

COPWATCH

Report

BERKELEY, CALIFORNIA

SPRING 1997

Task Force Says "NO" To Pepper Spray

BY ANDREA PRITCHETT



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Citing concern over the city's liability in cases involving police use of pepper spray, a city sponsored task force voted 5 to 2 in favor of recommending that the city council discontinue the use of pepper spray by police officers until the task force is able to report its findings. The task force, made up of representatives from eight city commissions, heard testimony from several Berkeley residents who have been exposed to pepper spray before voting for the proposal. Task force members also watched a video recording of pepper spray victim, Otis Stillwell's compelling testimony at a public hearing last May.

On February 11th, the City Council voted to award \$75,000 to Ms. Stillwell, Charles Youkum and the other plaintiffs (including two children) who were abused and sprayed repeatedly with pepper spray by Berkeley Officer Derek Bertauche. (For a description of this incident, see Ms. Stillwell's article in the "Victim's Voice" section of the Winter 1996 *COPWATCH Report*.) Another civil suit related to Berkeley Police use of pepper spray is expected to be filed on behalf of seven plaintiffs who were sprayed on May 27, 1996 during a block party on Prince Street. In both cases, plaintiffs complained of long-term discomfort related to their exposure to the chemical.

The latest action by the task force is actually the second time a city sponsored body has voted to suspend pepper spray use. Last June, after a public hearing and debate, the Police Review Commission voted in favor of a two month moratorium on police use of pepper spray. However, Police Chief Butler refused to comply with the PRC's recommendation and continued to allow the police to use pepper spray. The issue of a suspension of police use of pepper spray has never been directly put to a vote by the city council.

At the February Task Force meeting, members heard from police department representatives and individual officers about their experience using the spray. In all, four officers described using the spray and attested to its effectiveness in subduing resistant persons. Notably, in all but one of the instances described the officers failed to comply with the guidelines and protocols set up by the department. Each officer either used too much, was too close to the suspect, or used it while another officer was also spraying the individual. The only officer who did not violate BPD policy was the officer who described showing the suspect the can of spray, but not actually spraying him.

Although police officers were willing to attend the February Task Force meeting, on the whole, the work of the task force has been slowed by a lack of

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Budget, Staff Cuts Cripple PRC

BY DAVE TODTFELD

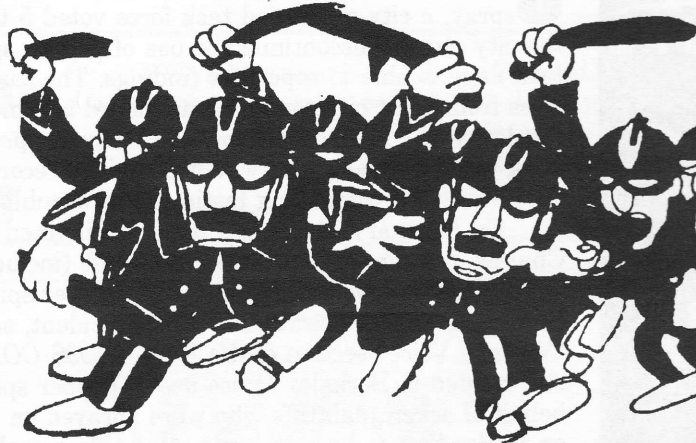
In 1973 the people of Berkeley voted to establish the Police Review Commission (PRC), the first civilian review board in the country. For years the PRC played an instrumental role providing community oversight of the Berkeley Police Department. (For more information on the history of the PRC, see *COPWATCH Report*, Winter 1996.) Today the PRC is understaffed, underbudgeted and thus much less successful in performing its public services.

The cuts began in Fiscal Year (FY) 1993-94, when the PRC's staff was reduced from six full time employees (FTE's) to five and one-half. The reduction represented a decrease in the number of PRC investigators from two FTE's to one and one-half. While this cutback was not drastic, its repercussions were predicted in the actual city budget for that year, which stated that the loss in staff "may limit PRC efforts to broaden community participation in review of Berkeley Police Department policy; decrease the capacity for independent analysis; reduce timeliness of complaint investigations; and impair compliance with procedural requirements of PRC regulations." After further, more drastic cuts, these predicted impacts have been realized.

Today the PRC is comprised of a working staff of just three FTEs - that's a 50% reduction since the initial cut just four years ago. In addition, the PRC's budget has steadily declined over this same time period. Again, the reductions started off looking relatively modest - from a budget of \$362,379 in FY 1993-94 to \$321,307 in FY 1995-96 (11% reduction). The proposed budget for FY 1996-97 would greatly accelerate this trend - allotting the PRC only \$246,470 (that's a 23% cut from the last budget; a 32% slash since the high point in FY 1993-94).

The PRC is mandated by city ordinance "to provide for community participation in setting and reviewing police department policies, practices, and procedures and to provide a means for

prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department." (author's emphasis) At this time, the PRC does not even have an investigator. The present PRC budget allows for one half time Investigator, but that position has remained vacant since December. This situation is addressed in a January 30, 1997 letter from the PRC's Subcommittee on Budget and Staffing (comprised of Commissioners Aaron Handel, Sheila Canavan, and Mel Martynn) to the City Manager, James Keene. In that letter the Subcommittee points out that the PRC "currently does not have any staff person with investigative experience" and thus pleads for the city to hire one full time investigator. Thus far, no decision has



been made.

The PRC cannot adequately perform its function with its current staff limitations. As the PRC struggles to adequately provide its services, Berkeley citizens become less confident in its abilities and thus fewer residents choose to turn to the PRC with their concerns about the BPD. Ironically, there are some members of the Berkeley city bureaucracy who argue this decreased use of the PRC is a justification for further cuts.

On the whole, the once radical and progressive PRC is now more conservative and complacent. Many within the PRC regard the cuts as the inevitable result of the city's budget constraints. Here two points need to be made.

First, while the city's revenue may not be keeping pace with

inflation, it has gradually increased over the last five years (from about \$212 million in FY 1992-93 to \$260 million planned for FY 1996-97). During the same time the Police Department's budget has remained more or less constant (at around \$26 or \$27 million). Therefore, to argue that PRC cuts are simply the manifestation of across-the-board cuts is untrue.

A second, more illuminating point looking at the numbers: a city budget in neighborhood of \$260 million, a police budget of \$27 million, and a proposed PRC budget of about \$75,000 will do a lot to accelerate the declining capabilities of the PRC, but it's a drop in the bucket if the issue is truly citywide savings.

The PRC once was a shining example of Berkeley's progressive community based

politics. Its creation grew out of the recognition for the necessity of independent civilian oversight of the police. That necessity still exists. Call or write your city council member and let them know that you are troubled by the decreased power of the PRC. Demand the hiring of at least one full time investigator. Tell them to provide the resources needed for a powerful PRC.

And tell them to appoint commissioners who believe in civilian review and are willing to fight for it! ☎

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. Opinions expressed are those of the author, not necessarily the organization.

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:

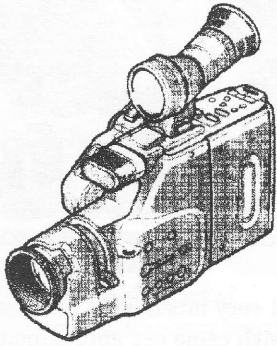
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Mass COPWATCHing Across Berkeley

Sixth Anniversary of Rodney King Brings Activists into the Streets



BY DANIELLE STORER

Most people are shocked when you tell them it has been six years since the LAPD viciously beat Rodney King in front of a videocamera. Every year, the National Coalition for Police Accountability calls a day of action on March 3, the anniversary of the beating, to encourage people to take stock of what progress has been won in the struggle for police accountability.

This year, COPWATCH joined with community groups in other cities across the country who held marches, forums, and other events during the National Week of Action for Police Accountability. On March 3, COPWATCHers fanned out on all the major streets of Berkeley to monitor police activity and distribute "Know Your Rights" information to the public.

Our event, "COPWATCHing Across Berkeley," began with a Copwatch Training, where participants were educated about their rights on the street, relevant laws and policies, and what to expect while observing police activity. The training offered non-violence guidelines designed to de-escalate tense situations involving the police, and provided information on how to watch the police safely while gathering vital information such as the name and badge number of the police officer. In addition, the training prepared us to explain COPWATCHing and the "Know Your Rights" information which we handed

out to the public.

After the training, pairs of COPWATCHers were given a clipboard, buttons, stickers, a map, and a stack of "Know Your Rights" guides, and sent out to the streets. A total of ten teams were sent out for two hours.


On their return, the COPWATCHers ate snacks provided by Food Not Bombs and reported on their observations and experiences. Across the board, they said that they had been well received by the public in most situations, although some people had been hesitant to talk to people they didn't know about the police.

One team of COPWATCHers observed police dealing appropriately with an assault victim. Most of the teams did not encounter police stopping people on the street, but heard many accounts of police misconduct and abuse.

For example, folks in West Berkeley

talked about being personally brutalized by the police. Homeless people in downtown reported repeated harassment by the same officers. South Berkeley residents told COPWATCHers about Berkeley police raiding houses in Oakland and Emeryville. And a young person on Telegraph Avenue described getting a \$130 ticket for sitting on the sidewalk.

The purpose of "COPWATCHing Across Berkeley" was to encourage everyone to get more involved in keeping the police accountable to people in the community. Our efforts on March 3 received wide coverage in the press, on Channel 7 and Channel 14, two newspapers and one radio station, through which we raised awareness of the problem of police abuse.

One COPWATCHer, Andrea Prichett, believes that, "The real solution to police brutality lies with the community. While police review boards and policies are helpful, it is ultimately a public which is educated about their rights and willing to act, who will put the check on police misconduct." 



COPWATCH INFO TABLE WELCOMED VOLUNTEERS TO MARCH 3RD EVENT.

Police Response to Nadel's Murder

BY ANDREA PRITCHETT

It isn't often that a person of such high regard within Berkeley and the progressive community dies. It is even more shocking and disruptive to our collective psyche to realize that this person didn't just die; David Nadel was murdered. He was shot in the head on December 19th by an unruly patron who returned to the club after being asked to leave. He died in the hospital two days later. David gave his best years to a vision of a better world and to this community in particular. Because David was so well known, loved and respected, people in the community are extremely concerned about how and why this murder was able to occur.

At COPWATCH, we believe that a thorough examination of this incident is useful for several reasons. First of all, the community has questions and it is the responsibility of the police department to answer those questions to the best of their ability. More importantly, a man lost his life and it is our responsibility to ask ourselves what could be done differently to help prevent a similar occurrence.

David was not a person who called 911 unless he believed that a situation had the potential for violence. However, he called 911 after the suspect was ejected from the nightclub for the third time. Witnesses allege that as he was leaving, the suspect told the security guard "I'll be back in five minutes" and mentioned something about his "pistola". According to witnesses, the suspect's behavior was rowdy and volatile the entire night.

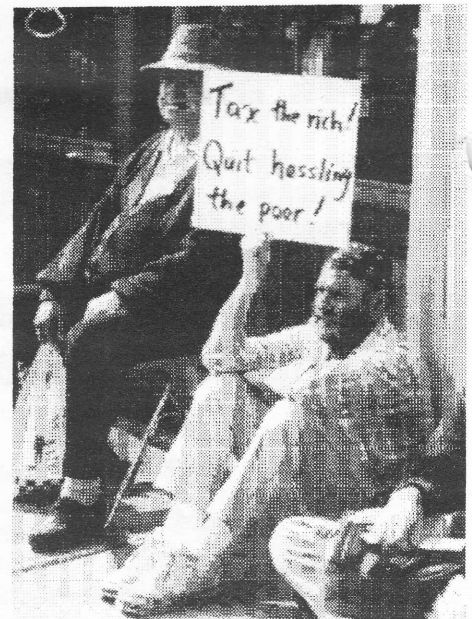
Witnesses relate that three police cars responded to the initial call. According to people at the scene, the police were shown which direction the suspect had gone. One officer apparently drove in the direction of Gilman Street and then circled back almost immediately. The initial search for the suspect took approximately five minutes. Meanwhile, another officer spoke with David. With the help of a woman named

Elnora, David described what had happened in the club and what the suspect looked like. She confirms that David also expressed his concern that the man was "dangerous". After the interview, the officer told David that he should call if he saw the suspect again.

During the interview with David, an officer noticed another man in front of the Ashkenaz who was obviously drunk and was becoming agitated. The officer arrested the drunk man after he ignored warnings to leave the area. Although arresting drunken, agitated patrons may be legal police procedure, this particular arrest served to remove another officer from the scene who could have possibly remained on site to respond if (and when) the threatening suspect returned. Elnora states that all police cars left the area and that one was still visible driving south on San Pablo when the suspect returned as promised and shot David in the head.

There are many questions about the investigation that certainly deserve answers. How do the police assess the need for surveillance? When do they take a threat seriously? Did all of the responding units need to drive off or should some very visible presence have been established in order to deter the suspect. The suspect said he was coming back! Why didn't the police wait for him? Should the police have spent more than 15-25 minutes on the scene? We need to review police policies regarding threats to the public and whether those policies and protocols were followed that night.

Witnesses have also raised questions about the murder investigation that began that night. By 3 am on December 20, the police had been shown the likely bushes where the murder weapon was discarded, a house where the suspect had been seen two to three weeks earlier and they knew that the suspect had plans to go to L.A. the following morning. Unfortunately, the police didn't actually look in those bushes, but the murder weapon was found there three weeks later! Three different composite drawings were done of the suspect. No



David Nadel at a Measure O protest.

two looked very much alike and the official sketch came out approximately a week after the murder.

Another question involves the accusation made by an anonymous member of the BPD and reported by *The Berkeley Voice*, that David Nadel lied to police regarding the whereabouts of the suspect. The accusation was absurd on its face. Why would David call the police just to withhold information? In the PRC meetings where the issue was discussed, the department had subsequently distanced itself from this officer's remarks but it seems that some word of censure should be directed at the officer who made these slanderous remarks. If David were alive, he would most likely have filed a complaint at being called a liar in public by the police. Does the department have a policy regarding statements to the press by officers? Is there any follow up to this most offensive act by a Berkeley police officer? Was the officer attempting to explain away the brevity and half-heartedness of the initial search for the suspect? We just don't know. The real question is whether department leadership will tolerate this kind of rumor mongering within a "professional" department.

We at COPWATCH urge the PRC to convene a special meeting to review (in public) current police practice related to situations where the public safety is threatened and whether or not those policies were followed in this particular situation. ☐

S.F. GRASSROOTS POLICE ACCOUNTABILITY MOVEMENT BUILDS BEHIND Demands To Fire Cop Andaya!

BY GERALD SMITH

At a tense Police Commission meeting on March 19, the San Francisco Police Department (SFPD) filed new charges against Officer Marc Andaya, accusing him of lying on his employment application in 1994. Andaya was the lead officer in the case where twelve cops beat, kicked, and pepper-sprayed (with 4 cans!) Aaron Williams on June 4, 1995. Aaron died in the police van. Earlier attempts to win justice in this case were frustrated by maneuverings on the part of Willie Brown's police commissioners.

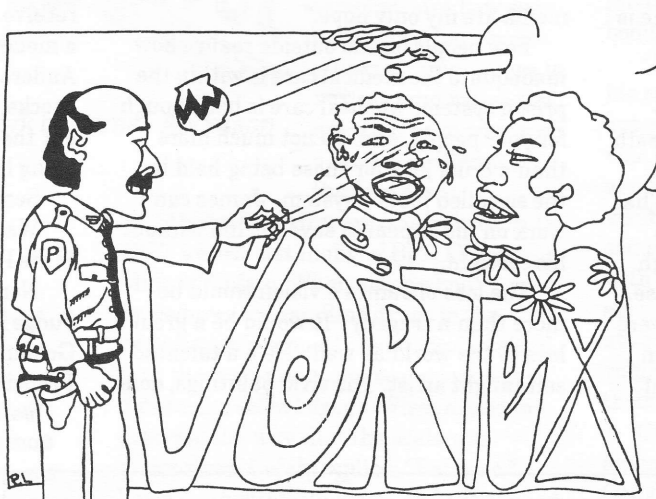
The citizens and the police were polarized from the beginning because the Police Officers Association (POA), the cop "union," attempted to stack the hearing room with cops. Over 100 cops showed up to support Andaya. In the face of this, the people, who had come to denounce police racism, stood their ground. After repeated appeals to the Police Commission to relocate the meeting to a larger room, some militants chanted, "What do we want?! A bigger room! When do we want it?! Now!" The meeting was moved upstairs to the sixth floor auditorium.

When the meeting reconvened, SFPD Chief Fred Lau, made the announcement about the new charges on Andaya. Van Jones, of Police Watch, asked for a moment of silence for Aaron Williams. Immediately, police in the back of the room started booing and chanting: "shame, shame," and "crack fiend", and then "Jim Guelf, Jim Guelf" — a cop that was killed while on duty in 1994.

This extremely disrespectful act may seem totally irrational at first glance. The twisted logic is that racist cops view themselves as "soldiers" in the "war on crime." Marc Andaya, like Mark Fuhrman, is their hero, Jim Guelf their martyr, and the Black and Latino communities their targets.

After this ugly but revealing incident

John Kecker, the President of the Police Commission, reprimanded ...the cops? No, he reprimanded Van Jones. He said to Mr. Jones, "This is not your meeting," and "If you have something to say, say it and sit down." Jones pointed out that he had been shouted down by the cops and that the people were tired of grossly unequal application of the "rules." "The people get three strikes and the cops get 30,000!" he said.



ARTWORK BY EMILY BUTTERFLY

Tony Coleman, a black man, stood up denounced the cops conduct and said that he paid taxes to pay police salaries and he resented the way they functioned. A white cop yelled out: "No, you don't — you have to have a job to pay taxes!" I happen to know that Tony Coleman is presently employed. When another black man spoke the cops blurted out: "How many strikes does he have?!" It appears the cops were not concerned with concealing their racism.

The vice president of the POA, Gary Delagnes, got up to speak: "We can no longer stand by and watch while our members are marched to the gallows." He was shouted down. The cops then staged a walk out. Save the drama for your mama! It was Aaron Williams who was lynched.

The cops then formed a gauntlet outside the meeting and videoed people as they were coming out. Is this the cops' method of healing their rift with the communities

they ostensibly protect? These actions make the idea of Community Policing a farce.

UNITED ACTION WORKS

What were the circumstances that led to this explosive meeting? In early November the Police Commission voted 2-2 on whether or not to punish Andaya for stomping Aaron Williams in the head, after he was hog-tied on the ground. A tie vote goes to the cop, so Andaya was off the hook...again.

But police accountability militants refused to leave Aaron Williams' family in the lurch. For such a blatant case of police brutality, with so many eye witnesses, surrender without a struggle was not an option.

PoliceWatch called a successful meeting in December, COPWATCH participated. We divided up the work and got busy. All components of the network we set up worked feverishly to get the word out to all communities that had felt the lash of police repression. We went to schools, churches, community centers, Potrero Hill projects, the Fillmore, the Western Addition, shopping malls, and anywhere we thought people might be interested. We leafleted and agitated for people to attend the Police Commission meetings. Our slogan was justice for Aaron Williams.

We discovered that many people had not forgotten this infamous case. All were concerned. With our leaflets as our lever we started an avalanche of overwhelming community support for this crucial case. Hundreds of community folks showed up at the Police Commission meetings.

KEKER LIES

In spite of the fact that acting police chief Earl Sanders called for Marc Andaya to be fired in his report at the Police Commission meeting in early February, the Police Commission voted 3-2 not to fire Andaya (he got a 90 day suspension).

Once again the spirit of protest and indignation spread through San Francisco
(continued on page 8)

Blind Justice

BY SARA JACOBELLI

James Anderson, a convict on San Quentin's Death Row, has more imminent problems than facing the executioner. He is going blind. He can't get the prison administration to approve the surgery he needs to save his eyesight, which is preventing him from working on his appeal.

James has been incarcerated for a murder conviction since 1979. He is fairly typical of Death Row residents, since he is poor, black and was represented by an inexperienced and ill-prepared public defender. Rich white people with high-priced attorneys are non-existent on Death Row. James, out of dire necessity, has become an adept jailhouse lawyer. He has a good case for an appeal, and through years of research, has uncovered enough evidence and documents to fight his case. He wants to continue the fight, but severe headaches and progressive loss of vision are preventing him from doing just that.

Two years ago, James had routine surgery for the removal of a cyst above his right eye. Two weeks later, he started developing headaches and blurred vision. According to his medical records at San Quentin, "The patient, James Anderson, has a piece of glass imbedded in his forehead that may need to be removed." For two years the headaches, loss of concentration and vision problems continued, while James, his eyesight deteriorating, fought for the necessary surgery.

In desperation, he decided to go public. "I know how the system works," James said in a telephone interview. "I think the media are my only hope."

Few people on the outside realize how inadequate the medical care is within the prison system. Medical care is bad enough for poor people, and it's not much more than a cruel joke for those being held in the so-called justice system. James can't work on his appeal to save his life without his eyesight.

The loss of James's vision would be more than a tragedy. It would be a great loss to the world as well. He's a talented self-taught artist. His vivid paintings, done

in acrylic on canvas, are hauntingly beautiful. They depict claustrophobic images of checkerboard floors, brick walls, layers of endless doors and keyholes, and ultimately, the city scapes and sky scenes of freedom. His work has been exhibited in several Bay Area galleries. Through painting, James is able to communicate with the outside world.

James is hoping that those who care about human rights will support him by writing letters demanding that he receive the necessary surgery to remove the piece of glass from his forehead and save his vision. In addition, he needs eighty dollars for filing fees related to his petitions to receive medical care. If you can help, send a money order, made out to James Anderson (prisoners can't receive cash or checks.) Remember, James can't just walk out the door and go to a doctor. He is being held captive, in more ways than one.

Send letters to:

Warden Arthur Calderon, San Quentin State Prison, San Quentin, CA 94964

Northern District Court of California, Judge Maxine Mackler Chesney, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102

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James Anderson's artwork, like this drawing, is on exhibit at three Bay Area galleries:

*Kenya Impex,
Berkeley
(510) 549-9953*

*Expressions,
Oakland
(510) 451-6646*

*Ethnic Trip,
San Francisco
(415) 252-9493*

*Write James at:
PO Box C-11400, 5E40
San Quentin Prison
San Quentin, CA 94974*

War on Drugs - Berkeley Style?



Artwork by James Anderson.

BY ANDREA PRITCHETT

Throughout the so called "War on Drugs" Berkeley Police have made thousands of arrests and assisted in the prosecution of hundreds of cases. In some instances, drug offenses have constituted the "third strike," sending people to prison for the rest of their lives. However, recent incidents involving BPD officers have caused many to question the credibility of a "drug bust" in Berkeley. Consider the following:

On December 30, 1996, BPD and university police officers stopped an older model, red car for having expired registration tags. The two men in the car stepped onto the sidewalk after speaking with both UC Officer Moore and BPD Officer Mesones. When asked by a COPWATCHer why the officers were searching the car, the men explained that the officers had offered them a deal. In exchange for allowing the officers to search the car, the officers said that they would not tow the car for having expired tags.

Officer Mesones (Badge #56) searched the car very thoroughly. After completing the search, the BPD officer went to the UC officer's car and spent several minutes there. When the officer returned, he was holding what appeared to be a small bag of marijuana up in front of him for the men to see. "That's not ours!" the men ex-

claimed with a bit of panic. "I know," Officer Mesones explained, "but I did find empty baggies just like this all over the back seat of your car." The officer apparently was using the baggie for demonstration purposes or possibly to intimidate the citizens. If nothing else, the incident demonstrates how easy it would be for a police officer to "find" drugs in any car, and raises the question as to why such a deal was offered in the first place.

Also noteworthy was the February 19, 1997 sworn testimony of BPD Officer Michael Cefalu. When asked about procedures for handling drugs in the department's property room, he explained that there was only one scale used for measuring seized drugs. When asked to describe the way that the scale was maintained, Cefalu replied, "Pathetic." Upon further questioning Cefalu explained, "Let me put it this way, I could go home, get a couple of two-by-fours and some fishing weights and make a scale that would be about as accurate." This is the same scale which is used to determine the weight of confiscated drugs and, therefore, the severity of the charges brought against individuals. The difference of a couple of grams more or less could mean a difference of years added on to a person's sentence.

These incidents may be "anomalies" as Chief Butler is so fond of saying. However, they may also be indications that innocent people are going to jail due to police misconduct. These kinds of incidents undermine the credibility of the entire department. We here at COPWATCH are doing our job to inform the public that incidents such as this are taking place. We call on the Chief of Police, the Police Review Commission and the City Council to take a closer look at existing procedures for drug arrests in Berkeley. ☎

Gregsby Case Going To Trial

BY SUZANNE LAPIDUS

In the last *COPWATCH Report* (Winter 1996) we told the story of Carl Gregsby who was brutalized by the police after he was stopped for having no license plate on the front of his car. Because he had recently had a stroke he was physically unable to comply with some of the officers requests. The officers took this as resistance and upon their insistence, he complied and proceeded to have a seizure. The police then continued to mistreat Mr. Gregsby and cause him bodily harm.

The Police Review Commission heard his case and found in favor of him on four out of five charges. Some of the witnesses who testified at the PRC hearing were arrested shortly thereafter when police went to their home with a warrant for someone else and ended up charging them with resisting arrest. Because these seemed like retaliatory arrests, local attorneys Osha Neumann and Jim Chanin volunteered to defend the witnesses on their criminal charges.

Carl Gregsby is now filing a civil suit against the officers who abused him. Osha Neumann, attorney for Community Defense, Inc. has generously offered to donate his time and skills to this important case. The civil suit is scheduled to go to trial on September 29, 1997.

Because of necessary testimony from a police procedures expert the trial is expected to be quite costly. Those who wish to make tax deductible donations to support this case should make checks out to Community Defense, Inc. and indicate on the check that it is for the Gregsby Civil Suit. Mail checks to the COPWATCH office. COPWATCH will be taking an active role in this case and we would welcome volunteers. ☎

write - call

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(PEPPER SPRAY, from page 1)

cooperation on the part of the police to supply the commissioners with the information they need. The Police Review Commission initially asked the Chief of Police to provide commissioners with copies of police reports describing every pepper spray related incident. The Chief responded at the January 31st meeting of the PRC by saying that there have been 35 incidents of pepper spray use by the department since it was introduced in 1993. He told the commissioners that he would be willing to provide the commission with the necessary reports, but that he would delete any information which could help to identify the victims or suspects in the incident. The Chief explained that he wanted to spare the individuals any embarrassment they might feel.

One reason the commission wanted the reports was so that they could examine each use and determine if it was proper. In addition, the commission would also be able to invite people who had been exposed to pepper spray to come to the commission and describe their experience. Without the identifying information, it will not be possible to contact these individuals. In any case, the Pepper Spray Task Force is still waiting to receive these police reports.

According to COPWATCHer Dennis


Mobley, "This high level of secrecy is more about sparing the police embarrassment than protecting the individuals involved. After all, the Chief has been working to reduce public access to police reports because he wants to reduce the number of lawsuits brought against the department. After this \$75,000 pepper spray settlement, it makes sense that the Chief would want to keep other incidents out of the public eye."

Other problems with Chief Butler's account of pepper spray incidents have surfaced. According to the Chief's report to the PRC on January 17th, there have only been two pepper spray incidents in the last six months in Berkeley. However, Task Force members heard a first hand account of an incident that occurred on July 4th at the Berkeley Marina. Massoud Saberi described how he and his girlfriend Nina Fallbaum were trying to leave the area at the request of BPD officers. When officers began pushing the couple from behind, Nina fell. As Massoud reached for her, he was pepper sprayed at close range by an officer he could not identify because he couldn't open his eyes. The next day they filed a complaint with BPD Internal Affairs Bureau. Sgt. McBride took the complaint, but this incident was not included in the report given to the PRC.

It also seems that BPD did not report each use of pepper spray to the California Department of Justice as it was required to do. According to the Environmental Protection Agency which collected the incident reports until June 1996, Berkeley only reported 13 uses of pepper spray. In his communication with the PRC, the Chief put the total number of uses at 35.

The Pepper Spray Task Force began meeting in December and is considering the impact of civilian use of pepper spray as well as police use of the spray. After passing the motion to suspend police use, the members began discussing the thorny issue of how the city can regulate or prohibit the sale of pepper spray to the public. That issue will be discussed further at next month's meeting.

Pepper Spray Task Force meetings are open to the public. They are held on the third Wednesday of each month at 7:00pm at the North Berkeley Senior Center on Martin Luther King Jr. Way. The next meeting will be on April 16th. Please come to a meeting and let the task force know that our community is concerned about exposure to dangerous chemical weapons.

COPWATCH intends to continue this campaign until police use of pepper spray is banned in Berkeley! 

(ANDAYA, from page 5)

like a wild fire. And mayor Willie Brown felt the heat. He pledged to "put pressure" on the commissioners who voted against firing Andaya so that "justice will be done."

At this point Mr. John Keker suddenly started suffering from a mysterious condition: selective amnesia (of the bureaucratic strain). Keker claimed to gullible newspaper reporters that he had been in the dark on Andaya's brutal record. "I was stunned to read about a case of excessive force (in Sunday's *Examiner*) that we did not see in his [Andaya's] personnel file," Keker said (*Examiner* 2/10/97).

In the same article he is quoted as saying: "In my judicial capacity I have not been reading stories about pending cases. I try not to get influenced by anything that I have not heard in the (misconduct) hearing." (Ibid.)

This is a clear lie. We know that Keker was fully aware of Andaya's record. The proof is simple. Van Jones repeatedly, at

more than one Police Commission meeting, stepped up to the mike and ran down Andaya's entire record of brutality. Keker simply pretends he didn't listen.

Andaya's record is also described in the leaflet we handed out at the Police Commission meeting and elsewhere, which reads in part:


"In 1993, Oakland's civilian Police Review Board found him [Andaya] GUILTY of using excessive force against a Black Oakland Resident. Witnesses reported Andaya calling the man a 'Black-ass n—r,' punching him in the jaw two to three times and kicking him in the testicles two times for no apparent reason."

All Keker had to do was pick up the phone and ask the Oakland Police Review Board and they would have gladly given him the 411 on Andaya. The real problem is that Keker lies as fast as quick can get ready.

Following this tumultuous meeting, two of the Commissioners who voted not to fire Andaya handed in their resignations. At the following meeting, on March 26, Keker

also resigned. In the midst of this crisis in confidence in the Police Department and Police Commission, Mayor Willie Brown claimed, "The relationship between the police and the neighborhoods is better than it has ever been."

Brown has appointed two new commissioners, and it only remains to be seen what they will do when the issue of firing Marc Andaya comes to a vote, which is expected in May.

The struggle to win justice for the family of Aaron Williams is not yet concluded. Keker's pitiful lying is a desperate, though transparent, attempt to cover his tracks in the heat of struggle. The additional charges against Andaya are the results of the mass campaign of hundreds of people who have participated in this battle to make the SFPD accountable for what they do in our communities. Keep the fire burning! 

New Law Disarms Cops Convicted of Domestic Violence

BY PAUL BELKIN

Keeping guns out of the hands of domestic violence offenders seems like a reasonable idea. In fact, it's not just a good idea, it's the law! But, police officers believe they should be exempt from this law.

According to a federal law enacted on September 30, 1996, as an amendment to the Gun Control Act of 1968, anyone who has been convicted of a "misdemeanor crime of domestic violence" is no longer able to lawfully possess, ship, transport, or receive any sort of firearms or ammunition. The new law was introduced by Senator Frank Lautenberg (D-NJ) and received strong support from President Clinton and a number of organizations dedicated to gun control and domestic violence prevention.

In an open letter informing all state and local law enforcement officials of the law, the Bureau of Alcohol, Tobacco and Firearms clarified that "law enforcement officers and other government officials who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose, including performing their official duties."

Politicians, law enforcement officials, and pro-gun organizations such as the NRA have responded by lobbying to have all officers exempted from the new law. The Fraternal Order of Police (FOP), the nation's largest police union, posted an advisory to a national police e-mail list urging officers "to refuse to answer any and all questions regarding previous misdemeanor convictions until first contacting an attorney." This is primarily because they are confident that an exemption bill will be passed soon.

Said Miami Police Major Bill O'Brien, "You don't see them going after butchers and taking their knives away when they have some type of dispute, or plumbers, taking their wrenches away. It seems like they're targeting us."

Should police receive an exemption from the law? Consider the facts. A recent

survey by the FOP found that 82% of its members feel domestic violence is a problem in police families. However, less than a third said that anyone in the ranks would admit to this.

This may be a problem given that self-revelation of prior domestic violence convictions is precisely how the new law will be enforced. According to the Washington Post, the Federal Justice Department, in response to the law, has asked all of its employees to sign documents stating whether or not they have been convicted of a domestic violence misdemeanor. These documents will reportedly be cross-checked with state-wide computer records in order to check whether employees have lied.

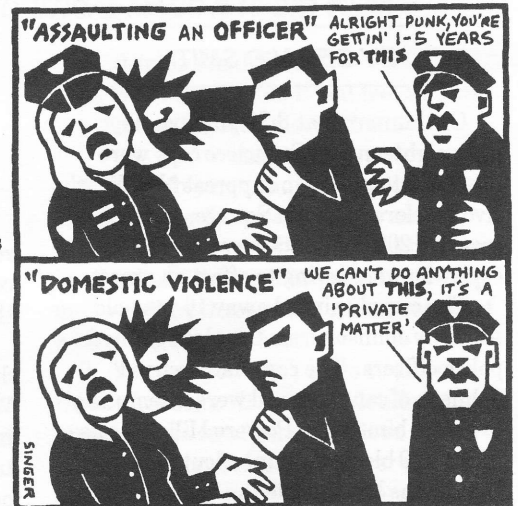
The Berkeley Police Department apparently intends to follow a similar procedure. At the February 11 Police Review Commission meeting, Chief Dash Butler said that all BPD officers were given documents asking whether they have been convicted of domestic violence. The chief said that the completed documents will be sent to a statewide bureau for review.

Given that all law enforcement offices in the state of California are submitting these documents to the same office, and given the instructions from the FOP telling cops to refuse to answer any questions on the subject, it is unlikely that any disciplinary action will be taken in the near future.

None of this reporter's telephone calls to the Berkeley Police Department regarding their progress in enforcing this new law were returned. ☹

NO EXIT ©'92 Andy Singer

ILLEGAL



LEGAL

The Stolen Lives Project

Let us not forget the lives of those killed due to police abuse and brutality.

The Stolen Lives Project plans to compile a national list of names of people killed by Police and Border Patrol from 1990-96. This is a joint project by the October 22 Coalition and The National Lawyers Guild to expose and show the magnitude of the killing of our families and friends. Let's not forget them, let's add dignity to their lives.

To participate, please send names and information to: Stolen Lives Project c/o National Lawyers Guild, 8124 West 3rd St. Los Angeles, CA 90048 or October 22 Coalition, 2940 16th Street, Rm. 216, San Francisco, CA 94103.

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 to 2022 Blake Street, Berkeley, CA 94704.

SFPD Gets Trounced On Potrero Hill

BY GERALD SMITH

On January 9 at 6:30 pm, just days after eighteen San Francisco cops were injured attempting to suppress New Year's Eve revelers at Union Square, an enraged crowd of 200 residents overpowered four cops who were trying to effect an arrest.

The crowd spirited away 16 year-old Anthony Johnson from the plain-clothed police officers. The cops had accused Johnson of car-theft and were attempting to arrest him at the Potrero Hill projects in the 900 block of Connecticut Street. During the brief tussle the four cops were whacked around a bit, and one, Inspector Mark Mahoney, was stomped. Nevertheless, the cops claimed there were no serious injuries. "Only bumps, bruises and a few hurt feelings", according to Cmdr. Joaquin Santos, a SFPD spokesman.

"Mahoney was knocked down and kicked, but (in the end) he was able to walk away," Santos said. "If you're on the ground and there's 25 people around you, you feel pretty threatened."

While we can't be sure the SFPD will draw any rational lessons from this episode, I intend to.

Although this incident received wide media coverage, only the *SF Examiner* made any significant attempt to explain why it happened. According to a January 10 article:

"Star Williams of Berkeley, who said she witnessed the entire incident, disagreed with the police version."

"If Mahoney had handled his business right, there wouldn't have been any trouble," Williams said. 'He just


started going through the crowd, pushing, and when he got the guy he wanted he grabbed him by the hair and put a knee in the young guy's back. People started telling him he oughtn't to be doing like that...'"

As to the police claim of "40 people releasing a fusillade of bottles," Williams contended that "no bottles were thrown at the police."

Since I was in the area that Friday, distributing material on the Aaron Williams case, I conducted my own investigation. I spoke to several residents trying to piece together what had happened.

They told me that a young man who lived in the neighborhood had recently died and they were having a block party to commemorate his death when the cops came. The residents told me that the cops claimed that they came because someone had called the police and complained about the noise.

Some residents took me to Anthony Johnson's home and introduced me to his mother. She told me that when she saw a cop [Mahoney] assault Anthony, she ran out of her apartment and pleaded for them to stop. While yelling at the police to cease the brutality she was punched in the stomach by a cop and doubled over. It was at this point that the crowd attacked the police and took Anthony away.

Context is extremely important. To "report" an incident of this nature without explaining what triggered the crowd's action is deceptive and dishonest, and serves to create undeserved sympathy for the cops. 

Cop Blotter

A sampling of some of the more egregious examples of police misconduct, gleaned from COPWATCH Incident Reports and/or reported to COPWATCH.

JAN. 4, 1997 - TELEGRAPH - A man was sitting on the sidewalk and Officer Goss ticketed him for non-criminal trespassing, which is a \$130 ticket. There was no "No Trespassing" sign.

FEB. 18, 1997 - SHATTUCK AND DURANT - A woman called the police to report a man in her business who was violent and abusive. She said she wanted him to be arrested. The cop said, "I don't care what you want, I'm going to listen to his side of the story." Officer Thornton arrived, came up behind her, twisted her arms behind her back, and said, "You're going to jail." She was arrested and then released with the charges dropped.

FEB. 21, 1997 - RUSSELL AND ADELINE - A homeless man called the police to report an injury he sustained from a pole jutting out of a chain link fence. Officer Lao arrived and did a warrant check on the man also checking his bike license. He did not receive assistance around his initial call.

MARCH 2, 1997 - EXPRESS CLOTHING STORE - A woman went into the Express wearing clothes she had purchased there four days earlier. When she left the store, seven cops arrived, and detained her for 30 minutes of interrogation. She believes the incident was racially motivated.

YES! I want to support COPWATCH...

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| <input type="checkbox"/> _____ - other | |
- donation each. Circle size(s): XL L
Choose style: T-shirt Tank Top

Name _____ Phone _____

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Organization _____

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

KNOW YOUR *BIKE* RIGHTS QUIZ

BY DANIELLE STORER OF COPWATCH AND JASON MEGGS OF CRITICAL MASS (510-273-9288)

Scenario #1: You are riding with 50 other cyclists in a Critical Mass bike ride, taking up two lanes of traffic. As usual, a number of police officers are following the demonstration on bikes, motorcycles and in cars. The bike group turns the corner, at which point the police surround you and begin to arrest people. Everyone is charged with blocking traffic, improper operation on the roadway and riding out of the bike lane. Two people who are carrying bags of bagels in one hand are charged with dangerous driving. Many people's bikes are examined for equipment requirements, and charges were added for having faulty brakes and for having no registration.

Questions:

1. Can the police legally arrest you for biking in a group such as Critical Mass?
2. Are charges of blocking traffic, improper roadway operation, and failing to use the bike lane, legal?
3. Is it within your rights to ride with one hand full of stuff?
4. Is it illegal to have bad brakes?
5. Must your bike be registered?

Answers:

1. & 2. The answer to both these questions involves interpretation of the law, and may still be affected by future litigation. Vehicle Code (V.C.) #21202 is a law describing "Operation on Roadway", as follows: a) If you're going less than normal traffic speed of traffic on the road at the time, you must ride "as close as practicable" (away from opening doors) to the right of the road UNLESS: 1) passing; 2) left turn; 3) to avoid hazards including a "substandard width lane" (ie. no room to share with car safely); b) can ride to left on one-way roads with two lanes of traffic.

V.C.#21208 is "Bike Lane Confinement": if slower than normal speed of traffic, must remain in bike lane unless: passing; making left turn; hazard; and must make signal to leave "in the event that any vehicle may be affected by the movement."

3. Yes. V.C. #21205 When carrying stuff, you must be able to have one hand on handlebars.

4. Yes. V.C. #21201 requires that your brakes must be able to make you skid on at least one wheel.

5. Yes. V.C. #39001 & #39002 give cities and counties the right to adopt resolutions requiring bike licenses and registration. Both Oakland and Berkeley require it.

Scenario #2: You drove a car to a friend's 21st birthday party in the Berkeley hills. You had a few beers, and by the time you were ready to go home you realized you probably shouldn't drive. You borrow your friend's bicycle to ride a couple of miles home to South Berkeley. You are Latino and 22 years old. Your friend's bike is top-of-the-line, with reflectors, mirrors, a bike light and it's even registered. You've gone a couple blocks, when you see the red and blue flash in your mirror. A police officer is right behind you pointing for you to pull over. You comply. The officer approaches, asking "Where are you going? Where have you been? Why are you riding so late? Where's your helmet, what's your name and address, and who's bicycle is that anyways?" As she's questioning you, she adds, "and it smells like you've been drinking?" You answer all the questions truthfully, the officer runs your name through the computer, finding no warrants, but decides to take you into the station anyway. You're charged with biking under the influence, and she wants to check to see if you're riding a stolen bicycle.

Questions:

1. Did the police have legal reason to stop you?
2. Can the officer legally ask you where you're going, and have been, etc.?
3. Do you have to wear a helmet? need a bike light?
4. Do you have to tell the officer your name?
5. Can the officer arrest you for

drinking and biking?

6. What can you do if you feel this was a case of racial discrimination?

Answers:

1. Probably not, unless: 1) you broke a traffic law; or 2) the officer has an articulable reason to believe that you were involved in a crime. For instance the cop may say that there was a recent report of a bike theft in this area.

2. Yes, but you don't have to answer those questions. If they are detaining you under suspicion of being involved in a crime, you may refuse to answer the questions until your lawyer is present. To find out if you are being detained, you may ask, "Officer, am I free to go?" If she says, "Yes," then it was a consensual stop, which means you do not have to answer any of her questions. If she says, "No," ask, "What is the basis for this stop?"

3. No, you don't have to wear a helmet, unless you're under 18 (V.C. #21212) (usually your first charge gets dismissed in court). Yes, you do need a bike light after dark. (V.C.#21201)

4. Yes, if you are being detained or arrested, you are required to tell the officer your name and address. It is not a crime to be without I.D. However, if you are given a ticket, it is up to the officer to decide whether or not to take you to the station in order to verify your identity.

5. Yes. It is illegal to bike while under the influence of alcohol or drugs (V.C.#21200.5)

6. Remember you have the right to remain silent and the right to have an attorney present while being questioned. These rights always apply, even if the police don't "Read you your rights." Document everything. Remember as much as you can about the situation, including: date, time, location, officer name or badge number, police department, what you were doing before the stop, what you did and said during the stop, what the police officer did and said throughout — and write it all down!!! File complaints with the PRC.



COPWATCH CALENDAR

MEASURE O-Ver

Tuesday, May 13, 6:30 PM

Old City Hall, at MLK and Center. Berkeley City Council considers Pepper Spray Task Force recommendation to suspend police use of pepper spray

Thursday, May 29, 7:00 PM

COPWATCH Training at 2022 Blake Street. Please come if you're interested in being trained to do copwatching or want to learn more about our organization.
Last Thursday of every month from 7-9pm.

Wednesdays, 7:30-8:30 PM

COPWATCH Radio Show on Free Radio Berkeley 104.1 FM

For more information about these or other events, call
COPWATCH at 510-548-0425.

Tuesday, April 15, the Berkeley City Council voted 5-1 to repeal parts of the so-called "poor laws." These laws were created to regulate sitting and lying on commercial sidewalks, and for solicitation.

Although these city ordinances were voted in by the public two years ago, they have not been enacted due to a lawsuit brought by the ACLU, COPWATCH, and the Berkeley Free Clinic. The Council's decision means that it will still be legal to: sit or lie on the sidewalk and solicit donations or ask for spare change in the following situations:

- 1) Near people getting in and out of cars.
- 2) Within six feet of a building in a commercial zone.
- 3) After dark.

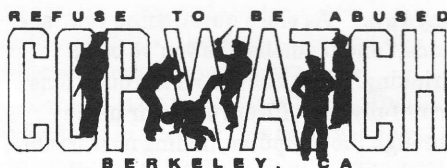
The decision did not repeal, meaning it is still illegal to:

- 1) Aggressively solicit/panhandle.
- 2) Solicit (panhandle) around ATM's.

Donate Your Junk to COPWATCH

COPWATCH is organizing a Garage Sale and Barbeque event to help Carl Gregsby in his lawsuit. We are in need of all the items you can spare, that someone else might want to buy. Please refer to the article on page 7 of this report for information on his case, and please give generously. We are willing to pick up donations.
Please call us at 548-0425.

**COPWATCH
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& TANK TOPS**



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