

Annual Report of the Police Review Board of The University of California, Berkeley June 25, 2014

This report describes the principal activities of the Police Review Board (PRB or Board) for the period from July 1, 2011 through December 31, 2013, as well as the complaints lodged during that period with the University of California, Berkeley, Police Department (UCPD or Department) and their disposition.

The Police Review Board's Responsibilities and this Report

The PRB has two standing responsibilities, which 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. As part of the latter monitoring function, the Board is tasked with preparing an annual report, addressing the cases decided on appeal and the information forwarded by UCPD to the Board outside of the appeals process. The Board must hold a public meeting at least once each academic year to receive community input and discuss a draft of its annual report. The PRB's procedures may be found [here](#). In addition to its two standing responsibilities, the Board is occasionally given special assignments by the Chancellor.

This report covers several fiscal years. The PRB's last annual report was on its activities during Fiscal Year 2010-2011; that report was submitted on December 14, 2011. However, in November 2011, the Board received a special assignment to review the events of November 9, 2011 and the UCPD's use of force against Occupy movement protesters. A committee of the PRB held public forums on February 13 and 15, 2012. Its special report was submitted to Chancellor Birgeneau on May 29, 2012. As explained further, below, the Board was not fully constituted during the last academic year and did not issue an annual report. Thus, this report covers the Board's regular activities from July 1, 2011 through December 31, 2013; that includes the period during which the PRB was occupied with its special assignment, the year in which it lacked full membership, and the first half of the current fiscal year.

Membership of the Police Review Board and Contact Information

Under policies adopted in 2001 by the University of California, Berkeley, the Board has eight deliberating and voting members: a chair, two faculty representatives, two student representatives (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. The 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 academic year 2011-2012, Jesse Choper, Earl Warren Professor of Public Law, served as PRB Chair. Michael Harris and William Oldham were faculty representatives, Fran Packard served as community representative, Tyson Nagler as staff representative, and Ronald Nelson as the representative with professional experience in law enforcement. Then-Captain Margo Bennett was the UCPD's liaison to the Board. The student representatives were Omar Kunbargi (ASUC's representative) and Eve Weissman (GA's representative, appointed in December 2011). Pam Sutherland, Assistant to the Vice Chancellor, Facilities Services, was named to staff the Board in December 2011.

Professor Choper resigned as chair during summer 2012. During the 2012-13 academic year, Ms. Weissman graduated, Mr. Nagler left the University, Ms. Packard passed away, and Professor Oldham resigned from the Board. Timofey Semenov succeeded Mr. Kunbargi as the ASUC's representative. In late March 2013, Berkeley Law Professor Charles Weisselberg was appointed as the new chair.

Vice Chancellor Wilton appointed new members to the Board in September 2014, and the GA and ASUC named new representatives. Current PRB members are:

Rishi Ahuja, ASUC Representative (appointed January 2014)
Andrew Brighten, Graduate Assembly Representative
John Cummins, Community Representative
Douglas Hambleton, Law Enforcement Representative
Michael G. Harris, Professor Emeritus, School of Optometry
Laura Kray, Professor, Haas School of Business
Rochelle Niccolls, Staff Representative
Charles D. Weisselberg, Chair

In 2013, Margo Bennett became Chief of the UCPD; Lieutenant Eric Tejada took over as the Department's liaison to the Board. The liaison position is now filled by Lieutenant Lee Harris.

With deep regret, the Board reports the death of Ronald Nelson, who served as the Board's law enforcement representative from 2003 until his passing in March 2014. We are deeply grateful for his years of service. His position has been filled by Douglas Hambleton, who retired after serving many years in law enforcement, including as Chief of the Berkeley Police Department.

Kathleen Moore has replaced Ms. Sutherland as the staff assistant to the Board.

The Chair of the PRB may be contacted at: cweisselberg@law.berkeley.edu. Ms. Moore may be contacted at: krmoore@berkeley.edu. 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](#). The PRB reports to the Vice Chancellor for Administration and Finance, John Wilton, whose office is described [here](#).

Overview of the Board's Activities from July 2011 through December 2013

During this two-and-a-half year period, the Board decided three (3) appeals from the UCPD's disposition of civilian complaints. As part of its oversight function, the Board reviewed all thirteen (13) civilian complaints filed with the Department in these years along with the Department's response letters, as well as a log describing eleven (11) "work file memos." Work file memos document civilian complaints or inquiries resolved without full investigations.

During the current and past academic years, the PRB met on four occasions: on May 24, 2013, November 13, 2013, January 30, 2014, and April 3, 2014. As noted, the Board was understaffed and without a chair for most of the 2012-2013 academic year. With only four members at the time of the May 2013 meeting, the Board determined that it lacked a quorum to hold a public hearing and issue an annual report. This academic year, a re-constituted Board met to plan its activities, receive training from the UCPD on specific Department practices and procedures, review civilian complaints, and prepare this report.

In addition to these activities relating to the PRB's standing responsibilities, the Board also completed one special assignment. As noted, a committee of the PRB reviewed the events of November 9, 2011 and reported to the Chancellor in May 2012.

The next two sections of this report address the civilian complaints filed with the UCPD, appeals from dispositions of those complaints, and work file memos, plus the Board's special assignment.

Civilian Complaints, Appeals and Work File Memos

Appendix A to this report summarizes the thirteen civilian complaints filed with the Department from July 2011 through December 2013. They contain allegations ranging in seriousness from unprofessional conduct to excessive use of force. The Board notes that two of the complaints were sustained. Three of the complaints stemmed from the November 9, 2011 Occupy movement events.

The Board received a total of three appeals from the Department's dispositions of the civilian complaints. When an appeal is lodged, a three-member panel of the Board is appointed and reviews the investigative findings of the UCPD. Under the Board's procedures, the panel has three options. It may summarily affirm the investigation, remand to UCPD with a request for further investigation or clarification, or refer the appeal to the full Board for an external investigation with an outside investigator. Summary affirmance is appropriate when it is apparent that "the Department's investigation was complete and its findings correct on the evidence presented, so that further investigation or hearing by the Board would be highly unlikely to lead to a different conclusion."

Two of the appeals came from complaints involving the November 9, 2011 events. In adjudicating the appeal from the Department's findings in Complaint #11C-03, the

Board's three-member panel carefully reviewed the investigative report and evidence, including videos of the events. The panel met with the UCPD liaison to review Department policies. The panel affirmed the investigative findings on the basis of the evidence presented, though it disagreed with the way in which the Department characterized one of its conclusions. In adjudicating the appeal in Complaint #11C-04, the three-member panel likewise reviewed the evidence, investigative report, and videos, and met with the Department's liaison. It affirmed the UCPD's findings on the basis of the evidence presented.

The third appeal was from the Department's findings in Complaint #12C-01. Regrettably, the appeal was filed while the Board was in desuetude. In June 2013, a three-member panel was appointed and conducted an initial review. Given the delay, the panel asked the Complainant's lawyer if he wished to supplement the appeal. Counsel was granted additional time to submit materials. The panel then reviewed the investigative report and the evidence, including the supplemental materials provided by the Complainant's counsel. The panel summarily affirmed three of the findings, but remanded the fourth (excessive use of force) to the UCPD for further investigation and clarification. Following that remand, the Department submitted a supplement to the Board. The panel affirmed the Department's finding of "not sustained."

In preparing this report, the Board also reviewed a log of work file memos. These are memoranda that are sent to officers' supervisors with issues that are short of major complaints. They may represent minor issues or problems that have been resolved to a civilian's satisfaction. In addition, pursuant to Department policy (General Order O-6), a complaint may be deemed withdrawn when the Complainant is uncooperative. Thus, work file memos may also represent dispositions of complaints when the Complainant does not pursue the complaint or cannot be reached.

Appendix B to this report describes the ten work file memos involving interactions with civilians during the relevant time period. The PRB's chair was able to see the most recent memos. Under Department policy, the memos are considered to be confidential personnel records and are retained only for three months or until the officers' next personnel review, whichever is longer. Thus, the only record of most of the work file memos was the Department's log. Going forward, the Board will seek to review the work file memos on a periodic basis so it need not rely upon the Department's log.

Based upon its review of the complaints, appeals, and available work file materials, the Board concludes that—on the whole—the Department has responsibly investigated the allegations in the complaints and work file memos. The Board is providing feedback to the Department with respect to the complaint process and how the Department communicates its findings to Complainants. The Board has scheduled a meeting in July with UCPD Chief Margo Bennett and Lt. Harris to follow up on the complaint process.

Additionally, the Board notes that during the time frame of this report, the UCPD sustained two complaints against the same officer. The Board inquired about the officer. We understand that at that time, the UCPD was concerned about an apparent pattern of

behavior and provided progressive training for the officer. No further complaints against the officer have been sustained since the training was received.

The Board's Special Assignment

Several days after November 9, 2011, Chancellor Birgeneau asked the Board to review the events of that day, to determine what happened, and to assess whether the conduct of officers was consistent with campus norms and policies. PRB Chair Choper appointed a committee, consisting of himself, Omar Kunbargi, Tyson Nagler, Ronald Nelson and Eve Weissman. The committee arranged two public forums on February 13 and 15, 2012, hearing over six hours of testimony. On March 5 and 6, 2012, the committee took statements from faculty members and the UCPD. The committee also met with members of the UC Berkeley Crisis Management Team, and reviewed many hours of videos, as well as other materials. The committee's report, along with an addendum by Ms. Weissman, was submitted to Chancellor Birgeneau on May 29, 2012. The report and addendum are available [here](#). The Chancellor's June 6, 2012 response is available [here](#).

The committee expressed concern that the campus had not adequately learned its lessons from the PRB's independent reviews of past incidents. In particular, the campus failed to implement recommendations contained in the reports following the 2009 occupation of Wheeler Hall and the 1997 occupation of Sproul Hall. However, the Board committee noted that in February 2012, the campus adopted a new approach in responding to protests. The campus has replaced the former Crisis Management Team with a Protest Response Team (PRT) under the joint leadership of the Executive Vice Chancellor and the Vice Chancellor for Administration and Finance. Under the PRT's preferred approach, the campus's response to protests will include—where possible—administrators and faculty members who are not law enforcement officers. And, where possible, decisions to authorize, escalate or de-escalate police engagement will be made only by a fully-briefed senior administrator who will be at the scene. In its report, the PRB committee characterized the PRT and its new principles as a positive step. Ms. Weissman wrote separately to state that, in her view, campus leadership's preparation for and response to the events of November 11 were unjustified, inadequate and irresponsible. She also raised concerns about the scope and conduct of the PRB's own investigation, including the lack of adequate protocols.

Like the previous PRB committee, the present Board views the implementation of the new policy (and the creation of the PRT) as a very positive development. It is a significant shift in the way the campus addresses protests. Instead of the Department serving as the initial contact with protesters, having educators and administrators interact with protesters—where possible—may facilitate a peaceful resolution. We are pleased to note that based upon conversations with the Department and campus officials, the UCPD and administration appear genuinely committed to the new approach, including the need to have critical decisions made by senior administrators who will communicate clear instructions to the Department. We hope that the new policy will assist the campus in responding to future incidents. However, we also share some of Ms. Weissman's concerns about the utility of the PRB's review of major campus incidents.

The Annual Public Meeting

The Board held its annual public meeting on Thursday, May 8, 2014 in Room 105 of the Law School. The Board published a notice of the meeting in advance, and posted a pre-meeting draft of its report on the PRB's website. The community was invited to attend and comment on the draft report, as well as provide input about the Department and the Board. The meeting began at 4:00 p.m. and adjourned at 5:40 p.m. All Board members were present except Professor Harris. UCPD Chief Margo Bennett and Lt. Eric Tejada also attended, along with approximately 20 students and/or members of the public.

The meeting began with a welcome and an overview of the Board's role and its activities from July 2011 through December 2013. The meeting was then opened to comments and questions from members of the public.

There were a number of questions about the role of the PRB and its relationship to the Department. The Board explained that it decides appeals from the Department's decisions on complaints, but does not participate in the initial decisions or routinely hear testimony to decide the appeals from those decisions. Nor, in its appellate role, does the Board recommend discipline for officers or impose discipline. Further, while the Board elicits community input and provides that to the Department as part of its audit role, the Board does not make policy decisions for the UCPD or have the power to subpoena witnesses through a grand jury-like process.

A significant portion of the meeting involved issues raised by survivors of campus sexual assaults. Some concerns reported by survivors included: rudeness by officers in interactions with sexual assault survivors; survivors being discouraged (allegedly by Gender-Equity staff) from filing complaints against officers; the Department's method of reporting data (particularly the characterization of sexual assault reports made to non-UCPD personnel as "unverified"); the length of time required to resolve reports of assault; and confusion among medical staff (such as at the Tang Center) about whether to refer survivors to UCPD or the Berkeley Police Department. They also asked several questions that the Department and not the Board would be equipped to answer, such as: the procedures and training within the Department for investigating sexual assaults; the relative jurisdictions of the UCPD and the Berkeley Police Department; and the timing of the designation of a Survivor Resource Officer within the Department.

There were a number of other comments and concerns raised by members of the public. One comment was that the procedures for filing a complaint against the Department and officers were not readily transparent, and that there should be an on-line mechanism for filing complaints. Other comments related to policing and race; a question was raised whether the Department would maintain and provide statistics on the race of all individuals ticketed, detained, or arrested. One student commented on the quality of police interactions with the students, and in particular students in communities of color, and suggested that the Department meet with students to discuss those interactions. The Board was also asked to inquire whether the UCPD issued tasers to officers or planned to do so. Another individual asked the Board about its special assignment following the

November 2011 Occupy Movement events; the Board referred to its prior report and the creation of the Protest Response Team. A member of the public inquired about the Board's earlier lack of membership.

We note that UCPD Chief Bennett followed up with survivors of sexual assault during the week after the annual meeting. The Board also has scheduled a meeting with the Department to discuss the complaint process and issues raised at the annual meeting.

Concluding Observations

The Vice Chancellor has appointed a new Police Review Board, which is fully functioning. The Board is current with respect to appeals. It has convened an annual meeting and is pleased to issue this report.

By charter, the PRB has a limited charge. Nevertheless, the Board hopes it may serve a useful role. In addition to deciding appeals and reviewing the complaints filed with the Department, the Board can elicit input from the community and facilitate a constructive discussion with the Department.

June 25, 2014

UC Berkeley Police Review Board

Rishi Ahuja

Andrew Brighten

John Cummins

Douglas Hambleton

Michael G. Harris

Laura Kray

Rochelle Niccolls

Charles D. Weisselberg, Chair

Appendix A

Summary of Civilian Complaints Filed With the UCPD and the Department's Findings

July 2011 – June 2012

#11C-01 8/14/11

Complainant (“C”) alleged that the officer was unprofessional when approaching “C’s” group in Foothill Parking Lot and displayed irrational and menacing behavior. The finding for the unprofessional conduct was sustained and the Department will work with the officer through additional training and supervision to improve performance.

#11C-02 8/20/11

“C” alleged that the officer was unprofessional when asking C and a companion to leash their dog, dishonest about policies for unleashed dogs, and asserted a false claim of authority. The finding for the unprofessional conduct was sustained, and the Department will work with the officer through additional training and supervision to improve performance. The finding for the allegation of dishonesty was unfounded.

#11C-03 11/09/11

“C” alleged that the officer displayed unprofessional conduct and unreasonable use of force when detaining “C” during the protest on Sproul Plaza. The finding for unreasonable use of force was unfounded; the Department conducted an investigation and concluded that the subject officer was not present when any force was applied. The finding for unprofessional conduct was not sustained. “C” appealed the complaint resolution and it was reviewed by the Police Review Board. The Board agreed that the subject officer was not involved. It disagreed with conclusion of “unfounded” and thought that a finding of “unsustained” was more appropriate. While the subject officer was not involved, the Board concluded that force was applied against “C” by someone, though it was not possible to identify that person or determine if the use of that force was excessive. The PRB agreed with the finding of not sustained on the allegation of unprofessional conduct.

#11C-04 11/09/11

“C” alleged that the officers used unprofessional conduct by failing to advise “C” of the charges and his rights, and unreasonable use of force when detaining “C” during the protest on Sproul Plaza. The findings for the allegation of unreasonable use of force were not sustained for the three incidents described by “C.” The findings for failure to advise the complainant of the charges and failure to advise about Miranda rights were exonerated. “C” appealed the complaint resolution, the Department conducted a follow-up report and the PRB reviewed the appeal. The PRB found that the force used did not constitute “unreasonable use of force” according to policy and concluded that the ruling of “not sustained” was appropriate. The PRB concluded that the finding of “exonerated” was appropriate in the assertion of failure to advise “C” of the charges and reading his Miranda rights.

#11C-05

11/09/11

“C” alleged that the officer displayed unprofessional conduct and unreasonable use of force during the protest on Sproul Plaza. The Department sent an initial letter informing “C” that the officers involved appeared to be Alameda County officers and forwarded the complaint to the Alameda County Sheriff’s office. The Department sent a subsequent letter to “C” informing him that they had identified the officer described in the complaint as a UCPD officer and assigned the complaint for investigation. There is no subsequent documentation of the resolution of the complaint.

#12C-01

3/9/12

“C” alleged that the officers were unprofessional, used unreasonable force, were dishonest, and falsely detained and arrested him. “C’s” friend also filed a report of the incident. The day after the incident, the officers filed a police report, including statements from the officers in question and witnesses. During the UCPD’s internal investigation, “C” responded through an attorney and declined to be interviewed, but offered to provide any follow-up information through the attorney. The Department investigator found the allegation of unprofessional conduct unfounded, the allegation of dishonesty unfounded, the allegation of false detention or arrest exonerated, and the allegation of unreasonable use of force not sustained. “C” filed an appeal and the PRB conducted a review. The PRB affirmed the Department’s findings on the allegations of false detention or arrest, unprofessional conduct, and dishonesty. The PRB remanded the allegation of excessive use of force to the UCPD for further investigation and clarification on the application of UCPD policies. The UCPD investigator attempted to contact “C’s” attorney, who did not respond. The UCPD supplemented its original report. The PRB reviewed the supplement and affirmed the finding of “not sustained” on the allegation of excessive use of force.

#12C-02

5/20/12

“C” alleged that two officers were unprofessional when responding in-person to a child custody dispute call, and alleged that one officer (a corporal) was unprofessional, dishonest, and discriminatory in conversations with “C”. The findings for the allegations of unprofessional conduct for two officers were not sustained. The findings for the allegations of unprofessional conduct by the corporal were unfounded. The Department reviewed the recorded phone call between “C” and the corporal and responded to each of the allegations of dishonesty, finding 11 allegations unfounded and 2 allegations not sustained. The finding for the allegation of prejudicial attitude by the corporal was unfounded.

July 2012 – June 2013

#12C-03

7/10/12

“C” alleged that an officer was unprofessional, used unreasonable use of force, discrimination, dishonesty, and brutality while waking her up and asking her to move from People’s Park. “C” also alleges that the officer damaged her property and falsely detained or arrested her. The finding for the allegation of unprofessional conduct was not sustained. The findings for the allegations of dishonesty and excessive use of force were

unfounded. The complaint did not provide examples of the alleged discrimination and there were no findings on this allegation.

#12C-04 10/17/12

“C” alleged that an officer was unprofessional, dishonest, did not provide police services when requested on the phone. “C” alleged that a second officer was unprofessional, did not provide adequate service, was discriminatory, and was dishonest on the police report. The findings for the allegations against the first officer were not sustained. The findings for the allegations against the second officer were exonerated for the allegations of unprofessional conduct and dishonesty, unfounded for the allegation of not providing adequate service, and not sustained for the allegation of discrimination.

July 2013 – December 2013

#13C-01 7/16/13

“C” filed a Citizen’s Complaint Form alleging that five officers falsely detained him and were excessively brutal. Investigators attempted to contact “C” via mail and multiple phone numbers but were unable to reach him. “C” was advised by mail that the complaint was being processed as an information inquiry and the complaint was filed as a work file memo (#13W-02).

#13C-02 8/12/13

“C” alleged that an officer was unprofessional, used unreasonable use of force, and falsely detained her during an incident where “C” was the suspect of a theft. The finding for the allegation of unprofessional conduct was unfounded. The finding for the allegation of false detention or arrest was exonerated. The finding for the allegation of unreasonable use of force was not sustained.

#13C-03 8/11/13

“C” filed a Citizen’s Complaint alleging that an officer was unprofessional when addressing him. The Department attempted to contact “C” four times via email and received no response. The Department notified “C” that they were processing his complaint as an information inquiry and added a work file memo (#13W-01) to the officer’s file.

#13C-04 7/18/13

“C” filed a Citizen’s Complaint form alleging that an officer used excessive force and was brutal during arrest. The investigation is pending and there are no findings as of yet.

Appendix B

Summary of UCPD Work File Memos

July 2011 – June 2012

#11W-08

Complainant (“C”) described an incident related to driving. Additional details were not available.

#11W-09

“C” alleged that an officer was rude in an incident related to parking. Additional details were not available.

#11W-10

“C” alleged inappropriate use of force. Additional details were not available.

July 2012 – June 2013

#12W-01

“C” alleged that an officer accelerated his vehicle when “C” and his son were in a crosswork. “C” did not respond to the UCPD investigator, and the incident was processed as a work file memo.

#12W-02

“C” is former student who periodically alleges mistreatment by UCPD and university officials. The work file log does not list the nature of these particular allegations. This is the same complainant as in #13W-05 and #13W-06.

July 2013 – December 2013

#13W-01

See Complaint #13C-03, above. “C” did not respond to the Department’s investigator, and the Complaint was treated as a work file memo.

#13W-02

See Complaint #13C-01, above. “C” did not respond to the Department’s investigator, and the Complaint was treated as a work file memo.

#13W-03

“C,” who received a traffic citation, complained about the length of the traffic stop and raised the possibility of being “profiled.” During the UCPD investigation, “C” learned that the officer was being trained, which may have extended the length of the stop.

#13W-05¹

“C,” the same complainant as in #12W-02 and #13W-06, alleged improper detention.

#13W-06

“C,” the same complainant as in #12W-02 and #13W-05, alleged unprofessional conduct by UCPD after being ejected and banned from campus recreational sports facilities.

¹ Note: #13W-04, the next work file memo in this sequence, does not relate to a civilian complaint. It is an internal matter for a civilian employee who was involved in an automobile accident.