

# COPWATCH

## Report

BERKELEY, CALIFORNIA

FALL 1996



BRENDAN THOMPSON

# Cops Defy PRC, Vow to Keep Pepper Spray

## COPWATCH Campaign Continues

BY LENORE ANDERSON

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**O**n June 10, Fairfield police pepper sprayed and hogtied James Parkinson. Mr. Parkinson died, becoming the latest victim in a wave of pepper spray related deaths in custody. On June 12, just two days later, the Berkeley Police Review Commission (PRC) voted to recommend a suspension on police use of pepper spray. The suspension was recommended for sixty days, during which time the PRC expected Police Chief Dash Butler to review the department's policy on pepper spray and new information on its medical dangers.

This marks a significant victory in the COPWATCH campaign to remove this chemical weapon from the police arsenal. After months of community education, outreach and research, COPWATCH held a public hearing before the PRC on May 22. Over 80 participants objected to police pepper spray before the commissioners, who agreed to give pepper spray a second look.

However, Chief Butler has refused to comply with the PRC 60-day suspension request, and Berkeley cops still use pepper spray as they patrol the city. The COPWATCH campaign continues as the City Council is scheduled to review police use of pepper spray on Tuesday, September 17, at 7:30 pm in Old City Hall, 2134 Martin Luther King, Jr., Way. In preparation for the meeting, COPWATCH will be gathering petition signatures and contacting other community groups. Organize with us for the City Council meeting and help win the campaign against police use of pepper spray.

**C**OPWATCH has brought the problem of police use of pepper spray to the attention of other commissions in Berkeley since the PRC public hearing. The Peace and Justice Commission (PJC) heard COPWATCH and Chief Butler debate police use of pepper spray on July 1. Butler claimed that

(continued on page 7)

# Dear COPWATCH...

On Sunday of the Memorial Day Weekend, I received two citations from Officer Focha of the Oakland Police Department; in addition, my bicycle was impounded. The citations are for riding without a bicycle license, and riding on the sidewalk.

I was riding on the sidewalk, however, because the Oakland Police Department had blocked the street — Lakeshore Avenue — with cones and a motorcycle arcade in order to pass out leaflets to drivers.

The leaflets say this: "The Oakland Police Department advises you that you

are in a No Cruising Zone. Your license plate has been entered into our computer. Further CRUISING within the posted 'No Cruising Zone' will be in violation of O.T.C. Section 113.1. You are subject to arrest or citation for this violation."

On Channel 7 News that night, a member of the OPD explained that the Department was giving citations to drivers who go around the lake more than twice within the hour. The officer also explained that this enforcement of O.T.C. Section 113.1 is necessary because cruising causes a gridlock on

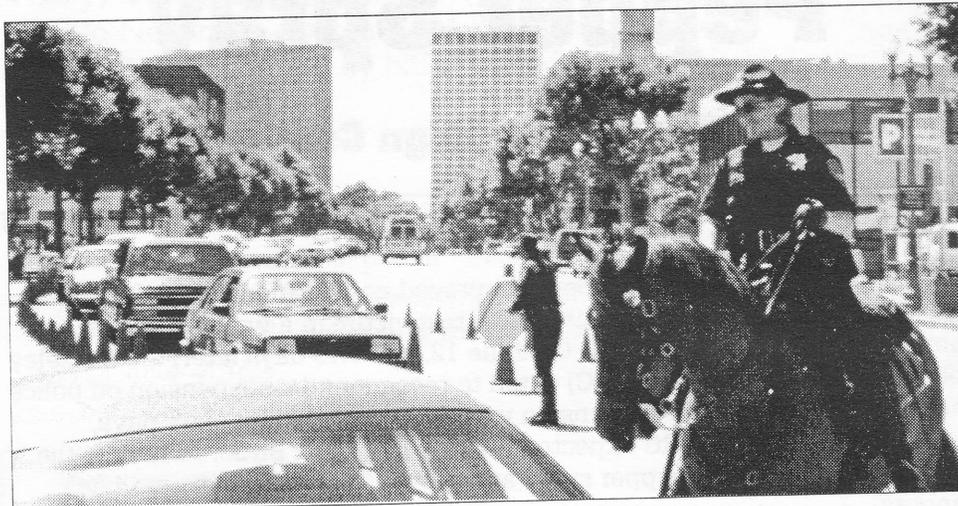
Lakeshore Avenue.

On Palm Sunday, on my way home from church, I sat in a line of cars for approximately ten minutes while the OPD passed out these same leaflets to every driver on Lakeshore Avenue. Gridlock, then, is clearly not the issue here; eliminating certain types of traffic (and certain types of people making up that traffic) is more the gist of the cruising law. Since I am white, Officer Focha had no problem with my riding on the sidewalk, nor with my riding without a bicycle license — until I asked him why the OPD was holding up Lakeshore traffic on a cold and windy day when not a car in sight was cruising.

I have lived in Oakland, near the lake, for over six years, and I am more than familiar with the crime and dangers of Oakland (I was nearly murdered three years ago). I realize that the apartment dwellers of Lakeshore Avenue have been subjected to vandalism and theft, but current unimaginative policing seems to have only exacerbated hostility between the few haves and the many have-nots in this city.

The City Council's recent decision to put more officers on the street does not make me feel protected. Oakland needs more *good* police officers — more community police, more police of color, more women, and more bilingual officers — not just more officers. Oakland also needs more officers who make the commitment to pay city taxes rather than only receiving pay from city taxes; Oakland needs more officers who live here.

— GWENDOLYN BIKIS



Police checkpoints snarled traffic as OPD tried to squash "hanging out" at Lake Merritt.

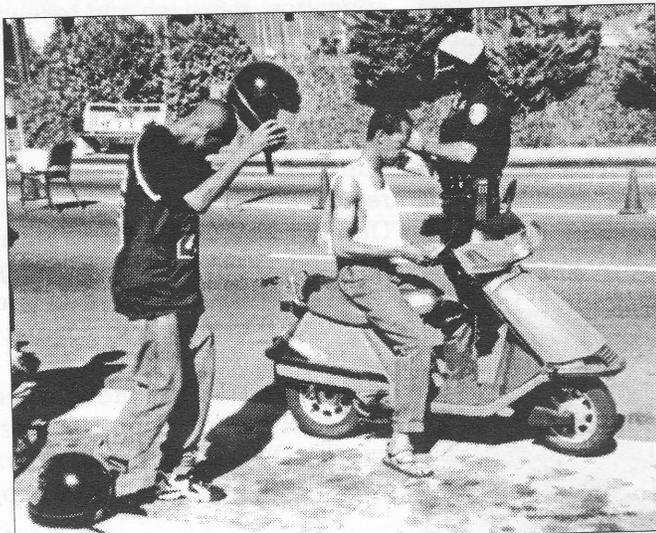
## COPWATCH Report

The COPWATCH Report is published by COPWATCH, a grassroots all-volunteer organization which works to defend the right of everyone in our community to fair treatment under the law.

To do this we need your support, energy, and ideas! Please call us or write us, or come to our weekly Monday meeting at 8 pm in our office:

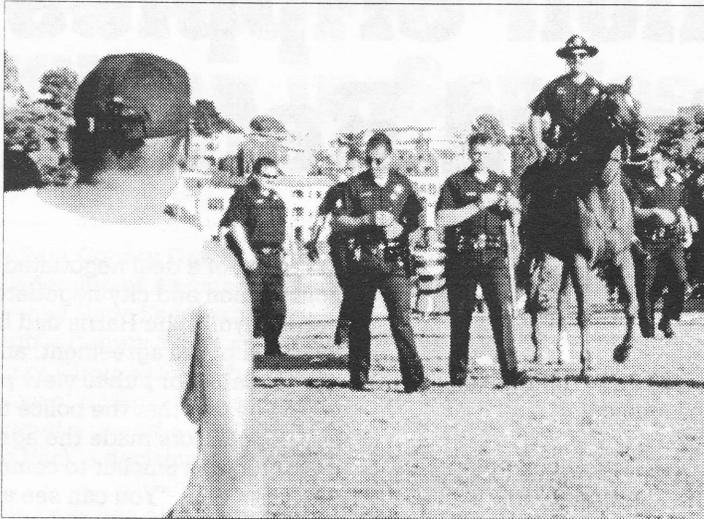
COPWATCH  
2022 Blake Street (near Shattuck)  
Berkeley, CA 94704  
(510) 548-0425

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PHOTOS BY COPWATCH STAFF PHOTOGRAPHER

Cops pulled over motorists, mostly people of color, and towed their vehicles for minor infractions such as a missing license plate. Even this scooter was towed.



PHOTOS BY COPWATCH STAFF PHOTOGRAPHER

# Young Comrades Organize to Take Back the Lake

BY TRACY JAMES

From the moment that the first Africans were brought over to the "land of the free" in chains, this country's institutions, policy makers, law enforcers, and average whites have been saying to its black inhabitants: "Fuck you." For blacks, July 4th is "fuck independence for black people" day.

With this "fuck black people day" in mind, it's only natural that from time to time individuals and groups blast out in resistance. The police are the front-line enforcers of American laws, from the slave patrols of the nineteenth century to the apartheid "no cruising" laws around Lake Merritt. Due to the capitalist structure of this society, day-to-day contact between black people and the police sets up a volatile situation.

Within this framework, the Young Comrades are attempting to clarify the class, race, and gender oppression we face under capitalism, and the specific role of the police. One recent example was the June 23 "Fuck the Police Day" at Lake Merritt. The Young Comrades, also known as the Revolutionary Comrades Collective, called this event to stop police harassment at the lake and fight the unjust "no cruising" law.

Due to the nature of the event, receiving a permit to have amplification was out. A plan was devised to set up micro-radio technology at the Allright

Parking Lot, across the street from Lake Merritt. As the Comrades began setting up the radio, a cop came and said that the Comrades couldn't set the station up without a special permit. When asked to provide the penal code, the cop slumped off to his car, whining that he was going to call the lot owner and have the Comrades kicked off the lot.

With the microphone set up on the sidewalk and another truck with a barbecue in its bed, the festival was beginning to rock in motion. The people at the lake dialed their radios to 87.9 FM and heard political and social positions put out by the Comrades. Interviews were conducted with community members who expressed

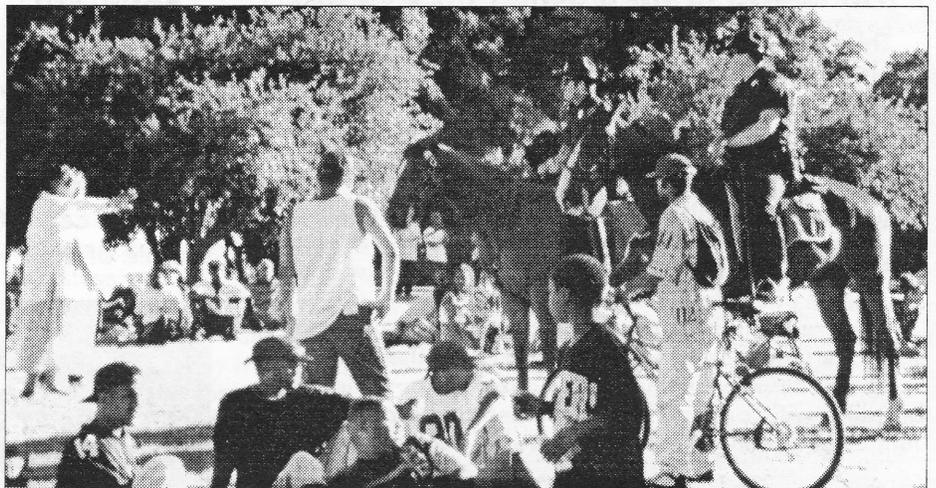
their views and experiences with the cops. Nine-year-old rapper Nubee performed a rap on political prisoner Mumia Abu-Jamal.

The police were left sitting around as people told the truth about them. Out of frustration, the cops claimed that a brother had ventured out into the street while holding a sign. As folks at the festival began to challenge the handcuffing of the brother, the cops let him go with a ticket.

As the hours wore on, the police began stormtrooping through the crowd in search, they claimed, of anyone with an open container, or anyone they could "smell marijuana on." A "Pig Alert" went out over the radio explaining that the cops were frustrated at this peaceful and educational event and wanted to provoke violence by harassing the crowd.

A mounted cop began stirring up his horse in front of little kids and people lying on the grass. Quite naturally this life-threatening action upset the crowd, and someone threw a bottle. Upset at this action, but not at the possibility of a horse stomping a little kid to death, the police began charging their horses through the crowd. The Comrades and others were able to calm the crowd and not let the cops turn the event into mayhem.

Mayhem was obviously their objective. This was verified by the police sending life-threatening phone messages to the Comrades. Verified by the intentional knocking out of a young brother who argued that he had the right to say "Fuck the police." And verified by the historical role the police play in capitalist society. This is something that the Young Comrades hope to play a role — a revolutionary role — in changing. ●



Mounted police disrupted the crowd's peaceful gathering on the lakeside lawn.

# Police Union Cripples Review Board Reform

## PUEBLO Fights Back

BY CORNELIUS HALL

Members of People United for a Better Oakland (PUEBLO) have been negotiating with the City of Oakland to form a new, stronger police review board. The people at PUEBLO, with some input from the ACLU attorney John Crew, sent Oakland negotiators a model of what they felt was a workable, effective review board. The Oakland Peace Officers Association and city negotiators worked out a weaker model.

It was announced at PUEBLO's "Juneteenth Celebration" that the police review board proposal would be on the City Council agenda that night, June 25. At this time, no one knew the specifics of the proposal. PUEBLO left the celebration and went to the City Council meeting. Members of the group, lead by Zak Sinclair, Dan HoSang, and John Crew, were each given only one minute to speak.

The proposal sent by PUEBLO

would have had three full-time investigators, subpoena power, and independence from the Police Department, as its name, "Civilian Police Review Board," indicates. But PUEBLO found a different proposal on the Council agenda. The agreement by city negotiators and police union representatives included hiring one full-time investigator, granting subpoena power, requiring officers to attend meetings, and requiring that findings of the review board be given a written response by the police chief or city manager. These additions would not be a new board but an ordinance to amend the old Citizens' Police Review Board.

Councilmember John Russo was visibly shaken by PUEBLO's negative response to the proposal. Russo made a statement to the effect that a new police review board would require a charter amendment and that he didn't feel that we could get enough signatures to put it on the November ballot.

PUEBLO members were skeptical of

the terms of a deal negotiated by the police union and city negotiators. Not even Mayor Elihu Harris had been informed of the agreement, and it was not available for public view prior to the vote. The fact that the police union and city negotiators made the agreement prompted Zak Sinclair to comment to the press that, "You can see a conflict of interest in that." Crew's statement to the press was: "Twenty-four hours before this is being put before the council, the public hasn't seen it. Leaving the amount of accountability up to the consent of those who are to be held accountable makes no sense at all."

Under the guise of doing the people a favor, the fox is back in the hen house. The old review board's recommendations in cases of police misconduct were weak and most times didn't go anywhere. Police often didn't even show up for the hearing of a complaint against them. The people want a "Citizens' Police Review Board," not a police review board negotiated by the police.

To help PUEBLO fight back, call them at (510) 452-2010. 

### The Organizing Committee for National No Police Brutality Day wants you to take action on Oct. 22!

This fall, as politicians push anti-crime propaganda and laws, and anti-civil rights initiatives, we can strike a note of truth if we raise our voices loud enough and bring into the streets a message that cannot be ignored.

On October 22, we are calling on people of all races and backgrounds to stand up and say that we will no longer put up with all this. On October 22, we are calling for people across the country to wear black in protest and in memory of the many people who have been brutalized and murdered by the police.

We are calling for people to participate in demonstrations, teach-ins, candlelight vigils, and other protests across the country on this day because we know that the brutality will continue unless we demand that it stop. Join us in making this day a powerful reality!

Call (510) 464-4563

## Artists Needed!

COPWATCH is looking for artists to illustrate an upcoming comic book. The comic book will be an educational tool, as part of our "Know Your Rights" campaign. We also welcome your creative input in writing the text. The comic will be based on actual encounters with the police.

Please call 548-0425 and ask for Andrea or send a sample of your work.

write • call

**COPWATCH**

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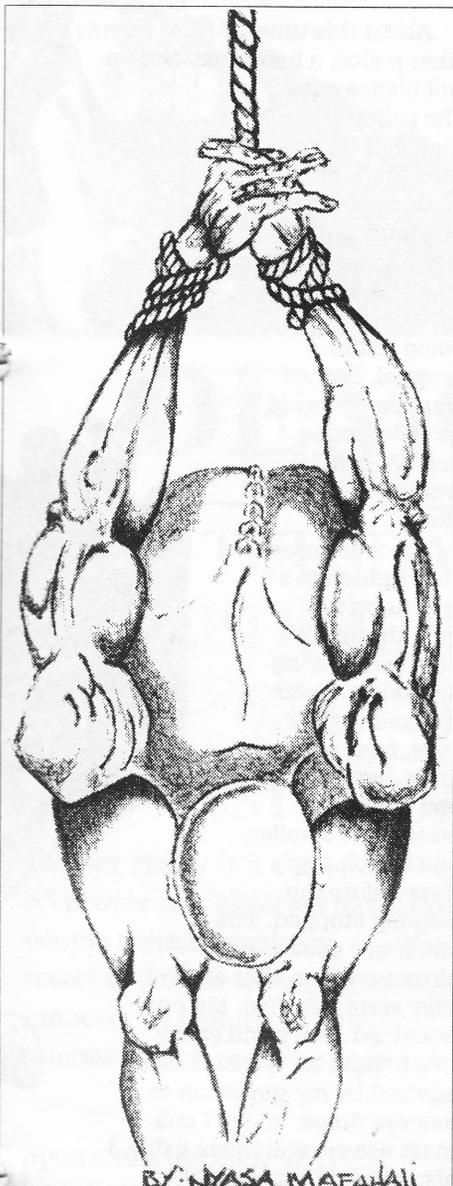
BERKELEY, CA 94704

# Deputy Walks After Killing in San Jose

BY CORNELIUS HALL

A Santa Clara County Grand Jury, under the leadership of Assistant District Attorney Dave Sanderson, cleared Sheriff's Deputy Tom Langley in the killing of Gustavo Soto Mesa. After five days of testimony, the Grand Jury deliberated one-and-a-half hours and brought back a decision of no indictment.

Due to the presence of the Human



This artwork was donated to Copwatch by inmate Nyasa Mafahali.

Rights Defense Committee and the Latino community, a rare open Grand Jury was held. As stated in the *San Jose Mercury News*, "District Attorney George Kennedy cited a threat of the breach of the peace and concluded that public suspicion might be averted if the evidence was laid open."

On Tuesday, June 18, the Grand Jury convened. The beginning was dedicated to diagrams and witnesses verifying the location of vehicles and Soto Mesa's final resting place after being shot in the back of the head. Assistant DA Sanderson, in his attempt to discredit Soto Mesa, brought back two laboratory technicians to the stand to testify that his blood alcohol level was at .21. Sanderson was not nearly so hard on Deputy Langley, who by his own admission has a history of misconduct complaints, which Sanderson never pursued.

According to Langley's testimony, he started to chase Soto Mesa's van, believing that he was intoxicated. The chase got up to ten miles-per-hour above the speed limit. Soto Mesa drove onto State Street, where an ambulance and a fire engine on a different call blocked the narrow street. The van hit the fire engine, coming to a rest and blocking his door. Soto Mesa climbed out the window and across a parked motorboat, and then he quickly walked away from the scene. Langley was right behind him. At a distance of just a few steps, Langley pulled his gun and fired into the back of Soto Mesa's head.

Two San Jose police officers testified that Langley was right behind Soto Mesa when they heard a muffled shot and saw the victim fall. They both asked Langley if he shot him, and Langley replied, "I think so." Although both Sanderson and Langley suggested that the gun went off accidentally as Soto Mesa and the deputy fell, neither officer saw him even stumble.

Additional witnesses, all civilians, denied that Langley fell and accidentally fired his weapon. When one witness, Fabian Osorio, said that he saw Langley lunge forward and fire, Sanderson became aggressive. Grabbing Osorio's shoulder and placing his

finger behind his head like a gun, Sanderson tried to intimidate the witness, to no avail.

But other witnesses, Deputies Babcock and Kuyat, had a different story. They testified that they saw Langley stumble as he fired, but when they asked if he shot Soto Mesa, Langley had answered, "I don't know."

We have to realize here that a .45 Colt automatic has quite a kick. You would know it if you fired, Langley's response notwithstanding.

Langley maintained that he held his finger outside the gun's trigger guard, with the safety on, throughout the chase. When he fell, Langley said, the gun must have gone off due to some malfunction. As the witnesses told opposing versions, Sanderson said that he would go with the hard evidence and forget the witnesses.

Well, here's the hard evidence. Langley's .45 automatic was in perfect working order. All that was wrong with it was that the shell of the fatal bullet jammed as it was expended, which may account for the muffled noise the officers heard.

According to Langley, he was three feet from Soto Mesa when his gun discharged. Langley held his gun across his chest as he fell. While falling, Langley said, the safety catch caught on his name tag and released. As the gun fell further across his chest, the trigger caught on his badge or maybe some pens in his chest pocket, causing the gun to fire.

Any rational person would have to ask: where, then, are the powder burns? If the gun had fired while brushing down his chest, powder burns would have been all over the front of his shirt. Instead, powder burns were found only on Langley's sleeve, consistent with the charge that Langley fired his gun as he stretched out his arm and aimed.

But Sanderson swayed the jury, and they accepted his version. The final miscarriage of justice was on the last day. Sanderson told the Grand Jury: "As your legal advisor, I say that it would be inappropriate to find an indictment." Sure enough, the jury came back with no indictment.

The Latino community and the Human Rights Defense Committee had hoped for justice, but found that a Grand Jury, led by a biased DA, will protect the police even if it takes manipulation. But what Sanderson didn't count on is that you can't manipulate the minds of all the citizens. ●

## **Victim's Voice:**

# **“The Officer Sprayed So Much, He Emptied The Canister...”**

BY OTIS STILLWELL

*Each issue, COPWATCH will publish the story of someone's experience with the police in their own words. This space is inspired by the work of Andrea Gibbs in Mississippi, who gave victims of police abuse there a voice.*

**B**erkeley Police Officer Bertauche and his partner violated the regulations regarding the use of pepper spray. Pepper spray, according to governing codes, is to be used only on violent suspects when all other lesser means fail.

**O**n April 29, 1994, I was sprayed repeatedly by Berkeley Officer Bertauche. I approached this officer outside of my home upon hearing sirens and screaming. When I came outside I saw two police officers at my nephew's car. Officer Bertauche was kicking inside on the passenger's side. I was about fifty feet away at this point. The scene was very frightening.

My nephew and his three-year-old twins were in the car. My sister was on the sidewalk crying and pleading with the officers. I didn't know what was going on, but I knew it was all wrong. As I got nearer, I saw Bertauche spraying pepper spray into the car. My nephew's head was leaning on the passenger seat and his hands were on the steering wheel. Neighbors were coming out — one young woman ran up to me and screamed, “They are killing him.”

As I approached the scene I saw that Officer Bertauche had his revolver at my nephew's temple as he continued to spray pepper spray with the other hand into the car. The children were crying and my nephew was pleading, “Please don't kill me.” Officer Bertauche was shouting, “Get out the car, motherfucker.” My sister continued to plead with the other officer. He finally helped her take the children from the back seat and into my mother's house.

By this time I had come within a few

feet of the car and asked Officer Bertauche, “what's the problem?” He immediately sprayed me in the face and told me to get back. I stepped back but continued to inquire as to the matter. I was terrified and feared for my nephew's life. The situation was so volatile that I believed the gun might go off and blow my nephew's brains out if he moved at all. So I pleaded with the officer to take the gun from his head and let him get out of the car. I could not move even though I was being sprayed every time I spoke.

### **EXTREMELY DANGEROUS**

The behavior of these officers was uncalled for and extremely dangerous. My nephew is a single parent with no criminal record. That day he and his girlfriend had an argument and someone told the police he had threatened her. There was no physical violence, only screaming by both parties.

After spraying me several times, while shouting orders for my nephew to get out of the car, Officer Bertauche finally took the gun from his head and allowed him out of the car. My nephew was very upset and confused and was adjusting his clothing, when the other officer out of the blue ran up and kicked him between the legs and ordered him to the ground.

By now my brother arrives home and comes to see what the problem was. My nephew is very distraught and will not get on the ground. He tries to tell the police he has not done anything. Officer Bertauche is pointing his revolver in our direction as we try to calm my nephew. As my nephew moves away from the car and in front of the house Bertauche moves to the middle of the street with his revolver aimed at my nephew's head. My brother tries to tell the officer this isn't necessary and asks him to calm down.

During this time my nephew is crying and the police are acting as though they have a wanted criminal cornered. The next thing we know, one officer has grabbed my brother, put him

in cuffs, and placed him in the police car. My nephew walks onto our property and goes to the back. Officer Bertauche begins spraying more pepper spray and we all got sprayed. He sprayed so much spray that he emptied the canister. I was completely drenched.

### **UPSET, AND ON FIRE**

About this time, at least twenty other police, a helicopter and an ambulance came.

The police searched the yards and my mother's house. The paramedics offered us advice about washing our eyes and going to the hospital. But we were so outraged and frightened that we just wanted to be left alone.

We were upset and frightened as well as on fire from the spray. This was a living nightmare. I was sprayed in the eyes, face, ears, arms, hands, neck and back. Our faces were swollen and it took many days before the burning stopped. The children's eyes were almost swollen shut and they were petrified. My eyes remained blurry and sensitive to light for weeks. I was advised by my physician to use eye drops, which I still must use several times a day. I also became extremely allergic and my asthma flaired.

*(continued on next page)*



That Monday morning, May 2, 1994, I walked about three miles to the Berkeley Police Department to file a complaint. I could have driven but I needed to walk out some of my anger. I could not believe this had happened to our family. We have lived in this community since 1950 and this just wasn't anything I could imagine occurring to this family.

Eventually there was a Police Review Commission (PRC) hearing. Officer Bertauche said he was pinned against a car by a mob and only sprayed twice in a circular motion to move the crowd back. The truth is that the people who came out stayed their distance. No one but my family approached this officer.

The PRC found in my favor. However, no disciplinary action was taken against Officer Bertauche. ●

pepper spray is needed because the BPD "hires people who are very small, very educated and very nice people, but very small." Apparently, the BPD "has to provide them with additional tools" in order to make up for their small size when confronting violent suspects. Butler did not comment on the serious lack of research on pepper spray's long-term effects or its impact on individuals with pre-existing medical conditions, nor did he address examples of BPD pepper spray misuse.

The PJC voted to forward a three-part recommendation to the City Council on pepper spray: that the City Council investigate the sale of pepper spray, looking toward adoption of an ordinance forbidding the sale of pepper spray in Berkeley; that the PJC will study whether pepper spray is outlawed by the United Nations; and that police policy should be amended to exclude pepper spray use on individuals with disabilities.

On July 4, several young Berkeley residents were reportedly pepper sprayed at the Berkeley Marina by BPD. One who came forward to COPWATCH told how he shielded his girlfriend, who is asthmatic, as a Berkeley officer doused them with pepper spray. Neither was arrested for any

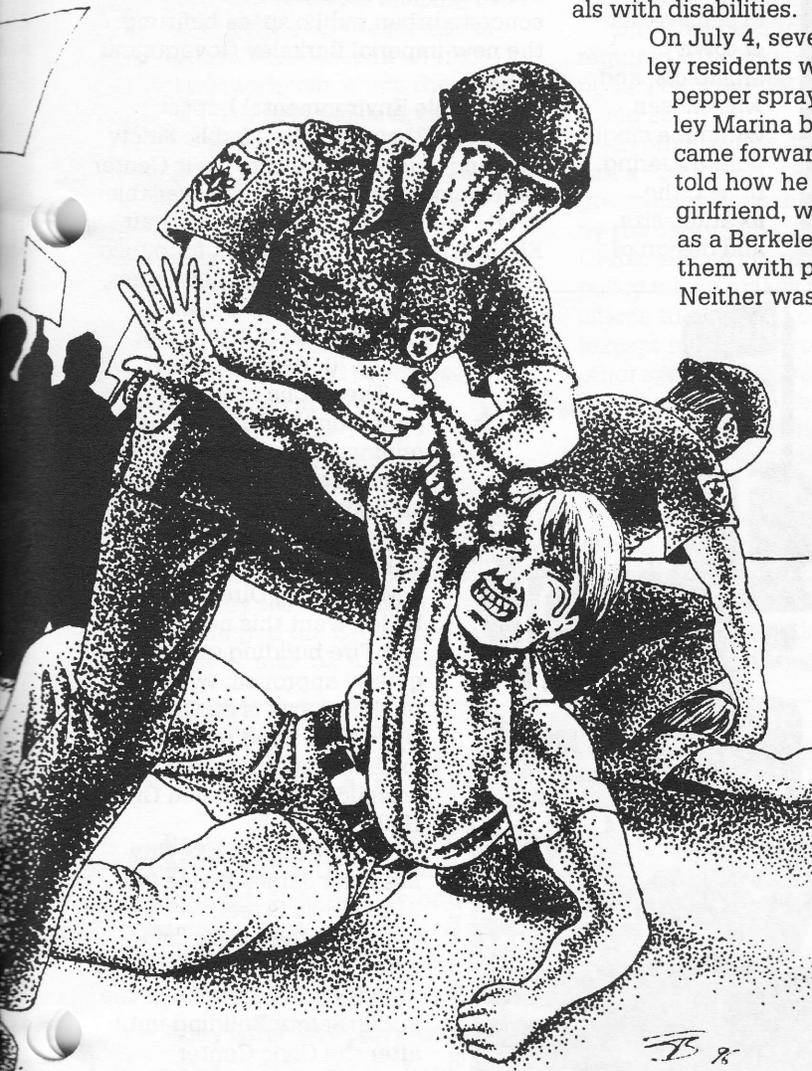
crime, nor were they offered any medical attention. Contrary to Chief Butler's claims that pepper spray is never used by Berkeley cops as crowd control, numerous officers allegedly used batons and pepper spray on July 4 to aggressively disperse crowds at the Berkeley Marina who gathered to set off and watch firecrackers. These two on-lookers were attempting to leave when, they said, police stopped them, shoved them, and sprayed them. Upon complaining to the department, they were told by an Internal Affairs officer that police had used pepper spray at least four times that night.

On August 1, COPWATCH addressed the Community Environmental Advisory Commission (CEAC). Particularly concerned about pepper spray as an unregulated toxic substance, the CEAC voted unanimously to recommend a moratorium on pepper spray in Berkeley, at least until conclusive studies are completed on its health effects and toxicity.

**A**s public opposition to pepper spray mounts, so does evidence on the medical dangers of pepper spray and its misuse by law enforcement. A Duke University Medical Center report by Dr. Woodhall Stopford released in June concluded that "individuals with pre-existing hypertension, asthma, eye conditions, chest infections or airway reactivity would be more susceptible to adverse effects after being exposed to OC spray [pepper spray] and should be excluded from exposure situations." This report included eye damage, loss of skin sensitivity and respiratory arrest in a list of risks associated with exposure to pepper spray.

As COPWATCH continues to research this issue, we have uncovered more records of apparent misuse. After receiving approval on a freedom of information request to look at the California EPA's collection of police pepper spray use reports, COPWATCH discovered over 75 pepper spray use reports from a Juvenile Detention Center in Kern County. The victims' ages ranged from 14 to 17.

Once again, police policy fails to regulate police behavior on the streets. If you were one of the individuals pepper sprayed by Berkeley cops on July 4, or a witness, we want to hear from you. If you want to take part in our effort to remove pepper spray from the police arsenal, you should contact us. Call COPWATCH at 548-0425. ●



ARTWORK BY BRENDAN THOMPSON

# New Police Station Costs \$20 Million

BY CLIFFORD FRED

Construction of a four-story, 65,000 square foot new building for the Berkeley Police and Fire Departments, at Addison Street and Martin Luther King, Jr. Way, is rapidly nearing final approval. The new building would house the 349 people the city says now work at the Hall of Justice and Fire Administration buildings on McKinley Street. It would include a private gymnasium for the city's police.

This "Public Safety Building," slated to cost \$20 million or more, is being paid for by Berkeley residents through

There is no commitment to tear down these buildings, and they will most likely be occupied indefinitely. Thus, the police will end up with a sprawling new building and will get to keep the existing Hall of Justice.

Unanswered questions include: how much larger will the new jail be? and how much of the construction money will go to new computer setups and other new technology for the Berkeley Police?

In May, the Council approved an ugly and austere fortress design for this building, not unlike the J. Edgar Hoover FBI building in Washington, D.C. This design was the creation of

expensive out-of-town architects, and was chosen without a single public hearing. In fact, the location, size, and design of

this enormous building have all been decided by the City Council without a single public hearing or any environmental review. All that awaits is one last vote.

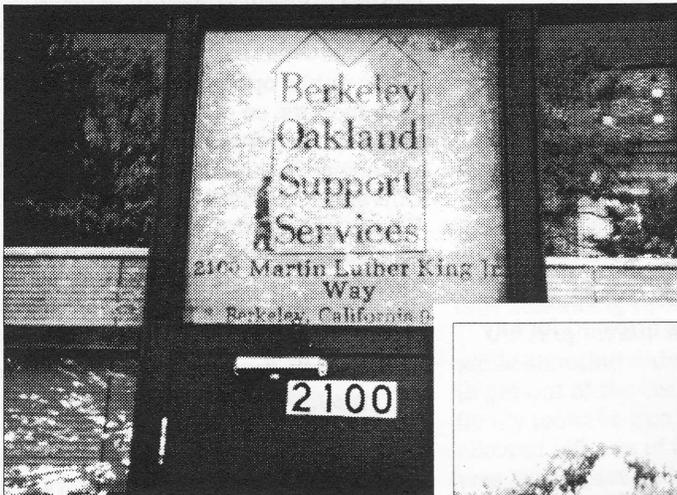
This "Public Safety Building" is but the first part of a vast Berkeley Civic Center redevelopment scheme. The plan would build a \$45 million Berkeley Courthouse, remodel City Hall for \$40 million, and expand the main library for \$37 million. Among the buildings to be demolished is the 24-bed transition house on McKinley Street, even though no new use is identified for the site. Martin Luther King Jr. Park and the Peace Wall therein would also be demolished, to be replaced by a concrete urban public space befitting the new imperial Berkeley Government Square.

A single Environmental Impact Report (EIR) on both the "Public Safety Building" and on the entire Civic Center development scheme became available in late July. To get a copy of the Draft EIR and be on the mailing list for public

hearings, contact Lois Jones, Environmental Review Officer, 2180 Milvia Street, 644-6570 (FAX 644-8607).

The public comment period on the Draft EIR is the minimum requirement of 60 days, even though this EIR is on both the Police & Fire building and the entire Civic Center scheme. Mayor Dean and Planning Director Gil Kelley want this new Police and Fire building quickly and quietly approved, while the public's focus is on the November bond measure to expand the library and seismically strengthen City Hall.

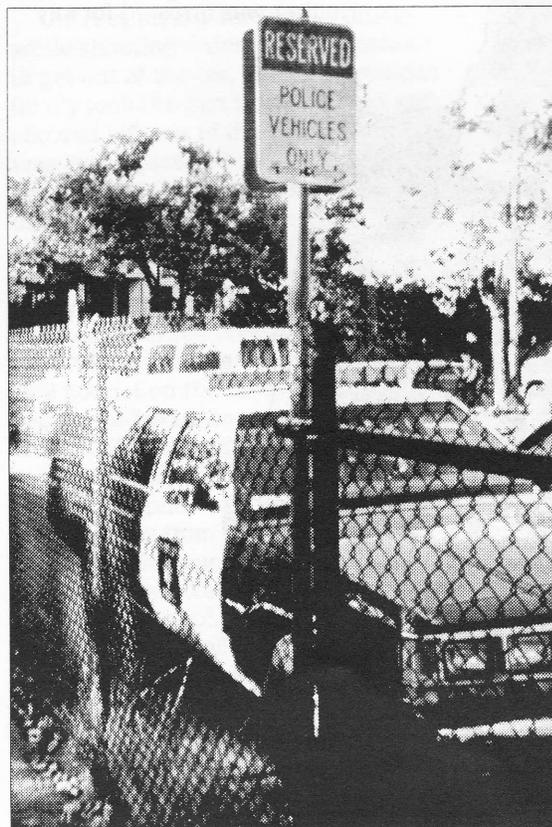
People should ask City Manager James Keene (at 2180 Milvia Street, 644-6580), to extend the public comment period to 120 days, and to delay consideration of the Public Safety Building until after the Civic Center development scheme is approved. ●



**Buildings like this... will be replaced with more of this.**

a recent local bond measure. Voters were given the impression that the bond would pay to make the existing police and fire department buildings seismically safe, not to finance construction of a massive new building.

City officials claim the police and fire departments are not growing. But the City Council and city planners refuse even to consider the option of remodeling the existing police and fire buildings for seismic safety, instead of constructing this massive new edifice. The subsequent demolition of the existing buildings is not part of this project.



PHOTOS BY LENORE ANDERSON

# Police Slam Door on Public Records

## Does the PRC Have the Key?

BY ANDREA PRICHETT

There is good news and bad news for those who believe in freedom of information and the public's right to know. The good news is that the Berkeley Police Department will reduce the cost of police reports from \$10 per report to just 10 cents per page. The bad news is that members of the public will no longer have access to these reports.

As a result of a complaint filed with the Berkeley Police Review Commission (PRC) by COPWATCH members, the commission will consider revising the current restrictions on the release of police reports. The outcome of their decision will seriously affect the ability of the public to hold police accountable.

The "Freedom of Information Act" is a federal law requiring the U.S. government to disclose information unless there is a reason to withhold that information. In California there is the "Public Records Act" (CPRA, or Government Code sections 6250-6268).

In May, Police Chief Dash Butler reported to the PRC on police use of pepper spray (see article, p. 1). COPWATCH attempted to get copies of the police reports referred to by the Chief in his presentation. The request for this very relevant information was denied. This prompted COPWATCH to file a complaint with the commission in order to clarify the Police Department's understanding of the CPRA, the exact cost of copies, and other specifics

relating to access to public documents.

City Attorney Manuela Albuquerque provided the PRC with an interpretation of the status of the California Public Records Act. According to Albuquerque, a 1993 California appellate court ruled that police departments are not required to provide copies of the actual reports except in certain situations or to the victim of the crime. The suspect, witnesses, and concerned citizens are no longer able to obtain copies of these reports. Most lawyers agree that the court's ruling was a bad one and dealt a serious blow to the concept of "freedom of information".

But even though the police are not required to provide police reports to the public, they are not prohibited from doing so.

In other words, the PRC can establish a "Sunshine" policy which allows greater access than what is guaranteed by the court's interpretation of the CPRA. Our city could implement a policy which makes it possible for any citizen to view and copy police reports (except in cases involving a minor or other special circumstances). This is not a radical departure from tradition. In fact, police reports in Berkeley have been a matter of public record until recently.

To have effective civilian oversight of police, it is crucial that police reports be made available to the suspects or arrestees in a case. The current policy makes police reports available to arrestees only during criminal court

proceedings. However, incidents involving police misconduct often don't go to trial. Police reports contain valuable information to the victims of wrongful arrests and misconduct. Access to police reports is one of the few checks we have on police conduct.

Another very serious question has arisen in the course of the PRC's consideration of this issue. The Public Records Act provides that any government document which is made public to some members of the public must be made public to all members of the public. If the PRC is truly an independent civilian oversight agency, then any police reports which are made available to it must be made public to all. However, if the PRC considers itself to be a "police agency" as described in the court ruling, then it may well be able to view police reports which are now considered to be confidential. The implication of the PRC describing itself in that way is that "independent" civilian review as we have known it in Berkeley will be a thing of the past. The public will be effectively shut out of the oversight process.

COPWATCH will be attending PRC meetings to discuss the issue of public access to police reports. It is crucial that all Berkeley residents speak out for openness in city government and for police accountability. Call the Police Review Commission at (510) 644-6717 and come to a meeting. Ask your commissioners, what do the police have to hide or what they are afraid of? Access to information is a right, not a privilege! 

## Thank You!

**Resist**, a Massachusetts-based foundation, endowed COPWATCH with a generous grant for much-needed office equipment. Progressive organizations seeking information or assistance may contact Resist at: One Summer Street, Somerville, MA, 02143; (617) 623-5110.

**Katya Komisaruk** donated additional office equipment.

**Kiley Etter** has provided technical expertise for our new system.

COPWATCH wishes to extend its gratitude to all of you.





**“I couldn't walk within a hundred feet of any demonstration without being thrown in jail.”**

**— Carol Denney**

# SLAPP Suit Ends

BY SOFIA CASINI AND CHRIS THOMPSON

Late May marked the end of the four-year long UC SLAPP suit against People's Park activist Carol Denney and others. Denney described to COPWATCH how, in the course of the lawsuit, the police used innuendo and half-truths to assemble a profile of her as a dangerous, violent provocateur.

In January 1992, the University singled out Denney and three others as the “ringleaders” of the 1991 People's Park riots and sued to hold them accountable for the damage. According to Denney, the University demanded \$500,000 in damages in order to intimidate the defendants from further public protest.

“It was just a number they pulled out of thin air to frighten us,” said Denney. “It was pretty scary.”

Judge Balacchi realized that getting half a million dollars from four impoverished activists was unlikely, but prohibited the activists from “encouraging violence at People's Park.” Denney faced thousands of dollars in legal fees, and she countersued the university to pay them and dismiss the injunction.

This May, an appellate court dismissed the countersuit, ending a four-year, emotionally draining legal

battle. Denney is still left to foot the bill.

Denney called the UC Police the “nuts and bolts” of the SLAPP suit. In October 1991, UC Officer Takaoka and others allegedly beat Denney after she objected to the illegal search of another woman. The subsequent public exposure of this incident may have caused the police to single her out as a troublemaker.

Police Review Commission records show that, shortly after the beating, UC Police gave BPD Officer Milner a file on Denney and told him to keep an eye on her. As the lawsuit later progressed, police officers filed depositions that described her as a violent instigator of the 1991 riots.

In one deposition, a Berkeley police officer cited an incident in which Denney threw roses into the park volleyball courts. The thorns on the stems, claimed the officer, constituted a weapon and demonstrated that Denney was a threat to society.

BPD Chief Dash Butler testified that Denney struck him at a City Council meeting (see *Copwatch Report*, Spring 1992). A newscast from

Channel 5 later showed that police arrested Denney before Butler even showed up to the meeting, and that Denney never touched Butler.

Testimony such as Butler's created a documented profile of Denney as violent and helped convince the judge to issue the injunction. Since then, Denney claims to have been harassed and frightened by police using the injunction as their excuse: “The idea was to induce a chilling effect. I couldn't walk within a hundred feet of any demonstration without being thrown in jail.”

As this case shows, an officer's courtroom credibility can be just as dangerous as his gun. ●

## **COPWATCHers Needed in Big Mountain, Arizona**

**People with videocameras, photographers, and witnesses are needed to record police harassment of traditional Navajo people threatened with relocation on behalf of Peabody Coal, Inc. Contact:**

**Sovereign Dineh Nation Office  
P.O. Box 40319  
Flagstaff, AZ 86004  
(520) 522-8683  
e-mail: sdn@primenet.com**

You may think you know what to do when stopped by the police. But when it actually happens to you, nine times out of ten your mind goes blank. COPWATCH came up with a few situations that you might not be so sure about, and here present for your benefit our latest

# KNOW YOUR RIGHTS QUIZ

*NOTE: It's impossible to explain all of the law right here. For a Know Your Rights workshop, call COPWATCH at (510) 548-0425. We thank Lenore Anderson and Katya Komisaruk for assistance in preparing this.*

*Although COPWATCH does not condone illegal activity, we recognize that those who break the law still have rights.*

A security guard at a grocery store catches you shoplifting and calls the police. Officer Bertauche arrives and, without reading you your rights, handcuffs you. You tell him that you want a lawyer. Bertauche responds, "You'll talk to a lawyer when I'm good and ready." He puts you in the police car and drives around town for two hours before taking you to the station. After you are placed in a holding cell, another police officer enters and says that you will get off easier if you confess now.

- A. Can the security guard detain you? Can he search you?
- B. Can Bertauche determine when you will be allowed to talk to a lawyer? How soon after arrest can you talk to a lawyer?
- C. Is Bertauche legally required to read you your rights when you're arrested?
- D. If your rights are not read to you, can what you say still be used against you?
- E. Can Bertauche drive around for two hours before taking you to the police station?
- F. Should you confess to the police officer in the holding cell?

**A. YES.** If the security guard has probable cause to believe that you are attempting to steal, he can detain you and search your belongings. However, the guard can only search your bags or other property. He cannot search the clothes you are wearing or your body.

Guards can search you regardless of probable cause if you give consent. Clearly state out loud that you do not consent.

**B. NO.** You have the right to three phone calls within three hours of arrest, and you should use at least one of them to talk to a lawyer. You have the right to an attorney before you plead. If you can afford a private attorney, he or she can probably get in to see you soon after you are booked. If you are assigned a public defender, you may not see him or her until you go to court.

**C. NOT ALWAYS.** Police only have to read you your rights when (a) you are under arrest, and (b) they want to ask you questions. However, you have the right to remain silent whether they tell you so or not.

**D. YES.** If a police officer does not arrest you but does ask you questions, what you say can be used against you. If an officer arrests you but does not ask you questions, and you voluntarily say something, what you say can be used against you. The only time what you say cannot be used against you is when a cop arrests you and then asks you questions without reading your rights. Security guards are not required to read you your rights, so anything you say to them at any time can be used against you.

**E. YES.** Delay in booking does not affect the validity of the arrest. Booking is not considered an actual part of the arrest process, simply the administrative task that follows an arrest. However, the cop would be violating your rights if he drove around for more than three hours without allowing you phone calls (although an unavoidable delay would likely be an exception).

**F. NO.** Don't be fooled by the police officer telling you that you will get off easier by confessing. Tell the officer that you want to remain silent and that you want a lawyer. 

## YES! I want to support COPWATCH...

- |   |  |
|---|--|
| <input type="checkbox"/> add my name to your mailing list and send me 2 free issues | <input type="checkbox"/> Send ____ T-shirts @ \$15 suggested |
| <input type="checkbox"/> \$80 / year – sustainer                                    | <input type="checkbox"/> \$25 / year – contributor           |
| <input type="checkbox"/> \$50 / year – supporter                                    | <input type="checkbox"/> \$5 / year – low income             |
| <input type="checkbox"/> _____ – other  | donation each. Circle size(s): XL L                          |
|   | Choose style: T-shirt Tank Top                               |

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Organization \_\_\_\_\_

Comments \_\_\_\_\_

Return to: COPWATCH, 2022 Blake Street, Berkeley 94704. (510) 548-0425. Contributions are NOT tax deductible.

# COPWATCH CALENDAR

## Tuesday, Sept. 17, 7:30 PM

Berkeley City Council considers a ban on police use of pepper spray. For details, call COPWATCH at (510) 548-0425.  
2134 Martin Luther King Jr. Way, Berkeley.

## Saturday, Sept. 21

Mass demonstration against the Criminal Injustice System. Sponsored by the kNOw Injustice Coalition, (510) 845-8813.  
Dolores Park (Dolores & 18th Street), S.F.

## Friday, Oct. 4 thru Sunday, Oct. 6

1996 National Conference On Police Accountability (NCOPA). Sponsored by NCOPA and Citizens Alert, (312) 663-5392.  
Chicago, Illinois.

## Tuesday, Oct. 22

National action against police misconduct (see page 4). Sponsored by the Organizing Committee for National No Police Brutality Day and Refuse and Resist!, (510) 464-4563.

# Volunteers & Interns Needed

- Learn about your rights and assist victims of police misconduct in filing complaints.
- Organize events, forums, and demonstrations for police accountability.
- Create videos, write for our Report, design flyers, and talk on our radio show.
- Speak in public and lobby public officials to change police practice.
- Take part in outreach and street patrols to directly help those targeted by police abuse.

You can learn skills while organizing with COPWATCH for social justice. College credit through UC Berkeley's Peace and Conflict Studies program is available.

People of color and people of all ages are encouraged to intern with COPWATCH. For information, call us at (510) 548-0425.

**COPWATCH  
T-SHIRTS  
& TANK TOPS**



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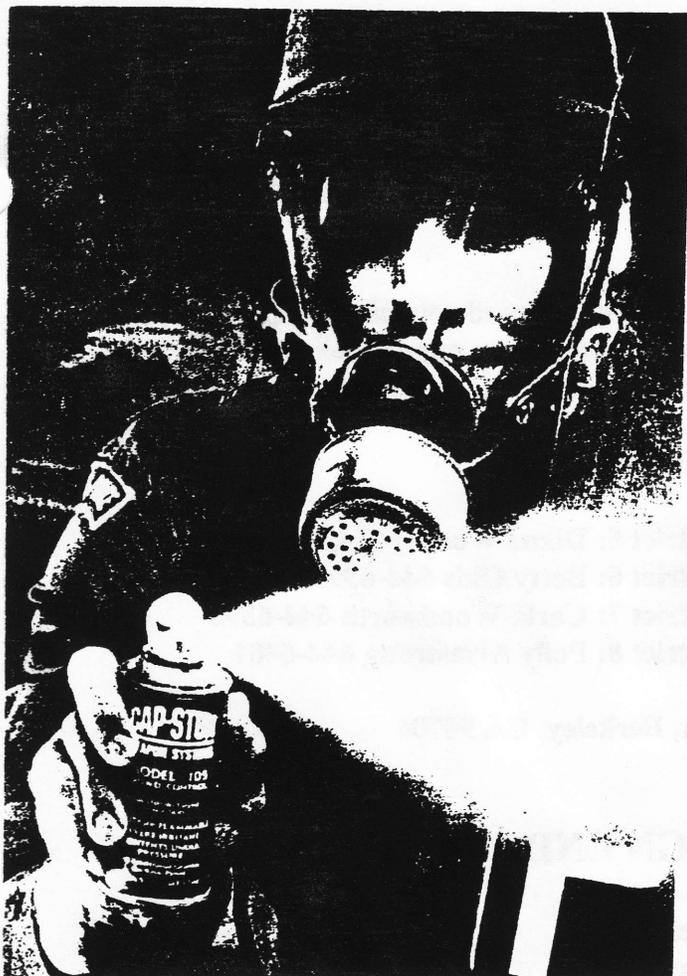
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# BAN

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## POLICE USE OF PEPPER SPRAY!

# DEMONSTRATION

TUESDAY  
SEPTEMBER 17  
6:00 PM

OLD CITY HALL  
2134 MARTIN  
LUTHER KING WAY

**JUST BEFORE THE CITY COUNCIL MEETING**

**Pepper spray** is a choke-inducing toxic that has never been adequately tested for health effects. At least 33 people in California have died after being pepper sprayed and restrained by police. None of these 33 people were committing a violent or serious crime. **Pepper spray** is supposed to only be used as a last resort in dangerous emergencies. On the streets, cops use pepper spray on nonviolent demonstrators, innocent bystanders, youth, and people with disabilities. Let the Berkeley City Council know we will not tolerate police use of untested chemical weapons! Come speak out against police pepper spray use!

Sponsored by: COPWATCH  
International Socialist Organization

**CALL COPWATCH  
548-0425**

# CALL YOUR COUNCILMEMBER!

The campaign to ban police use of pepper spray rolls on! We need your citizen input! Call or write Mayor Dean and your city councilmember. Tell them you oppose police officers carrying untested chemical weapons. Assert community control of the police!

**Mayor Shirley Dean: 644-6484**

**District 1: Linda Maio 644-6359**

**District 2: Mary Wainwright 644-6400**

**District 3: Maudelle Shirek 644-6243**

**District 4: Dona Spring 644-6266**

**District 5: Diane Woolley-Bauer 644-6294**

**District 6: Betty Olds 644-6399**

**District 7: Carla Woodworth 644-6398**

**District 8: Polly Armstrong 644-6401**

**Write City Hall! 2180 Milvia, Berkeley, CA 94704**

## COPWATCH CAMPAIGN ENDORSERS:

Berkeley Ecumenical Chaplancy to the Homeless

Berkeley Fellowship of Unitarian Universalists

The Religious Society of Friends, Berkeley

Green Party

American Friends Service Committee

San Jose Peace Center

National Lawyers Guild

National Organization of Women, East Bay Chapter

National Coalition on Police Accountability

Bay Area Policewatch

Justice Education and Action Project

Action for Police Accountability

Christina Huskey, Redwood Chapter American Civil Liberties Union

Ron Hampton, National Black Police Officers Association

Kriss Worthington, candidate for City Council, district 7

Rabbi Zari Weiss, Kehilla Community Synagogue

Boona Cheema, executive director of Berkeley Oakland Support Services

Candace Kilcheman, Berkeley Grey Panthers

David Nadel, owner of Ashkenaz

Tom Ammiano, San Francisco Supervisor

International Socialist Organization

Committee in Solidarity with the people of El Salvador