

Annual Report of the Police Review Board of The University of California, Berkeley November 23, 2010

This Annual Report will describe the principal activities of the Police Review Board (PRB or Board) during 2009 and 2010, as well as the complaints that have been lodged with UCPD Berkeley and their disposition. We also will summarize statistical information about reported crimes for 2009.¹

Membership of the Police Review Board and Contact Information

Under policies adopted by the University of California, Berkeley, in 2001, the Board has eight deliberating and voting members: a chair, two representatives of faculty, two representatives of students (one undergraduate and one graduate student), a representative of the Berkeley community bordering the campus, a representative of campus staff, and a person who formerly had professional experience in law enforcement. UCPD designates a liaison officer to provide information to the Board and to coordinate UCPD's efforts to respond to the PRB's questions or requests.

During 2009 the Board's chair was Christopher Kutz, a professor in the School of Law. Wayne Brazil, also a professor in the School of Law, was appointed chair in January of 2010.

Most of the members of the Board served for all of this reporting period: Nilima Bhatia as the staff representative, Michael Harris and William Oldham as faculty representatives, Fran Packard as community representative, and Ron Nelson as the representative with professional experience in law enforcement. Captain Margo Bennett served as UCPD liaison to the Board.

The student representatives on the Board for academic year 2009-2010 were Jennifer Lewis (representative from the Graduate Assembly) and Waseem Salahi (ASUC's representative). Jennifer and Waseem were replaced for academic year 2010-2011 by Munira Lokhandwala (GA) and Omar Kunbargi (ASUC).

¹We report crime statistics on a calendar year basis in part because UCPD is required by regulatory agencies to maintain and report statistics on that basis, and in part to enable the campus community more reliably to understand whether there have been significant year-to-year changes in reported criminal activity. See Safety Counts, UCPD's "Campus Annual Security Report 2010-2011."

Substantial information about the Police Review Board, its mission, the rules under which it operates, and its annual activities is available on the Board's website: <http://administration.berkeley.edu/prb/PoliceReview.htm>. The chair of the PRB may be reached by email at wdbrazil@law.berkeley.edu.

The Board delivers its work product to the Vice Chancellor for Business and Administrative Services. Thus, concerns or complaints about how the Board performs its duties, or suggestions about how the Board's work might be improved or its responsibilities expanded, should be directed to the Vice Chancellor - BAS, who also is the person to whom complainants may appeal findings or recommendations made by the Board in response to appeals to it of UCPD's disposition of complaints. Concerns about or suggested changes in the Board's mission or composition also may be communicated directly to the Chancellor.

The Police Review Board's Responsibilities

The PRB has two standing responsibilities and occasionally is given special assignments by the Chancellor. The two standing responsibilities are (1) to consider the merits of appeals from the disposition by UCPD of civilian complaints about the conduct of sworn UCPD officers, and (2) to monitor and review departmental policies and procedures, particularly with respect to how UCPD processes and addresses civilian complaints and the quality of UCPD interactions with the campus community. The Board has been active in all three of these arenas during the past year.

Overview of the Board's Activities During 2009

For most of calendar year 2009 the Board's activities were relatively routine. Through October, the number of complaints presented to the Department (four)² tracked patterns from the previous decade.³ None resulted in appeals to the Board.

In early May of 2009 the Board held a public meeting that was not well attended -- in part, at least, because of competition with final exams and the last meeting for the academic year of the ASUC senate. Nonetheless, the meeting featured extensive, searching discussion and debate about the role of the PRB and the reach of its responsibility.

The Board did not convene again until December 3, 2009, about two weeks after the November 20th occupation of Wheeler Hall and the attendant demonstrations. Before the

²A fifth individual began the process of filing a complaint but elected not to pursue the matter formally.

³The Police Review Board's Annual Report for Academic Years 2007 and 2008 discloses the number of formal complaints lodged for each year between 1996 and 2008. The numbers range from a low of three to a high of 11 (in 1997, a year that included a dramatic demonstration and confrontation in and around Sproul Hall). The median number of complaints filed annually was 5.

meeting on December 3rd, Chancellor Birgeneau had announced his decision to ask the PRB to accept a “broader special assignment” that would include conducting a thorough and independent review of the events of November 20th and making an objective assessment of how both UCPD and the civilian Administration responded to those events.

Chair Kutz announced at the meeting on December 3, 2009, that he would be resigning from the Board – as he had been elected president of the faculty senate for the Berkeley campus. Given the imminence of the Board’s “special assignment,” which the Chancellor had not yet formalized or framed with particularity, and given the Chair’s imminent resignation, the Board was not in a position to make decisions about how to proceed. After a substantial discussion about what had happened on November 20th in and around Wheeler Hall, the Board approved for distribution to the entire campus community a message that Professor Kutz had drafted. That message encouraged anyone with information about what had occurred at Wheeler to submit it soon to the PRB.

During early December there were additional demonstrations, smaller in scope, but which in some instances included acts of vandalism. No complaints were filed with UCPD arising out of these year-end protest activities.

**The Special Assignment:
Assess the Events of November 20, 2009**

In mid-December the Chancellor asked recently appointed law professor Wayne Brazil to serve as the new chair of the PRB. The Chancellor formalized the appointment of the new Chair on January 11, 2010, in a letter in which he set forth the specific components of the special assignment arising out of the occupation of Wheeler Hall on November 20, 2009.

The Chancellor asked the Board to develop:

- “1. A comprehensive and accurate account of the demonstration [on November 20, 2009] including the conduct of the police and of the demonstrators, both inside and outside of Wheeler Hall, building upon the work done by the [anticipated] operational review [by UCPD], if and as necessary.
2. An evaluation of the possible use of excessive force by the police . . . in establishing and managing crowd control in the context of the actual situation, including the behavior of the demonstrators.
3. An evaluation of the response of UCPD command and campus administrators in managing the demonstration.
4. Recommendations, if necessary, in police training, policy and practice designed to reduce the severity of confrontations with police during demonstrations, including procedures for bringing in outside agencies onto campus and moving them onto the police line.”

The Chancellor asked the Board to do its best to complete its investigation and submit its report by the end of May, 2010.

On February 3, 2010, the full Board convened to assess its assignment and to consider how best to complete it. Because one important aspect of the Board's special assignment was to assess the "Operational Review" of the events of November 20th that UCPD still had underway, it was clear that the Board's work could not begin in earnest until UCPD completed that Operational Review.

Given the immense volume of evidence and information that the Board would need to review and analyze in order to complete its special assignment, and given the long list of people who would need to be interviewed, the Board decided to supplement its investigative resources by hiring (on a part-time basis) Sarah Weinstein, an attorney who formerly had been a law clerk for Professor Brazil (when he served as a magistrate judge in the federal district court). The Board also decided to put out an additional call to the entire campus community for information, evidence, perspectives or suggestions. To provide ample opportunity for all interested persons to respond, the Board fixed March 5, 2009, as the deadline for submitting such material.

Shortly after that deadline, the Board convened again to consider data that Ms. Weinstein had been organizing and to make plans for a meeting in early April to which the public would be invited and at which all interested persons would be encouraged to present information or to articulate perspectives about the events of November 20, 2010.

The Board's ability to move forward with its assignment was hampered by the fact that UCPD did not complete its Operational Review of the November 20th demonstration until the third week of March (the Board received its copy of that Review during Spring Break -- about March 23d).

The Board hosted a public meeting/open forum about the Wheeler Hall demonstrations on April 8, 2010. We had made aggressive efforts to publicize this meeting in advance, e.g., through notices in The Daily Californian, electronic communications, and oral announcements at ASUC and GA meetings. Nonetheless, only a handful of people showed up (the absence of students may have been attributable in part to the fact that ASUC elections were underway at the time). Some interesting discussions ensued, but little additional information was provided.

During April and early May, Ms. Weinstein and the Chair conducted a couple of dozen additional interviews, studied hundreds of pages of documents (some newly delivered by the Administration), and reviewed hours of U Tube segments and video tape. In May, the Chair drafted the Report. After the draft was circulated and comments were digested, the final version of the document was submitted on June 14, 2010.

We make no attempt to re-present that 120 page Report here. It has been publicly available for several months and can be examined on the Board's website: <http://administration.berkeley.edu/prb/PoliceReview.htm>.

For present purposes it is sufficient to note that the Board concluded that the unhappy developments on November 20th were the product of shortfalls in restraint by the demonstrators and by the police, operational misjudgments, poor communication and coordination, and administrative passivity.

The Board's Report about November 20th has not been relegated to collecting dust on remote shelves. Instead, UCPD and the civilian Administration have used it and the

Department's Operational Review as springboards for launching sustained self-examinations and a series of measures designed to capitalize on the learning that the wake of the Wheeler Hall demonstrations has produced.

To its considerable credit, UCPD identified on its own initiative, through its internal Operational Review, no fewer than ten features of its handling of the demonstrations that should be changed or improved. See pages 76-77 of the Board's June 14, 2010 Report.

In the months since it completed its Operational Review, UCPD has taken significant steps toward improving its command post capabilities and plans, enhancing mutual understandings and developing better lines of communication with local law enforcement agencies, especially the City of Berkeley Police Department (with whom UCPD now conducts joint trainings), clarifying protocols and procedures for soliciting help during emergencies through the mutual aid systems that are operated by the Alameda County Sheriff's Office, establishing more reliable means of communicating with and controlling the operations of officers who are deployed from outside agencies, and acquiring equipment that will enable UCPD to communicate more effectively with demonstrators or bystanders – thus improving the Department's ability to help people understand in advance what is expected of them, as well as what officers on the scene plan to do and why. In addition, the Department is slated to become a member of the East Bay Radio Consortium – a joint venture by local law enforcement agencies that will assure more reliable communication and better coordination among simultaneously deployed units.

On the civilian side, the Administration convened a high level Working Group to help the campus develop means to avoid some of the kinds of problems that surfaced and mistakes that were made before and on November 20, 2010. Chaired by a person with considerable experience in university and local government administration, this Working Group has studied each of the PRB's findings and recommendations and is helping develop ways to assure that the Administration and UCPD respond appropriately to a wide range of possible scenarios. Perhaps as significantly, the Working Group coordinated substantive meetings between high level administrators and the chiefs of police of the City of Berkeley and the University (Berkeley campus) -- meetings that yielded much improved understandings, better lines of communication, and commitments of mutual support and cooperation.

It also is noteworthy that while there have been several protests and demonstrations during 2010, none have resulted in the kind of friction between law enforcement and civilians that we saw on November 20th of last year. Nor have these more recent events generated complaints to the Department or appeals to the PRB.

Civilian Complaints

I. Complaints Filed before November 20, 2009.

As noted earlier, four complaints were presented to UCPD during the first ten months of 2010. None involved physical injuries to complainants. All involved allegations of unprofessional conduct by UCPD officers -- meaning, among other things, unjustifiably aggressive behavior and/or primitive, confrontational attitudes. None of the allegations in the

complaints were “sustained” (through UCPD investigations), and none resulted in an appeal to the Board. Some information, limited in order to protect the privacy rights of the people directly involved, is captured in the appended summary report from UCPD (“2009 Complaints Report”).

One officer was the subject of two of the four complaints that were filed between January and October of last year. That officer also was the subject of a separate, third complaint that was filed early this year (2010). The Chair of the PRB has discussed this situation with the Chief of UCPD, who is reviewing the circumstances and, as appropriate, will counsel the officer and assign additional training.⁴

One additional comment about these first four complaints is warranted. The complainant elected to pursue the Department’s investigative process to completion in only two of the four cases (in the other two instances, the complainants did not pursue final dispositions by the Department). In each of the two cases that proceeded to the Departmental disposition stage, however, UCPD failed to meet the deadlines for completing its assessment of the allegations. Under rules that have been in place since 2001, the Department is required to complete its investigation “within forty-five (45) calendar days from the filing of the complaint.” See “Procedures for Handling Citizen Complaints,” section II. 2. b. If unusual circumstances will prevent the Department from meeting this deadline, the rules require the Chief of Police to seek an extension (of up to seven calendar days) from the Vice Chancellor for Business and Administrative Services. *Id.* The Board has seen no evidence that any such extension was requested or granted during the period covered by this Annual Report.

One of the two complaints that was pursued through the full UCPD process was filed on March 22, 2009. UCPD, however, did not send its disposition letter in this matter until July 16, 2009 – after passage of well over twice the time the rules permit. The other complaint that worked its way fully through the UCPD system last calendar year was filed on August 7, 2009 – but the Department did not communicate its findings to the complainant until December 18th -- missing the deadline by an even greater margin.

As we will discuss, below, these failures to comply with well-established deadlines are not isolated incidents. Instead, they are part of an unexplained pattern of tardiness in the Department’s work in this arena that can undermine public confidence in UCPD and that should be corrected immediately.

One of the first steps the Department should take to address the tardiness problem is to bring its applicable General Order into compliance with the controlling campus rules. The Department promulgated the General Order [O-6] that covers “Processing Complaints” in 1995

⁴Established departmental policy recognizes the importance of command staff reviewing each complaint “to determine if the involved personnel have been named in previous similar incidents within a designated time frame. Should an employee show a pattern of inappropriate behavior, regardless of the adjudication of each individual complaint, a remedial program may be appropriate.” Section VII., paragraph 25., General Order O-6, issued December 1, 1995.

-- six years before the University issued its “Procedures for Handling Citizen Complaints” (2001). Under those more recent “Procedures,” as we have noted, the Department has 45 calendar days from the filing of the complaint to complete its investigation – and any extension of that deadline may be for a maximum of seven calendar days and must be granted by the Vice Chancellor - BAS. The pertinent provisions of General Order O-6 are inconsistent with these University mandates. Section V., paragraph 15. f., of General Order O-6 reads as follows:

The entire investigation and SRB [Sufficiency Review Board] process will be completed within forty-five (45) working days. The CIU [Complaint Investigation Unit] Captain may extend the time frame targets for good cause only. When an extension is granted, the subject Officer should be notified. In no event, however, will the process require more than sixty (60) days, total, unless the Chief of Police approves the delay in writing.”(emphasis added)

Under the University’s superceding procedures, the Department has only 45 calendar days, not work days, to complete its investigation. More significantly, *the University’s rules do not empower anyone within UCPD to extend this deadline.* Such an extension may be granted only by the Vice Chancellor - BAS – and only for up to seven calendar days. In sharp contrast, General Order O-6 purports to empower the Chief of Police to extend the deadline indefinitely.

The Board also wonders why, under General Order O-6, when an extension is granted, the only person who is to be notified is the “subject Officer.” *The Board believes that the Department also should notify the complainant when an investigation is delayed.*

II. Complaints Arising Out of the Demonstrations on November 20, 2009

Seven people filed complaints alleging misconduct by officers during the demonstrations on November 20, 2009. Three of these complaints targeted officers from off-campus law enforcement agencies, so the complainants were told to pursue their claims with the employing entities (the Berkeley Police Department and the Alameda County Sheriff’s Office). UCPD has no authority to impose discipline on officers employed by other agencies.

Two of the remaining complainants elected to have issues of the kind they raised addressed in the broader Police Review Board investigation, so they withdrew the complaints they had filed directly with the Department.

The remaining two complainants elected to continue in the UCPD complaint process. One of these complaints was filed about January 11, 2010. The Department formally acknowledged it on January 20, 2010. It appears that the initial departmental investigation of this matter was concluded on March 19, 2010 – but UCPD did not communicate its disposition of the matter (exoneration of the accused officer) to the complainant until July 28, 2010. Under applicable campus rules, the Department should have completed its investigation and reported its findings by about March 1, 2010. See “Procedures For Handling Citizen Complaints” (2001), section II. 2. b. We have seen no evidence that the Department sought or received an extension of the rule-fixed deadline. Nor has UCPD explained the substantial tardiness of this notification.

This complainant apparently elected to pursue litigation against the University instead of appealing the Department's disposition to the PRB.

The remaining complaint that arose out of the demonstrations around Wheeler Hall on November 20th was filed on December 7, 2009. The Department acknowledged this complaint in writing on December 8, 2009, and assigned an investigator to the matter that same day. It appears that the sergeant who was given this assignment completed and submitted the report of the investigation on February 2, 2010. Again, however, the report apparently languished on someone's desk -- and/or was the subject of additional work, the promptness of which was not disciplined. Finally, in a letter dated April 28, 2010, the Department notified the complainant that it had exonerated its officer. Dissatisfied with the one sentence explanation for this disposition, the complainant appealed to the Board.

Three weeks after receiving this appeal the Board sent its 5,000 word assessment of the matter to the complainant. As the Board explained in detail, it had serious concerns about some aspects of the Department's investigation. However, the Board could not conclude, on the record before it and in light of the fact that the applicable legal standard placed heavy burdens on the complainant, that the Department's disposition should be overturned.

Instructively, the complainant elected not to pursue the matter further. Instead, he communicated to the Board that he appreciated the care with which the Board had considered the matter and the thorough explanation the Board had given him for the conclusions it had reached.

Given this experience, *the Board urges UCPD to seriously consider offering complainants more substantial written explanations for the Department's dispositions of complaints that are pursued to conclusion.*

III. Work File Memos in 2009

UCPD reported seven expressions of dissatisfaction with or concern about officer conduct in 2009 that did not result in the filing of formal complaints but that led to the creation of "Work File Memos."⁵ The Department does not have the authority simply to convert a formal complaint into a Work File Memo. Unless the complainant freely elects to abandon the formal process, the Department cannot dismiss or downgrade a complaint to a work file memo without the concurrence of the Police Review Board.⁶ It is important, however, for the

⁵The Department generated one additional work file memo in 2009 when a person who had filed a formal complaint decided to withdraw it and to ask the Department to take responsive action less formally.

⁶Under the campus' "Procedures for Handling Citizen Complaints," the Chief of UCPD may refer a formal complaint that does not "allege facts establishing a prima facie showing of improper conduct" to the Board for summary dismissal. If the Board concludes that the complaint does make the required prima facie showing, the Board may either remand the complaint to UCPD or initiate its own investigation of the matter. See "Procedures for Handling Citizen Complaints Against Sworn Member of the University of California Police Department," section II. 1. d. (2001). UCPD did not refer any complaints to the Board under this provision during the period covered by this Annual Report.

Department to track and take appropriate action in response to input from civilians who have concerns about officer behavior but who do not want to proceed with the formal complaint process.

The content of the concerns raised in the Work File memos is reported in the Department's "2009 Complaints Report" that is appended hereto. The Board is not aware of any special concerns that the reported Work File Memos for 2009 might trigger.

IV. Complaints Filed in 2010

Four formal complaints about conduct by UCPD officers (not connected with November 20, 2009) have been filed through the end of October, 2010.⁷ Only one of these complainants elected to pursue the process through a formal disposition by the Department.

The 'process history' of this complaint warrants more specific description. The incident giving rise to the complaint occurred on January 14, 2010. The complainant began completing the appropriate forms on January 17th, but did not present the necessary supporting information until January 22, 2010. The Department acknowledged receipt of the complaint in a letter dated January 26, 2010 -- and that day assigned a sergeant to conduct the investigation. After conducting interviews and reviewing documents the assigned sergeant submitted a "Report of Findings" on February 23, 2010. Apparently this initial version of the Report was deemed insufficient. A second version of the Report was not submitted, however, until April 12, 2010. As far as we know, the Department did nothing with this second iteration of the Report through early May, when the complainant contacted the civilian Administration to try to determine the status of her matter. Prodded by this contact, the Department moved forward, but did not communicate its disposition of the complaint to the complainant until June 1, 2010 (in a letter of that date). Under applicable rules, the Department should have communicated its disposition by March 8, 2010.

When the complainant learned that the Department had exonerated its officer on two of the allegations and had concluded that the citizen had failed to prove the other two, the complainant promptly appealed to the PRB.

⁷In addition, a person approached the Board with concerns about whether UCPD was attempting to use electronic social networking to conduct investigations or maintain surveillance. The Board discussed these concerns at two meetings and urged the person who had raised this issue to present it directly to UCPD command staff. Apparently this matter was resolved informally through dialogue and discussion between the concerned citizen and the Department.

When a panel of three members of the PRB reviewed the record, it remanded the complaint to the Department, with requests for additional information. The Department submitted a revised “Report of Findings” on August 12, 2010. The panel concluded that this iteration of the Report also contained insufficient information to support some of the dispositions reached by UCPD. Another remand ensued after the full Board considered the matter on October 6, 2010. Finally, on November 2, 2010, the Department provided the additional information that enabled the Board to make reasoned assessments of the Department’s dispositions of the four allegations.

On November 10, 2010, the Board sent a long letter to the complainant explaining its findings, some of which were favorable to the complainant and some of which were not.

V. Work File Matters in 2010

While the Board has not asked UCPD to compile a full report of “work file” matters for this calendar year, the Department has informed us about four additional matters that civilians have raised informally this year but have elected not to pursue as formal complaints. Two of the expressed concerns are about events that occurred in 2008 or 2009 – well outside the 30-day period in which complaints are to be presented to UCPD.⁸ And one of these does not appear to implicate conduct by members of the campus police force.⁹ The other two complainants seem to have been satisfied by responsive steps the Department took or by responsive information the Department provided.

The Board has not identified anything in the communications from civilians about these matters that gives rise to any substantial concerns or that should trigger any additional inquiries.

⁸Section II. 1. c. of the “Procedures for Handling Citizen Complaints” provides that “All Complaints shall be filed within thirty (30) calendar days of the alleged improper conduct, and any complaint not filed within thirty (30) calendar days shall be dismissed; provided, however, that a Complaint may be filed within an additional thirty (30) calendar days if the Complainant demonstrates to the Chair that the failure to file the Complaint within the initial thirty (30) calendar day statutory period was the result of incapacity or excusable neglect. In the case of physical incapacity, and at the discretion of the Chair, a Complaint may be filed within one year. Lack of knowledge of the existence of the Board or its Complaint Procedures shall not constitute incapacity or excusable neglect.”

⁹The law enforcement officers whose conduct is challenged in this complaint are employees of other agencies.

Crime Statistics for 2009

UCPD's comprehensive annual security report for academic year 2010-2011 (published under the title Safety Counts) presents considerable data about crimes reported to the Department during 2009. There is no occasion to review that data in detail here. Instead, we offer a few general observations about trends.

On the whole, the data reported for calendar year 2009 are encouraging -- as they show rates for many types of crimes declining or holding steady. Compared to reporting year 2008, for example, reports of robberies, aggravated assaults, forcible sex offenses, and burglaries all were down. Bicycle thefts also were down, but remain, by far, the biggest single category of crimes. There were moderate up ticks in auto theft and in arson, but the raw numbers were not large in either of these categories. Reports of crimes occurring off campus (but near by) were somewhat less positive, but not out of line with historical figures.

Given the number of people who attend school or work in and around the campus, the aggregate crime statistics for last year are cause for guarded optimism, not anxiety.

Conversations with UCPD Leadership About the Department's Investigative Processes

Members of the Board have had many substantive exchanges this year with the leadership of UCPD about departmental practices and policies. In all of these numerous face-to-face exchanges, the leaders of the Department have been very responsive to our questions and requests for information. We have learned a great deal about the many challenges the Department faces on an ongoing basis -- and about how the Department's resources have been severely strained by budget cuts and losses of personnel. We also have come to understand how difficult it was for the Department to function at a high level during several critical months spanning the latter part of 2009 and early 2010, when one of the two captain positions was vacant -- forcing the one remaining captain to try to cover a huge range of duties.

To extend the Board's understanding of the Department's investigative policies and procedures, we held a special meeting with the Chief of UCPD and one of the Department's captains on November 2, 2010. The Board invited these leaders of the Department to describe in detail and to discuss the procedures the Department follows when it responds to and investigates civilian complaints. We also sought to review the information and the assistance the Department provides to people who want to make suggestions, register concerns, or proceed with the complaint process. During the meeting, the Board identified ambiguities in the wording of parts of the standardized complaint form and in the "Complaint Process Guide." Subsequently, the Board has suggested alternative phrasing that might more clearly explain the deadlines that complainants are expected to meet.

Through this recent meeting with UCPD's Chief and one of its captains, the Board has learned more about some of the challenges the Department faces when it is trying to conduct responsible and timely investigations. For example, we learned that it is not at all uncommon for identified witnesses either to refuse to communicate with the investigating sergeant or to

make themselves available only after the sergeant has made repeated but unsuccessful efforts, over a substantial period, to make contact.

We also learned about how investigations often have been delayed as a result of competing demands on the time of lawyer for the officer whose conduct has been challenged (an officer who is accused of misconduct has a right to be represented by counsel during all interviews related to the accusations). Moreover, occasionally (as during last December's continuing demonstrations) there are extraordinary demands on departmental resources that require responsive action by virtually all of the sworn officers – including sergeants who are assigned investigative responsibilities.

The Annual Public Meeting November 16, 2010

The Board published (electronically) a draft of this Annual Report about a week before the annual public meeting, which was held on Tuesday evening, November 16, 2010. Notices alerting the campus community that the draft of the report had been published, and inviting the public to attend the annual meeting, were printed in The Daily Californian and sent electronically by the Office of the Vice Chancellor for Administration to every student, teacher, and staff member. In addition, at least one of the student members of the Board circulated such notices by other electronic means and tried to spread the word orally to interested constituencies.

In addition to six of the eight members of the Board and its executive assistant (Rita Gardner), the annual public meeting was attended by the Chief of UCPD, Mitchell Celaya, the Captain of the Department's Administration and Community Outreach Division, Margo Bennett, the Associate Vice Chancellor for Business and Administrative Services, Ron T. Coley (the position of Vice Chancellor for Administration is vacant), a few members of the Berkeley community, and twelve to fifteen students.

After describing the content of the draft of the annual report, the Chair invited the representative of UCPD to respond or make comments. Chief Celaya acknowledged difficulties the Department had experienced meeting deadlines for completing some investigations and described steps he is taking to improve the way the Department collects information from witnesses. Under the approach he is implementing, a smaller cadre of experienced officers will be responsible for conducting investigations and interviewing witnesses. Limiting this important function to a small group of seasoned officers will enrich their experience base and help better target and streamline their training in this field. Chief Celaya also acknowledged that the training of officers for this role should take into account the fact that, at least in some circumstances, interviewing non-party witnesses for purposes of investigating citizen complaints could call for use of different approaches or techniques than interviewing possible suspects or hostile sources during a criminal investigation.

After Chief Celaya completed his summary of the Department's responses to the draft annual report, the Chair invited questions, comments, or expressions of concern from anyone present.

During the ensuing hour several people from the campus and community asked sometimes pointed questions and expressed substantial concerns about how the Board tries to meet its responsibilities and about how UCPD responds to complaints and handles its interactions with the public. One view that several people voiced was that the Board and its activities remain essentially invisible to large segments of the population that is policed by UCPD. Criticism of the Board's failure to make its existence, its mission, and its activities known in the community that surrounds the campus was particularly strong – and well taken. Some members of the public also felt strongly that the Board was too passive, generally, and that it contributed little or nothing of value because its visibility was so episodic and because it failed to press (persistently over time) the Administration or UCPD to adopt its recommendations. The Board also was taken to task for not making it clearer how complaints could be registered about the Board itself -- its composition, its dormancy, its invisibility, and/or the findings and recommendations that it generates in individual cases or in special assignments.

Some people in attendance also expressed considerable dissatisfaction with UCPD's failure to meet deadlines for completing investigations and its failure to communicate meaningfully with complainants – both about the pace of the Department's work on complaints and about the bases for the Department's conclusions. During the course of the discussion about meeting deadlines for completing investigations it became clear that UCPD and the Board have different views about what the relevant rules mean. Section II. 2. b. of the campus' "Procedures for Handling Citizen Complaints" declares that the "investigation is to be completed within forty-five calendar days from the filing of the complaint" and that extensions of this deadline may be granted by the Vice Chancellor-BAS for up to seven calendar days -- but only on a showing of "just cause."

UCPD took the position during the public meeting that the only work that it must complete within the 45 day deadline fixed by these rules is the field investigation by the Complaint Investigation Unit (CIU) within the Department. According to views expressed by departmental command during the public meeting, it is understood that after the completion of the initial report by the CIU unit, additional time would be taken by a Sufficiency Review Board to assess the work and findings by the CIU.¹⁰ And thereafter, yet more time would be needed for the Chief to study and approve the report and recommendations made by the Sufficiency Review Board. Of course, the Sufficiency Review Board and/or the Chief also might remand the matter to the investigating sergeant (with instructions to do additional work), consuming even more time. Under this understanding of the 45 day deadline, there is no externally imposed limit on the total amount of time the Department would have to complete

¹⁰Curiously, the view that work by a Sufficiency Review Board falls outside the deadline of 45 calendar days is contradicted by the Department's own General Order 0-6, which states: "The entire investigation *and SRB process* will be completed within forty-five working days." Gen. Order 0-6, para. 15. h. (1995).

Again we note that the University's subsequently adopted "Rules for Handling Citizen Complaints" articulates deadlines in calendar days, not work days. See. e.g., Section II. 2. b. of those Rules.

its response to a complaint and to notify the complainant about the Department's disposition of the matter.

The difficulty with this interpretation is that it renders the relevant rule meaningless. It also would compromise, in some instances severely, the Board's ability to meet its appellate responsibilities. If many months have passed between an incident and the Board's review, memories will have faded and the public's confidence in the Board's ability to determine what actually happened will be badly strained.

The Board believes that the rule imposes a 45 calendar day deadline on the Department to fully complete its response to a complaint and to communicate the outcome to the complaining party.

Concerns and Suggestions

As noted above, the Board has learned a great deal this year about the challenges the Department faces when it attempts to meet its responsibilities to investigate civilian complaints. We recognize that these challenges are substantial and that, on occasion, there are circumstances well beyond the Department's control that disable UCPD from completing investigations promptly.

Nonetheless, the Board believes that improvements in this arena are possible and necessary. We have identified several related aspects of the Department's performance that are in need of additional attention. The first and most obvious is that in many instances the Department does not timely communicate the results of its investigation to the complainant or the PRB. Often, it appears, the investigating sergeant completes his or her initial 'Report of Findings' within the period prescribed by the rules (45 days from receipt of the complaint), but then considerable time passes before the matter is concluded and the Department communicates its disposition to the person who filed the complaint. We do not fully understand why this pattern of delay exists, but we know that the substantial tardiness that we have described compromises the public's confidence in the Department and invites civilians to infer that UCPD might not take their concerns seriously.

We recognize that there may be occasions when, for fully legitimate reasons, the Department cannot complete a respect-worthy investigation and notify the complainant about its outcome within the 45 calendar day period allowed under the University's rules. But when a deadline is approaching and the Department knows that it will not be met, the rules require the Department to notify the Administration and to seek an extension. See "Procedures for Handling Citizen Complaints," Section II. 2. b. *Courtesy should compel the Department, simultaneously, to notify the complainant that the matter will not be concluded within the prescribed period -- and to identify a date by which the Department will complete its work and communicate its findings.*

The Board also has expressed concerns about how the Department acquires information during its investigations, how it sifts through and organizes the relevant evidence, and how it explains the reasoning by which it moves from evidence to findings. More specifically, we believe that the way the Department's investigators conduct interviews could be improved (to

maximize the likelihood that all the relevant information will be acquired and that the interviewees will emerge with a feeling of confidence in the process). We also believe that sometimes the written summaries of the interviews omit important information and are not structured in uniform and clearly logical ways.

Given these concerns, the Board believes that the Department should actively consider seeking additional training in how most reliably to conduct internal affairs investigations.

The Board suggests that UCPD consider consulting with professors in the communications, psychology, and journalism departments to learn from experts in these fields approaches and techniques that are likely to maximize the quantity and reliability of information acquired during interviews.

The Board also would like the Department to consider expanding the explanations of its findings that are mailed to complainants once the investigative process has been completed.

As they have been written over the past year or so, most of these letters communicate very little about why the Department has reached the conclusions that are set forth in summary fashion. Such letters do not do justice to the work the Department has in fact devoted to its investigations -- which often is considerable. Complainants who receive such letters are likely to infer, incorrectly, that the Department disposed of their complaint summarily and did not take their concerns seriously. We urge the Department to consider ways to frame these letters so that they encourage complainants to believe that UCPD has committed significant resources to addressing the complaints and has done its best to reach reliable and fair conclusions.

We also believe that the Chief of UCPD should sign all such letters. His signature will reinforce the message to complainants that the Department has taken their concerns seriously. It also will reassure complainants that the highest level of command responsibility has learned about the incident or conduct out of which the complaint arose.

For its part, the Board believes that it can and should do a much better job of making itself and its activities more visible -- especially to members of the surrounding community -- and that we should find ways to improve access to the Board by anyone who has concerns about UCPD or about the Board. The Board also should make it clearer how people who are unhappy with the Board can register and support their complaints in the most appropriate places within the campus' civilian Administration.

Concluding Observations

The Board appreciates how readily UCPD has shared information and perspectives with us, and how open-mindedly it has heard our concerns and considered our suggestions. We have very positive impressions of the people who run the Department -- and we are convinced that they want to deliver the best possible service to the campus community. We also have developed a fuller understanding of the magnitude of the challenges the Department faces and the character of the constraints under which it must operate.

The spirit in which we submit this report is respectful. Our hope is that the information, perspectives, and suggestions that we have offered will enrich a continuing dialogue that will help an exemplary police force become even better.

This Annual Report is respectfully and unanimously submitted on November 23, 2010, by the Police Review Board of the University of California, Berkeley.

Nilima Bhatia, staff representative
Wayne Brazil, law professor and chair
Michael Harris, Professor, School of Optometry
Omar Kunbargi, ASUC representative
Munira Lokhandwala, Graduate Assembly representative
Ronald Nelson, formerly Chief of Police for the City of Berkeley and for UCS
William Oldham, Emeritus Professor, Electrical Engineering and Computer Sciences
Fran Packard, community representative

Appended: UCPD Berkeley's "2009 Complaints Report."

UCPD Berkeley's "2009 Complaints Report"

2009 Complaints

09C-01 4/9/09

"C" alleged that the officer was unprofessional, used unreasonable force when striking "C's" approaching dog and acted unprofessionally by taking enforcement action. The findings for the allegations of unprofessional conduct were not sustained. The finding for the unreasonable use of force allegation was exonerated.

09C-02 7/2/09

"C" alleged that the officer displayed unprofessional conduct, used unreasonable force during a detention, discriminated in his enforcement action and falsely detained "C". The finding for the allegation of unprofessional conduct was unfounded, for unreasonable use of force was exonerated, for discrimination in enforcement action was unfounded and false detention was exonerated.

09C-03 8/26/09

"C" alleged that the officer displayed unprofessional conduct during a traffic stop. The finding was not sustained.

09C-04 10/23/09

"C" alleged that the officer used excessive force during his arrest. "C" canceled the complaint and wanted it to be information only. Work File Memo 09W-08 was issued.

09C-05 OPERATIONAL REVIEW - WHEELER HALL

09C-05B 11/20/09

"C" alleged that the officer used unreasonable force when affecting an arrest. The finding was exonerated.

09C-05C 11/20/09

"C" alleged that the officer used unreasonable force while defending the barricade line during protest activity. The finding was exonerated.

09C-05D WORK FILE MEMO

"C" alleged that he the officer used unreasonable force while defending the barricade line during protest activity.

09C-05E WORK FILE MEMO

"C" alleged the officer used unnecessary force and knocked her down while officers were entering the protest area.

2009 Work File Memos

09W-01 WORK FILE MEMO

“C” did not like the attitude of the police when they came to “C’s” home looking for “C’s” son.

09W-02 WORK FILE MEMO

“C” felt that “C” was in danger from the police as they enforced a restraining order. “C” was not specific as to why “C” believed “C” was in danger.

09W-03 WORK FILE MEMO

“C” did not agree with the Department’s use of the PC 626 exclusion order.

09W-04 WORK FILE MEMO

“C” alleged false detention by the officer and did not like that the officer displayed OC spray at “C” while the officer was involved in the arrest of another.

09W-05 WORK FILE MEMO

“C” alleged that officers used excessive force by pulling “C” toward a patrol car while “C” was handcuffed.

09W-06 WORK FILE MEMO

“C” alleged the dispatcher was rude when stopping “C” from entering Sproul after hours.

09W-07 WORK FILE MEMO

“C” felt “C” was treated unprofessionally when forced to leave Boat while participating in a protest.

09W-08 WORK FILE MEMO

Work File Memo issued when “C” withdrew “C” complaint (09C-04)

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