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# Executive Summary

After physical conflict erupted between police and protesters during demonstrations at UC Berkeley and UC Davis in November 2011, University President Mark G. Yudof asked Vice President and General Counsel Charles F. Robinson and Berkeley Law School Dean Christopher F. Edley, Jr. to review existing policies and practices regarding the University's response to demonstrations and civil disobedience. This review was not intended as a fact-finding investigation into the November 2011 protests, or into any other particular incident. Other reviews have been tasked with that objective. Rather, this review was aimed at identifying best practices to inform the University's response to *future* demonstrations. Since work on the review—and this resulting Report—began, additional clashes on other campuses have underscored the need for this analysis.

This Report is premised on the belief that free expression, robust discourse, and vigorous debate over ideas and principles are essential to the mission of our University. The goal of this Report is to identify practices that will facilitate such expression and encourage lawful protest activity—while also protecting the health and safety of our students, faculty, staff, police, and the general public when protesters choose to violate laws and regulations.

It is important to note that several of these practices have already been adopted by campuses within our system. Indeed, many of our campuses have long employed these recommended practices to positive effect in responding to protests—the vast majority of which are handled successfully by campuses across the UC system, without conflict. By recommending these practices in this Report, we do not mean to suggest that they are novel or have never previously been employed within our system. For some campus administrators and police, however, implementing our recommendations will require a substantial shift away from a mindset that has been focused primarily on the maintenance of order and adherence to rules and regulations. With this Report, we mean to encourage all our campus administrations and police to consistently implement the best practices recommended herein. In addition, for some protesters, implementing our recommendations will require taking more responsibility for their activities, including by educating themselves about protest-related rules and considering the impact acts of civil disobedience can have on others in the campus community.

In developing this prospective framework for responding to protests and civil disobedience, the authors examined existing University policies and practices on speech, demonstrations, and use of force by police; the opinions of students, faculty, administrators, staff, and police on all ten campuses; and the views of academics and other experts on speech, civil liberties, and law enforcement. The objective has been to be as broad and fair as possible in collecting information in order to develop a thoughtful and fact-based Report.

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Ultimately, the Report arrives at 49 recommendations in nine areas:

1. **Civil Disobedience Challenges.** The Report points out the need for the University to define and communicate more clearly the free speech rights and responsibilities of all members of the University community. We must ensure that there is no confusion on our campuses about the rights of individuals to express themselves and to assemble lawfully for that purpose. But the more challenging situations arise when protesters decide to violate laws or regulations—in other words, to engage in civil disobedience. The University and individual campuses should amend their policies in order to recognize explicitly the historic role of civil disobedience as a protest tactic. Those policies should also make clear, however, that civil disobedience by definition involves violating laws or regulations, and that civil disobedience will generally have consequences for those engaging in it because of the impact it can have on the rest of the campus community.
2. **Relationship Building.** The University must endeavor to increase trust and understanding among campus stakeholders, by better utilizing existing communication channels and by building new ones. Many protests can be avoided if there are effective lines of communication between would-be protesters and administrative officials, and opportunities to raise substantive concerns with the Administration and to obtain a meaningful response. The University's response to protests can also be handled better and more efficiently by maintaining strong working relationships between police officials and administrators and relationships of trust between campus police and the communities they serve.
3. **Role Definition and Coordination.** To ensure an effective University response to protests involving civil disobedience, there must be an established system for coordination between police and administrators, with well-defined roles and a shared understanding that ultimate responsibility for the campus's response rests with the Chancellor. The Chancellor and other administrators should develop and follow a set of guidelines designed to minimize a police response to protests, and to limit the use of force against protesters wherever possible. Absent exigent circumstances, the Chancellor or the Chancellor's designee must approve any force by police immediately before it is used. And greater emphasis must be placed on coordinating with outside law enforcement agencies who may provide assistance during large demonstrations.
4. **Hiring and Training.** The Report advances recommendations regarding hiring police officers and better training them about how to respond to civil disobedience. It also recommends that University administrators be required to attend regular trainings, in order to educate them about approaches for de-escalating protest situations, and to help them better understand police policies and practices.

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5. **Communications with Protesters.** With strong communications between demonstrators and the campus Administration, civil disobedience can sometimes be avoided—or, at least, can take place peacefully without any use of force by police. The Report offers recommendations regarding communication and coordination with protesters in advance of a planned event, as well as during an ongoing demonstration.
  6. **Response During Events.** Once a protest is underway and individual protesters begin to engage in civil disobedience, the decisions made by administrators can directly affect whether the protest ends peacefully rather than with violence. The Report recommends several strategies for reaching a peaceful accord with protesters without resorting to the use of force by police. It also proposes adoption of policies to guide our campus police departments if the Administration decides that a police response to the protest is necessary, such as a systemwide response option framework with guidance on appropriate responses to different types of resistance.
  7. **Documenting Activity During Demonstrations.** The Report recommends several parallel methods for creating an accurate record of the actions of police and demonstrators during demonstrations. These include the use of neutral observers, a policy of videotaping activity at the demonstration, and the creation of police after-action reports following any police response to a demonstration.
  8. **Post-Event Review.** The Report recommends that the University adopt a systemwide structure located outside of the police department and the campus Administration for reviewing the response to civil disobedience.
  9. **Implementation.** Finally, we suggest a process for implementing the recommendations in this Report. Most significantly, it recommends that the President require each Chancellor to take concrete action to implement our recommendations, and to report promptly to the President on his or her progress.

The recommendations were posted in draft form so they could be commented on and debated. After considering the public comments and making some revisions in response to them, we have finalized the recommendations and now submit them to the President. To be sure, no single report can resolve all the issues the University faces regarding protest and civil disobedience. Successfully laying the groundwork for safe and accountable protest activity will take the commitment and effort of all members of the University community. This Report is just the starting point—an attempt to assist the University in moving forward to celebrate the diversity of opinion and culture on our campuses, to do so with respect and civility, and to build on the illustrious history of public involvement and free speech that is the DNA of the University of California.

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## Preliminary Statement on Scope

We begin with a couple notes on the scope of this Report. First, we have found that the most difficult questions concerning how our University should respond to protests center around a narrow band of protest activity involving violations of laws or campus regulations, which we will refer to as civil disobedience. The issues presented by other protest conduct are more straightforward. Protests that are lawful and comply with the applicable time, place, and manner restrictions are clearly permissible, and our Administrations and police departments must allow them to proceed—if not encourage them. On the other end of the spectrum, violent activity by protesters, which threatens the safety of others or significantly damages property, is illegal and cannot be permitted. The thorniest questions lie between these two extremes. How should our University respond to protest activity that is not violent, but that violates the law or campus regulations and that may negatively impact the University’s mission? This form of protest activity, which we refer to throughout this Report as “civil disobedience,” is the central focus of our Report.

Second, although we recognize the troubling possibility that protests may involve some individuals bent on creating mischief, destroying property, or worse, handling such protesters has not been a primary focus of this Report. It has been our experience that the vast majority of protests are peaceful, and that the vast majority of protesters see protest as a means of expressing their views and opinions in a peaceful manner. Most of our recommendations for responding to protests are therefore premised on the assumption that protesters will be acting in good faith and in a peaceful manner, even if violating laws or regulations to emphasize their message. But we cannot ignore the possibility that some individuals may have less honorable intentions, and may seize on protests as an opportunity merely to cause disruption or damage. We think our campuses should attempt to follow our recommendations regardless of the apparent motivation of the protesters, but to the extent ill-intentioned individuals are among the protesters, we recognize that it may complicate the efforts of our Administrations and police departments to successfully respond, and may render some of the Recommendations in our Report infeasible or ineffective.