

BERKELEY POLICE DEPARTMENT POST INCIDENT REVIEW



RESPONSE TO CIVIL UNREST DECEMBER 6 & 7, 2014

Post Incident Review

- PIR Team Created
- Report-Candid
 - Accurate
 - Detailed
 - Professional assessment
 - What transpired, How police responded, Lessons learned, Recommendations

Methodology

- Reviewed:
- 400 videos
- CAD records
- 911 calls
- Case law
- Police reports
- Interviews
- BPD General Orders (C-64, P-29, U-2, U-4)

Interviews

- Command Staff (BPD & BFD)
- Subject matter experts
- Legal experts
- Mutual Aid Commanders
- Community groups-Neighbors, Students (ASUC, BSU), Chamber of Commerce
- Religious leaders
- Civil rights activists (NAACP, ACLU)
- Members of the media

Best Practices

- Reviewed crowd management best practices
 - Laws
 - Training
 - Equipment
 - Use of CS gas, Less Than Lethal munitions & batons
 - Sample policies/guidelines (IACP, POST, OES)

The Report

- Public document
- Police website -
<http://www.ci.berkeley.ca.us/police/BPDPostIncidentReview/>
- Full un-redacted library of all videos
- Summary of the 6th and 7th of December

The Report

- Embedded video clips to enhance viewer understanding
- Individual uses of force - not evaluated
- Recommendations based on Lessons Learned

December 6th

- Anti-police protest 5PM Bancroft/Telegraph
- Mutual aid pre-requested

Mission

- Monitor & Facilitate peaceful demonstration
- Public safety & Security
- ID & Arrest lawbreakers

Incident Objectives

- Monitor
- Traffic control
- Maintain Law & Order

Priorities

- Life safety
- Incident stabilization
- Property protection

**FROM FERGUSON TO AYOTZINAPA
MARCH AGAINST STATE VIOLENCE**

**REMEMBER THE DEAD
FIGHT LIKE HELL FOR THE LIVING**



**5:00 PM
DECEMBER 6
TELEGRAPH+BANCROFT
BERKELEY**

BRING FRIENDS, BANNERS, MASKS, MEGAPHONES, ET CETERA



WED:
5PM 14TH & BROADWAY
OAKLAND

THURS:
5PM 14TH & BROADWAY
OAKLAND

FRI:
7PM 27TH & TELEGRAPH
OAKLAND

SAT:
5PM BANCROFT & TELEGRAPH
BERKELEY

ERIC GARNER . MIKE BROWN
FUCK THE POLICE

Facts

- Potential for unrest
- Likely high attendance
 - 688 RSVP “Yes”
- Mutual aid requested
 - Only event advertised in the area
 - 250 officers responded

Mutual Aid

- Cal OES LE Guide For Emergency Operations
- Unusual occurrence beyond local resources
- Request to ALCO Mutual Aid Coordinator

Mutual Aid

- BPD calls Sheriff
 - Resources
 - Mission
 - Equipment
- Sheriff calls LE resources from operational area
- Local requestor remains in charge
- Mutual Aid responders shall follow their own policies & bring state approved equipment

Standardized Emergency Management System

- Scalable Incident Management System
 - Resource management tool
 - Government Code 8607(a)
 - Required by state law for multi-agency & multi-jurisdictional emergencies

Mutual Aid Staging Area

- 2100 block of McKinley Ave
 - PSB lot too small
 - Proximity to check-in, Department Operations Center (DOC), briefing room, food & bathrooms
 - Security (Remote vs. Nearby Locations)

December 6th

- Briefing 3:30 PM
- All BPD resources and 50% of Mutual Aid
- BPD Mutual Aid Liaison provided operations plan and briefing to Mutual Aid responders

December 6th

- 4:45 PM Over 150 Law Enforcement Officers deployed
- 4:54 PM Protesters gathered @ Sproul Plaza
 - Number of protesters grew rapidly
- Protesters marched toward PSB
- 4 Bicycle officers monitored

December 6th

- 5 Motorcycle Officers & 5 Parking Enforcement Officers facilitated march with traffic control
- 5:56 PM Die-in @ Shattuck/Allston
 - Streets were blocked for protester safety
- 6:08 PM Milvia/Allston Officers observed some crowd members donning masks
- Historical meaning; prior protests

Public Safety Building (PSB)

- Critical Infrastructure
 - City Emergency Operations Center (EOC)
 - Police & Fire Communications Center
 - City Jail
 - Police Operations
 - Fire Administration

PSB Security



In Front Of PSB

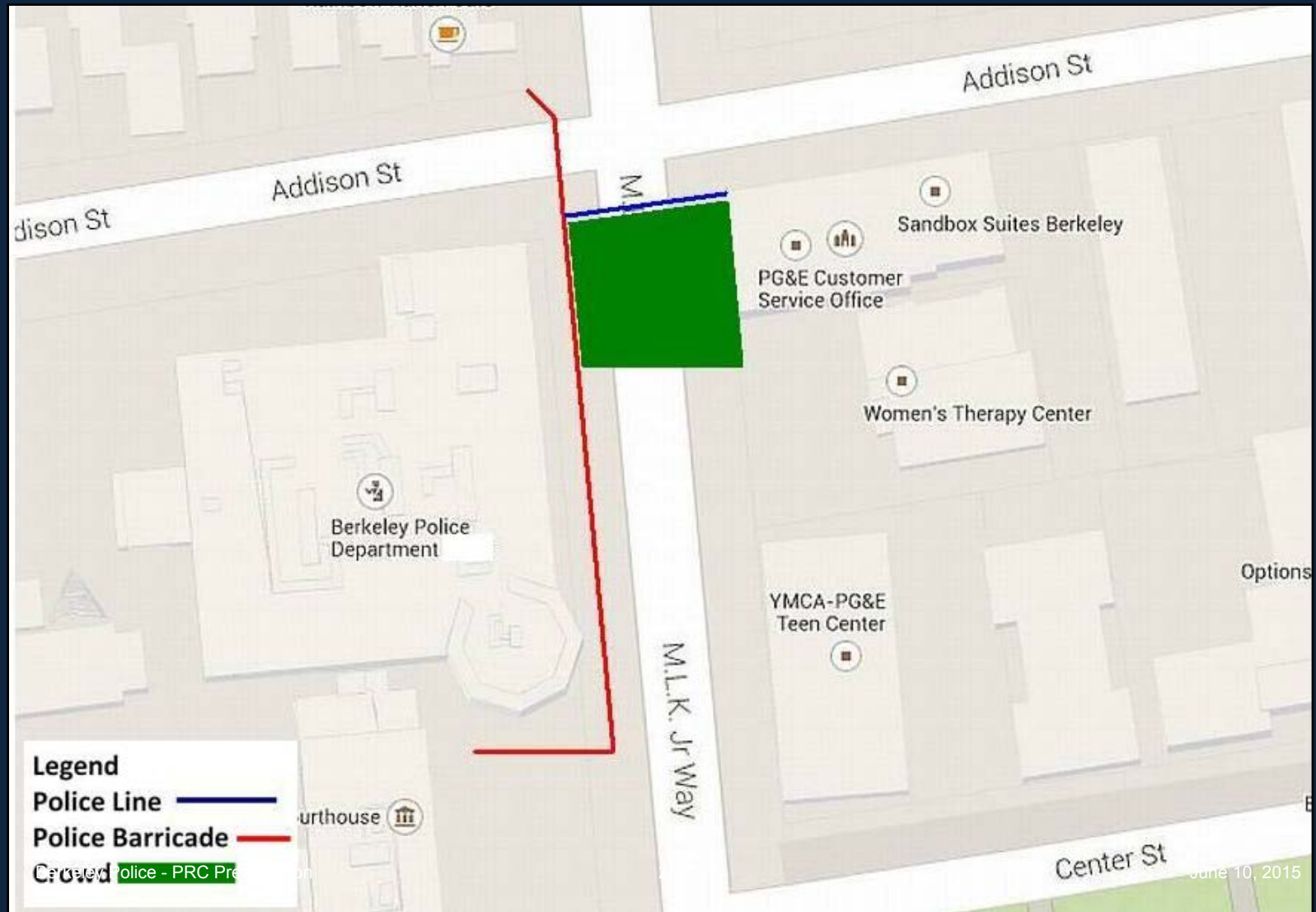
- Approx 800 people in intersection Center/MLK
- Front lobby closed
- Barricades staffed with officers

MLK/Addison

- Officers @ MLK/Center requested additional resources on North side of the block
- 2 Squads arrived & blocked MLK/Addison



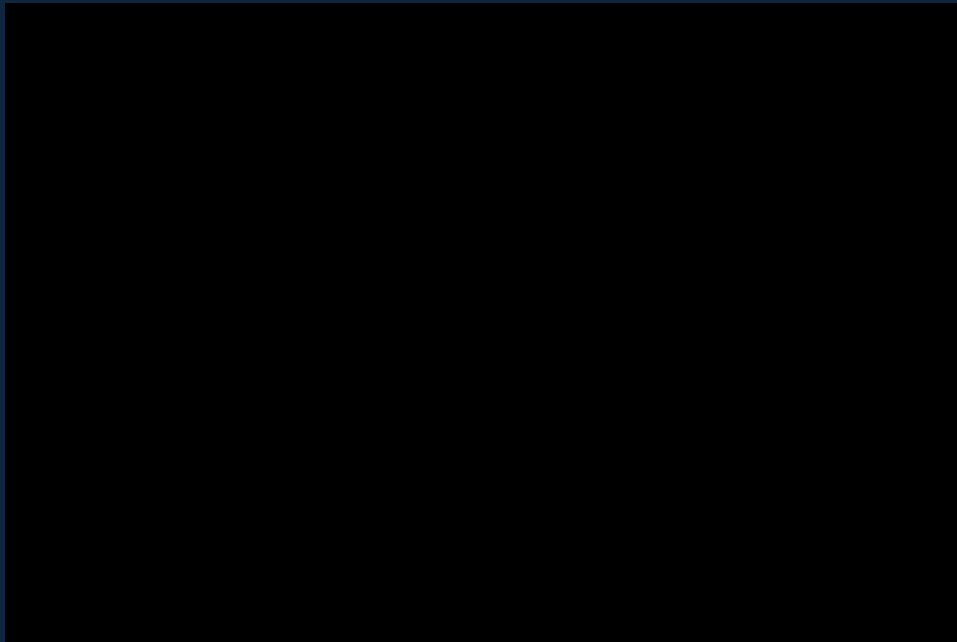
Crowd Moved To MLK/Addison



MLK/Addison

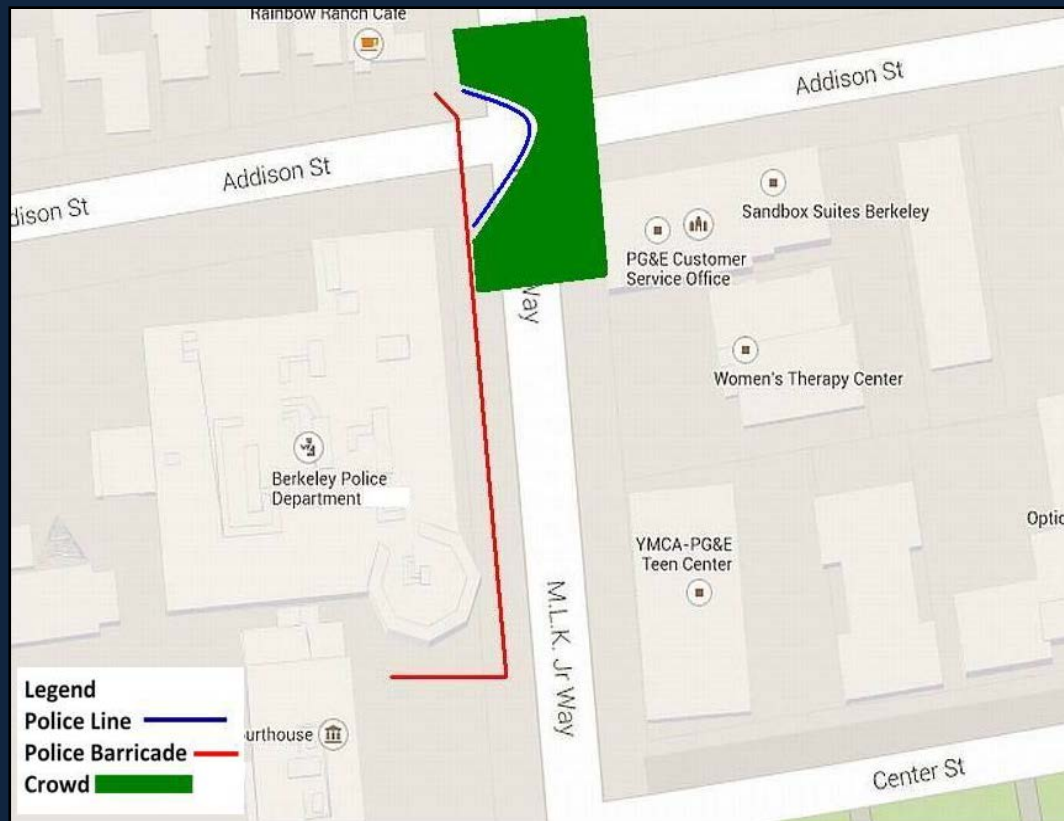
- Police line was set
- Crowd members requested to stay back
- Officers used hands & batons to maintain safety zone
- Within minutes, Squad Leader reconfigured police line in an attempt to reduce friction with the crowd

VIDEO



MLK/Addison

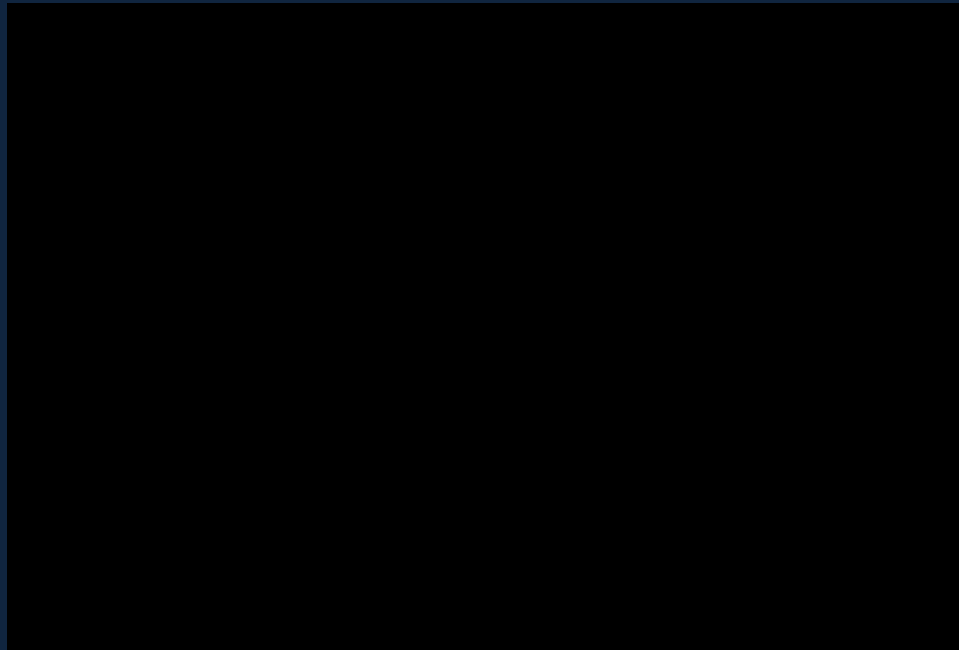
- Adjusted police line



MLK/Addison

- Crowd was warned to stay back from officers
- Some crowd members were pushed for getting too close to officers
- As crowd filed by, masked person threw object at officers
- Crowd member walked into officer who pushed him back

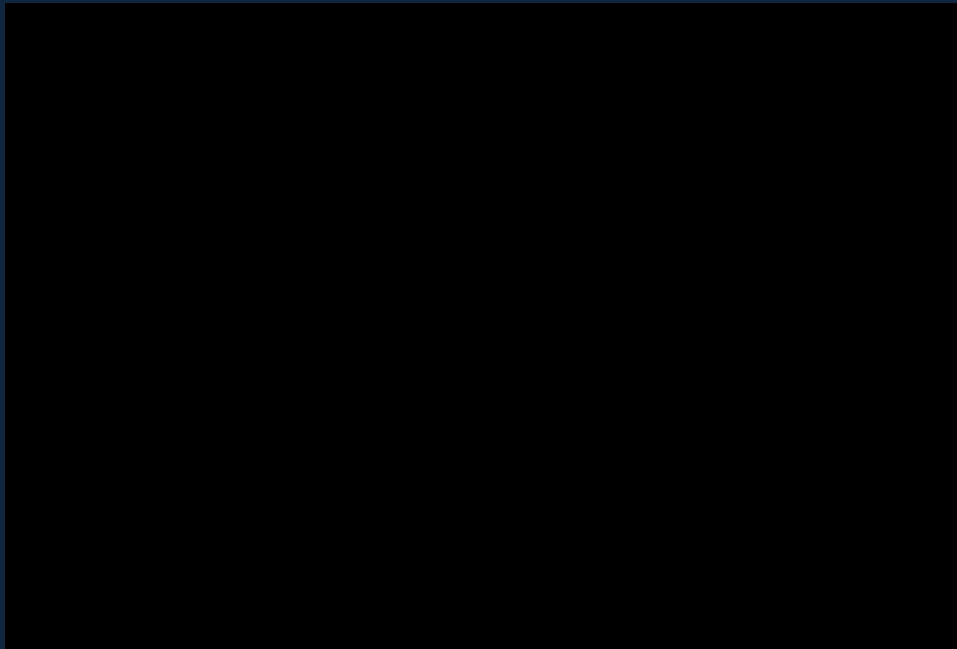
VIDEO



MLK/Addison

- Masked individuals pelted officers with projectiles
- 5 Officers were injured
- Officers rolled smoke canisters
- Crowd moved off

VIDEO



Berkeley Police - PRC Presentation

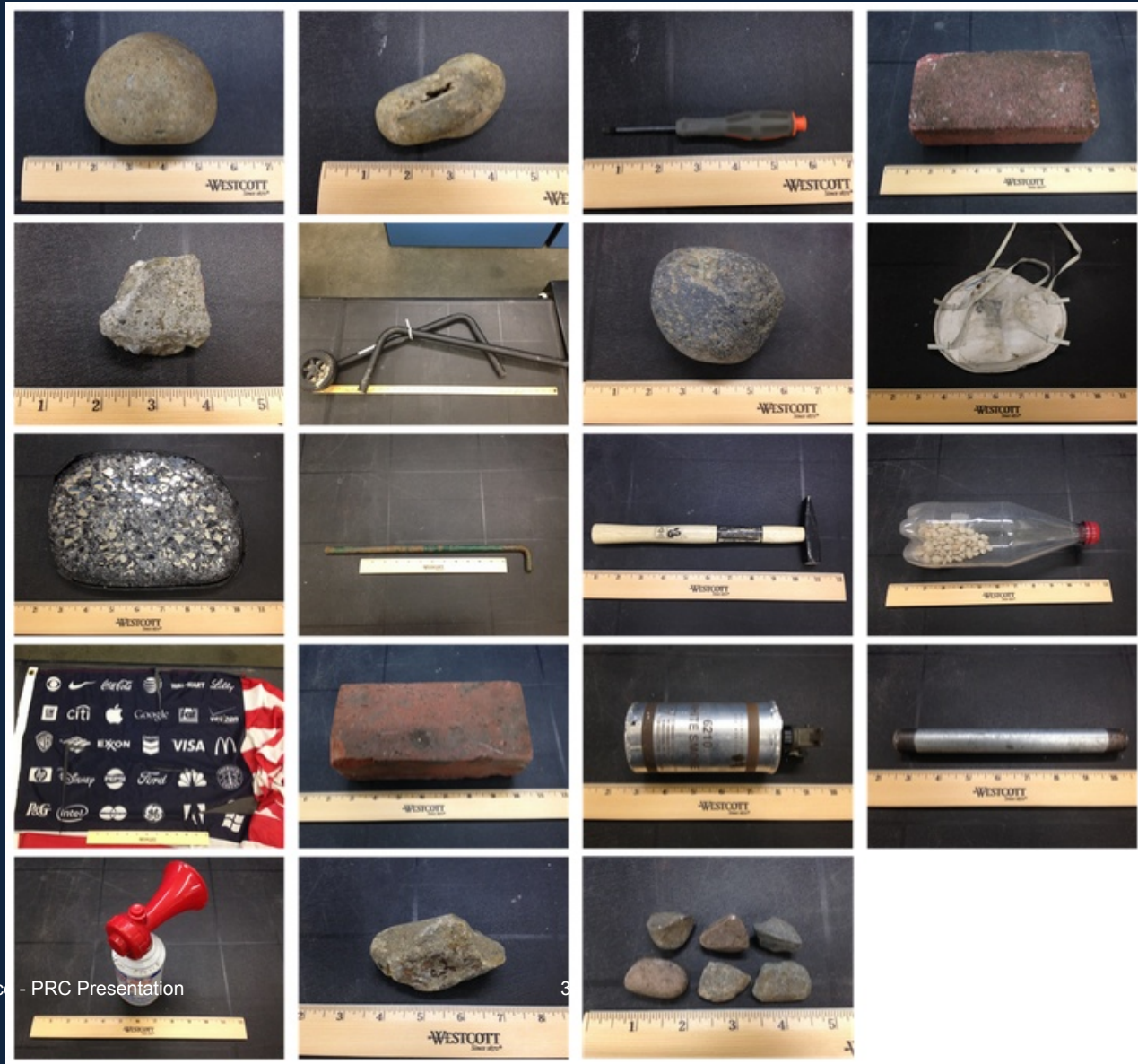


Youtube Link / Embedded Video

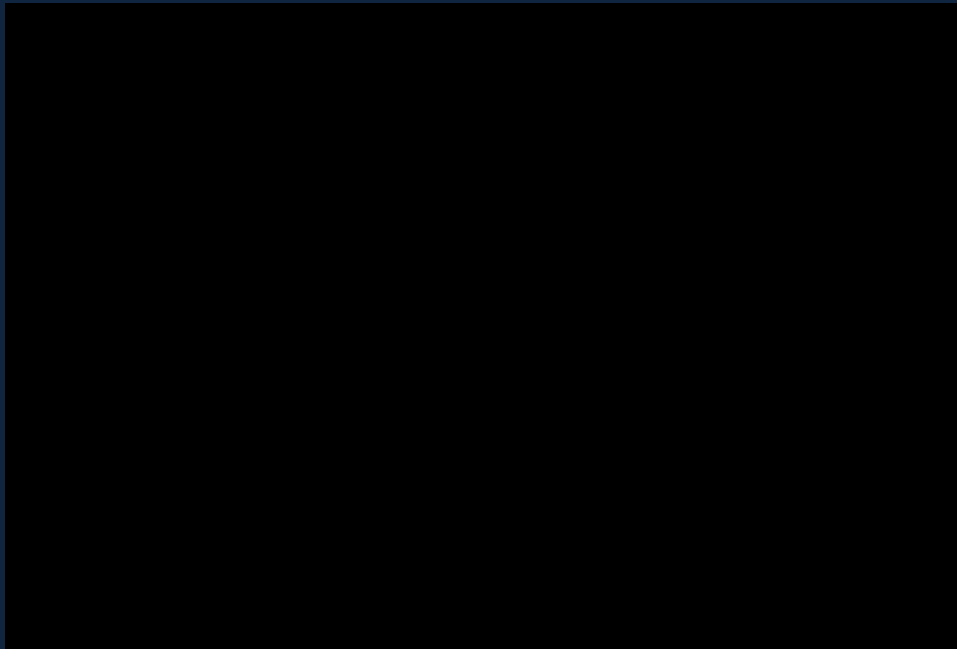
June 10, 2015

Numerous items thrown

Sample of Items Thrown at Police



VIDEO



GO (U-2) Less Than Lethal & Chemical Agents

- Crowd Situations – Less than Lethal & Smoke/CS require prior approval of Chief
- Unless exigency (Barrage of projectiles)

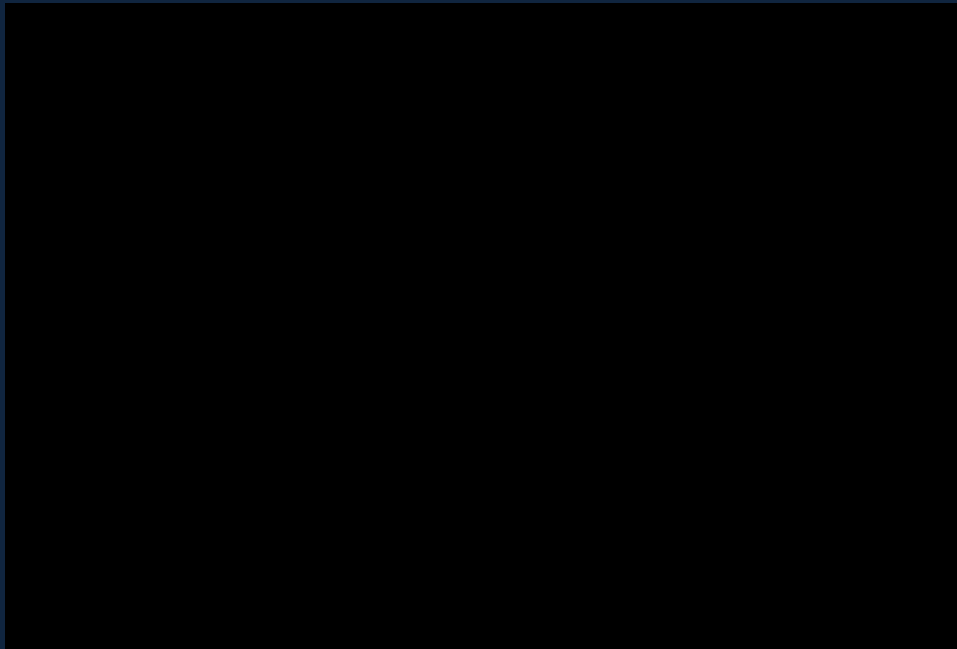
MLK/Addison

- Order to roll smoke given verbally
 - Not communicated via radio
- Other commander thought crowd threw gas/smoke at police first
- Officers donned gas masks, but no CS gas was used
- Crowd proceeded north

Trader Joe's

- Damage & Looting
- Some crowd members attempted to intervene
- Police response affected
 - Injuries to officers
 - Clarity of orders
 - Inability to maneuver quickly

VIDEO



Trader Joe's

- Broken windows
- Destroyed merchandise
- Masked individuals
 - Highly organized
 - Fought with other crowd members
 - Provided security for vandals
 - Confronted videographers
 - Media
 - Individuals

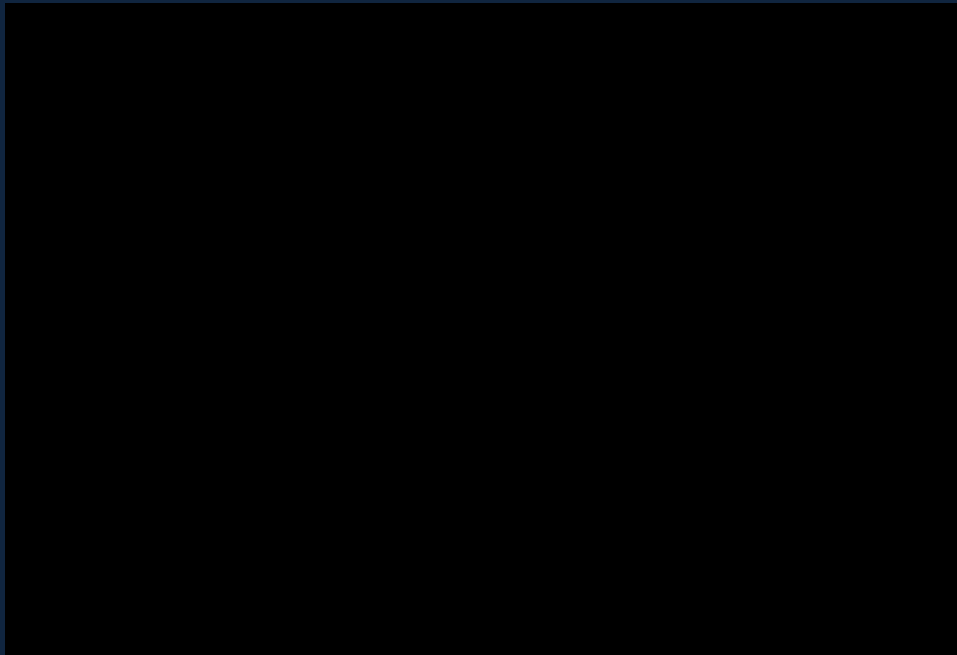
MLK/University

- Officers removed masks & reconsolidated
- Officers moved to MLK/University
 - Provided traffic control & security
 - Searched Trader Joe's
 - Waited for further instruction

Radio Shack

- Damage and looting
- Thousands of dollars in damage and loss

VIDEO



PC 404 Riot Defined

- *“Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.”*
- *Police Response-Declare unlawful assembly & disperse crowd to bring order*

University Avenue

- The crowd proceeded west on University
- Wells Fargo at San Pablo/University suffered thousands of dollars in damage
- To the freeway
 - Police line @ 6th/University
- Crowd moved eastbound
- Police made several unsuccessful attempts to stop and contain (“kettle”) the crowd for dispersal order

Unlawful Assembly

- Crowd behavior:
 - Clear & present danger of imminent violence
(General Order C-64)
- Dispersal order used for:
 - Riot
 - Unlawful Assembly
- Order must be audible & crowd must be given reasonable time to comply

Dispersal Orders PC 409

- Dispersal orders may lead to arrests and possible use of force

“The plain objective of section 409 is to enable law enforcement officers to defuse riotous situations by ordering persons to remove themselves from the area without need to distinguish between rioters and bystanders...” People v. Cipriani, 1971

- If same crowd relocates:
 - Still in violation of the order
- If crowd relocates, but composition may have changed:
 - New dispersal order needed

Dispersal Orders

- Mass arrests - difficult
 - Staffing sufficient arrest teams
 - Fielding transportation vehicles
 - Booking/Custodial teams
- Potentially difficult to prove each arrest

March back to Bancroft/Telegraph

- Crowd evaded kettles
 - Communication delays with Mutual Aid
 - Traffic congestion due to march
- 7:41 PM Bottles thrown at officers
 - San Pablo/Francisco
- 8:00 PM Rocks thrown at officers
 - Berkeley Way/West
- 8:20 PM Dispersal orders
 - University/Acton
- Crowd moved faster than BPD could observe & coordinate resources

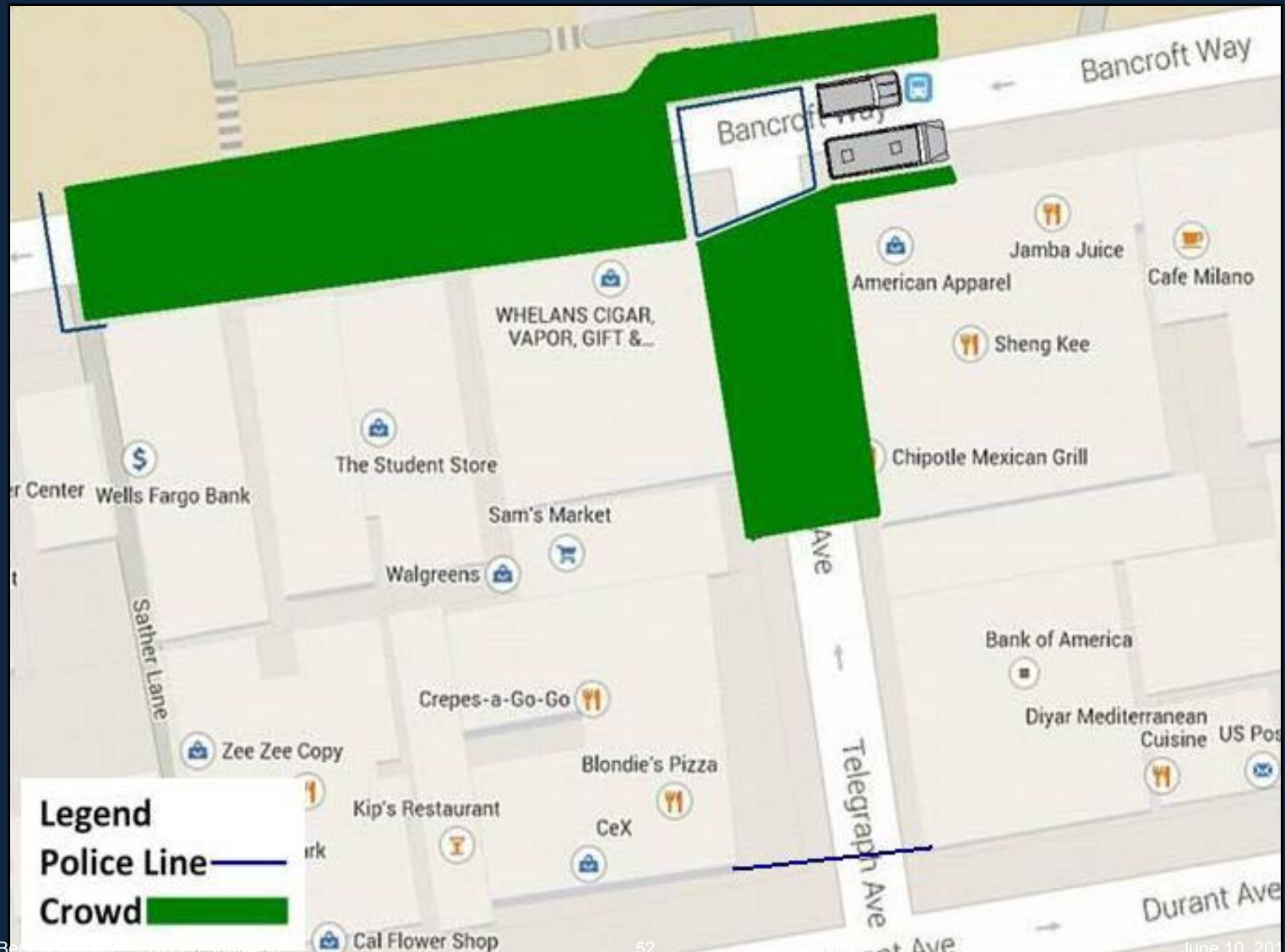
Department Operation Center Situational Awareness

- High volume of radio traffic
- Lack of overhead live information
- Open source live stream video (delayed)
 - News & crowd members
 - News streaming video was delayed by minutes
 - Police helicopters not used by BPD
 - 1982 Berkeley City Council Resolution - excludes crowd situations

Telegraph Avenue

- Historical concern
 - Looting, vandalism, rioting
- 9:00 PM Crowd kettled @ Bancroft between Dana & Telegraph
 - Responding police vehicles parked
 - Durant/Telegraph
 - Telegraph/Channing
 - Dispersal orders given over PA & video recorded
 - Large crowd formed – Telegraph south of Bancroft
 - Grew to 1000-1500 at Telegraph/Durant

Officers Surrounded



Dispersal Orders

- BPD issued 23 dispersal orders over 54 minutes on Telegraph
 - Crowd grew; mostly students
 - 10 orders @ Bancroft/Telegraph
 - 13 orders @ Telegraph/Durant
- Crowd west of Telegraph/Bancroft left, circled around the block & rejoined the crowd at Durant/Telegraph

Telegraph Avenue

- Police line was set at Telegraph north of Durant
- Crowd ordered south from Bancroft/Telegraph
- Officers at Bancroft used batons to push the crowd south
- Telegraph/Durant police line opened to allow the crowd to disperse to the south

Telegraph at Durant

- Officers were surrounded on all sides
- Simultaneously, masked individuals flattened tires, smashed windows & spray painted police vehicles



Berkeley Police - PRC Presentation



Telegraph at Durant

- Numerous dispersal orders given
- One arrest was made, but mass arrests were not feasible
- Crowd refused to disperse
- Rioters threw rocks and bottles at officers
- Chief gave approval for CS Gas

CS Gas – “Tear Gas”

- 2-chlorobenzalmalononitrile
- Causes irritation to eyes, nose and throat
- Treated by getting to fresh air
- Officers are exposed to it in police academy

CS Gas – “Tear Gas”

- Preferable to baton use
- Intermediate use of force
- Ultimate goal was for:
 - Dispersal
 - Return to order
 - Stopping lawlessness

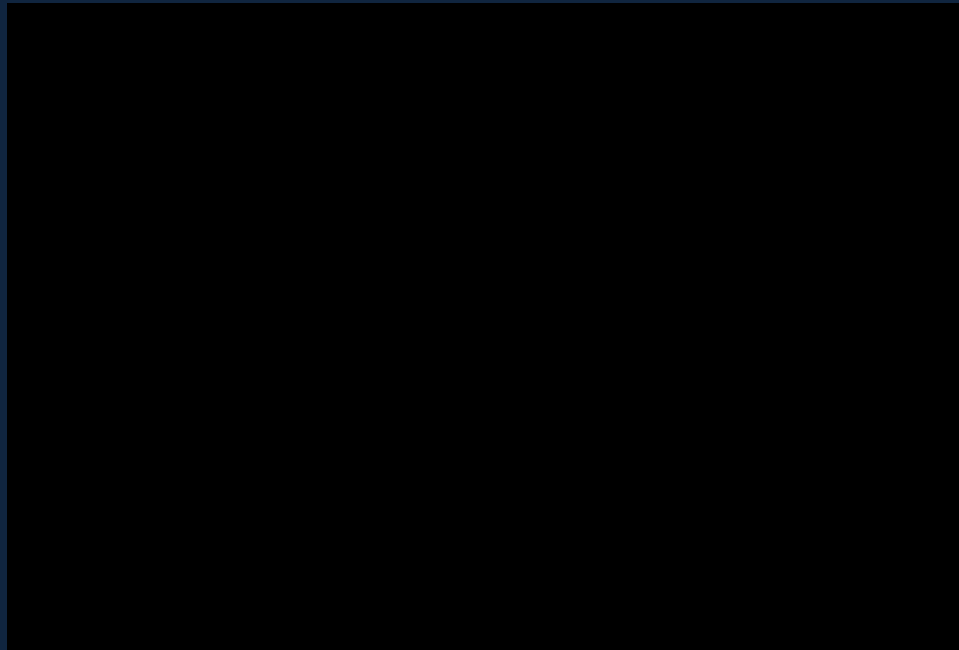


CS Gas – “Tear Gas”

- Less discriminate than batons
- No express warning was given



VIDEO



Protesters Moved South

- There were numerous avenues for people to disperse
 - Side streets
- Many people left the main crowd
- Rioters vandalized and disabled police vehicles at:
 - Telegraph/Channing

Group Reconvened

- A large crowd began to amass at Telegraph/Channing
- Police guarded disabled vehicles at Telegraph/Channing



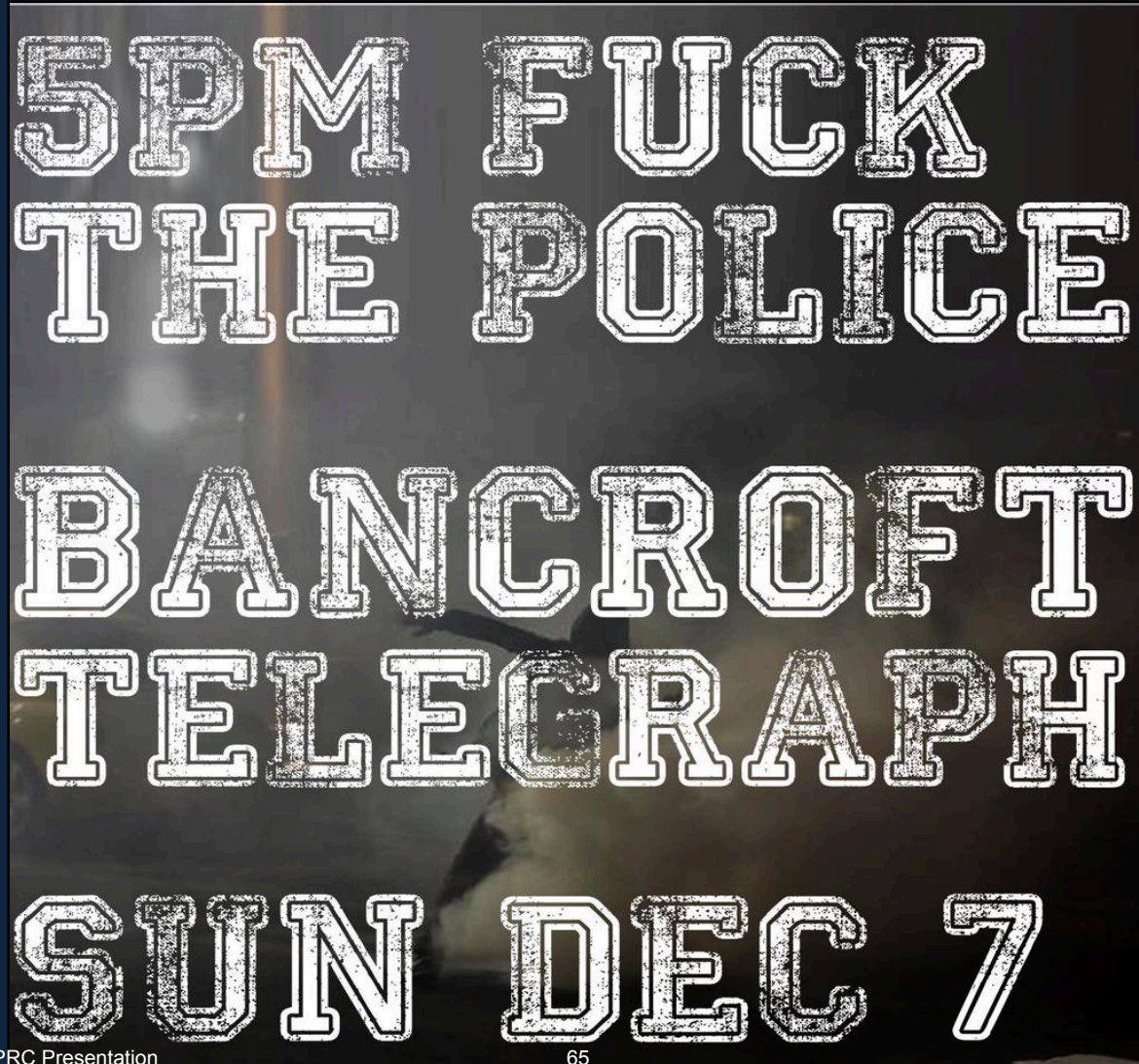
Crowd Grew at Telegraph/Channing

- 500-600 people
 - Some members of the crowd wore masks
- Surrounded officers and vehicles
 - Officers called for help
- Numerous dispersal orders were given
 - They were ignored by protesters

Crowd dispersed again

- Officers moved protesters for a second time
- Rocks and bottles thrown at officers
 - CS Gas was used
 - CS Gas successfully moved crowd back from officers
- Most of the crowd dispersed
- Officers were able to disengage at 1:38 AM

Day 2 – December 7th



Mission

- No change to mission from December 6th
- Significant strategic changes
 - Mobile Field Forces
 - Targeted arrests
 - Minimize
 - Static positions; skirmish lines
 - Conflicts with the crowd
 - Avoid dispersal orders

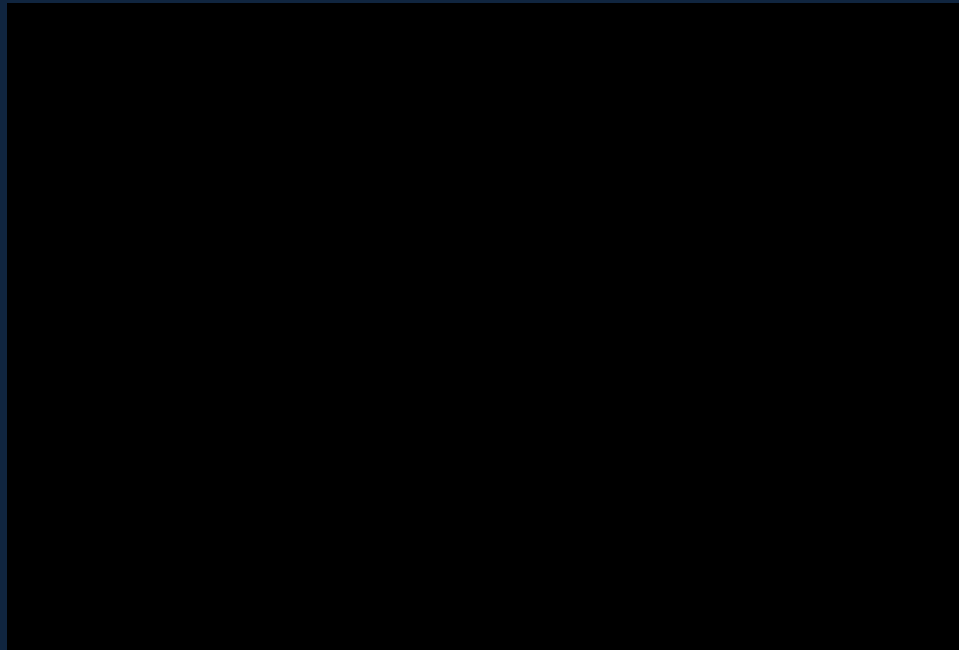
December 7th

- 5:00 PM planned start time for protest
- March down Telegraph and through Downtown
- Initially peaceful
 - PSB
 - City Hall
- Turned violent
 - Radio Shack, etc.
- Staffing was significantly less
 - No pre-ordered mutual aid

Violence Begins

- Looting and violence at Radio Shack;
2500 Shattuck; 7:40 PM
 - Masked protesters/looters
 - Hammer attack against protester who tried to stop looting
 - Officers sent in to provide security for injured man and Fire Department

VIDEO



Area Wide Issue

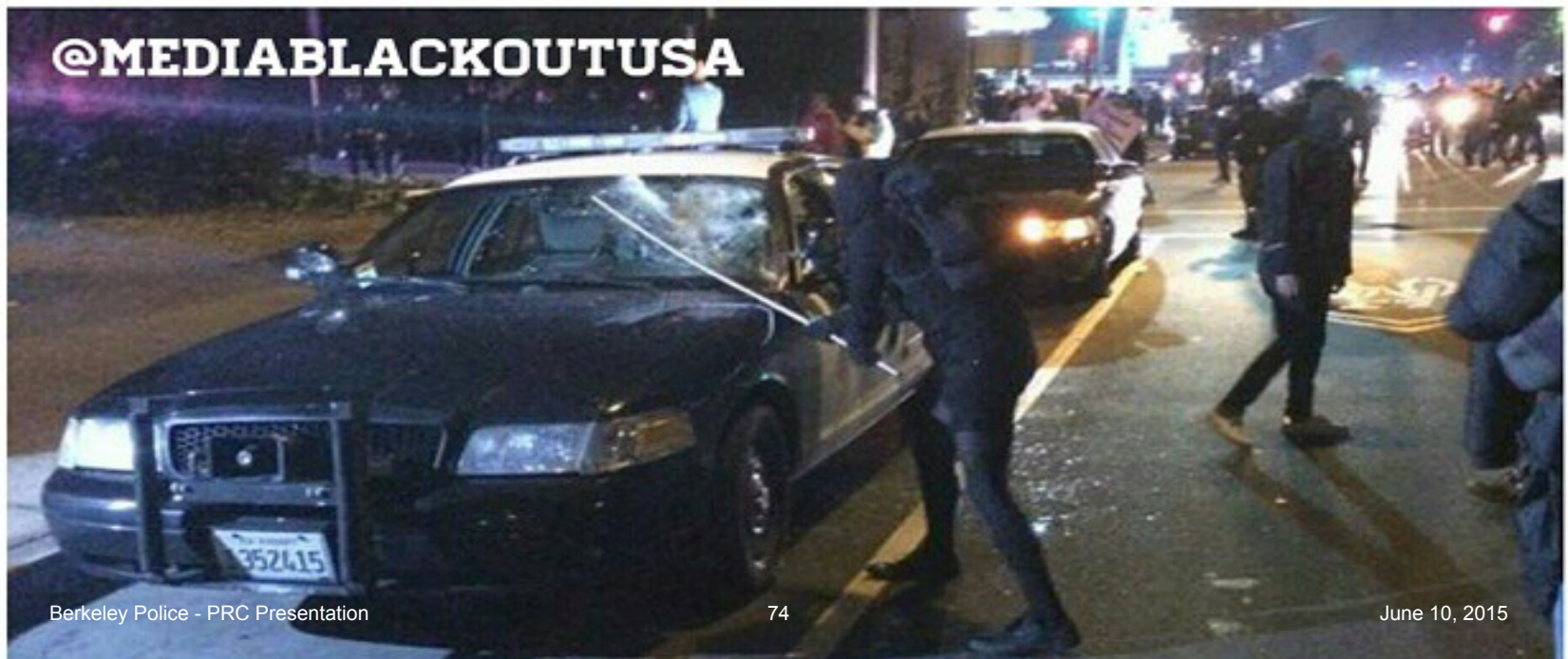
- Protest moves into Oakland
- More Violence ensues
- Attempts to take over freeway



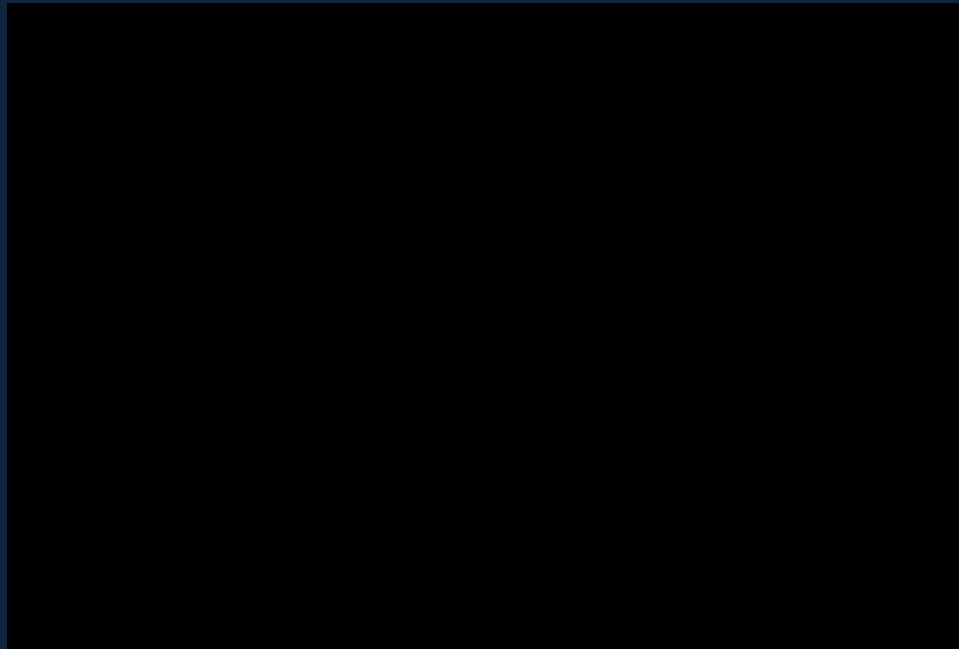




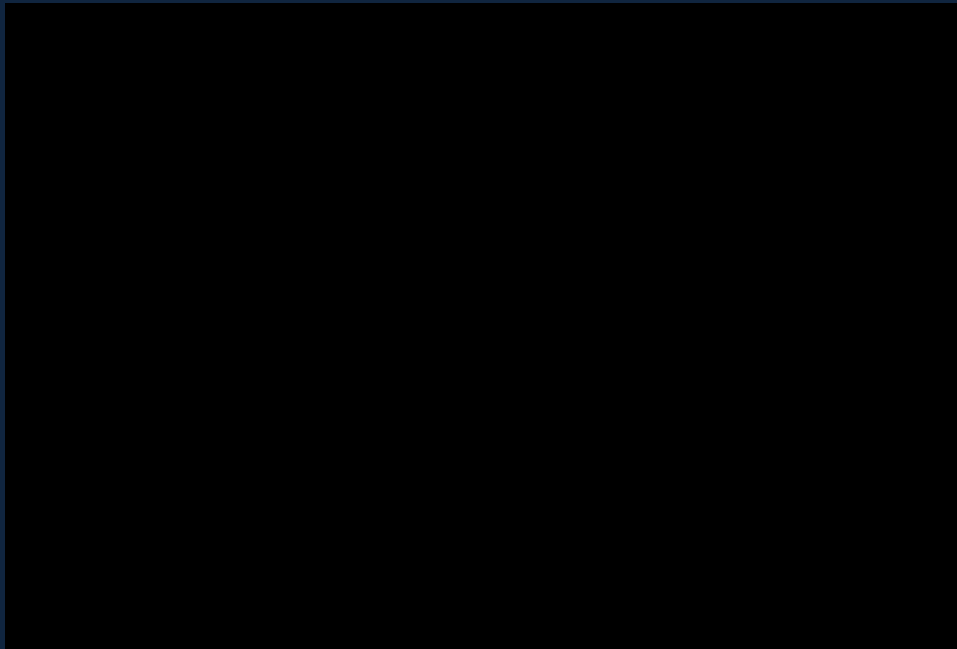




VIDEO



VIDEO



Return to Berkeley

- Approximately 10:00 PM the riotous crowd marched back to Berkeley on Telegraph Ave.
- Numerous instances of lawlessness followed
 - Arson
 - Vandalism
 - Fighting
 - Looting

Notable Incidents

- Rioters Vandalized/Looted
 - Telegraph Avenue area
 - Bank of America
 - Wells Fargo



Notable Incidents

Shattuck Ave./Downtown

- Mechanics Bank
- Chase Bank
- Wells Fargo
- Citibank
- T-Mobile
- AT&T
- Sprint
- McDonald's
- Missing Link Cooperative

Notable Incidents

- Shattuck Avenue/Downtown
 - Mechanics Bank



Notable Incidents

- Shattuck Avenue/Downtown
 - Chase Bank



Notable Incidents

– Shattuck Avenue/Downtown

- Wells Fargo



Notable Incidents

– Shattuck Avenue/Downtown

- Citibank



Notable Incidents

— Shattuck Avenue/Downtown

- T-Mobile
- AT&T
- Sprint



Notable Incidents

- Shattuck Avenue/Downtown
 - McDonald's



Notable Incidents

- Shattuck Avenue/Downtown
 - Missing Link Cooperative



Police Response

- Officers try and make targeted arrests
- Officers were targeted with bottles
 - Shattuck/Berkeley Way
- Protesters set roadblocks and fires
- Rapid protester movements/marches

Notable Incidents

— City Hall

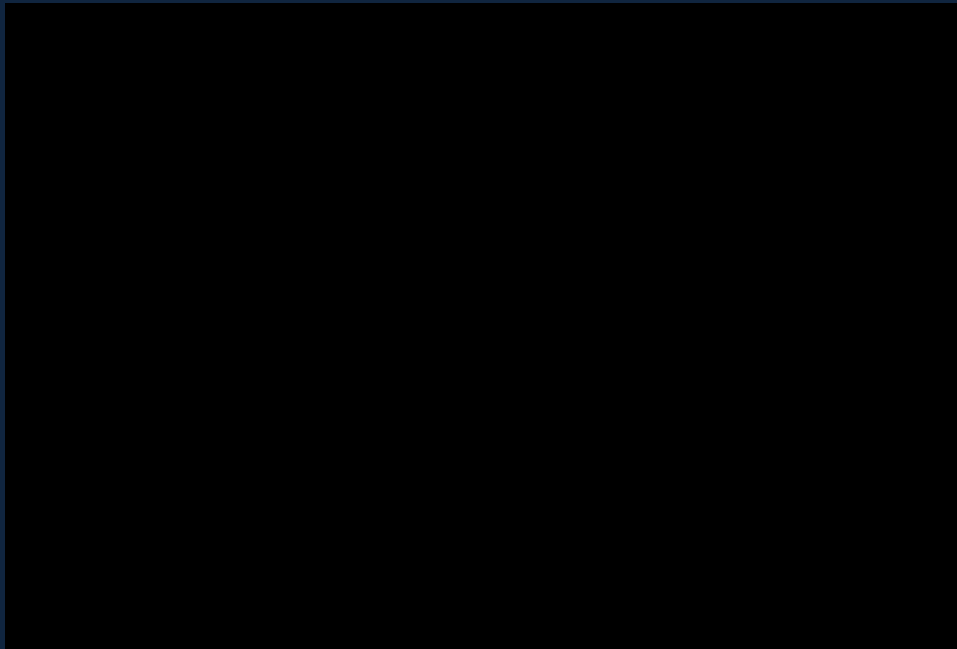


Notable Incidents

- Radio Shack (2nd time)
- Walgreens



VIDEO



Significant Arrests

- Vandal at Trader Joe's from December 6th
 - Threw bottles at police on December 7th
- Man who:
 - Threw items into McDonald's
 - Looted from cell phone retailers
 - Set fires in the streets
- Other arrests were made when officers were able

Lessons Learned and Recommendations

Communication

- Alameda County East Bay Regional Communication System (EBRCS)
- Consider the use of plain talk when interacting with regional resources

Communication – Recommendation

We recommend the Department investigate and better understand regional radio interoperability for common encrypted radio channels to improve communications with mutual aid partners during large scale events.

Communications

- Use of social media to conduct outreach
- Pre-event outreach
- During-event outreach

Communication – Recommendation

Explore the use of BPD Negotiators to enhance communication with the crowd and crowd leadership before and throughout the event.

Social Media

- Protesters used effectively
- Facebook/Twitter
- Live streaming
- Nixle
- High rate of usage by participants

Social Media – Recommendation

We recommend the Department use social media proactively before and during the event to communicate with participants. As dispersal orders are given over the loud speaker social media could be used to communicate more detailed information to the crowd.

Tactical Command

- Lack of situational awareness

Tactical Command - Recommendation

- Tactical command decision making and responsibility should be relocated from the Department Operations Center to the field.
- We recommend coordination of squad movements happen in the field.

Tactical Command

- Outside agencies needed clear missions
- MLK @ Addison on December 6
 - Order was given for perimeter security
 - Line was established
 - Line was adjusted

Tactical Command - Recommendation

Command should make efforts to ensure mission clarity as much as possible when resources are dispatched.

Crowd Control & Crowd Management Defined

- Crowd Control is “law enforcement response to a pre-planned event or spontaneous event, activity, or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd.”
- Crowd Management is “...strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event’s lawful activities.”

Crowd Control vs. Crowd Management

- The vast majority of officers were deployed for *crowd control*.
- More crowd management efforts to “maintain the events’ lawful activities.”
- Additional resources should also be held in reserve.
- Stopping the crowd at MLK and Addison St. was not advised. A crowd management posture was indicated.

Crowd Control vs. Crowd Management Recommendation

Opportunities for the police to deescalate from crowd control to crowd management tactics needs to be recognized and seized.

Deployment - Recommendation

We recommend commanders in the field make redeployment decisions proactively based on known situational awareness.

Deployment - Recommendation

Increase staffing of bicycle officers, motorcycle officers and parking enforcement officers for large scale crowd management events.

Deployment - Recommendation

Deploy resources flexibly in crowd management roles designed to keep events peaceful.

Overcommitting Resources

- Officers were not available to parallel the crowd

Maneuvering - Recommendation

Hold a contingent of officers in reserve to move with the crowd, so that violent elements in the crowd will see a continuous police presence.

Maneuvering

- Squads left their vehicles unattended, unprotected and far from skirmish lines slowing redeployment
- Traffic control was needed for safety and maneuverability

Maneuvering - Recommendation

Deploy squads with dedicated drivers who remain with the vehicles to facilitate maneuvers and vehicle security

Deployment – Recommendation

Deploy joint police and fire scout teams to manage small fires and scout medical calls.

Situational Awareness

- Information Technology
 - Live streams
 - Media
 - Internet live streams
- Real-time information
 - Helicopters
 - Uniformed officers

Situational Awareness - Recommendation

Explore technology that can improve the quality and timeliness of information available to decision makers.

Situational Awareness - Recommendation

We recommend the Department invest in quality video cameras, live stream capability and video capture software to improve situational awareness.

Situational Awareness - Recommendation

Consider proposing changes to the City Council Resolution 51,408 – N.S., to permit the use of helicopters in instances of significant civil unrest.

Situational Awareness - Recommendation

Preparatory orders warning officers of the impending use of chemical agents should be announced over the radio.

Dispersal Orders

- Many dispersal orders were given at different locations
- It can be difficult to prove people heard the order
- Too many orders can lead to non-compliance

Loud Speakers and Bullhorns

- Prolonged amplified orders drew people to the crowd
- Timing and strategy play a key role in deciding when and where to confront crowds and issue dispersal orders

Dispersal Orders - Recommendation

Issue fewer dispersal orders and record evidence that the crowd was able to hear the orders.

Dispersal Orders - Recommendation

Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas.

Communication - Recommendation

BPD should acquire a high quality mobile mounted public address system. This can also be an asset during natural disasters.

Skirmish Lines

- Skirmish lines can result in use of force necessary to establish the line and maintain it.

Skirmish Lines - Recommendation

Skirmish lines should be deployed only in situations where the use of force that may be necessary to enforce the line is warranted by the objective of deploying the line.

Kettle

- Stopping a crowd to issue a dispersal order.
- Difficult to execute.
- Once dispersal orders were issued, the crowd left the immediate scene, only to go around the block and join the larger crowd.
- In effect, the crowd had not actually dispersed.

Use Of Batons

- BPD officers are trained regularly in the use of the baton (most recently – Summer of 2014).
 - Verbal de-escalation
 - Commands
 - Baton techniques
 - Baton target areas and non-target areas

“Over the head” baton strikes

- Officers are trained to avoid head, neck, throat, spine, kidneys, heart and groin.
- The person may move unpredictably.
- Central issue is the place on the body targeted.

Use of Force - Recommendation

We recommend that BPD review its policy regarding the use of CS gas and batons in crowd control situations.

Use of Force - Recommendation

We recommend that the Department continue to train and reinforce disciplined use of baton strikes by officers to avoid striking people in non-target areas.

Accountability - Munitions

- Less than lethal munitions and CS gas were not properly accounted for.

Accountability - Recommendation

Improve accountability for the deployment and use of less than lethal munitions and CS gas. Use of less than lethal munitions should be recorded in the after action report and the policy should be updated to include this requirement.

Accountability - Recommendation

Less than lethal operators should be briefed regarding the rules of engagement prior to deployment. Command should review the use of force as it relates to accomplishing mission objectives with less than lethal operators, prior to deployment.

Accountability - Recommendation

Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas.

Accountability - After Action Reports

- After action reports (AAR) are required after each incident per G.O. U-4.
- Duration, complexity of events, and commitment of resources made it difficult to write AARs while preparing for continuing operations.
- The Chief determined that this investigation would be in lieu of the after action report.

Accountability – Recommendation

To comply with our existing policies an after action report (AAR) should be written after each incident, even if only in summary form.

Training

- BPD held a 10-hour in-house training for all Operations personnel in Crowd Management in 2012 and 2014.
- Not all commanders attended the training.

Training - Recommendation

- All officers should continue to receive crowd management training every two years.
- All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.
- Mobile Field Force training with regards to conducting targeted arrests.
- Train sufficient personnel to use higher quality camera systems to gather better video evidence at protests.

Training - Recommendation

- Commanders should attend training to improve their understanding of BPD's current capabilities and limitations in crowd management and control which should enhance planning and tactics.
- Commanders should conduct crowd management table top exercises.

Training - Recommendation

We recommend the creation of a document on the BPD website which will provide information on how to conduct or participate in protest activity in a safe and legal manner.

Equipment

- Video recorded by BPD was of poor quality
- Video/streaming capture solutions were lacking

Equipment

- 5 new cameras have been purchased.
 - HD quality
- Video evidence training is needed for personnel.

Equipment - Recommendation

The Department should investigate the use of personal protective equipment to be worn underneath a uniform of the day, to protect officers from projectiles while minimizing the projection of force to protestors.

McKinley Ave. Staging Area

- The department did not communicate effectively with its neighbors.
- Mutual aid agencies staffed perimeter posts.

McKinley Ave. Staging Area

- BPD later met with neighbors and has implemented measures to improve our response while being good neighbors.

Media

- Officers were advised to attempt to identify members of the press in the crowd.
- It was not always apparent who was press.
- No press credentialing system currently exists.

Media - Recommendation

We recommend the BPD Public Information Officer investigate the viability of establishing a regional media credentialing system.

Media - Recommendation

We recommend the Department develop a collaborative training for press to enhance their safety and safeguard the First Amendment right of a free press.

Acknowledgement

- Members of the department did many things right over the course of the protests and riots.
- Through this process we identified many opportunities for improvement.
- Leaders in the department were instrumental in this process by offering candid critiques, feedback and recommendations.
- This review's recommendations will serve to positively impact similar future operations.

Conclusion

- The Berkeley Police Department remains committed to protecting free speech, and facilitating protests regardless of the message being expressed.