

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

Summary of Review of Incidents on UNC-Chapel Hill Campus

This review focused on events that took place on the UNC-Chapel Hill (UNC-CH) campus on September 8, 2018, December 3, 2018, March 16, 2019 and March 31, 2019. Two of these incidents involved arrests made by the UNC-CH campus police during the course of protest and/or counter-protest events. Public statements have been made that the arrests were without justification and that an officer provided false testimony in a district court trial. The other two incidents involved crimes committed on campus in which immediate arrests were not made by campus law enforcement. In each case the motivations and actions of the law enforcement officers involved have been publicly questioned.

This review consisted of over 45 interviews; document retrieval and analysis, and retrieval and analysis of officer body worn camera (BWC) video. During the events that are encompassed in this review, several people present created video documenting some of the actions that were relevant to this review. Much of this information was posted to publicly available open sources. This review accessed and reviewed numerous videos posted on public sites that captured relevant actions.

This review and report makes no value judgments nor takes any position regarding the ideologies or characteristics of the various groups involved. This report assumes that the First Amendment to the US Constitution applies to all, up to the point where speech turns into violation of laws, property damage or violence.

This review endeavored to be objective and free of preconceived opinions. UNC-CH has facilitated this objective approach and made available whatever was requested. The review was not limited to certain information or directed in any way by any person or agency within UNC-CH Administration. Consequently, what follows is an independent assessment of these events.

This report analyzes the facts developed during the review and provides findings supported by those facts. Analysis and comparison were made to established policy and procedures, various "After Action Reports"¹ relating to similar events across the country and prevailing law enforcement standards. The facts, findings and recommendations set forth below are based on these sources. Where appropriate constructive recommendations

were made to ensure policies, procedures and practices align with the public safety mission of the UNC-CH PD and to address the perceptions of campus police bias.

1 See: "Final Report independent Review of the 2017 Protest Events in Charlottesville, Virginia" prepared by the Hunton & Williams Law Firm and "Virginia's Response to the Unite the Right Rally After-Action Review" prepared by The International Association of Chiefs of Police December 2017.

See also:

<https://www.berkeleyside.com/wpcontent/uploads/2018/09/20180805DemonstrationAfterActionReport.pdf>

1

The primary role of UNC-CH Police, or any campus police department, during special events on campus is to develop and execute plans to ensure the security and safety of the public, while to the greatest extent possible enabling the free expression of first amendment rights of the participants on all sides. This review found that with regard to the September 8, 2018 and December 3, 2019 events the UNC-CH PD effectively discharged their duties in this regard.

With respect to the scenarios where the UNC-CH PD did not make immediate arrests when violations on campus occurred in their presence this review found failings in certain procedures or practices that created the perception that the UNC-CH PD failed to properly exercise their discretionary police powers. The motivations of the law enforcement officers involved however were not out of sympathy for any particular cause nor animosity towards any group or individual. To the contrary the motivations, goals and objectives of UNC-CH PD and assisting law enforcement officers were at all times to protect public safety and property while facilitating the exercise of speech and assembly guaranteed by the US Constitution.

Background on UNC-CH Police Department, Law Enforcement Standards and Tactics

The policies, procedures and protocols of the campus police department are governed by a set of General Orders (GO), which are periodically updated and supplemented. The jurisdiction of the UNC Chapel PD is defined by N.C.G.S Section 40.5 (a), which limits the territorial jurisdiction of the department to "all property owned or leased to the University and that portion of public road or highway passing thru such property and immediately adjoining it, wherever located." This Review compared the actions of the UNC-CH PD to internal procedures, North Carolina statutory and case law relevant to law enforcement activities and law enforcement standards established by professional police organizations such as the International Association of Chiefs of Police (IACP). It is

important to understand the role of campus law enforcement in policing campus events where opposing groups are intent on proactive public demonstrations of their views, especially when some of the participants are intent on provoking incidents, including violence, in order to draw media attention. It is a sound police strategy to undertake measures to ensure that protestor and counter-protestor groups do not come in direct physical contact with each other during special events. The tragic events in Charlottesville in August 2017 provide an example of scenarios in which protestors and counterprotestors, some who were intent on instigating or committing violence, were allowed to come in direct contact. The failure to separate the groups in Charlottesville had deadly consequences.

The September 8, 2019 Incident

On September 8, 2018 a group known as the "New Confederate States of America" (NCSA) conducted a rally at the former site of the controversial Silent Sam Monument. The rally was staged from 5 to 7 pm at the site of the Silent Sam pedestal. A group known as the "Real Silent Sam Coalition" also staged a counter-protest with a "Nazis Suck" themed gathering featuring a "potluck" dinner and canned food drive, which began in the early afternoon of September 8 before the NCSA members arrived.

2

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

In planning for the rally and counter-protest the primary goal of campus law enforcement and the UNC-CH Administration was to provide for a safe and secure event. The recent history of events at McCorkle Place involving some of the same actors had given the UNC-CH PD command staff insights into the tactics of both protestors and counter-protestors and they were determined to prevent violence by maintaining a buffer between the opposing groups. A major finding of two separate after "action reports" which focused on the deadly August 2018 events in Charlottesville was that when law enforcement allowed protestor and counter protestors to come in direct contact, extreme elements on both sides instigated and committed violence. These reports recommended that police develop and execute plans to ensure that opposing groups are not allowed to be in close proximity to each other.

Prior to the event, representatives of NCSA agreed, in the interest of safety, to certain parameters set by the UNC-CH PD. These included parking at a pre-designated location, consenting to be escorted to and from the Silent Sam pedestal/base and conducting their rally inside a pre-designated perimeter delineated by temporary barriers. Unfortunately, counter-protestors declined to work cooperatively with law enforcement regarding safety measures.

This event followed previous events focused on the Silent Sam monument that took place on August 20th, 25th and 30th in which a combined total of 13 arrests had been made for incidents that occurred during the events. The most notable of these events was the razing of the Silent Sam Monument on August 20th after the outnumbered and unprepared police contingent were overwhelmed and withdrew to avoid a violent confrontation with the large and hostile crowd.

On September 8, 2018, the NCSA rally was staged by a small contingent of pro-Silent Sam protestors who were vastly outnumbered by counter-protestors. The rally went off without any breaches of public safety, but as police escorted the pro-Silent Sam contingent to the cars, a smoke bomb was tossed towards the police line by a counter-protestor. This action resulted in the arrest of the offender. After the arrest, the police officers attempted to make their way back to Graham Hall while a loud and hostile crowd followed them challenging the arrest and their supposed "support" for the NCSA. Crowd members, chanting expletive laden anti-police slogans began pressing up against a police line that was formed to cover the withdrawal. Officers on the police line continuously ordered the more aggressive counter-protestors to step back, however few complied.

As officers withdrew slowly into Graham Hall in an effort to de-escalate the situation, anti-Silent Sam counter-protestors closed in around the officers guarding the building entries. Some positioned themselves within inches of the officer's faces as they shouted expletive laden insults and advanced up to the threshold of Graham Hall.

At this point several officers broke from their police line to arrest two counter-protestors who had spit at and kicked officers on the line. Several members of the crowd closed in on them and a general melee ensued. Some of the counter-protestors grabbed at the officers and attempted to pull the arrestees from their grasp. Several crowd members can be seen in video footage grabbing and pushing as the officers were trying to make the arrests.

3

During the melee, a total of seven people were arrested.² It is notable that six of the seven arrests were made after the

departure of the pro Silent-Sam contingent from the campus. During the melee, a UNC-CH police officer ("Officer 1") arrested a UNC-CH graduate student ("Student 1") for interfering with one of the arrests and assaulting the arresting officer ("Officer 2"). Student 1 was convicted in a trial of assaulting Officer 1 and Officer 2. Student 1 and their supporters dispute the circumstances surrounding Student 1's arrest. They assert that Student 1 did nothing to justify arrest and the prosecution was tainted by Officer 1's false testimony.

During Student 1's district court trial the Assistant District Attorney (ADA) only called two witnesses to establish his case, Officer 1 and Officer 2. No video evidence or other witnesses were introduced. Officer 1's body worn camera (BWC) battery had discharged due to working double shifts that day so BWC footage was not available. Officer 2 was not wearing a BWC. Unfortunately, the UNC-CH PD did not conduct even the most rudimentary follow up investigation to support the arrest, nor did Officer 1 prepare for their testimony other than the brief interviews with the ADA. Officer 1's report of the arrest did not identify Officer 2 as the victim officer.

Officer 1 testified in district court that they observed Student 1 interfering with an arrest being conducted by Officer 2 by kicking and grabbing at Officer 2. Officer 1 grabbed Student 1 around Student 1's waist from behind, raised Student 1 off their feet as Student 1 struggled and threw Student 1 onto the ground in an effort to gain control and arrest Student 1. Officer 1 landed hard on the ground landing on and hurting their elbow in the process.

Officer 2 testified that they did not feel anyone grab them and could not corroborate Officer 1's testimony that Student 1 interfered with the arrest. The ADA argued successfully to the trial judge that Officer 2 was wearing over 20 pounds of equipment and multiple vests as a "grenadier" and that is why Officer 2 did not feel the assault.

Student 1 testified at the trial: "I saw one of my friends get thrown down on the ground and I reached out towards [them], like I was trying to help [...]." Student 1 identified the friend as Individual 1.3 Student 1 stated that as Student 1 was "trying to help (Individual 1]" Student 1 was grabbed from behind and thrown on the ground. During an interview conducted as part of this review, Student 1 professed ignorance as to Individual 1's actions that preceded and led to Individual 1's arrest. Based on the evidence presented, Student 1 was convicted on two officer assault charges. Student 1's attorney subsequently filed a detailed Motion To Suppress/Dismiss and

2 One arrest had already been made for throwing the smoke bomb as police was escorting the NCSA to their parking lot. 3 Individual 1 can be seen on video approaching the police line aggressively, shouting "F...you pigs and chanting, "AK-47 send

these cops to Piggy heaven" during the September 8 event. When Individual 1 was arrested, Individual 1 was found in possession of two knives and a padlock tied to the end of a bandana.

4

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

Memorandum In Support containing still photos that were taken from videos posted on Twitter by a group that calls itself "Take Action Chapel Hill." Unfortunately after the September 8 arrests, the UNC-CH PD did not conduct any follow up investigation to support the arrests and it was not until February 2019, after the District Court conviction of Student 1 that the lead ADA began conducting his own investigation and gathering evidence that should have been developed by the UNC-CH PD before the January trial.

This review determined that when a UNC-CH PD officer sprung forward to arrest the counter-protestor who spit at officers, counter-protestor Individual 1 followed behind the officer and attempted to interfere with the arrest. Another officer from the UNC- Greensboro Campus PD ("Officer 3") observed Individual 1's actions and arrested Individual 1 for interfering with the arrest of the counter-protestor who spit at officers on the police line. 4

As Officer 3 approached the area where officers were making the arrests, Officer 3 observed Individual 1 trying to pull someone from the grasp of an officer. Officer 3 was pushed to the ground and kicked in the chest by Individual 1, knocking Officer 3's camera off Officer 3's chest. Individual 1 struggled as Officer 3 tried to arrest Individual 1. Notably, Officer 3 was dressed in a dark blue ballistic vest with a "Police" placard on Officer 3's back similar to the one worn by Officer 2.

Another police officer, Officer 4, from the NC Central Campus Police Department assisted in the arrest of Student 1; however Officer 4 never testified at Student 1's trial. It was only after the trial that Officer 4 provided a written statement at the request of the lead ADA. Officer 4 advised that during the melee, Officer 4 observed Student 1 pulling on the arm and sleeve of another officer who was on the ground attempting to arrest another person. This other person was trying to pull away from the arresting officer. Student 1 was using both their hands to interfere with the officer on the ground. Officer 4 assisted in

getting Student 1 off the arresting officer, took Student 1 to the ground and got Student 1 under control with a wrestling hold.

There is strong evidence that Officer 2 was not the officer allegedly assaulted by Student 1. However it is also evident from Student 1's own testimony as well as various officer statements, video posted on the Internet and video retrieved from officer BWCs that it was actually the arrest of Individual 1 that triggered the arrest of Student 1. This review found that Officer 2 had nothing to do with the arrest of Individual 1 and Officer 1 was not coming to Officer 2's assistance, contrary to Officer 1's trial testimony.

Unfortunately, the ADA did not have the benefit of video evidence from relevant officer BWCs at the District Court trial of Student 1. He did not use social media video posted on the Internet because either he was unaware of the video or it was not posted at that time. Video

4 In January 2019, Individual 1 was convicted of Resist, Delay or Obstructing (RDO) an Officer the same day that Student 1 was convicted. Individual 1 has appealed their conviction.

5

clips posted on various social media sites, however, are instructive on the actions and movements of Student 1 and the officers involved in Student 1's arrest. These videos tend to corroborate the testimony of Officer 4, Officer 3, and Officer 1 that Student 1 was attempting to interfere with the arrest being conducted by Officer 3. Assisting or "helping" someone who is in the process of being arrested constitutes interference with the arrest. Student 1's own admission; the statements of Officers 4, 3 and 1; the video from various officer BWCs and video posted on social media sites provide sufficient evidence that Student 1 was at minimum interfering with the arrest of Student 1's friend, Individual 1, and therefore Student 1's arrest was lawful.⁵

UNC-CH PD Fails to Conduct Basic Investigation to Support the September 8, 2018 Arrests

This review found that minimal to no investigation was conducted by the UNC-CH PD to support the arrests made on September 8, 2018. As a result of the poor documentation and minimal follow up investigation several cases were dismissed or reduced and other were disposed of by deferred prosecution in exchange for community service. In most of the cases the ADA assigned to the cases had to amend the charges to more appropriately match the limited evidence he had to work with.

For example, video evidence that may have depicted the actions of the arrestees and arresting officers was either not available or was never reviewed, and preserved. Footage

from the relevant time period captured by closed circuit TV (CCTV) surveillance cameras installed on Graham, Pettigrew and Vance Halls were not reviewed and preserved. Video from a temporary pole camera borrowed from The NC Emergency Management Service was not reviewed or preserved. Officer 4 was never interviewed and Officer 4's BWC video was neither reviewed nor preserved. Finally, Officer 3 was never interviewed, was not directed to prepare a statement nor was Officer 3's BWC reviewed or preserved.

No efforts were ever made to identify law enforcement witnesses from UNC-CH PD or other assisting departments who participated in the September 8, 2018 event who might have relevant information. In several cases victim officers were never identified.

The BWC video evidence from some UNC-CH PD officers who were in proximity to the arrest of Student 1 and Individual 1 was retrieved only after Student 1 's trial and after Student 1's conviction was appealed to Superior Court.

5 N.C.Gen.Stat. § 14-223 (1986) makes it unlawful for any person to "willfully and unlawfully resist,

delay or obstruct a public officer in discharging or attempting to discharge a duty of his office...." Actual physical force or assault is not necessary. State v. Downing, 66 N.C.App. 686, 690, 311 S.E.2d 702, 704 (1984), aff'd in part and rev'd in part, 313 N.C. 164, 326 S.E.2d 256 (1985). The State does not have to prove that the officer was permanently prevented from discharging his duties by defendant's conduct. Id. Instead, the State must prove only that "the officer was obstructed or interfered with, and that such obstruction or interference was willful on the part of the defendant.... To `interfere' is to check or hamper the action of the officer, or to do something which hinders or prevents or tends to prevent the performance of his legal duty; and to `obstruct' signifies direct or indirect opposition or resistance [sic] to the lawful discharge of his official duty." State v. Burton; 423 S.E.2d 484 (1992), 108 N.C. App. 219.

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

The District Attorney's Office is responsible for criminal prosecutions in a three county district. The ADAs do not have the time, resources or mandate to investigate cases.

Nevertheless, after Student 1's appeal and Motion to Dismiss were filed, the lead ADA was obliged to take the time and effort to identify and locate other law enforcement witnesses. For example the ADA, not UNC-CH PD investigators, made the effort to identify Officer 4 and Officer 3 as witness, after Student 1's trial, and personally obtained statements from them. He also had to request that UNC-CH PD BWC video relevant to Student 1's arrest be downloaded to an external drive for his review. In total, this ADA reviewed video from at least 65 BWCs, none of which had been reviewed or summarized by UNC-CH PD investigators for the ADA. The arrest and prosecution of Student 1 and the other arrests on September 8, 2018 received extensive media attention and were closely followed cases. UNC-CH PD General Order (GO) 8-3R1 requires that such sensitive cases be assigned and investigated. The ineffective, and in some cases nonexistent, investigation by UNC-CH PD to support their arrests on September 8, 2018 was a significant factor in the inaccurate testimony of Officer 1 and the adverse outcomes in several trials associated with the arrests that evening. This situation must be rectified by shoring up policy regarding investigations of special event arrest cases and conforming practice to policies. It also requires focus and attentiveness from UNC-CH PD police executives.

Findings Regarding The Arrest of Student 1

While Officer 1 provided inaccurate testimony in district court when Officer 1 identified the law enforcement assault and RDO victim as Officer 2, the evidence is overwhelming that the victim officer was Officer 3. Video shows that the two officers were wearing ballistic vests that looked similar from the back. This fact combined with the chaotic nature of the scene during the melee makes Officer 1's statement that Officer 1 made an honest mistake credible. Since Student 1 was actually interfering with the arrest of Individual 1, Student 1's arrest for RDO was based on sufficient probable cause.

The tactic of challenging and provoking officers on the police line was frequently on display in the September 8, 2018 UNC-CH event. This Review found that the law enforcement officers on the scene demonstrated professionalism and restraint in the face of significant provocation.

While the motivations and actions of the officers involved were proper, there were some serious shortcomings in the exercise of proper police procedures regarding the conduct of arrests during events, the lack of follow up investigation and an officer provided erroneous testimony in a district court trial that resulted in the conviction of Student 1. The mistake was caused by several factors, the most glaring of which was an utter failure to investigate the arrest and provide Officer 1 the benefit of the investigation before Officer 1 testified. This is an area that needs immediate attention and a number of recommendations were made in this regard.

The December 3, 2018 Incident

On December 3, 2018, several hundred demonstrators marched the streets of Chapel Hill and amassed around the boarded up base of the Silent Sam Confederate statue at UNCChapel Hill, calling for a strike of graduate student teaching assistants. The planned protest began quietly outside the downtown post office at 7 p.m. as a protest against the university's proposal to house the toppled statue inside a \$5.3 million history and education center, to be built at the edge of campus. The protest on campus started with speeches by a student, Student 3, and other demonstrators. Then the crowd marched in the street and chanted "No KKK, no fascist USA" and "cops and Klan go hand in hand." Video captured scuffles between students and university police. During one of the scuffles, a student, Student 3, was charged with assault on a police officer and resisting, delaying or obstructing an officer. The day after the protest, Student 2, was also arrested and charged with inciting a riot and assaulting a police officer.

When protesters began pushing on barricades surrounding the statue's pedestal, officers held the perimeter around the Silent Sam pedestal and called for assistance from arrest teams staged in nearby Graham Hall. These teams exited Graham Hall and advanced to support officers working the barricades. A UNC-CH PD Officer, Officer 5, advised that as Officer 5 and the arrest team members approached the barricades, Officer 5 observed an individual Officer 5 later identified as Student 3, shaking the barricade. According to Officer 5, Student 3 was swinging a backpack as if to toss it into the barricade at the officers inside. Officer 5 feared the backpack might contain something dangerous or was heavy enough to inflict injury to officers inside the barricade.

Officer 5, who was wearing a yellow "OSHA" police vest, blue uniform and riot helmet, yelled to Student 3 "Hey stop". According to Officer 5, Student 3 then pushed on the barricade again and rapidly tried to move away. Officers 5 and a NC State Campus Police Officer, Officer 6, then placed their hands on Student 3 to stop Student 3. Officer 5 reported that Student 3 threw an elbow at Officer 5, slung the backpack at Officer 5 and grabbed Officer 5's body camera. Officer 5 yelled at Student 3 to "get off my camera dude." According to Officer 5, Student 3 swung their body and elbows at both Officer 5 and Officer 6. After a very brief struggle, Student 3 became cooperative and submitted to the arrest.

Officer 5 had activated their BWC several seconds prior to confronting Student 3. This video was downloaded and reviewed.

The video showed 3 as a blurry figure moving away from the barricade rapidly as Officer 5 approached. The video does not show Student 3 swing or flail their arms but contains sounds of a close quarters struggle as Officer 5 places their hands on Student 3. Officer 5 can be heard screaming to Student 3 to let go of the camera at the same time the camera goes blank for 1-2 seconds indicating that something was covering the lens of the camera. The BWC does not clearly show Student 3 throwing an elbow or arm at Officer 5 or Officer 6. Although Officer 5 explained to this reviewer that Officer 5 perceived that Student 3 was about to throw a backpack over the barricades and that Officer 5 was especially concerned as to what the pack contained, the BWC video does not show Student 3 attempting to throw the backpack.

8

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

Officer 6 substantially supports Officer 5's description of Student 3's movements, stating that Student 3 flailed their arms and resisted both Officer 6 and Officer 5's attempts to get Student 3 under control. They were able to get Student 3's arm behind Student 3's back at which time Student 3 stopped resisting.

Officer 6's BWC was not turned on. Officer 6 prepared a report later that day before going off duty and filed it with Officer 6's department. This report was never filed with the UNCCH PD and was not part of the arrest file. Officer 7, another member of the arrest team, who was ahead of Officers 5 and 6, observed Student 3 "resisting" and putting a hand on Officer 5's camera. Officer 7 heard Officer 5 loudly telling Student 3 to let go of the camera. In the time Officer 7 turned and took several steps to assist Officers 6 and Officer 5, they had Student 3 in handcuffs.

Officer 8, the fourth member of the arrest team and designated team leader, described being summoned by radio to immediately assist inside the barricade perimeter to prevent a breach of the perimeter. Officer 8 was behind Officers 5 and 6 and observed Officer 5 grab the first person at the barricade. Officer 8 did not see what this person (Student 3) was doing but did observe Officer 5 pull Student 3 off a barricade. Officer 8 observed Student 3 "flail towards" Officer 5 and 6 but Officer 8 did not see Student 3 strike at Officers 5 or 6, nor did Officer 8 see Student 3 grab Officer 5's camera.

UNC-CH PD Officer 9 prepared a brief report of the arrest of Student 3. The report contained second hand information Officer 9 obtained from Officer 5. Prior to the court date, Officer 5 had a brief 5-10 minute phone conversation with ADA Billy Massengale. ADA Massengale also had a brief phone conversation with Officer 6 but never contacted Officer 7 or the fourth member of the arrest team, Officer 8. ADA Billy Massengale reviewed the video from Officer 5's BWC. As in Student 1's matter, no effort had been made by the UNC-CH PD to retrieve and preserve video from the fixed video cameras on McCorkle Place, nor the temporary pole cameras provided by NC Emergency Management Services for the event. Based on the evidence available, ADA Massengale determined that there was insufficient evidence to prove beyond a reasonable doubt that Student 3 committed a criminal offense and dismissed the charges. Findings

This review determined that there was sufficient probable cause to stop and question Student 3 because Student 3 was pushing on the barricade as Officer 5 approached. Based on the statements of four separate officers, two of whom were never interviewed by the ADA, there was also sufficient evidence that Student 3 flailed their arms and initially resisted Officer 5, which then provided a sufficient basis to arrest Student 3 for RDO.

UNC-CH GO 06-01R6 requires that all key persons will prepare an After Action Report after every incident of civil disturbance. The report should detail the incident, actions taken by

9

each officer and supervisor, final outcome, injuries and any incident of use of force. The Patrol Services Commander is then required to prepare a comprehensive report, which includes all arrest, and other pertinent reports from UNC-CH and assisting agency officers. This report provides a basis for improving law enforcement responses though lessons learned. No such report was ever prepared after the December 3, 2018 or the September 8, 2019 events. This failure was a missed opportunity to incorporate lessons learned into future event planning.

Recommendations Regarding the September 8, 2018 and December 3, 2019 Events

1. Incident Action Plans for special events should detail the protocols for ordering an arrest, declaring an unlawful assembly ordering the crowd to disperse and deescalation tactics when appropriate;
2. During protest/counter-protest events UNC-CH PD incident commanders should be visible, proactive and equipped with a bullhorn

or LRAD device to make commands to the crowd audible over the noise of the events;

3. The UNC-CH PD should deploy one or more roving videographers and observers during special events to observe and document the actions of the crowd and law enforcement;
4. Special event Incident Action Plans should include the presence of a legal advisor at the event to provide timely on scene legal advice;
5. UNC-CH PD Officers should be trained on arrest procedures relating to protestor/counter-protestor activity and the exercise of discretion in making such arrest;
6. Officers in positions of command should not be involved in arrests. They must be in a position to direct others regardless of the circumstances;
7. The UNC-CH Administration in collaboration with campus police executives should establish and document the criteria that constitute an unlawful assembly along with specific protocols for declaring and communicating an unlawful assembly when actions of crowd meet those criteria;
8. UNC-CH Administration and Campus Police executives should establish and communicate a policy mandating appropriate documentation and thorough follow up investigation of arrests made during special events;
9. Procedures should be established to require that the cause of adverse outcomes in court be identified and remedial action be taken where appropriate;
10. UNC-CH PD executives should recognize that it is the primary role of the police department to investigate cases;
11. When arrests during high profile special events are made they should be treated as priority matters and investigated accordingly;
12. UNC-CH PD leadership should take into account that each case that is not fully supported in court with sufficient evidence reflects poorly on the department;
13. After every special event in which arrest(s) are made, the video footage from all fixed cameras, pole cameras and BWCs that could potentially record the event should be reviewed and relevant video downloaded and preserved;
14. Additional cameras should be installed overlooking McCorkle Place to cover existing blind spots;

10

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

15. UNC-CH Administration should establish Honor Code provisions regarding compliance with all police commands and noninterference with lawful police actions;

16. The UNC-CH PD should establish clear policy on visitor conduct as relates to compliance with lawful police commands and noninterference with lawful police activities;

17. UNC-CH Administration should require that a comprehensive After Action Report be submitted within 10 days of any special event where injuries occurred, property damaged, arrests made or force was employed to control the crowd.

The March 31, 2019 Incident

On March 31, 2019 a young UNC-CH PD officer happened across two individuals in the early hours of the morning who were in the process of defacing the historical Unsung Founders Memorial in McCorkle Place. While the officer failed to conduct a field investigation and notice the defacement at that time, the officer shortly thereafter conducted aggressive and timely follow up investigation that resulted in the arrest of the perpetrators. The perpetrators were later arrested and convicted of multiple charges.

A review of the UNC-PD compilation of General Orders that govern police actions on campus revealed that investigative stops based on reasonable suspicion are authorized under GO 04-01R13 governing patrol operations. The officer failed to conduct an effective field investigation pursuant to this GO.

After the incident, accusations were made that the officer was sympathetic to the cause of the two perpetrators who were self described neo-confederates and who were known to have had participated in several pro Silent Sam rallies. Had the officer had other motivations, the officer would never have conducted such a timely and thorough investigation to solve the case. In fact, the officer's investigation solved another similar crime that had taken place on campus that same morning.

Findings

While the incident involving the defacement of the Founder's Memorial and the failure to conduct a field investigation and arrest an armed intruder on the campus gave rise to legitimate questions about the motivations of the officer involved, the facts point to the inexperience of a single police officer who quickly followed up with an aggressive investigation.

Allegations that the officer had any motivation other than identifying and arresting the perpetrators of the Unsung Founders Memorial are unfounded. In fact the two subjects, Ryan Barnett and Nancy McCorkle, were recently convicted of 11 counts of defacement, racial intimidation and other charges. The officer in this case should be commended rather than criticized.

Recommendations

1. That UNC-CH PD conduct additional training to reinforce the need to treat incidents involving historical monuments, artifacts or artworks at McCorkle Place and other sensitive areas of the campus containing symbolic artifacts with a sense of urgency and priority;
2. The UNC-CH PD conduct additional department wide training on police tactics involving investigative stops and field investigations per the US Supreme Court decision in Terry v. Ohio and North Carolina statutory and case law.

The March 16, 2019 Campus Firearms Incident

On March 16, 2019, approximately a dozen members of a group calling themselves the Virginia Task Force III% (VTF) arrived in a small caravan at the parking deck on Rosemary Street in the Town of Chapel Hill located near, the UNC-Chapel Hill campus. An alert parking attendant noted that several members of the group were armed and notified the Chapel Hill Police Department Watch Commander.

This group ultimately appeared on the UNC-CH interior campus on Cameron Street. One of the men, Lance Spivey, was openly armed with a pistol clearly visible in a hip holster. Another man had what appeared to be a handgun on his right hip partially concealed but protruding from under a vest. Others were openly carrying a collapsible baton, handcuffs and canes. Some wore vests or coats that extended below the waist with noticeable bulges around their waists.

After lingering on Cameron Avenue on the UNC-CH campus for approximately 20 minutes, they were confronted by a contingent of five UNC-CH PD officers. The group were warned not to carry firearms on the campus and escorted off the campus grounds without being arrested or even identified. The officers did not ask for identification, conduct criminal record checks for outstanding arrest warrants or felony records nor did they request other information that might be relevant to the intruders, one of whom was openly carrying firearms on the campus. One member of the group was later determined to be a convicted felon. They were never questioned as to the purpose of their presence on the campus armed.

A UNC-CH PD officer called command staff on a mobile phone to inform them that the team was about to intercept the group. The command staff instructed the officer to "hold off" until they got clarification from the District Attorney about "issues with weapons on streets and sidewalks." The command staff immediately called another UNC-CH PD officer and instructed them to contact an

Assistant District Attorney to clarify whether armed individuals were subject to arrest and successful prosecution when walking the sidewalk located in the interior of the campus and bounded on all sides by campus property.

Shortly thereafter, command staff again spoke to the inquiring officer via personal mobile phone to the shift mobile phone and gave the "OK" to approach the group, but according to the officer, the officer was instructed that if the VTF/HTF members were cooperative, to give them a chance to leave the area after advising them as to the boundaries of the campus.

12

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

A few minutes later, five UNC-CH PD officers finally confronted the VTF/HTF group in front of Memorial Hall. One UNC-CH PD officer spoke directly to Spivey and other members of the group while the other officers provided security. The officer advised the VTF/HTF group that they were on the UNC-CH campus armed with a firearm and must leave immediately. Spivey, who had been on the campus during previous events, professed confusion as to the boundaries of the campus. After some discussion, the members agreed to depart the campus. One of the members of the group extended his hand to the officer who instinctively shook hands. The officer stated to this reviewer that the officer had no idea that anyone would interpret this as a sign of affinity for white supremacist ideology. No evidence was uncovered during this review that would support this allegation.

A few minutes later, District Attorney Woodall called the UNCCH PD back and stated that if the armed individuals were on campus sidewalks or roadways bounded on all sides by campus property, he would prosecute them. This information was relayed to command staff.

The UNC-CH PD officer who confronted the VTF/HTF group stated that they fully intended to arrest the armed VTF member or members if they set foot on the campus armed but was obligated to follow command staff orders. The majority of UNC-CH PD officers interviewed for this review stated that it was clear to them that people who enter the campus on foot

carrying a firearm are subject to arrest. There was consensus among the officers on duty that day that, at a minimum, Lance Spivey should have been arrested when he set foot on the interior campus armed.

Findings

This review determined that there was confusion only at the command level as to the application of the campus firearms statute to armed individuals walking on interior campus areas. Officers who were posed this question during the course of this review were able to make the distinction between border areas of the campus and interior areas surrounded by campus. They were also aware that visitors driving through the campus in vehicles passing through to non-campus locations were not subject to arrest.

A review of the UNC-PD compilation of General Orders that govern police actions on campus revealed that investigative stops based on reasonable suspicion are authorized under GO 04-01R13 governing patrol operations which states:

A. VI. Field Interviews

Officers are authorized to conduct investigative stops and interviews based upon reasonable suspicions. An individual's actions, attitudes, demeanor, or being located in areas of recent problems, may warrant an investigative stop. In making the investigative stop, the officer is to present a professional, courteous manner. Field interviews that do not result in any kind of enforcement action should be cleared as code (information) and documented on a Computer Aided Dispatch (CAD) report. Field interviews that result in enforcement action should be

13

documented in accordance with General Order 12-02, Field Reporting and Management, in any incident report.
(1.2.3, 41.2.4)

It should be noted that prior to the March 16, 2019 incident, several individuals have been arrested on several occasions after subsequent follow up investigations. These individuals include Student 3 for defacing the Silent Sam Monument and Ryan Barnett and Nancy McCorkle for defacing the Unsung Founders Memorial. Also, after the Silent Sam Monument was torn down on Monday August 20, 2018, three individuals were charged and arrested the following Saturday. These individuals included Jonathan Fitzgerald Fuller, 27, Lauren Aucoin, 23, and Raul Arce Jimenez, 27. All were charged with misdemeanor rioting

and misdemeanor defacing a public monument after follow up investigation was conducted in conjunction with the SBI. This apparent inconsistency has given rise to valid questions as the uneven application of officer discretion.

DA Woodall stated during this review that he generally expects officers to exercise their discretion when going about their duties. He acknowledged that there are times when it is a good idea to consult with himself or an Assistant District Attorney (ADA) and that he and his assistants are available "24/7/365". He stated, however, that based on what he knew about the circumstances it would have been appropriate for officers on the street to arrest the armed VTF members on their own discretion.

This review also found the failure to arrest the armed intruder(s) who appeared on the UNC-CH campus on March 16, 2019 was a breakdown in procedure and practice. The armed intruders should have been, at minimum, identified, questioned and run through criminal law enforcement databases. The situation was dangerous and constituted an open and flagrant violation of the state campus firearms laws.

Despite the valid perception of disparate treatment, this review found that the officers who confronted the VTF/HTC members that day were prepared and intended to arrest the armed individual. A ranking officer who was not on the scene called off the officers. There was no evidence that any of the officers on the street that day were motivated by affinity for NCSA or VTF or their ideology.

While the command staff may be afforded the benefit of the doubt as to the confusion regarding campus jurisdiction on public roadways and it was not improper to consult with the District Attorney, a follow up investigation, similar to the ones conducted after the razing of the Silent Sam Monument, should have resulted in the arrest of Lance Spivey who was familiar with the campus boundaries and openly carried a prohibited firearm on the campus.

There was no evidence, however, that the inaction of the officers on the scene was motivated by favoritism towards the white supremacist cause or ideology of the VTF or HTC. In fact the officers on the scene were prepared and intended to make an arrest but were called off by the command staff.

In summary, while there were breakdowns in police procedures and practices the actions or inactions of law enforcement vis a vis the four incidents under review, the motivations of the officers involved were not improper. Where appropriate, recommendations are made to

14

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

shore up these policies and procedures to align the UNC-CH PD with the campus public safety mission and avoid future issues with respect to negative public perception as to their actions and motivations.

Recommendations

1. Establish clear documented policy of zero tolerance for and immediate arrest of armed intruders who appear on the UNC-CH interior campus on foot;
2. The policy should also address other possible scenarios such as armed individuals on campus border sidewalks, armed individuals in vehicles;
3. The policy should be codified in the UNC-CH PD General Orders, campus visitor policy and the student honor code;
4. The UNC-CH PD should adopt the model procedures for field investigations established by the International Association of Chiefs of Police (IACP) and train UNC-CH PD officers on these procedures;
5. UNC-CH Administration should establish and document clear policy on strict and consistent enforcement of all laws on UNC campus.

Conclusion

In their efforts to preserve public safety, the police have a duty to fairly and objectively enforce the laws of North Carolina and campus property owner restrictions/conditions of campus visitation. Police are not policy makers when it comes to the controversies surrounding confederate monuments and their role is to function as a neutral party protecting all participants and the public. They should not favor any particular individual or group participating in special events. They may not selectively enforce the laws nor make judgments as to the morality of any particular cause or ideology.

Unfortunately, in their efforts to maintain safety and public order, campus law enforcement officers are often targeted for abuse. It is the avowed strategy of certain groups to provoke an over-reaction that would stimulate media coverage and thus call attention to their particular cause or ideology. Police officers are trained to take unlimited verbal abuse, but if they are assaulted or obstructed, arrests will follow. Lawful police orders to step back, move on or disperse must be obeyed. Police lines and barriers must be respected as they are established to preserve order and public safety. On September 8, 2018 and December 3, 2018, these barriers and police commands were

ignored by a small but active group of counter-protestors, officers were assaulted and lawful police actions obstructed. The primary role of UNC-CH Police, or any campus police department, during special events on campus involving protests and counter-protests is to develop and execute plans to ensure the security and safety of the public, while to the greatest extent possible enable the free expression of first amendment rights of the participants on all sides. This review found that with regard to the September 8, 2018 and December 3, 2019 events, the UNC-CH PD effectively discharged their duties in this regard.

15

The concept of police discretion featured prominently in this review. Law enforcement officers are invested with considerable discretion as they discharge their duties. As situations unfold, they have the authority to stop, investigate, arrest, use different levels of force or take no action according to their training, experience and existing federal, state and local laws. This review examined whether the UNC-CH PD actions that involved police discretion were properly and consistently applied.

The allegations that the police were somehow favorably disposed towards the neoconfederate groups who demonstrated on campus because they escorted them to and from the site and formed perimeters around them is unfounded. Given the circumstances, especially the disparity in numbers between the groups, this was a logical and necessary strategy to prevent violence.

While the motivations of the officers involved were proper, there were some serious shortcomings in the exercise of proper police procedures and an officer did provide false testimony in a district court trial that resulted in the conviction of Student 1. This review found that the campus police officer who provided the false testimony was honestly mistaken and that the mistake was caused by several factors, the most glaring of which was an utter failure to investigate the arrest and provide the officer the benefit of the investigation before the officer testified. This is a command failure that needs immediate attention and a number of recommendations were made in this regard. Similarly, while the incidents involving the defacement of the Founder's Memorial and the failure to arrest an armed intruder on the campus gave rise to legitimate questions about the motivations of the officers involved, the facts point to the inexperience of a single police officer in the case first case and confusion by command staff in the second.

In the case of the defacement of the Founder's Memorial, a young officer happened across two individuals in the early hours of the morning who were in the process of defacing the historical Founder's Memorial Table in McCorkle Place. While the officer failed to conduct a field investigation and notice the defacement at that time, the officer conducted aggressive and timely follow up investigation that resulted in the arrest of the perpetrators. Had the officer had other motivations, the officer would never have conducted such a timely and thorough investigation to solve the case. In fact, the officer's investigation solved another similar crime that had taken place on campus that same morning.

Allegations that the officer had any motivation other than identifying and arresting the perpetrators of the Founder's Memorial are unfounded. Notably the two subjects, Ryan Barnett and Nancy McCorkle, were recently convicted of 11 counts of defacement, racial intimidation and other charges. The officer in this case should be commended rather than criticized. Finally the failure to arrest the armed intruder(s) who appeared on the UNC-CH campus on March 16, 2019 was a breakdown in procedure and practice. The armed intruders should at minimum been identified, questioned and run through criminal law enforcement databases. The situation was dangerous and constituted an open and flagrant violation of the state campus firearms laws.

16

Chris Swecker Law

Suite 818 2820 Selwyn Ave
Charlotte, NC 28209
chris.swecker@gmail.com

November 3, 2019

While the command staff may be afforded the benefit of the doubt as to the confusion regarding campus jurisdiction on public roadways and it was not improper to consult with the District Attorney, a follow up investigation, similar to the ones conducted after the razing of the Silent Sam Monument should have resulted in the arrest of Lance Spivey, who was familiar with the campus boundaries and openly carried a prohibited firearm on the campus.

There was no evidence, however, that the inaction of the officers on the scene was motivated by favoritism towards the white supremacist cause or ideology of the VTF or HTC. In fact, the officers on the scene were prepared and

intended to make an arrest but were called off by the command staff.

In summary, while there were breakdowns in police procedures and practices the actions or inactions of law enforcement vis a vis the four incidents under review, the motivations of the officers involved were not improper. Where appropriate recommendations are made to shore up policies and procedures to align the UNC-CH PD with the campus public safety mission and avoid future issues with respect to negative public perception as to their actions and motivations.