

According to Swartwood, he stepped out of the encircled activists to speak with the DPD commander who had arrived to assist the UCDPD. Swartwood described his exit as follows: “in order to conceal my intentions of going through or over the occupiers, I walked to the south east side of the walkway then went quickly to the line of sitting occupiers and stepped over them to get to the other side.”⁵¹⁰

Meanwhile, a woman made a “mic check” announcement proposing an amendment to the accepted “Cops off the Quad” proposal, saying “*I think we should ask politely – because demands – only inspire fear.*”⁵¹¹

In the lull of crowd noise that followed this announcement, Pike spoke to an activist seated in the middle of the pathway, again touching the activist’s shoulder.⁵¹² The man responded, “You are going to shoot me? You are going to shoot me for sitting here? Is that what you said officer?” Someone in the crowd called out, “He said yes, he just said yes!” Lieutenant Pike, who had then turned and walked away, returned to the seated activist and spoke to him again. The seated activist said, “I’m just making sure, you’re shooting us for sitting here? No...that’s fine, that’s fine.”⁵¹³ The man’s response was audible to the crowd and the crowd began chanting “*Don’t shoot students.*” Pike walked back to where the pepper ball gunners were standing.

Pike spoke shortly with the pepper ball gunners and then formed the officers on the southern end of the circle into a wedge shape and obtained a canister of MK-9 pepper spray from the belt of another officer.⁵¹⁴ The southern walkway was now fully lined with seated activists and a crowd of spectators standing behind them were on the walkway as well.⁵¹⁵

510 Supplemental Narrative Report, by Barry Swartwood, November 30, 2011. [Exhibit 115]

511 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 19:00. [Exhibit 134]

512 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 19:25. [Exhibit 134]

513 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 4:01. [Exhibit 136]

514 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 20:15. [Exhibit 134]

515 <http://www.youtube.com/watch?v=NwFa5Kq4Rfo> at 2:23. [Exhibit 138]



6.2.10 *The Decision to Use Pepper Spray*

According to Lieutenant Pike's Supplemental Narrative Report, he discussed the use of pepper spray with Lieutenant Swartwood and "considered other force options." Pike felt that "the use of batons, pepper ball guns and ECD's [tasers] were in my opinion on a higher level of the continuum and were not feasible options at the time under the set of circumstances we were facing." Pike felt that "the use of control holds, the physical movement of the suspects and active grappling with the suspects was also not an entirely feasible consideration as we had several arrestees to escort away from the scene and the actual physical confrontation with the suspects could lead to injuries to officers and suspects."⁵¹⁶

In the Supplement Narrative Report written by Lieutenant Swartwood, he does not say that he discussed the use of pepper spray or any other less-than-lethal force with Pike.⁵¹⁷ Video footage shows that approximately one minute before Pike obtained the pepper spray from another officer's belt, Swartwood stepped through the encircled activists to the southeast without incident.⁵¹⁸ The first mention of pepper spray by Swartwood in his Supplemental Narrative Report is when "Lieutenant Pike displayed a can of police pepper spray" to the crowd while Swartwood was outside of the circle.⁵¹⁹

516 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

517 Supplemental Narrative Report, by Barry Swartwood, November 30, 2011. [Exhibit 115]

518 <http://www.youtube.com/watch?v=6u2FTYUjpmU&feature=related> [Exhibit 134]

519 Supplemental Narrative Report, by Barry Swartwood, November 30, 2011. [Exhibit 115]

According to Pike, “the pepper spray was the tool at the time I believed to be most appropriate for conducting the necessary action needed to secure the arrestees and remove us from the confines of the mob.”⁵²⁰

Meanwhile, DPD officers had arrived at the south portion of the Quad. Having stepped through the activists encircling the UCDPD officers, Lieutenant Swartwood approached the DPD officers and informed them of his plan to bring the arrestees down the south walkway to patrol vehicles.⁵²¹ Lieutenant Swartwood asked the DPD officers to line the south walkway, so that the UCDPD officers could exit the Quad.⁵²² DPD officers then began to clear and line the walkway, ordering the activists to “Move to the side” and “Off the sidewalk please.”⁵²³

Video footage shows Lieutenant Swartwood leading several DPD officers up the walkway to the seated activists, with Lieutenant Pike facing him on the other side of the seated activists.⁵²⁴ Swartwood leans forward to pull a female activist with his hands, is motioned away by Pike, and then turns to walk away with his arms raised at the elbow. The following video stills illustrate this sequence of events:



Swartwood pulls the arm of a seated activist with DPD officers on either side of him.⁵²⁵

520 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

521 Supplemental Narrative Report, by Barry Swartwood, November 30, 2011. [Exhibit 115]

522 Supplemental Narrative Report, by Barry Swartwood, November 30, 2011. [Exhibit 115]

523 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 6:19. [Exhibit 136]

524 <http://www.youtube.com/watch?v=5ePH-1B2-gc> at 0:05. [Exhibit 139]

525 <http://www.youtube.com/watch?v=wuWEx6Cfn-I> at 2:10. For additional footage of this episode, see <http://www.youtube.com/watch?v=NwFa5Kq4Rfo> at 4:05 and <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 21:40. [Exhibits 120, 138, 134]



Shown from a different angle, Swartwood's helmet and back are visible, behind two DPD officers, as he pulls the arm of the seated activist. Pike faces him from within the circle, holding a canister of MK-9 pepper spray.⁵²⁶



As Swartwood continues to bend forward to pull the seated activist, Pike lifts the pepper spray canister, visible as a red shape between the officers' helmets in the above picture.⁵²⁷



Swartwood releases the arm of the seated activist and turns away after Pike lifts the pepper spray.⁵²⁸

⁵²⁶ <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 6:19. [Exhibit 136]

⁵²⁷ <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 6:19. [Exhibit 136]



Swartwood begins to walk away from the seated activists.⁵²⁹



Swartwood lifts his hands as he walks away.⁵³⁰

6.2.11 Application of Pepper Spray

During this time, the crowd chanted “*Don’t shoot your children*” and individuals yelled for the seated activists to “*protect yourself*,” to “*stand your ground*” and to “*remove your contacts*.”⁵³¹ As Pike shook the canister of pepper spray visibly, the crowd stopped chanting and reacted in different ways, including helping the seated activists to cover their head and face. The seated activists pulled their hoods over their heads, pulled scarves up to cover their faces or bent their faces toward their chests.

528 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 6:19. [Exhibit 136]

529 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 6:19. [Exhibit 136]

530 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 6:19. [Exhibit 136]

531 <http://www.youtube.com/watch?v=NwFa5Kq4Rfo> at 3:20. [Exhibit 138]

The crowd then erupted in the chant “*The whole world is watching.*”⁵³² Seconds later, Pike stepped over the seated activists and began applying the pepper spray as he walked from the east to the west and then west to east. He continued to shake the spray intermittently during the application. Lieutenant Pike appeared to have exhausted the contents of the canister and Officer Lee began to spray some of the students seated on the west portion of the group.

According to Officer Lee, “Lt. Pike issued an order to me to use police pepper spray on the crowd. I sprayed the crowd directly in front of the police skirmish line using a department issued pepper spray fogger Defense Tech MK-9.”⁵³³

The crowd responded with screams and then began chanting “*Shame on you*” as officers from both inside and outside the encircled crowd were able to breach the line of activists by physically separating them from each other. The officers cleared the walkway of the seated activists and took additional activists into custody.⁵³⁴ The officers facilitated the removal of the arrestees and placed them into the patrol vehicles.

6.2.12 Transportation of Arrestees

As described on the following table, it took 40 minutes to transport all ten arrestees from the Quad, according to UCDPD radio broadcasts.⁵³⁵ In the planning discussions for November 18, according to Garcia-Hernandez, there was talk about getting a “paddy wagon kinda thing” but it was not followed through on.⁵³⁶

Time	Action
3:35 p.m.	Officers advance on encampment and begin making arrests
3:46	Three arrestees transported from the Quad by Officer Terry
3:52	Two arrestees transported from the Quad by Officer Guerrero.
4:04	Four arrestees transported from the Quad, two by Officer Guerrero and two by Sargent Beermann.
4:15	One arrestee transported from Quad by Officer Guerrero

532 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 21:45. [Exhibit 134]

531 Supplemental Narrative Report, Officer Alex Lee, November 18, 2011. [Exhibit 140]

534 <http://www.youtube.com/watch?v=6u2fTYUjpmU&feature=related> at 22:15. [Exhibit 134]

535 UCDPD Call Number 11-063695. [Exhibit 124]

536 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 22, lines 3-8. [Exhibit 95]

At 3:41 p.m., Pike called for two patrol cars on Centennial Walkway for pickup.⁵³⁷ At 3:44 p.m., DPD communicated that it was responding with four units plus a Sergeant. At 3:46 p.m. Officer Terry transported three arrestees from the Quad to the station. Moments later at 3:48 p.m., Swartwood “advised we need Davis officers now.”

At 3:48 p.m. Officer Guerrero arrived at the walkway in his police vehicle and broadcast that he was “ready for one.” At 3:52 p.m. Officer Guerrero took two arrestees in custody and advised dispatch he was en-route to the station. A minute later, Lieutenant Swartwood broadcast, “whoever was at the patio, come back.”⁵³⁸ Officer Guerrero broadcast “do you want a car with two prisoners?”⁵³⁹ There was no response.

At 3:56 p.m. Lieutenant Swartwood broadcast “need two cars up center sidewalk ASAP.”⁵⁴⁰ This request was followed up 26 seconds later by Lieutenant Pike requesting a marked unit to Centennial Walkway ASAP. At 3:57 p.m. Officer Terry notified units that they had five arrestees in the UCDPD holding tank. At 4:02 p.m. Officer Brewer broadcast that he was at the sidewalk with two arrestees in custody. At 4:04 p.m., Officer Beermann picked up the two arrestees from Officer Brewer and returned with them to the station. Also at 4:04 p.m., Officer Guerrero picked up two arrestees and returned with them to the station.

At 4:06 p.m. Officer Brewer made an additional request to expedite the cars, saying “we’re sitting them down on the sidewalk.”⁵⁴¹

At 4:15 p.m., Officer Guerrero picked up a single arrestee and returned to the station.

6.2.13 *Officers Leave the Quad*

The officers began to leave the area but were followed by the activists and student spectators. A “mic check” was performed and the following was said and then repeated:

537 Incident Report – Narrative, UC Davis Police Dept., OCA # C11-1258, November 29, 2011. [Exhibit 123]

538 UCDPD Call Number 11-063695. [Exhibit 124]

539 UCDPD Call Number 11-063695. [Exhibit 124]

540 UCDPD Call Number 11-063695. [Exhibit 124]

541 UCDPD Call Number 11-063695. [Exhibit 124]

*We are willing to give you a brief moment of peace. So you may take your weapons and our friends and go. Please do not return. We are giving you a moment of peace. You can go, we will not follow you.*⁵⁴²

Students cheered as the officers exited the Quad. Meanwhile, the activists that were pepper sprayed received treatment from onlookers, fellow activists and campus fire fighters. According to the fire department, there were ten to fifteen individuals who approached fire department personnel for medical assistance after being sprayed.⁵⁴³ Two individuals were transported to Sutter Davis Hospital; all other individuals were treated and released.⁵⁴⁴ Many individuals declined to provide personal information.⁵⁴⁵

At 4:21 p.m., UCDPD radio transmissions stated “we are done here” and “all cars on the Quad can clear.”

One officer, Sergeant Sutera, was injured while taking a subject into custody during the incident. The officer sustained an injury to his shoulder.⁵⁴⁶

Ten activists were cited and released for 409 PC (present at an unlawful assembly after being ordered to disperse) and 647(e) PC (lodging in a place without permission of the person in control of it). Of the ten activists who were arrested, two were identified as non-affiliates, Jordon Wilhelm,⁵⁴⁷ age 24, and Enosh Baker,⁵⁴⁸ age 27. Baker is a UC Davis graduate; he was awarded a Bachelor of Science degree in June 2009.

Other than the arrests, in which several officers reported violent resistance, few or no allegations of violence by activists were identified in media reports, interviews, video footage or statements by officers.

542 http://www.youtube.com/watch?v=1jC_ZknN8lc&feature=related [Exhibit 141]

543 Incident Report, City of Davis Fire Department, 2011-1118136-000, November 18, 2011. [Exhibit 141]

544 Incident Report, City of Davis Fire Department, 2011-1118136-000, November 18, 2011. [Exhibit 141]

545 Incident Report, City of Davis Fire Department, 2011-1118136-000, November 18, 2011. [Exhibit 141]

546 Supplemental Narrative Report, Officer Raymond Sutera, November 29, 2011. [Exhibit 96]

547 Notice of Withdraw of Consent to Remain on the University of California, Davis. Case No. CII-1258, Citation No. 28070. [Exhibit 143]

548 Notice of Withdraw of Consent to Remain on the University of California, Davis. Case No. CII-1258, Citation No. 28067. [Exhibit 143]

Several officers and one UC Davis staff member (whose son was one of the UCDPD officers involved in the operation) stated that they saw protesters holding and/or passing out stones, but did not see them thrown or used against police.⁵⁴⁹

According to Dispatch Supervisor Garcia-Hernandez, when Lieutenant Pike came back to the DOC, she said “Are you okay?” Lieutenant Pike responded, “Oh my god.”⁵⁵⁰ Pike scratched his head and said “I hope I’m not the scapegoat for this one.”⁵⁵¹ Then the pepper spray video came up on the TV at the DOC. Garcia-Hernandez said, “John, that looked really bad.” Pike responded, “I know, it was really bad out there.”⁵⁵²

Twenty minutes after the officers had left the Quad, Chief Spicuzza “recalled officers to the Quad as another set of tents were erected,” according to Pike’s Supplemental Narrative Report. Lieutenant Pike returned to the Quad with Officer Terry, made contact with one individual and two tents were subsequently taken down.⁵⁵³

A debriefing was subsequently held in the DOC at the police station. According to Sergeant Henoeh, Chief Spicuzza told the officers present that they “did an outstanding job.”⁵⁵⁴ According to Officer Zekany, Chief Spicuzza said that she was “proud of how we handled the situation.”⁵⁵⁵ Several officers were not informed of the debriefing and did not attend, according to Officer Brewer.

549 Transcribed interview of Bob Brewer, December 8, 2011; Transcribed interview of Joanne Zekany, January 19, 2012, page 20, lines 1-9; Transcribed interview of Danny Sheffield, January 20, 2012, page 5, lines 1-17. [Exhibits 144, 145, 118]

550 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 23, line 17. [Exhibit 95]

551 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 23, lines 17-19. [Exhibit 95]

552 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 23, line 19 through page 24, line 4. [Exhibit 95]

553 Supplemental Narrative Report, John Pike, December 13, 2011. [Exhibit 54]

554 Supplemental Narrative Report, Paul Henoeh, November 29, 2011. [Exhibit 146]

555 Supplemental Narrative Report, Joanne Zekany, November 28, 2011. [Exhibit 147]

7

7 ANALYSIS

The few minutes when Lieutenant Pike and Officer Lee pepper sprayed the seated protesters on the UC Davis Quad may have drawn international attention and condemnation, but to understand those actions properly, it is critical to review the entire sequence of events which led to that singular decision. Doing so reveals a cascading series of errors which set the stage for the use of pepper spray.

Kroll identified three types of failures that set the stage for the use of pepper spray: failures of leadership, failures of communication and failures of documentation. The three critical decisions that will be subjected to analysis in this section—the decision to mount the police operation while questions of legal authority remained unanswered; the decision to commence the operation in mid-afternoon on a crowded campus; and the decision to use pepper spray on a line of seated protesters—were impacted by these three types of failures.

7.1 The Leadership Team

In order to respond to the increasing number of demonstrations against funding cuts and tuition increases on University of California campuses that began in 2009, the UC Davis administration formed a “Leadership Team.” The Leadership Team did not have a formal name or roster of members. There was no agreed upon method to communicate or record a decision made by the team. While members of the Leadership Team described the decision-making process as consensus-based, there were several key decision-makers with the group, including Chancellor Katehi, Provost Hexter and Vice Chancellors Wood and Meyer.⁵⁵⁶ The Leadership Team received advice from and issued directives to campus legal counsel, campus police, Student Affairs and media relations.

⁵⁵⁶ Transcribed interview of John Meyer, December 7, 2011, Volume II, page 4, line 9 through page 5, line 1. [Exhibit 2]

In sum, the actions of the Leadership Team provide a case study in how not to make important institutional decisions.

The “meetings” for the team were ad hoc; there do not appear to have been any rules regarding mandatory attendance. The meetings were held with whichever members were available. In addition, there were no rules or agreements about minutes or note-taking. The meetings were conducted almost exclusively via conference call, and participants in the calls, many of whom have offices in the same building, would sometime gather in each other’s offices to join the calls or would simply “call in.”

As a result, Kroll has been unable to determine precisely what decisions were made by the Leadership Team, as well as on what basis they were made, when they were made, and by whom they were made. In fact, Kroll’s investigation identified several instances in which key decision-makers held conflicting views of what decisions had been made and when such decisions had been made by the Leadership Team, as well as conflicting views regarding the basis for those decisions.

For instance, Vice Chancellor Meyer believed that the decision to remove the tents at 3 p.m. on Friday, November 18, was made on the 10 p.m. Leadership Team call on Thursday night, while Vice Chancellor Wood believed that the decision was not made until Friday morning. Vice Chancellor Meyer believed that the basis for the decision was Chancellor Katehi’s desire to remove the encampment before the “party night” on Friday, while Vice Chancellor Wood believed that 3 p.m. was selected because UCDPD did not have sufficient officers available for an early morning operation.⁵⁵⁷

When decisions were made, they were not sufficiently articulated. As a result, the decisions were not fully understood, or the decisions were understood to mean different things to different people. For example, when the Leadership Team decided that the police operation should not be “like Berkeley,” Chancellor Katehi understood this to mean “no violence,” while Vice Chancellor Meyer understood it to mean no batons and believed that “hands-on” use of force by police was acceptable.⁵⁵⁸ The challenges of achieving a different result than that of Berkeley were never addressed by the Leadership Team nor raised explicitly by Chief Spicuzza. When Chief Spicuzza, apparently applying her own interpretation of the decision of

557 Transcribed interview of John Meyer, January 20, 2012, page 9, lines 14-21; page 37, lines 1-2. [Exhibit 40]
Transcribed interview of Fred Wood, December 8, 2011, page 16, lines 20-21; page 15, line 23 through page 16, line 5. [Exhibit 69]

558 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 16, lines 14-21. [Exhibit 2]

the Leadership Team, directed her officers that batons, helmets and pepper spray were not to be utilized, she was flatly rejected. She opted not to follow up with a direct order to her subordinates to comply (an option within her power as Chief of Police).

Chief Spicuzza also opted not to inform the Leadership Team of this rejection. When the decision to remove tents in the afternoon was made, Chief Spicuzza failed to inform the Leadership Team that her Lieutenants believed that the removal of the tents at 3 p.m. was a “bad idea,” would be met with “resistance or agitation” on the part of the activists, and that her officers had aggressively resisted her requests that they not wear helmets and carry batons and informed her that they would be carrying chemical agents including pepper spray and pepper ball guns.⁵⁵⁹

Since Chief Spicuzza declined to speak with Kroll investigators, it is difficult to determine the extent to which certain communication failures resulted from deficiencies in Chief Spicuzza’s professional conduct as opposed to the manner in which the Leadership Team conducted its business and the conduct of its other members.

It is clear, however, that the decision to remove the tents on Friday afternoon was challenged in several different ways in the hours before the operation was commenced, and that none of these challenges succeeded in altering the Leadership Team’s decision to remove the tents. At approximately 1 p.m. on Friday, Lieutenants Pike and Swartwood questioned the legal basis for the operation with campus counsel. Also around this time, Chief Spicuzza informed the Leadership Team that her Lieutenants thought the timing presented tactical problems, but it then appears that Chief Spicuzza allowed her statement to be disregarded.⁵⁶⁰ At approximately 2 p.m., Assistant Vice Chancellor Castro informed her boss, Vice Chancellor Wood, that there was significant activity on the Quad and that she thought it was a good idea to suspend the operation, but her suggestion was not acted upon.⁵⁶¹

There was a significant gap between the instructions that Chancellor Katehi believed the Leadership Team had provided to campus police (“no violence”) and the police operation that was planned, mounted and finally carried out by the campus police under her authority. In the 24 hours before the police operation commenced, both Student Affairs staffers and campus

559 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2012, page 7, lines 5-7. [Exhibit 95]

560 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 4, line 25 through page 5, line 1. [Exhibit 148]

561 Transcribed interview of Griselda Castro, December 8, 2011, page 49, line 23 through 25; page 50, line 1 and 2. [Exhibit 5]

police provided warnings to members of the Leadership Team that a confrontation might occur between activists and police on the Quad. These warnings do not appear to have impacted the decision-making of the Leadership Team, however, and the gap in understanding of core issues by members of the Leadership Team was not successfully expressed or exposed on the conference calls until after the police operation had gone awry.

The following table identifies the actual vs. optimal decision-making practices of the Leadership Team:

Actual	Optimal
The composition of the Leadership Team changed by the call/email	Clear statement of who is on the team and process to update non-attendees
The purposes of the calls were not clearly stated, most often for situational updates, sometimes for decisions	Clear scheduling of calls, agenda, leader on the call, purpose of the call
No clear communication of final decisions	Summary at end of call/meeting; post-meeting email
No documentation kept of the decision, the alternatives, the basis for the final decision	Some form of minutes; in critical situations the appointment of a scribe

7.2 The Legal Basis for Removing the Tents

In a democratic society, police are controlled by the law. It is the law, primarily Constitutional and criminal law, which gives police the authority and power to take action. Here, there is a fundamental question as to which law gave police the authority to take down the tents and arrest those who opposed them. Without the legal authority to demand that the tents be removed, the police lose the legal authority for much of what subsequently transpired on November 18, including the issuance of an order to disperse and the declaration of an unlawful assembly.

The question of legal authority to take police action is a thread that runs throughout the discussions, interviews, reports and emails that relate to this event. Indeed, even before the Occupy movement came to UC Davis, the question of police authority to prevent an encampment – the tents – was raised.

Vice Chancellor Meyer raised the question in a Leadership Team email on October 25 wherein he discussed two possible protest scenarios, including camping on the Quad:

“Camping is not allowed on the quad, however removal of occupants may create a scene with Police removing individuals and property that could be troublesome. We do worry that if camping persists it could attract individuals that have no affiliation with the campus which raises other security issues. We are assessing our legal options and are not inclined to allow tents or structures.”⁵⁶²

In subsequent emails, the question of whether tents would be allowed was discussed further, and references to a university policy against camping on campus were made, but no clear answer as to what criminal statute erecting tents on the campus ran afoul of was ever stated. Chief Spicuzza raised the questions again in an email on November 2 to her boss Vice Chancellor Meyer.⁵⁶³ This email from the Chief sparked an exchange of emails between Vice Chancellors Meyer and Wood about tents and the issue of camping on university grounds, and a single-page-form summarizing the administrative policy was attached to some of the email traffic.⁵⁶⁴ The Chief of Police closed out this apparent thread of conversation with her November 7 email to the Leadership Team and members of her staff (including Pike and Swartwood) in which she stated:

“No setting up of tents or ‘camping’ will be allowed on campus. The act of ‘camping’ was discussed and it will include sleeping on campus without a tent. We have had a report of a hammock being hung between trees near Mrak.”⁵⁶⁵

The Chief cited no legal authority for this position.

562 Email from Meyer to Katehi, Hexter, Wood, Spicuzza, Carmichael, Barbera, Benson, Swartwood, Castro, Loessberg-Zahl, Raycraft, Carter-Dubois, Dickinson, Engelbach, Parker, October 25, 2011 at 12:09 p.m. [Exhibit 38]

563 Email from Meyer to Wood, November 2, 2011 at 12:13 p.m. and email from Wood to Meyer, November 2, 2011 at 12:21 p.m. [Exhibit 49]

564 Use of University Properties, University of California, Davis. This pamphlet was compiled from information from the following source: <http://manuals.ucdavis.edu/ppm/270/270-20.pdf> [Exhibit 50]

565 Email from Spicuzza to Wood, Drown, Sweeney, Engelbach, Meyer, Swartwood, Carmichael, Pike, Yahnke, Parker, Myler, Crossley, Ealy, Hull, Green, November 7, 2011 at 6:58 p.m. [Exhibit 59]

Despite the lack of clarity of the legal basis to remove the tents, the UCDPD operation plans for both November 15 and November 18 stated that camping was not allowed on campus and that tents would not be permitted and would be removed.⁵⁶⁶

The legal discussion continued until the moment at which the police operation on November 18 commenced. A few hours before the operation commenced, Chief Spicuzza, Lieutenant Pike and Lieutenant Swartwood sought legal advice “regarding the laws that apply to camping on the UC Davis campus” from Campus Counsel Drown and Senior Campus Counsel Sweeney.⁵⁶⁷ This call was apparently placed because of the Lieutenants’ continued concern over the legal basis for removing the tents, and the police operation was commenced only after this last-minute call.⁵⁶⁸

It is unknown what specific legal advice was given in that call; it has been redacted from Pike’s Supplemental Narrative Report and was not provided to Kroll investigators in correspondence from Campus Counsel.⁵⁶⁹ (Kroll investigators believe that during this same time-frame, Campus Counsel contacted the Yolo County District Attorney’s office. Campus Counsel has declined to advise Kroll what was discussed during this call, citing attorney-client privilege).

There have been various legal statutes offered relative to tent removal. These include:

1. California Penal Code Section 647 (e). The arrestees were charged with violating this section, which provides: “Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: (e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.” The arrests on the UC Davis Quad were made at 3:00 p.m. and it is not clear that the arrestees were, in fact, connected to any of the tents or had in fact “lodged” on University property. This likely

566 November 15, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood, UC Davis Police Department, Operations, November 15, 2011. [Exhibit 55] and November 18, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood and Lieutenant John Pike, UC Davis Police Department, Operations, November 18, 2011. [Exhibit 101]

567 Letter from Sweeney to Berkow, January 13, 2012. [Exhibit 44]

568 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

569 Letter from Sweeney to Berkow, January 13, 2012. [Exhibit 44]

- explains why the Yolo County District Attorney's office opted not to proceed with the prosecutions.⁵⁷⁰
2. Use of University property for overnight camping is prohibited by the UC Davis administrative code (PPM 270-20.II.A.5). While this administrative code was frequently cited by campus police, it appears to be simply a campus administrative rule. Enforcement of such a rule by the police, by way of arrest and criminal process, would seem legally suspect, as opposed to enforcement by way of campus administrative procedures.
 3. California Code of Regulations, Title 5, Section 100005, which forbids *non-affiliates* from camping on university property. This regulation has been cited in a letter by Campus Counsel to Kroll.⁵⁷¹ In the letter, Campus Counsel asserts that if non-affiliates refuse to comply (e.g., vacate the tent) they are guilty of a misdemeanor. The problem remains that none of the arrestees was tied to any specific tent, and of the ten persons arrested, eight were current UC Davis students.

It is clear that the UCDDPD leadership was concerned about its legal authority to remove the tents, at least during the daytime. It is equally clear that the UC Davis Administration was adamant that it did not want tents on campus and that the tents were considered a threat to health and safety. Just as the Leadership Team ultimately failed to arrive at a policy that appropriately constrained the conduct of campus police, so too did it fail to press for a definitive legal assessment of the scope of its authority to order the removal of the tents.

In the course of its investigation, Kroll has been unable to identify the legal basis for the decision of the Leadership Team to act against the protesters and for the operation mounted by the UCDDPD. It appears that the UCDDPD mounted its operation absent the clarity of legal authority under pressure from the Administration to do *something* to get rid of the tents. The interviews conducted by Kroll indicate that Chief Spicuzza failed to challenge or question this administrative policy directive at crucial decision points. Indeed, according to Pike's Supplemental Narrative Report, it was Lieutenants Pike and Swartwood who demanded the last-minute call to Campus Counsel to obtain legal guidance.

⁵⁷⁰ "Occupy UC Davis Protesters won't be Charged," CBS Local, January 20, 2012. Also note Clark vs. Community for Creative Non-Violence, (1984) 468 U.S. 288 relative to tents/sleeping in public spaces as forms of protest.

⁵⁷¹ Letter from Sweeney to Berkow, January 13, 2012. [Exhibit 44]

It appears that the Leadership Team did not consider the use of the campus administrative rules and regulations with regard to student protesters, or consider the need to calibrate precisely the use of misdemeanor authority against those few protesters who happened to be non-affiliates.

The campus culture of UC Davis, as described in the interviews and background discussions, is keen on fostering diverse viewpoints, open debate and discussion on controversial issues. The culture favors a “light” touch of policing. Thus, it is striking that the Leadership Team did not seriously consider the use of Student Affairs and other administrative policies and options in dealing with a public protest in a public space.

One possible explanation for the Leadership Team’s failure to consider employing administrative rules and discipline in response to the encampment lies in the perceived presence of non-affiliates among the Occupy activists. The decision to remove the tents—indeed, the administration’s visceral aversion for the tents—appears to stem from the belief that *tents equal non-affiliates*; that the presence of tents and overnight “camping” was partially or mostly being carried out by non-students and would only serve to attract additional non-students.

The idea of non-students being on the campus in tents led the Leadership Team to fears of criminal activity in general and potential sexual assault specifically.⁵⁷² Leaving aside the question of whether this is a valid view of non-affiliates and the threat they pose, there is first the factual question of the extent to which non-affiliates were involved in the encampment. Leading up to the eviction, Chancellor Katehi and Vice Chancellor Meyer were not swayed by the reports from Student Affairs staff that the Occupy activists were overwhelmingly comprised of students;⁵⁷³ even after nine of the ten individuals arrested on November 18 were found to be students (or recent alumni), the perception that there was a significant presence of non-affiliates persisted.⁵⁷⁴

572 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 18, lines 6-17 [Exhibit 1] and transcribed interview of John Meyer, December 7, 2011, Volume I, page 26, lines 4-15. [Exhibit 2]

573 Transcribed interview of Griselda Castro, December 8, 2011, page 32, line 24 through page 34, line 4. [Exhibit 5]

574 Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 17, lines 15-17 [Exhibit 1] and Transcribed interview of Anne Myler, January 19, 2012, page 33, lines 16-17. [Exhibit 41]

7.3 The Decision to Remove the Tents in the Afternoon

The decision to remove the tents during the afternoon was made despite questions being raised regarding the legal basis for such an operation and assertions of the tactical challenges that such an operation would pose. As the events played out, the timing of the police operation was a key factor in the growth of the crowd which resulted in the encirclement of the police and the decision to use pepper spray.

Therefore, Kroll has closely examined the communications that contributed to this decision.

From the moment the tents went up – at approximately 3:00 p.m. on Thursday, November 17 – the Leadership Team began planning to take them down.⁵⁷⁵ While there are no records that clearly depict what was planned or approved, Kroll investigators were able to re-assemble some of the discussion/decision-making process from interviews and email records.

According to Leadership Team members, there were three “Leadership Team” calls scheduled for November 17: at 8:30 a.m., 1:00 p.m. and 10:00 p.m.⁵⁷⁶ The tents went up in between the calls and prompted a series of calls between sub-groups of the Leadership Team. These calls played a key role in the decision-making process at 10:00 p.m. On one of these sub-group calls, held at approximately 6 p.m., Chief Spicuzza informed Vice Chancellor Meyer that she did not have enough officers for an early morning operation on Friday, and proposed pushing the operation back 24 hours to 3:00 a.m. on Saturday.⁵⁷⁷

On a subsequent Leadership Team call, the Chief informed the group that she wanted to mount the operation at 3:00 a.m. on Friday, November 18, but that she was unable to get the necessary police assistance from the other UC campuses, and proposed that the operation be pushed back 24 hours.⁵⁷⁸ This suggestion, according to the interviews of various members of the Leadership Team on the call, was resisted by the Chancellor, who stated that she was

575 Email from Spicuzza to Galindo, November 17, 2011 at 4:06 p.m. [Exhibit 86]

576 Transcribed interview of Ralph Hexter, December 8, 2011, page 18, lines 3-15. [Exhibit 3]

577 Transcribed interview of John Meyer, January 20, 2012, page 8, line 4 through page 9, line 14. [Exhibit 40]

578 Several of the sources interviewed by Kroll were not sure of the exact time when statements were made; in the case of determining when the 3 p.m. time for the operation was decided upon, Kroll has identified the 10 p.m. Leadership Team call as the most likely time, since no other Leadership Team was scheduled for Thursday evening. Transcribed interview of John Meyer, January 20, 2012, page 8, line 4 through page 9, line 14. [Exhibit 40]

concerned about the tents being up on a “party night,” and instead suggested that the operation be moved to 3 p.m. on Friday afternoon.⁵⁷⁹

While in her interview the Chancellor repeatedly stressed that decision-making was done by “consensus” on the Leadership Team conference calls, it is clear from the interviews that two things occurred on this call: *first*, the Chancellor suggested the afternoon operation and stressed that she wanted the tents down before Friday evening; *second*, that the Chief of Police did not succeed in communicating to the Leadership Team the gravity of the potential problems associated with conducting the operation in the afternoon.⁵⁸⁰

According to Chancellor Katehi, the Leadership Team would have “paused really seriously” if Chief Spicuzza had objected to the timing of the operation and that she (the Chancellor) did not make “tactical” decisions.⁵⁸¹ While there is no direct evidence of the statements made during this conference call other than the varied recollections of the parties to the call, it appears that *if* Chief Spicuzza did raise an objection, the gravity of that objection was not understood by the other parties on the call. At the same time and on the same call, while the Chancellor viewed herself as chairing a consensus-driven discussion, her subordinates instead heard her issue an executive order. By insisting that the tents not be allowed to stay up on Friday night, Chancellor Katehi did in fact make a tactical decision: that the tents would be removed during the day.

The timing of any police operation is a key tactical consideration and Chief Spicuzza should have affirmatively resisted this direction—that is, assuming she did not agree with it. Chief Spicuzza’s position is unclear: she clearly considered 3:00 a.m. on Friday morning as a first choice and 3:00 a.m. on Saturday morning as a second choice. Kroll has not determined whether Chief Spicuzza viewed 3:00 p.m. as simply the third choice or whether she strongly objected to this timing on tactical/operational grounds.

Chief Spicuzza did receive a clear objection to a daytime operation from her subordinates. According to Dispatch Supervisor Garcia-Hernandez, Lieutenants Pike and Swartwood began registering their objections to the timing of the operation with the Chief on Thursday evening,

579 Transcribed interview of John Meyer, January 20, 2012, page 9, lines 14-21; [Exhibit 40] Transcribed interview of Chancellor Linda Katehi, December 20, 2011, page 23, lines 1-9; [Exhibit 1] Untitled Microsoft Word document attached to an email from Spicuzza to ascy88@sbcglobal.net, November 20, 2011 at 7:12 p.m. [Exhibit 92]

580 Transcribed interview of John Meyer, December 7, 2011, Volume II, page 10, lines 12-18. [Exhibit 2] Chief Spicuzza declined to be interviewed by Kroll.

581 Transcribed interview with Chancellor Linda Katehi, December 20, 2011, page 58, line 17. [Exhibit 1]

ahead of the 10:00 p.m. Leadership Team conference call, and continued to register their objections through the commencement of the operation on Friday afternoon.⁵⁸²

The only account of Chief Spicuzza communicating the objections from her officers to the Leadership Team comes from Garcia-Hernandez, who was in the room with Spicuzza during the Leadership Team call on Friday at approximately 1 p.m. Even during this eleventh-hour call, while the UCDPD appears to have had strong objections to beginning the operation at 3:00 p.m. on Friday, it appears that these objections were not clearly expressed to the rest of the Leadership Team. At the same time that the police department was failing to clearly communicate its opposition, the Chancellor was clearly communicating her desire that the tents be removed by Friday night.⁵⁸³ An hour later, when Assistant Vice Chancellor Castro expressed her concerns to Vice Chancellor Wood about the number of people on the Quad, again the gravity of this message was lost.⁵⁸⁴

These communication breakdowns resulted in the launching of the operation to clear the tents in the afternoon, when there were numerous students, staff and faculty in and around the Quad. This fact resulted in the large crowd that assembled as the police operation progressed. It is relevant to note that in November 2011, there were multiple police operations in different jurisdictions, including universities and cities, where “Occupy” tents were removed and occupations displaced. The vast majority of these operations occurred during darkness, in the early morning hours, and several were accomplished with little or no use of force by police.⁵⁸⁵

7.4 The Use of Force and Decision to Use Pepper Spray

The video that went viral and sparked the international concern about this event was the pepper spraying of the seated line of protesters by Lieutenant Pike and then of a smaller portion of them by Officer Lee acting at Lieutenant Pike’s direction. This leads to the obvious question: Why did Lieutenant Pike deploy pepper spray?

582 Transcribed interview of Leticia Garcia-Hernandez, January 20, 2011, page 4, line 18 through page 5, line 15. [Exhibit 95]

583 Transcribed interview of Leticia Garcia-Hernandez, February 1, 2012, page 4, line 25 through page 5, line 1. [Exhibit 148]

584 Transcribed interview of Griselda Castro, December 8, 2011, page 49, line 23 through 25; page 50, line 1 and 2. [Exhibit 5]

585 “14 arrested Occupy UCLA members to referred to first amendment rights program,” *Daily Bruin*, January 6, 2012 [Exhibit 28] and “Police clear Sproul Plaza encampment in quiet raid,” *The San Francisco Chronicle*, November 18, 2011. [Exhibit 25]

The interviews with involved officers, a review of the videos of the incident, and the Supplemental Narrative Reports written by UCDPD officers provide their basis for the action: the police generally, and Lieutenant Pike specifically, believed that they and their prisoners were surrounded by a hostile “mob,” and that the pepper spraying was necessary to clear the pathway so that the officers and their prisoners could leave the Quad safely.⁵⁸⁶ While a detailed review of the event provides some support for their position, the facts finally undermine the conclusion that the officers were trapped by the crowd of protesters.

The apparent reason for the police remaining on the Quad after the tents were removed was the lack of transport for their prisoners. In the movement to deconstruct the tents, the police took several activists into custody. About eleven minutes after the police began making arrests, three prisoners were initially transported from the Quad in a single police car⁵⁸⁷ and the rest of the prisoners were moved to an area on the walkway and the police positioned themselves around the prisoners. At least one of the arrestees stated that he would not walk and was going to remain “limp,” thereby requiring that he be carried or moved in some other fashion.⁵⁸⁸

A key flaw of the police operations plan prepared by Lieutenants Swartwood and Pike⁵⁸⁹ is that the plan failed to address prisoner transport. The operations plan stated that a jail bus from the County would be used at the UCDPD headquarters, but was silent with regards to transporting arrestees from the Quad, as well as dealing with non-compliant arrestees and transporting them from the Quad.⁵⁹⁰ As a result, the officers stood idle on the Quad, on Centennial Walkway, encircling a small number of prisoners. The lack of timely decision-making by Lieutenants Pike and Swartwood to respond to this unplanned situation exacerbated an already volatile and escalating situation.

As the officers stood with the prisoners, a member of the crowd, using the “mic check” method of communicating favored by the activists, led the crowd in a chant that they will “march peacefully – as one – to where they are being held.”⁵⁹¹ The crowd responded by

586 Supplemental Narrative Report, by John Pike, December 13, 2011 [Exhibit 54] and Appendix B.

587 Three prisoners were transported from the Quad by Officer Terry at 3:46 p.m.

588 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

589 The typed operation plan lists both their names as preparing it and Pike in his summary report relates that they both prepared it. But there is no signature block on the report form and no markings to support the typed notation.

590 The jail bus was never, in fact, deployed. November 18, 2011 Protest, Operations Plan, prepared by Lieutenant Barry Swartwood and Lieutenant John Pike, UC Davis Police Department, Operations, November 18, 2011. [Exhibit 101]

591 <http://www.youtube.com/watch?v=DjXk9wYWIE8> at 5:30. [Exhibit 127]

standing up and walking, often with linked arms, in the direction of the officers and the prisoners.⁵⁹² The result of the chant and the crowd movement was that the crowd pivoted around and ultimately did, in part, encircle the police officers and their prisoners. The circle, as seen in various videos and photos, was by no means a solid line or uniform; the circle appeared to have some gaps and was largely comprised of one person seated with one or more members of the crowd standing between them. This crowd and their chants were what the officers cited as posing a threat to them and the security of their prisoners. Lieutenant Pike then used the pepper spray in order to clear a path on the walkway.



In their reports and in some of their statements, the officers describe their *subjective* belief that the crowd was hostile, that they were surrounded, and that they were in risk of losing their prisoners. The following facts are not consistent with that expressed sentiment:

1. On two occasions, Sergeant Beermann was able to walk prisoners out of the crowd, once by himself and once accompanied by a second officer.⁵⁹³ While Sergeant Beermann noted in his interview his concern about the crowd and his sense that the crowd had grown “denser” when he led the second prisoner out,

592 Video footage taken by Ben McNulty of UCDPD, starting at 34:00. [Exhibit 112]

593 <http://www.youtube.com/watch?v=CD97TZ2fdYg&feature=related> starting at 2:05 and 6:15. [Exhibit 131]

video footage shows him simply leading the arrestee out of the crowd without any other use of force or apparent opposition.⁵⁹⁴

2. Lieutenant Swartwood was able to step over the line of seated protesters and walk through the crowd to meet the newly arrived DPD officers, and then lead them back through the crowd to link up at the line of seated protesters.⁵⁹⁵ Again, it appears that neither Swartwood nor the DPD officers used any force to accomplish these movements through the crowd.
3. Lieutenant Pike's actions and body language are clearly depicted on the videos/photos. He appears calm and collected in his movements and actions. He is seen repeatedly warning the protestors and talking to various officers inside the circle. Then, before applying the pepper spray, Lieutenant Pike may be seen stepping over the seated protesters to get to their faces (the protesters, after being warned, had turned their backs to Pike), a move that a police officer would generally not perform with a hostile crowd as the 'stepping over' movement leaves the officer vulnerable to attack.

One contemporaneous fact supports the officers' stated concerns—Lieutenant Swartwood's radio request at 3:47 p.m. to speed up the response of the DPD to the scene.⁵⁹⁶ DPD was not part of the briefing and they were not on scene at the start of this police operation, but at 3:38, only minutes after police had begun making arrests, they were requested to respond.⁵⁹⁷ After this original request, and after the crowd had encircled the officers, Lieutenant Swartwood told the police dispatcher "we need Davis officers now" and the dispatcher acknowledged his request, saying "copy, requesting Davis officers expedite."⁵⁹⁸ This is just short of a "help" call—an officer outright stating his need for immediate assistance. The language and the tone used by Swartwood suggest that he was calling in connection with a non-routine situation, if not making an outright call for help.

With respect to the pepper spray, the weapon used was a MK-9, First Defense Aerosol Projector.⁵⁹⁹ This item is different than the MK-4 product that is generally carried by

594 <http://www.youtube.com/watch?v=zZHimnbvqOU&feature=related> at 1:30. [Exhibit 137]

595 <http://www.youtube.com/watch?v=K8Uj1cV97XQ> at 3:35. [Exhibit 136]

596 UCDPD Call Number 11-063695. [Exhibit 124]

597 UCDPD Call Number 11-063695. [Exhibit 124]

598 UCDPD Call Number 11-063695. [Exhibit 124]

599 Defense Technology, Product Specifications, MK-9 Aerosol Projector. [Exhibit 119]

individual officers. It has a higher pressure, is nitrogen driven, and is intended for crowd dispersal rather than field applications. The recommended *minimum* distance for the application of the MK-9 is six feet, versus three feet for the more commonly personally carried MK-4 Aerosol Projector.⁶⁰⁰

The UCDPD, as part of the UC policing system, are obligated to follow what is commonly called the “Gold Book.”⁶⁰¹ The Gold Book merely states that the UC police departments shall follow the law (Chapter 2, Statutory Authority, Section 201.1 thru 201.3) and delegates to the chief of each individual department the authority to create a policy regarding the use of force (Chapter 8, Section 801). Accordingly, the UCDPD has developed its own policies that guide their use of force. In fact, UCDPD has two policies that overlap in the area of setting standards around police use of force. Policy No. 559 sets out what are authorized weapons, and when and how force can be used. Policy No. 111 is the use of force policy. The following points in these two policies are critical:

1. No. 559 does not mention or authorize the use of the MK-9. It does authorize pepper spray, specifically the MK-4, but it contains no discussion of the MK-9. Kroll found no indication that any member of the UC Davis Police Department has ever been trained on the MK-9.
2. No. 111 was published in 2004 and basically restates the legal guidance provided by the U.S. Supreme Court in *Graham v. Connor*. It does not discuss the use of pepper spray.
3. Pepper spray has been carefully tested⁶⁰² and is broadly used in American policing: over 99% of American police forces have indicated in a recent survey that their officers carry pepper spray.⁶⁰³

A key issue in evaluating whether the use of pepper spray was appropriate is the determination of what type of resistance the protesters seated on the ground with linked arms were presenting: was it *passive* resistance or *active* resistance? The UCDPD use of force policies do not provide any guidance. In contrast, for example, the UCLA Police Department’s

600 Defense Technology, Product Specifications, MK-4 Aerosols Projector. [Exhibit 119]

601 The University of California, University-wide Police Policies and Administrative Procedures is referred to as the “Gold Book”

602 Granfield, Onmen & Petty, 1994; Petty, 2004.

603 “A Multi-Method Evaluation of Police Use of Force Outcomes: Final Report to the National Institute of Justice” Michael R. Smith, et al., July 2010.

use of force policy (General Order 11-06) specifically defines the linking of arms by protesters as *active* resistance (Section 6.2.3 Definitions, Actively Resisting). The California Commission on Police Officers Standards and Training (POST) also defines the linking of arms as *active* resistance (2102 DRAFT, POST Guidelines, Crowd Management, Intervention and Control, Appendix A, Terms and Definitions, Active Resistance).

Most police departments across the United States use a training device commonly referred to as a “use of force continuum” as a means of training their officers on when and what type of force to use.⁶⁰⁴ Most of these continuums—there is no standard national continuum—allow the use of pepper spray when confronted with “active resistance.”⁶⁰⁵ Thus, the use of pepper spray against seated protesters linking arms may be technically permissible as a general matter.

While the interviews with the witness officers describe the crowd predominately as “hostile” or mob-like [See Appendix B], and a few instances of adversarial chants were identified (e.g. “from Davis to Greece, fuck the police”), the videos show a different reality. They show Sergeant Beermann leaving the encircled group twice, each time with a prisoner. In neither case does Beermann use any force or encounter any resistance. The videos depict Lieutenant Swartwood moving through the crowd—immediately behind the seated activists that are within minutes of being pepper sprayed—without using force and without being confronted by any violent reaction, and then returning with the four Davis PD officers and their supervisors who, again, part the crowd without using force. In none of the hours of video reviewed by Kroll is a single violent act on the part of the activists captured.⁶⁰⁶

Approximately twenty minutes after the pepper spray, when tents were erected on the Quad for a second time, Lieutenant Pike and one other officer returned to the Quad without riot equipment and without support from other officers. Simply by talking to the activists, the officers were able to get the activists to take the tents down.⁶⁰⁷ No perception of threats was reported.⁶⁰⁸

604 <http://www.nij.gov/nij/journals/267/use-of-force-what-is.htm> and <http://www.nij.gov/journals/267/use-of-force.htm>

605 “A Multi-Method Evaluation of Police Use of Force Outcomes: Final Report to the National Institute of Justice” Michael R. Smith, et al., July 2010.

606 <http://www.youtube.com/watch?v=n3A0d9fHWag&feature=related> starting at 11:40. [Exhibit 116]

607 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]

608 Supplemental Narrative Report, by John Pike, December 13, 2011. [Exhibit 54]



One witness (whose son was a UCDPD officer involved in the operation) reported taking a rock from a protester,⁶⁰⁹ and a few officers stated they saw rocks in the hands of protesters.⁶¹⁰ There are no reports of anything being thrown.

On balance, there does not seem to be an objective, factual basis for Lieutenant Pike to have believed that he was trapped or that his officers were prevented from leaving by the seated protesters. Furthermore, there is no objective evidence available to Kroll that depicts any attempt by the protesters to use violence.

Considering all the available evidence—while recognizing that Kroll investigators were not able to interview Lieutenant Pike to learn and report on his state of mind at the moment he used the pepper spray—the deployment of pepper spray does not appear to have been an objectively reasonable use of force. This conclusion is buttressed by the facts that the MK-9 was not an authorized weapon under UCDPD guidelines and that UCDPD officers were not trained in its use.

609 Transcribed interview of Bob Brewer, December 8, 2011. [Exhibit 144]

610 Transcribed interview of Joanne Zekany, January 19, 2012, page 20, lines 1-9; [Exhibit 145] Transcribed interview of Danny Sheffield, January 20, 2012, page 5, lines 1-17. [Exhibit 118]

At the same time, Lieutenant Pike appears to have been the most vocal in questioning the legal basis to mount the operation and in questioning of the timing of the event. He was hampered by repeated failed leadership of Chief Spicuzza, his supervisor, who did not attend the briefing for the operation, did not raise objections to the flawed plans suggested by the administration, and played an unusual, disengaged role at the scene. Throughout the series of events that led to the pepper spraying, the Chief's actions were deficient: she failed to say "no" to the Chancellor when suboptimal tactical decisions were being promoted; when she saw things during the police operation not occurring to her satisfaction, she did *not* step in and assume command. Rather, the Chief chose to call repeatedly the Department Operations Command post and relay instructions.

7.5 **Additional Police-Related Issues**

Other police-specific issues and operational failures impacted this event. Kroll identified the following additional issues:

1. In responding to planned demonstrations, there was a trend to obtain officers from other UC campuses despite the distance, response time and small size of the other UC police departments. In this case, before turning to the Davis Police Department or the local Sheriff's Department, the UCDPD turned to sister UC police agencies, the closest of which was UC Berkeley, almost two hours away. While there are certainly unique aspects to campus policing, there are problems with relying on only the other UC agencies. For example, on some of the days of public order challenges at UC Davis, there were statewide protests that should have reasonably been expected to demand the police at their home campuses.
2. It may be preferable to follow a process that maximizes the use of other campus departments—especially Student Affairs—and relying on administrative sanctions, rather than police and the criminal law, to gain compliance during protests. Such an approach would reserve the UC Davis Police Department for what are truly the most serious incidents, ones where there can be no question of the need for professionally trained and equipped peace officers. Kroll suggests a strategy that minimizes the use of the police in the student protest context and reserves them for major conflicts and real threats to the campus community.

3. Even with the desire to rely on other UC police departments, it is clear that each UC campus police agency is operating independently: they do not have common policies, training, tools or tactics. This was clear in this event, where the UC Davis Police Department (UCDPD) officers were not carrying riot batons but other UC officers at the same event, carrying out the same mission, were. This is especially problematic when it comes to use of force. Each agency has a different policy and different tools. This is a result of the basic operating structure of UC campus police departments whereby the Chancellor of each university campus has a unique police department answerable to him/her. In short: each Chancellor has his/her own chief, own rules, and own policies.
4. The UC System mandates a “Coordinator” of the Council of Police Chiefs, but this person has no direct line authority over the other chiefs; rather, this is simply one of the chiefs who coordinates their discussions about policing issues. It is similar to the role of a president of a municipal police chiefs association at the county level.
3. UC Davis police do not appear to be following State-mandated rules regarding incident/event planning (Standardized Emergency Management Systems SEMS). There are specific law enforcement rules and regulations about mutual aid and joint response to emergencies.
 - a. The operations plans that were created by the UCDPD do not follow appropriate ICS/SEMS format. They lacked signature blocks for creation, review and approval. Large portions of the operations plans were left blank. There were operational elements described that were not executed (e.g., the jail bus).
 - b. The plan failed to account for prisoner transport from the scene of the event/operation to the site of prisoner processing.
 - c. The Department Operations Center (which is referred to in the plan) was not set up in an appropriate fashion.
 - d. The failure to pre-brief the Davis Police Department, the closest quick reaction force in the event of a problem, was a significant oversight.

- e. The roles of the supervisors were either unclear or inappropriate. For example, Lieutenant Pike was not given a role in the Operations Plan for November 18. Moreover, the assignment of the two lieutenants to the actual dismantling of the tents by the Chief of Police was an inappropriate role for supervisors, especially for the Incident Commander.
4. The actions of the Chief of Police caused confusion during this operation. She was not present at the pre-event briefing and is not listed in any form on the operations plan. Her role in the field, where she was present on the Quad but not with the police, and was calling in directions via the command post, was problematic and added to the confusion already present in the operation. Indeed, at least one officer stated in his interview that during the most turbulent minutes of this operation, he observed the chief standing opposite him in the crowd filming the police actions with her cell phone.⁶¹¹
5. The actual crowd control formations used by the UC Davis Police did not comport with contemporary policing practices. The initial movement onto the Quad, the inverse wedge that ultimately became a skirmish line with a left flank, was unorthodox at best. The fact that a supervisor was removing arrestees from the circle without communicating with the incident commander was problematic. While Sergeant Beermann was successful, it is possible that had he alerted the incident commander to his successful removal of prisoners, Lieutenants Swartwood and Pike may have opted to take a different tactical approach to the situation.

611 Transcribed interview of Officer Robert Sotelo, January 19, 2012, page 18, line 25 through page 19, line 3.

8

8 RECOMMENDATIONS

Kroll has identified recommendations for both the UC Davis Administration and for policing at the University of California system-wide. On the civilian side, improved institutional decision-making processes and culture are critical. On the law enforcement side, systemic policing improvement are also called for.

8.1 UC Davis Leadership Team

The creation of the Leadership Team, an inter-disciplinary team to address developing campus issues and potential crises, was an excellent idea, but the Leadership Team must include a clearly defined structure and set of operating rules. While the UC Davis Administrative Code makes clear that the Chancellor “is the person ultimately responsible for all functions of the campus community,”⁶¹² the Chancellor told Kroll investigators that she favors a participatory style of leadership involving consensus-building rather than an authoritative style of leadership.

For the Leadership Team, we recommend:

1. A clear statement of membership with a defined chairperson to guide the meetings.
2. Scheduled meeting times that are communicated to all members and, when communicated, identify whether meetings are mandatory or can be attended by a substitute if necessary.
3. Decisions that are clearly summarized at the conclusion of the call/meeting, and that the various decision-makers are given the opportunity to state their positions.

612 “The Gold Book,” Universitywide Police Policies and Administrative Procedures, page 61.

4. A simple “listserv” be created to insure that each member of the team receives all team-wide communications.
5. Training in the incident command system, as well as the California Standardized Emergency Management concepts and guiding principles, should be provided to the members of the Leadership Team. The training needs to be tailored to the type of situations the Leadership Team is likely to encounter, in other words, especially including public protest.
6. A review of available legal options, including the difference between “administrative violations” and “criminal violations.” Put another way, the Leadership Team should re-think how best to use their various ‘tools,’ including Student Affairs or the Police Department, in addressing problems, with input and direction from Counsel.
7. Recognizing that the University is a unique environment with a special culture, the University of California should provide clear policy guidance as to what is acceptable protest behavior and what is not. At what point does protesters’ behavior become serious enough to warrant police response and the application of the criminal law, instead of administrative sanctions and referral to internal campus enforcement mechanisms?

8.2 System-wide Policing at the University of California

Kroll recommends that changes in policing at the University of California be instituted system-wide, and not merely on the UC Davis campus.

Kroll recommends that the University of California immediately begin the transition from ten separate university police departments operating pursuant to their various administrative leaders to a unified, standardized police force that is uniformly deployed at different locations around the state. A similar such institution is the California Department of Corrections, a statewide sworn law enforcement agency that has one set of core policies (e.g. one use of force policy, one training curriculum for crowd management, etc.), while allowing the local administrator in charge (the warden) flexibility to address unique local realities differently. (Another example is the United States Park Police; while the majority of their operations are in the Washington, D.C. metropolitan area, they are also responsible for national parks in

New York City and San Francisco. They provide some flexibility to their local police leadership working with the local park management, but their core rules, regulations, policies, training and equipment are standardized across all the locales that they police).

The first step in this direction should be the creation of a Chief Public Safety Administrator (“Chief PSA”) position operating out of the Office of the President of the University of California. This individual should be an experienced law enforcement professional. The Chief PSA should have functional authority over the ten different UC campus police chiefs; at a minimum, he/she must be able to require adherence to certain core equipment standards, training minimums/curriculums, and policies.

As a first step, the new Chief PSA should work with the various police chiefs to create, implement, review and establish standardized “public safety” policies throughout the UC System. All UC police officers, regardless of campus assignment, should be operating under the same core policies and performing their duties using the same training.⁶¹³ The UC policing apparatus should strive to become a leader and a source of expertise in the constitutional policing of public protest.

While the UC campus police chiefs should remain in a direct reporting line to a high-level campus administrator (this administrator should be standardized as well), the Chief PSA should have the authority to audit core functions of the campus police departments at any time. Annual reviews in areas such as use of force, training, critical incidents, internal affairs investigations and discipline-imposed would be appropriate.

In a similar vein, the Chief PSA should develop an annual statewide training plan on critical policing issues/skills for the UC campus police. This training plan will ensure that coordinated inter-campus training is being conducted. The idea of a “north” policing culture that differs from a “south” policing culture should be addressed and eliminated, at least as to core skills, functions and policies, as part of this training plan.

⁶¹³ Without belaboring the point, we believe it is completely unacceptable to have police forces that wear the same badge and work for the same ultimate employer, but use different tools, training and tactics and follow different policies. This is more serious when one looks at the various use of force policies that are employed on different UC campuses, and should be a top priority for repair. The UC reality is compounded in that each campus police department does its own hiring and most of their hires appear to be either self-sponsored at the various academies around the state or hired after initial training and service with a different law enforcement agency. Thus, while their training will have a common basis—the learning domains established by California POST—officers will have attended academies of different lengths, with different training emphasis, with different policing cultures. The UC system should develop training methods to foster one agreed upon set of competencies across the system, with emphasis on the necessary tactics for policing a college campus.

8.3 Additional Recommendations for UC Policing

A detailed review of the UC system's approach to policing should be conducted. This is not the first major incident to go awry on UC campuses in recent years. The expectations of the individual UC campuses and the UC system leadership for their police should be defined and measured against the current capabilities of the UC police force. In short, a gap analysis should be conducted.

The operational tempo of UC police departments is radically different from that of standard municipal police agencies; the normal measures of reported crime, calls for service, and response time remain elements of evaluating the police departments but must be supplemented by the other regular demands placed on these forces—and public protests and public order must be at the top of this list. With increasingly coordinated protests occurring across the state and the UC system, it is highly questionable whether the current system of inter-agency assistance remains viable. This needs further study.

There are a number of very specific policing-centric tasks that need to be addressed; these recommendations certainly apply to the UCDPD but may also apply to other departments in the UC system. These are:

1. Standardized and recurring training should be provided for UCDPD officers involving *21st Century Crowd Management* strategies (20 hours). Additionally, enhanced supervisory and executive level crowd management training should be developed (10 hours). Training must comport with the California POST, 2102 updated, *Crowd Management and Civil Disobedience Guidelines*.
2. Incident Command System (ICS) training should be provided for individual campus Student Activities, Public Information, EH&S, Care and Shelter, Food Services, Financial, Office of Technology, Risk Management, Human Resources and Emergency Management personnel.
3. UC Davis campus emergency personnel must comply with state mandated standards for ICS and SEMS. This is especially true in the area of documentation where the operations plans for virtually of the police events discussed in this report were deficient in key areas (e.g. no signatures, no approval sign-off signature, numerous blank sections of the report, failing to provide for key tactical elements of operations,

- etc.). Put another way, Incident and Event Action plans must be detailed, informative, accurate and have “accountability for review” measures built in.
4. While we understand that some emergency operations discussions have occurred in the past, our understanding is that they involved sub-sets of the various campus entities but were neither comprehensive in their involvement nor realistic in defining their subject matter. Periodic Emergency Operations Center (EOC) exercises must be conducted and evaluated. Exercises must include both sworn and civilian EOC stakeholder personnel and these exercises should comport with both SEMS and the National Incident Management System (NIMS) standards.
 5. Training should be provided to all UC police officers addressing alternative force applications (Passive Arrest Team Tactics) involving arrests of both active- and passive-resistant protesters. Command approval authority should be included regarding use of specialized munitions and OC dispersal methods during crowd control situations.
 6. There needs to be a wholesale review of the UC Davis use of force reporting and investigation protocols. The use force by police against a member of the public is almost inevitably controversial. The policies, training, and investigative procedures must be current, comprehensive and transparent. They must include supervisory review of use of force reports, and the process needs to include command and executive review. Recordation should include threshold triggers to identify employees prone to multiple use of force applications and recommendations for training and/or remediation. These systems are generally termed Early Identification and Intervention systems (EIIIS) and there is an existing United States Department of Justice approved training program to aid in the development of these necessary systems.

Finally, Kroll recommends that the University of California monitor its progress in meeting all of the above-stated objectives, and report its progress to the public on a regular basis.



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February 22, 2012

Office of the President, University of California

Appendices to Report Concerning the Events at UC Davis on
November 18, 2011

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Appendix A

Chief Spicuzza Cell Phone Log on November 18, 2011 from 7:00 a.m. until 5:00 p.m.

Time	Incoming/Outgoing	Telephone Number	Length
8:46 a.m.	Incoming	Mitch Benson	1 minute
9:47 a.m.	Outgoing	UCDPD Emergency Line	1 minute
9:58 a.m.	Outgoing	UCDPD Emergency Line	1 minute
11:12 a.m.	Incoming	Fred Wood Cell Phone	4 minutes
11:42 a.m.	Incoming	Griselda Castro Cell Phone	1 minute
12:25 p.m.	Incoming	Griselda Castro Cell Phone	4 minutes
1:52 p.m.	Incoming	Susanne Rockwell, UC Davis News Service	4 minutes
2:07 p.m.	Outgoing	Steve Drown Cell Phone	2 minutes
2:12 p.m.	Outgoing	Steve Drown Office Phone	3 minutes
2:47 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
2:49 p.m.	Outgoing	UCDPD Conference Room/Command Post	3 minutes
2:53 p.m.	Blocked	Blocked	3 minutes
3:02 p.m.	Outgoing	Fred Wood Cell Phone	6 minutes
3:09 p.m.	Outgoing	UCDPD Conference Room/Command Post	2 minutes
3:11 p.m.	Blocked	Blocked	1 minute

3:14 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
3:17 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
3:18 p.m.	Outgoing	John Meyer Cell Phone	2 minutes
3:20 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
3:22 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
3:28 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
3:37 p.m.	Outgoing	John Meyer Cell Phone	2 minutes
3:41 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
3:53 p.m.	Outgoing	John Meyer Cell Phone	2 minutes
3:57 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
4:01 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute
4:02 p.m.	Outgoing	John Meyer Cell Phone	1 minute
4:04 p.m.	Outgoing	John Meyer Cell Phone	1 minute
4:05 p.m.	Outgoing	John Meyer Cell Phone	1 minute
4:08 p.m.	Incoming	UCDPD Conference Room/Command Post	2 minutes
4:15 p.m.	Blocked	Blocked	1 minute
4:16 p.m.	Outgoing	UCDPD Emergency Line	2 minutes

4:28 p.m.	Incoming	UCDPD Conference Room/Command Post	2 minutes
4:36 p.m.	Outgoing	UCDPD Conference Room/Command Post	1 minute

Appendix B

UCDPD Officers' Understanding of the Mission for the Operation

Officer	Comment
Sergeant Henoach	"What we were going to do was to remove the tents from the Quad." ¹
Officer Brewer	"It's started to escape me at this point. The gist of it was we were going to be getting the ... protestor's tents off the Quad." ² (Brewer was not present for the UCDPD briefing).
Officer Ahmad	"The idea was to move in and, if there were still tents up, to remove the tents, and come back out." ³
Officer Arias	"Eliminate the Quad area of the tents and the occupiers that were there." ⁴
Officer Kwong	"The briefing was to do an in-and-out kind of a process, to get into the quad, get the tents removed and get back out." ⁵
Sergeant Beermann	"We were going to go to the park and request the ... Occupy people to leave. And then we were to stand by and basically be security so that facilities could take the tents down in an orderly manner and package them so that they could be booked as evidence or retained so that they could be returned to the owners of the tents if they can be determined." ⁶

¹ Transcribed interview of Paul Henoach, January 20, 2012.

² Transcribed interview of Justin Brewer, January 19, 2012.

³ Transcribed interview of Moaz Ahmad, January 20, 2012.

⁴ Transcribed interview of Ruben Arias, January 19, 2012.

⁵ Transcribed interview of Vincent Kwong, January 20, 2012.

⁶ Transcribed interview of Bill Beerman, January 20, 2012.

Officer Halley	“Lieutenant Pike said that we were going to go into the quad and remove tents.... The protestors could stay, but we were just there to take the tents out.” ⁷
Officer Barrera	“Our mission was to remove the occupants from the Quad, that set [up] tents, [who] were camping out.” When asked if the discussion was to remove the tents or the occupants or both: “Both.... It was discussed was that we were going to give several ... dispersal orders. We would set up skirmish lines, and that hopefully ... they would depart when we gave out those orders.” ⁸
Officer Guerrero	“The chancellor wanted the tents that were on the quad to be removed and that was going to be our mission.” ⁹ “I don't recall anything specifically said about ... arresting anybody ... just that our mission was to go and remove the tents.... The word was that just our presence was going to be enough and that once ... our presence was there the scuttlebutt among the students was that they were just going to pack up and leave.” ¹⁰
Officer McCulloch	“The mission was to take down the tents of the Occupy campers in the UC Davis Quad. Basically, that briefing detailed how we were going to enter the area, contain the occupiers and push them out to take the tents down.” ¹¹
Officer Zekany	“The plan that was to go to the Quad area on campus and remove some tents that had been set up overnight by protestors, because they were violating university policy.” ¹²
Officer Sotelo	“We were going to advise the protestors of their unlawful assembly and that we were there to take down the tents. Our only course at that time was to take down the tents. We weren't to disperse the

⁷ Transcribed interview of Brian Halley, January 20, 2012.

⁸ Transcribed interview of Jason Barrera, January 19, 2012.

⁹ Transcribed interview of Manuel Guerrero, January 19, 2012.

¹⁰ Transcribed interview of Manuel Guerrero, January 19, 2012.

¹¹ Transcribed interview of Miku McCulloch, January 20, 2012.

¹² Transcribed interview of Joanne Zekany, January 19, 2012.

students. We weren't to limit or prohibit the amount of protesting that was happening. We were just there to take down the tents."¹³

"Officers in attendance were advised that a large group of protestors had erected tents in the center of the campus core in violation of University code. The campers have been notified over the course of approximately 24 hours that their camping was in violation of the law and they needed to remove the tents. The lieutenants advised that the mission of the officers was to enter the campus core and disassemble the campground. We would meet any resistance with an arrest."¹⁴

Sergeant Sheffield	No comments.
Officer Terry	No comments.
Lieutenant Pike	"The objective was the removal of the tents from the quad." ¹⁵
Officer Lee	"At approximately 1530 hours Lt. Pike (#1008) issued an admonishment to the crowd ordering them to disperse. The crowd did not disperse. The crowd refused to leave and I was given the order to arrest any persons who remained." ¹⁶
Lieutenant Swartwood	"Chief Spicuzza gave Lt. Pike and I (Incident Commander) the assignment of removing tents from the quad on 11-18-11, in violation of university policy (Overnight Camping Prohibited, PPM270-20.II.A.5) and Penal Code 602 (M) Entering/Occupying Real Property Without the Permission of the Owner." ¹⁷

¹³ Transcribed interview of Robert Sotelo, January 19, 2012.
¹⁴ Supplemental Narrative Report, Robert Sotelo, November 24, 2011.
¹⁵ Supplemental Narrative Report, John Pike, December 13, 2011.
¹⁶ Supplemental Narrative Report, Alex Lee, November 18, 2011.
¹⁷ Supplemental Narrative Report, Barry Swartwood, November 30, 2011.

UCDPD Officers' State of Mind While Encircled by Crowd

Officer	Comment
Officer Brewer	<p>"It was very frustrating and scary to be put in a situation where you're surrounded by essentially what's becoming, more and more, an angry mob, rather than a group of protestors."¹⁸</p> <p>"With lots of [people] standing around and closing in on us, essentially ... you've got a situation where a crowd can suddenly change in an instant, the way they circled on us in an instant, and ... we've got a brawl."¹⁹</p> <p>"Based on my experience, I would have been very afraid to walk a prisoner through the crowd."²⁰</p>
Officer Ahmad	<p>"I was in fear of our safety, but also we had arrestees, so ... I was thinking 'Okay, they're gonna try to ... overpower us to get their arrestees free.'²¹</p>
Officer Arias	<p>"I started getting scared ... I began to think 'Well, they're gonna try to hurt us, and then take [the arrestees], and go from there.'²²</p> <p>"I noticed the crowd started to get more volatile towards us, and it started encircling us ... then I became worried.... [B]ecause they started chanting things like, 'Let them go!' and 'Shame on you!' ... My biggest fear was this whole crowd was now starting to encircle us, which wasn't a good feeling.... [I]n my mind I['m] ... thinking they're gonna come and try and lynch these guys and get them out of there, you know? So now my job [has] ... become more difficult, because now I am ... in charge of these guys [the arrestees], ... I've got them in my custody.... I'm worried that this going to happen."²³</p>

¹⁸ Transcribed interview of Justin Brewer, January 19, 2012.

¹⁹ Transcribed interview of Justin Brewer, January 19, 2012.

²⁰ Transcribed interview of Justin Brewer, January 19, 2012.

²¹ Transcribed interview of Moaz Ahmad, January 20, 2012.

²² Transcribed interview of Ruben Arias, January 19, 2012.

²³ Transcribed interview of Ruben Arias, January 19, 2012.

After the initial three arrests, the crowd became “not necessarily violent, just more aggressive. Instead of staying back and doing their chanting, they're actually getting closer, as if ... the thought of them lynching this person [the uncooperative arrestee] was, in fact, going to be a reality. I actually started getting scared. ... I began to think, ‘Well, they're gonna try to hurt us, and then take them, and go from there.’ And there's so many, and there's only us here, so I'm gonna do the best I can and just stay my ground and wait.”²⁴

Officer Kwong

“We were stuck in place with no path of safe movement or retreat. I feared that protesters were planning to charge through the inner protection circle to lynch the arrestees or injure officers. If I had to use my baton to push protesters away, I could injure them and officers around me. I did not know what else to do other than to hold my position and provide rear guard protection. I was awaiting further orders. The scene was chaotic. Protestors were mobilizing, yelling and chanting at us.”²⁵

Sergeant Beermann

“Now during that time when I was taking these prisoners out ... I really felt very claustrophobic because, you have the line of officers in confrontation with the demonstrators and all the screaming and yelling and the crowd. And it was frightening because there was really no control. I felt we were surrounded. The only reason I was able to get in and out with prisoners is because I believe my persistence and the fact that I didn't hesitate to go through the crowd. It was either get out of the way or I'm going to mow you down.”²⁶

When going into the crowd to get the second prisoner, “I felt uncomfortable. I felt a little bit scared. I was concerned for, not so much myself, but for the other officers.... I don't know whether

²⁴ Transcribed interview of Ruben Arias, January 19, 2012.

²⁵ Supplemental Narrative Report, Vincent Kwong, November 29, 2011.

²⁶ Transcribed interview of Bill Beerman, January 20, 2012.

that's my training, my own personal confidence, but I felt they were in more danger than I was."²⁷

"It's my experience when someone interlocks their arms, they're no longer passive. They're resistive. And so, you know, at some point that changes your mindset too, because we're no longer dealing with passive resisters. They can say all day long, 'I'm being passive, I'm not being violent.' But they aren't, they ... are resisting, so it really changes my mind as an officer dealing with that."²⁸

Officer Halley

"I was in shock. This was my first time dealing with an incident—this many people. I think I was just kind of wondering what next.... I started thinking if I do use force what kind of force am I going to use because they were five feet away.... I was just in shock—really nervous, wondering what to do, how was I going to do it. I was afraid the officers ... were going to get hurt."²⁹

Officer Barrera

"From my vantage point, they had encircled us. It was about four people deep and getting thicker. Protestors were approximately two feet from me, yelling, chanting."³⁰

"I was concerned that we were going to have to use force to get ourselves out of there. From my vantage point, we were surrounded. The crowd was 200 to 300 plus people in my estimation, it was growing. We had several, several individuals in the crowd that were very upset. Yelling and screaming, yelling profanities. From past experiences ... I was afraid that we were going to have to use some force to, to get ourselves to safety.... I was also concerned that they may also try to assist the prisoners that we had there."³¹

Officer Guerrero

No comments. (Was transporting prisoners, wasn't in the crowd).

²⁷ Transcribed interview of Bill Beerman, January 20, 2012.

²⁸ Transcribed interview of Bill Beerman, January 20, 2012.

²⁹ Transcribed interview of Brian Halley, January 20, 2012.

³⁰ Transcribed interview of Jason Barrera, January 19, 2012.

³¹ Transcribed interview of Jason Barrera, January 19, 2012.

Officer McCulloch

“There's a bunch of yelling and hundreds, hundreds of people start gathering around the entirety of the quad. At some point, I believe the skirmish line tried to pull apart people to get to the tents and break them down.... [A] group of occupiers basically encircled us just because we were so outnumbered.... It seemed like as time went on, more and more people were encircled around us and that's when I started hearing things like, 'Let them go and we'll let you go.' Aside from all the 'f you's' and other things.”³²

“I don't like being ... surrounded.... I started thinking okay, who ... are the troublemakers I'm going to take out first. And looking around and saying ... where are my escape routes.... So I'm looking at what targets I need to take out to kind of keep myself safe because I was expecting something to happen where the crowd would come in on us.... It was just that ... little feeling in my head, you know?... That feeling of ... that guy's gonna come after me.”³³

Officer Zekany

After the pepper spray, “there were some [protesters] that were still blocking our pathway out. They were not ... moving. So when I came upon them, they were still seated, linking arms, and I just had to assist Officer Lee in clearing the pathway. At that point, I did see one or two that were standing in the east area, just east of me, that were having water poured on their face.”³⁴

Officer Sotelo

“Based on the number of protestors and their hostile behavior, I was in fear for the safety of myself and the other officers.”³⁵

“When I describe our job, and I tell people that it's 99 percent boredom and one percent, oh shit terror. I have to describe that that ... three, four minutes after their tents were disassembled and that group surrounded us, I was living that one percent, "Oh shit" terror. Was I in fear for my life? I don't think I was. But I was afraid that the actions of the crowd was going to force me to do the full

³² Transcribed interview of Miku McCulloch, January 20, 2012.

³³ Transcribed interview of Miku McCulloch, January 20, 2012.

³⁴ Transcribed interview of Joanne Zekany, January 19, 2012.

³⁵ Supplemental Narrative Report, Robert Sotello, November 24, 2011.

duties ... that my job describes and entitles me to do. And ... that was not the objective, that wasn't the purpose of ... me being in the campus that day. ... I was scared when I was there. I was scared. I could see that my Trainee was scared.”³⁶

“Now this place is turning into a powder keg, and any spark at any moment could set this crowd off. I am recognizing this. I've seen it happen.”³⁷

Sergeant Henoch

When the officers are surrounded by the protesters, “I'm a little nervous.... I mean, it's not every day you get encircled by anybody. I mean, that's the first time in my career that I've been encircled.”³⁸

Sergeant Sheffield

When the police encircled the detainees, then stopped, “I did wonder what was going on, but I maintained my primary focus on dealing with the people in front of me. It, it didn't serve me anything to turn around and start questioning the people that were making the decisions, because this crowd was growing and it was becoming more volatile.”³⁹

Officer Terry

No comments. (Assigned to patrol, then to the transport of the first three arrestees; was on the Quad only briefly.)

Lieutenant Pike

“The mob encircled the officers on the Quad. Four to five people deep surrounded us in some areas of the circle. Several hostile chants, were heard coming from the crowd. Some of the chants that stood out the most for me were, ‘From Davis to Greece, Fuck the Police’, ‘Cops off Campus’, and ‘If you let them go, we will let you go’. Within moments, the crowd and mob mentality of the moment became even more belligerent and worrisome.”⁴⁰

Lieutenant Swartwood

“The sitting protesters rose to a standing positions [sic], with arms linked, they went around us to the south side, encircling us. They

³⁶ Transcribed interview of Robert Sotelo, January 19, 2012.

³⁷ Transcribed interview of Robert Sotelo, January 19, 2012.

³⁸ Transcribed interview of Paul Henoch, January 20, 2012.

³⁹ Transcribed interview of Danny Sheffield, January 2012.

⁴⁰ Supplemental Narrative Report, John Pike, December 13, 2011.

began to yell: "Let them go, we will let you leave". At this point, I was concerned that they would attempt to take our prisoners back and I was also concerned for the officers' safety."⁴¹

⁴¹ Supplemental Narrative Report, Barry Swartwood, November 30, 2011.

Accounts of Violent Acts or Threats of Violence from Crowd by UCDPD Officers

Officer	Comment
Officer Brewer	During the initial arrests, “I remember seeing Ray Sutera and one or two other people hands-on with [activists] and those people resisting, arms flailing, that sort of thing.” ⁴²
Officer Ahmad	<p>Saw one prisoner “struggle with” Detective Zekany “a little bit, and tr[y] to pull away from her and ... she had to take him to the ground because [he] was resisting. And I remember just giving people command to stay back ... while she was dealing with him.”⁴³</p> <p>Recalls “somebody saying that there is [sic] a couple people with rocks on the north side, but on my south side ... I never saw anybody with rocks, [and] no one made any attempt to throw anything at us ... or I would have started engaging people.”⁴⁴</p>
Officer Arias	Saw “officers at the skirmish line ... dealing with an uncooperative subject. Now this person is kicking and flailing, and so they’re trying to have him stand up, which he’s just making his body limp. He’s not going along with anything.” ⁴⁵
Officer Kwong	No comments.
Sergeant Beerman	Described being “struck” as an activist was taken into custody: “The [skirmish] line starts to move forward, the confrontation [between the skirmish line and the crowd of students] occurs, the crowd surges. At one point I’m trying ... to keep the crowd back.... I felt really like a rock trying to hold the tide back. You just couldn’t do that. They were just surging right into the back of us. As my focus is southwest, I feel something hit me from behind. I could

⁴² Transcribed interview of Justin Brewer, January 19, 2012.

⁴³ Transcribed interview of Moaz Ahmad, January 20, 2012.

⁴⁴ Transcribed interview of Moaz Ahmad, January 20, 2012.

⁴⁵ Transcribed interview of Ruben Arias, January 19, 2012.

tell it was a body by the weight. A body flies, hits me in the lower legs, calf area. I start to fall back, I catch myself. And I realize that there are two students laying on the ground. One student ... has struck me in the back of my legs. I turn around obviously because I've been ... struck. And when I say struck, it's not like a physical punch or hit, it is a body flying against my body.... They made impact with me.”⁴⁶

Officer Halley No comments.

Officer Barrera No comments.

Officer Guerrero No comments. (Was transporting prisoners, wasn't in the crowd.)

Officer McCulloch When the skirmish line came in contact with the occupiers, “a great majority of them ... put themselves in a circle, locking arms, facing us. As [the] skirmish line went to try to disburse them to get the tents away, that was when, if there was any kind of physical resistance against the skirmish line, I was right behind the skirmish line ... [I had] to point them out and grab them and get them out of the way.... [F]rom a physical standpoint, there wasn't a lot of peaceable or non-physical people in there. There was certain individuals who were more aggressive than others.” What do you mean by aggressive? “As opposed to just locking arms and yelling, let's say, they would push against the skirmish line. That was the main issue here. I didn't see much spitting or anything like that.”⁴⁷

Officer Zekany “As I was standing there [behind the skirmish line], several protestors did try to approach the skirmish line and come up within a feet [sic] ... to two feet of some officers that were standing to my left. ... [A]nd they had to be told repeatedly to stand back. There was a subject ... that came up, he appeared to be very agitated. He was a white guy, beard, green jacket, carrying a guitar, and he kept looking south of ... my location and was like ... clenching his

⁴⁶ Transcribed interview of Bill Beerman, January 20, 2012.

⁴⁷ Transcribed interview of Miku McCulloch, January 20, 2012.

... face in his hands and I didn't really know what he was gonna do, what his intentions were." Later, "I see the same guitar guy come up again to our skirmish line. He's ... still agitated and the officer that was next to me, I hear him yelling ... 'Put that rock down.' Something to the effect of 'Don't throw that rock, put the rock down,' and I look at his hands and he has some sort of object in his hand, I don't know what it was. I couldn't discern what it was, and he put it in his pocket and we just continued south, and once we reached ... the end of the walkway we were on."⁴⁸

Officer Sotelo

"Every hand has a camera in your face. All I see are cellphones, and cameras, and computers. I'm trying to keep an eye on things that ... are in people's hands, but everybody's got something in their hand. And the shouting's not stopping, the chanting's not stopping. It's becoming a very hostile environment and it happened at blitzkrieg speed."⁴⁹

"The people aren't as passive as they said that they wanted to be. They were passive in the beginning. We used too little of force in the beginning. Officers got injured because of it. And were now having to recover and change our method of operation to reduce the likelihood of injury towards the officers." Refers to an officer who injured his shoulder trying to pull two protesters apart. "He was pulling two suspects apart who were linked at the elbows. They violently pulled and pulled away from him and it was their hostile reaction towards I'm trying to separate them that pulled his arm. ... The extent of the injuries, or the type of the injuries that he sustained I don't know. All I know is that his shoulder is very badly injured and it could lead up to a career ending injury."⁵⁰

"Several subjects attempted to contact us while we were in formation and tried to ask questions of the officers. A female subject ran up to my right and stopped approximately 10 feet from me. She yelled, "Fuck you!" and spat at some of the officers behind me as they continued past her. The female subject

⁴⁸ Transcribed interview of Joanne Zekany, January 19, 2012.

⁴⁹ Transcribed interview of Robert Sotelo, January 19, 2012.

⁵⁰ Transcribed interview of Robert Sotelo, January 19, 2012.

	<p>continued to yell, “Fuck you!” as the formation of officers passed her location.”⁵¹</p>
<p>Sergeant Heno</p>	<p>“[W]e were there, it seemed forever, but I’m sure it had to be ... more than twenty minutes.... I had a concern that we might start getting ... objects thrown at us, or we would get individuals who’s trying to break into the group and start pulling these people out.... And the longer you stay there, the worse it gets.”⁵²</p> <p>“[T]he crowd had gotten larger and deeper in size, and for the safety of the officers and us, we didn’t want to get into a grabbing match with prisoners back and forth, because then somebody would get hurt. ... Or grabbing at our feet ... if we had to walk over the top of them, because you’d have to use ... more of a force to get free, and then they might be subject to injuries.”⁵³</p>
<p>Sergeant Sheffield</p>	<p>Observed three or four male subjects “floating in and out of the crowd, intermingling and pulling what looked like golf ball size rocks out of their pockets and handing them to people.... I raised the pepper ball gun at them ... and yelled at them. And ... they dropped them.”⁵⁴</p>
<p>Officer Terry</p>	<p>No comments. (He was assigned to patrol, then to the transport of the first three arrestees; he was on the quad only briefly.)</p>
<p>Lieutenant Pike</p>	<p>“I received information that a couple of male subjects in the crowd were seen holding and passing out rocks.”⁵⁵</p> <p>“As the crowd was chanting ‘If you let them go, we will let you go’, I became more concerned that the mob mentality of the group would lend way to hostile acts that would force our hands. The group had stopped us from moving. We were waiting for additional UCDPD officers and officers from the City of Davis Police Department to respond to assist us. I did not believe we could</p>

⁵¹ Supplemental Narrative Report, Robert Sotelo, November 24, 2011.

⁵² Transcribed interview of Paul Heno, January 20, 2012.

⁵³ Transcribed interview of Paul Heno, January 20, 2012.

⁵⁴ Transcribed interview with Danny Sheffield, January 20, 2012.

⁵⁵ Supplemental Narrative Report, John Pike, December 13, 2011.

safely exit the circle with our in custody arrestees without further confrontation from the crowd.”⁵⁶

Lieutenant Swartwood “It was my belief that to step over the protesting occupiers with prisoners and weapons would be hazardous. The occupiers had collectively surrounded us and it was possible, if we did step over them, that they could attempt to free our prisoners (they chanted that they wanted them released) or attempt to grab us or our equipment.”⁵⁷

As he was retreating with the other officers to their vehicles, “a female Asian, wearing glasses, a black jacket and dark blue pants slapped my hands.”⁵⁸

⁵⁶ Supplemental Narrative Report, John Pike, December 13, 2011.

⁵⁷ Supplemental Narrative Report, Barry Swartwood, November 30, 2011.

⁵⁸ Supplemental Narrative Report, Barry Swartwood, November 30, 2011.

UCDPD Officers' Understanding of the Legal Basis for the Operation

Officer	Comment
Sergeant Heno	"We had talked about certain laws, whether or not we were going to do disbursement ... Unlawful assembly, and then illegal camping, but that wasn't discussed until way after the fact when people were arrested and were eventually cited, because I didn't really know what charges they were going to do." At the briefing, that "wasn't discussed at length ... that I can recall." ⁵⁹
Officer Brewer	No comments.
Officer Ahmad	At the briefing, Pike stated that the protesters had "set up tents, which was violation of university code to camp on property." ⁶⁰
Officer Arias	No comments.
Officer Kwong	No comments.
Sergeant Beermann	The possibility of arresting the protesters for overnight camping "was never discussed ... in the plan. It had been discussed earlier in their occupation. [It] was decided that we weren't going to arrest them ... for ... illegal camping. In fact, the discussion even occurred, well then are we going to enforce illegal camping anywhere else on the ... campus. And again, that was one of those things that well, we'll have to talk about that ... at a later time and it was never discussed." Do you recall what these individuals were actually cited for? "I believe they were cited for ... failure to comply to a lawful order, 409 PC, I believe." ⁶¹
Officer Halley	"Failure to disperse and unlawful assembly, I believe was what it was." ⁶²

⁵⁹ Transcribed interview of Paul Heno, January 20, 2012.

⁶⁰ Transcribed interview of Moaz Ahmad, January 20, 2012.

⁶¹ Transcribed interview of Bill Beerman, January 20, 2012.

⁶² Transcribed interview of Brian Halley, January 20, 2012.

Officer Barerra	“We were informed that ... Student Affairs ... was going to distribute flyers with information about the University rules regarding ... overnight camping ... on the Quad. They distributed those flyers. Then Sergeant Sutera verbally notified the crowd that was assembling there about the university regulations regarding camping overnight.” ⁶³
Officer Guerrero	“If I remember, there was talk [about illegal camping] but it might have been just between myself and other officers.... I don't know if it was mentioned at the briefing that if you make an arrest this is the code to use. I don't think so.” ⁶⁴
Officer McCulloch	No comments.
Officer Zekany	In the briefing, Lieutenant Pike “went over the university policy and actually read ... some sort of card that was being handed out to the campers, letting them know they were in violation of university policy for camping overnight.” ⁶⁵
Officer Sotelo	Describes two rounds of arrests, before and after the pepper spray. “Failure to disperse was the ... the first group. They ... failed to disperse after a dispersal order was given. The second group ... that surrounded us were chanting, “We'll let you go if you let them go”; they linked arms to refuse passage of officers. They made threats to release inmate, or arrestees from custody that had been lawfully and legally arrested. That's lynching. Refusing to get out of our way when we have a suspect, that's a 148. And them doing it in unison it's conspiracy. As far as I was concerned, I would have hauled up half dozen to a dozen of them right there and thrown them all in prison.” ⁶⁶
Sergeant Sheffield	No comments.

⁶³ Transcribed interview of Jason Barrera, January 19, 2012.

⁶⁴ Transcribed interview of Manuel Guerrero, January 19, 2012.

⁶⁵ Transcribed interview of Joanne Zekany, January 19, 2012.

⁶⁶ Transcribed interview with Robert Sotelo, January 19, 2012.

Officer Terry	No comments.
Lieutenant Pike	“Both Lt. Swartwood and I had several questions about the legality of conducting a planned operation during the middle of the afternoon versus the early morning hours.” ⁶⁷
Lieutenant Swartwood	“Chief Spicuzza gave Lt. Pike and I (Incident Commander) the assignment of removing tents from the quad on 11-18-11, in violation of university policy (Overnight Camping Prohibited, PPM270-20.II.A.5) and Penal Code 602 (M) Entering/Occupying Real Property Without the Permission of the Owner.” ⁶⁸

⁶⁷ Supplemental Narrative Report, John Pike, December 13, 2011.

⁶⁸ Supplemental Narrative Report, Barry Swartwood, November 30, 2011.



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