

# **Review of the Events Occurring at Baruch College on November 21, 2011**

January 4, 2013

**The City University of New York**

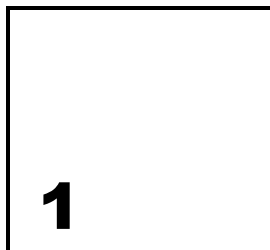
Report to the Office of the Chancellor



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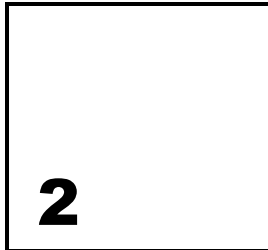


## **INTRODUCTION**

Kroll was retained by the City University of New York (“CUNY”) on January 4, 2012 to conduct an independent investigation into the events surrounding a protest that occurred at Baruch College (“Baruch”) on November 21, 2011. The protest took place during a public hearing of the CUNY Board of Trustees at which planned tuition increases were discussed.

Kroll was tasked by the Office of the Chancellor of CUNY to prepare a report detailing the facts and circumstances that led to the removal of protesters from the lobby of Baruch College and the subsequent arrest of fifteen individuals. Additionally, Kroll was asked to provide its analysis of the University’s response to the protest and recommendations for improving its response to similar events in the future.

The following report summarizes Kroll’s findings and recommendations.



## SCOPE AND METHODOLOGY

From January 4, 2012 through November 26, 2012, Kroll conducted an investigation consisting of the following elements:

- **Review of print and online media relating to the protest.** As an initial matter, Kroll sought to identify all media coverage of the protest in an effort to understand the various perspectives on the event and identify potential witnesses. Research was focused on media reports published from three months prior to November 21, 2011 until six months thereafter. Among other sources, Kroll searched and analyzed major national publications, local news outlets, and student newspapers. Kroll also reviewed online and print flyers that were distributed on CUNY campuses in the days leading up to November 21, 2011 in an effort to publicize and help organize the protest.
- **Review of social media postings relating to the protest.** Kroll searched popular social media websites for postings related to the events of November 21, 2011. Relevant postings were captured and preserved for review.
- **Review of video evidence.** Kroll identified and reviewed 39 video clips posted online that captured the protest or portions thereof. Additionally, Kroll conducted a close review of a video recording of the protest taken by a CUNY Department of Public Safety (“DPS”) officer using a handheld camera. Kroll also reviewed video postings of protests at other CUNY campuses in the

months before and after November 21, 2011 in order to provide a basis for comparison and to acquire a general understanding of how CUNY handles on-campus demonstrations.

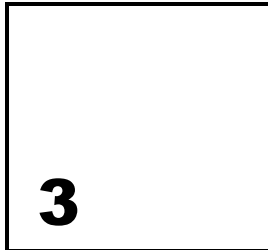
- **Investigative interviews of CUNY personnel.** Kroll interviewed 34 members of the CUNY Department of Public Safety and six of CUNY's senior administrators, including Chancellor Matthew Goldstein ("the Chancellor" or "Chancellor Goldstein"). Kroll also attempted to interview Gabriel Eszterhas ("Eszterhas"), Baruch College's former Vice President for Administration and Finance, who was present in the lobby during the protest. For reasons that are unclear to Kroll, Eszterhas refused to cooperate with Kroll's investigation.
- **Investigative interviews of CUNY students.** In an effort to identify CUNY students with information relevant to the protest, Kroll created a dedicated e-mail address, *BaruchReview@kroll.com*, which persons affiliated with CUNY (i.e., students, faculty, and administrators) could use to independently and confidentially contact Kroll investigators to provide information about the protest. At Kroll's request, CUNY administrators distributed the address via the CUNY Newswire on April 3, 2012.<sup>1</sup> The only replies that Kroll received were from the editorial staff of *The Envoy*, the student newspaper of Hunter College, and staff members of *The Ticker*, the student newspaper of Baruch College. Kroll interviewed a total of six students, including four members of *The Envoy* staff and two students from *The Ticker*. Every student who was willing to speak to Kroll was interviewed and given the opportunity to provide relevant materials. In particular, the students from *The Envoy* provided Kroll with a detailed account of the events in the lobby as well as photographs and video of the incident. Kroll reviewed this information in coordination with an editor from *The Envoy*, who provided his own interpretation of what he had witnessed.
- **Investigative interviews of relevant NYPD officers.** Kroll sought input from the New York City Police Department ("NYPD") in an effort to better understand their role in responding to the protest. With the full cooperation of the NYPD, Kroll was given the opportunity to interview two high-ranking police officials who were present at Baruch College on November 21, 2011.

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<sup>1</sup> <http://www1.cuny.edu/mu/forum/2012/04/03/kroll-review-underway-input-welcome/>. The CUNY Newswire is an online Internet portal on which news and announcements from all CUNY campuses and the CUNY administration are disseminated to the students, faculty, and public. Source: <http://www1.cuny.edu/mu/forum/>.

- **Interview of Ronald B. McGuire.** Kroll conducted a telephone interview of Ronald B. McGuire (“McGuire”), an attorney and student rights advocate known for his adamant defense of student rights. McGuire was present at Baruch College during the protest on November 21, 2011.
  
- **Review of relevant CUNY policies, procedures, and training manuals.** At Kroll’s request, CUNY provided the following written materials:
  - *CUNY Public Safety Department Operations Guide*
  - *SAFE Team In-Service Training Program*
  - *The Campus and the First Amendment Right to Freedom of Speech*
  - *Presentation on Managing the Risk: Protests and Demonstrations*
  - *SAFE Team – Duties and Responsibilities at an Unusual Disorder*
  - *Legal Review – Laws Applicable to Civil Disorder*
  - *NYPD Arrest Processing Procedures*
  - *Disorder Control/Mass Arrest Procedures and Tactics*
  - *Use of Flex Cuffs*
  - *Positional Asphyxia Prevention*
  - *Crowd Arrest Warnings & Formations*

Kroll carefully reviewed all of the aforementioned documents.



## **EXECUTIVE SUMMARY**

- On December 28, 1991, nine people died and dozens were injured by the crush of a crowd waiting for a charity basketball game outside of Holman gymnasium at the City College of New York (“City College”). In the aftermath of this tragedy, it was determined that one of the primary causes was poor coordination and oversight of the private security guards and police officers who were assigned to this event. The City College tragedy was the impetus for the establishment of the CUNY Department of Public Safety’s SAFE team and has since become the touchstone for responding to major crowd control events on CUNY campuses. According to several senior CUNY officials, any major security event involving the handling of crowds at CUNY facilities must be viewed through this lens.
- On November 21, 2011, a public hearing of the CUNY Board of Trustees was scheduled to take place at 5:00 pm on the fourteenth floor of the Baruch Vertical Campus. The agenda for the public hearing included discussion regarding proposed tuition increases.
- In advance of the hearing, student groups from CUNY rallied at the north end of Madison Square Park. The students were joined by members of the CUNY faculty union and non-CUNY affiliated groups such as Occupy Wall Street (“OWS”). Students from New York University and The New School also participated in the rally. The combined group of protesters marched from the park to the Baruch Vertical Campus on East 25th Street, some of them breaking windows along the way.

The protesters then began to rally outside of the Baruch Vertical Campus building. These events were monitored throughout by the NYPD.

- The fourteenth floor meeting room at Baruch had a legal capacity of 120 people. In the event that the meeting room reached capacity, CUNY officials had arranged for an overflow room on the first floor, adjacent to the lobby, equipped with a live audio/video feed of the hearing. In addition, a dedicated outdoor protest area had been established by the NYPD.
- Protesters generally refused to utilize the overflow room to observe the public hearing and began to congregate in the lobby. As a result, a crowd of approximately 100 to 150 protesters began to form. At the same time, students began to gather on the second floor balcony overlooking the lobby. Regularly scheduled classes were in session throughout this time, with students and faculty entering and exiting the building.
- Concerned that the safety of the students could be compromised and that the large and vocal crowd would disrupt the normal operations of Baruch College, CUNY DPS officials attempted to clear the lobby. On several occasions, the protesters were directed to leave the lobby or face arrest. The directives were generally disregarded, with some of the protesters responding by sitting down on the floor and refusing to move. According to several CUNY officials, this action on the part of the students was reminiscent of the City College incident and raised similar safety concerns.<sup>2</sup>
- When repeated attempts to persuade the protesters to leave the lobby on their own volition failed, CUNY Public Safety officials attempted to physically remove them from the lobby. Specifically, DPS officers attempted a coordinated push, using wooden batons held horizontally across their chests, as trained, and using a forward pushing motion in an effort to direct the protesters toward the exterior doors and out of the building on to East 25th Street. The protesters physically resisted the push, some violently.
- Acting on their own accord, a group of approximately nine NYPD officers entered the building to assist CUNY DPS officers in removing the protesters from the lobby and assisting in several

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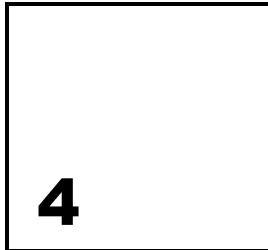
<sup>2</sup> Interview of Special Counsel to the Chancellor Dave Fields, November 26, 2012.



arrests. The actions of CUNY DPS officers with NYPD assistance were successful in clearing the lobby, and no protesters were injured in the process.

- As a result of the confrontation in the lobby, fifteen protesters were arrested by CUNY DPS officers. Of the fifteen protesters arrested, five were taken to the NYPD's 7th Precinct for processing, where they were charged with inciting a riot, assault, resisting arrest, disorderly conduct, and trespass. One protester was charged with robbery for forcibly taking a DPS officer's badge off of his uniform.
- Kroll's review of the University's preparation for and response to the protest resulted in several key findings:
  - CUNY DPS officers exercised remarkable restraint and utilized their batons in an appropriate manner throughout the protest.
  - The decision to allow protesters to congregate in the lobby and students on the second floor balcony overlooking it allowed protesters to gather in a sensitive area where CUNY DPS was not prepared to deal with a large crowd.
  - The number of security personnel assigned to the protest was insufficient to handle the large number of protesters present in the lobby on November 21, 2011.
  - Communication between CUNY and the NYPD needs review to achieve a better formalized structure and coordination, thereby improving the free flow of intelligence in both directions.
- Kroll recommends the following measures to improve the University's preparation for and response to future public protest events:
  - All CUNY DPS officers should be provided with enhanced crowd control training. In addition, all SAFE team members should be trained regularly and as a group. It is noted that CUNY has instituted significant changes in the training regimen of its DPS officers since the protest that are detailed later in this report.

- DPS managers and supervisors should receive formalized training in crowd management to help them better plan for future protests and deploy their officers more effectively.
- The relationship between the NYPD and CUNY should be strengthened by assigning a dedicated liaison or liaisons. The University should consider coordinating training with the NYPD.



## **BACKGROUND**

### **The City University of New York**

CUNY is one of the nation's largest public universities, with 540,000 students enrolled in degree programs adult, continuing, and professional education. The CUNY system comprises 24 schools and institutions, all located within the five boroughs of New York City. The University includes eleven senior colleges, seven community colleges, the William E. Macaulay Honors College at CUNY, the Graduate School and University Center, the CUNY Graduate School of Journalism, the CUNY School of Law, the CUNY School of Professional Studies, and the CUNY School of Public Health.<sup>3</sup>

#### *The Department of Public Safety*

The CUNY Department of Public Safety is responsible for protecting all campuses of the CUNY system and enforcing State and City laws on and off campus grounds. The DPS force consists of approximately 700 officers and is considered to be the fifth-largest law enforcement agency in the City of New York. The department was formed in 1990 at the direction of former University Chancellor W. Ann Reynolds.

DPS officers hold peace officer status throughout the state under Article 2 of the New York State Consolidated Laws of Criminal Procedure. This status accords DPS officers the power to make

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<sup>3</sup> <http://www.cuny.edu/about.html>

warrantless arrests, use physical or deadly force if necessary, and carry out warrantless searches. Officers are legally permitted to carry firearms after completing the proper training and with the permission of the Department of Public Safety and the local campus president. As a practical matter, very few DPS officers regularly carry firearms on duty.

The Department of Public Safety consists of uniformed patrol officers who hold the following ranks: Campus Peace Officer, Specialist, Corporal, Sergeant, Lieutenant, Director, Deputy Chief, and Chief of the Department, currently William Barry (“Director Barry”). Training is conducted annually at York College in Jamaica, Queens and is designed to exceed the state requirements for peace officer status.<sup>4</sup> Officers are equipped with an ASP baton, pepper spray, handcuffs, and a radio.

Officers are assigned to specific colleges within the CUNY system and report directly to the college Director of Public Safety. The college Director of Public Safety, in turn, reports to the Vice President of Administration, who reports to the college President. The University Director of Public Safety is responsible for the overall management of the Public Safety Department but does not have direct authority over the officers. This reporting structure is found in many universities nationwide.

### *Board of Trustees and Public Hearings*

CUNY holds public hearings of its seventeen-member Board of Trustees approximately one week prior to its scheduled Board meetings. Under CUNY by-laws, the schedule of Board meetings must be disseminated no later than August 1 of each year, and public hearings must be held no later than three days before the Board meeting.<sup>5</sup> The purpose of the public hearings is “to provide the public and interested constituencies an opportunity to speak to items on the board agenda.”<sup>6</sup> According to CUNY administrators, the University is only required to hold one public hearing in each borough per year and the November 21 hearing was the second one held in Manhattan in 2011. The November 21 hearing was provided in order to give students, faculty, and the public an opportunity to be heard on issues of concern. Those who wish to speak are required to give notification at least one business day in advance of the

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<sup>4</sup> Interview of Director Daniel Donahue, November 6, 2012.

<sup>5</sup> <http://policy.cuny.edu/text/toc/btb/ARTICLE%20I/>

<sup>6</sup> “A Message From Chancellor Matthew Goldstein Regarding the November 21 Board of Trustees Public Hearing,” *Office of the Chancellor*, November 22, 2011. (See Appendix 2)

hearing, although every effort is made to also accommodate speakers who fail to sign up.<sup>7</sup> Speakers are asked to submit written statements in advance of the hearing so that they can be summarized for the trustees prior to the meeting. Speakers are generally afforded three minutes to make their remarks.

### *Tuition Increases*

For many years, CUNY provided a tuition-free college education. In 1976, the University began charging its students tuition for the first time.<sup>8</sup> Subsequent tuition increases were imposed on an *ad-hoc* basis by state legislative action and without adherence to any formal policy. In recent years, the CUNY Board of Trustees has worked with New York State and City officials to establish more consistent tuition policies.

In August 2011, New York State Governor Andrew Cuomo signed into law a “rational tuition policy” for CUNY that granted the University the discretion to increase its undergraduate tuition by \$150 per semester over a five year period.<sup>9</sup> The law required the CUNY Board of Trustees to adopt a five-year plan detailing those increases by November 2011.<sup>10</sup>

According to Michael Arena (“Arena”), Director of Communications and Marketing at CUNY, prior to the new law, the increases were typically instituted approximately every four years and would amount to a 15% increase each time.<sup>11</sup> In contrast, the rational tuition policy provided for smaller and more predictable tuition increases. Despite the tuition increases, Arena noted that 60% of the full time undergraduates attend CUNY “tuition-free” as a result of New York State Tuition Assistance (“TAP”), Pell Grants, and other financial aid.

*The CUNY Value*, a document first published on the CUNY website on December 20, 2010 with a final printed version released by the University on November 3, 2011, contained detailed information about the changes in tuition, grants, tax incentives, and student loans.<sup>12</sup> Specifically, *The CUNY Value* provided

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<sup>7</sup> Notice of the November 28, 2011 Board Meeting, *Secretary of the Board*, November 4, 2011. (See Appendix 3)

<sup>8</sup> Interview of Senior Vice Chancellor Jay Hershenson, April 20, 2012.

<sup>9</sup> <http://www.governor.ny.gov/press/08082011NYSUNY2020Legislation>

<sup>10</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>11</sup> Interview of Director of Communications and Marketing Michael Arena, April 10, 2012.

<sup>12</sup> <http://www.cuny.edu/about/info/value/subnav/CUNYvalueBrochure12072011.pdf> (See Appendix 4)

information regarding tuition comparisons to other large schools, both public and private; it also described the programs available to students to assist with their rising tuition.

Six informational e-mails detailing the college costs and available financial aid were also sent to all CUNY students beginning on March 9, 2011 and continuing throughout the spring 2011 semester, according to Jay Hershenson (“Hershenson”), Senior Vice Chancellor for University Relations and Secretary of the Board of Trustees.<sup>13</sup> An additional seven e-mails were sent during the fall 2011 semester. This information was also disseminated to students via the student intranet, online student portal, and brochures.<sup>14</sup> According to Arena, the website on which students could access the posted tuition information received approximately 10,000 hits.

### *Student Activism at CUNY*

Student activism is a longstanding tradition throughout CUNY, often expressed in the form of public protest. According to CUNY administrators interviewed by Kroll, the University takes great pains to ensure that students are allowed to exercise their First Amendment rights while, at the same time, ensuring that other students are not impeded in their ability to attend classes. Historically, protests at CUNY have been relatively peaceful. In the weeks prior to November 21, 2011, protests were held at approximately ten different CUNY campuses, according to interviews of several CUNY administrators. Allan Dobrin (“Dobrin”), Executive Vice Chancellor and Chief Operating Officer of CUNY, stated that the protests were related to the proposed tuition increases and included OWS issues as well. According to the CUNY Department of Public Safety and the NYPD, all were conducted peacefully.<sup>15</sup>

The most recent incident of violence at a protest occurred at a public meeting at Baruch College approximately eight to nine years ago, when a smoke bomb was thrown at a Board member and a Vice Chancellor was hit in the face with a thrown object.<sup>16</sup> After this incident, CUNY reassessed the way it conducted public meetings. Public meetings of the Board of Trustees committees, which have historically not attracted demonstrations, have continued to be conducted at the CUNY Central Office at 535 East

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<sup>13</sup> Interview of Senior Vice Chancellor Jay Hershenson, April 20, 2012.

<sup>14</sup> Interview of Director of Communications and Marketing Michael Arena, April 10, 2012.

<sup>15</sup> Interview of Executive Vice Chancellor Allan Dobrin, May 4, 2012.

<sup>16</sup> Interview of Senior Vice Chancellor Jay Hershenson, April 20, 2012.

80<sup>th</sup> Street, New York, New York. Board of Trustee meetings were moved to a larger room on the fourteenth floor of Baruch College where greater distance could be maintained between the audience and Board members. Public hearings of the Board of Trustees have taken place in sufficiently large spaces in Court Houses and Borough Halls throughout New York City and in the same fourteenth floor room at Baruch College used for formal Board meetings. Overflow rooms were set up when a large crowd was expected.

### *The City College Tragedy*

Senior CUNY administrators and Department of Public Safety leaders told Kroll that they were concerned about the possibility of the Baruch College protest transforming into a violent incident similar to what occurred at the City College of New York in 1991.<sup>17</sup> References to this incident were reiterated by lower-ranking DPS officers as well. The City College tragedy occurred on December 28, 1991 when a large crowd surged through an entrance to a celebrity basketball game at the college's Holman Gymnasium, crushing eight people to death and seriously injuring twenty-nine others.<sup>18</sup> A ninth victim later died after her family agreed to remove her from life-support.<sup>19</sup>

Media reports issued shortly after the incident quoted officials and witnesses who stated that "there were too few security guards and police at a star-studded charity event," and those that were present were unable to contain a "frustrated, locked-out crowd."<sup>20</sup> It was reported that the crowd waiting to enter the event grew so large that they burst through the glass doors and collapsed down a staircase into "a heap of broken and smothered bodies."<sup>21</sup> A report was subsequently commissioned by Mayor David Dinkins and assigned to Deputy Mayor for Public Safety Milton Mollen ("the Mollen Report"). The Mollen Report concluded that "almost all of the individuals involved in the event demonstrated a lack of responsibility."<sup>22</sup> Specifically, the Mollen report noted that "more than 5,000 people were allowed to funnel toward a

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<sup>17</sup> Interview of Senior Vice Chancellor Jay Hershenson, April 20, 2012.

<sup>18</sup> "Guards Couldn't Contain N.Y. Crowd Before Fatal Crush," *Washington Post*, December 30, 1991.

<sup>19</sup> "Death toll Rises to nine in Stampede at Gym," *St. Louis Post-Dispatch*, January 2, 1992.

<sup>20</sup> "Guards Couldn't Contain N.Y. Crowd Before Fatal Crush," *Washington Post*, December 30, 1991.

<sup>21</sup> "Guards Couldn't Contain N.Y. Crowd Before Fatal Crush," *Washington Post*, December 30, 1991.

<sup>22</sup> "The Crush at City College; An Inquiry Spreads Blame for Deaths at New York Gym," *The New York Times*, January 16, 1992.

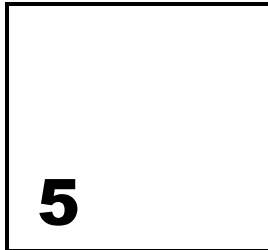
gymnasium that could only hold 2,700,” overwhelming the 23 college security guards and 63 NYPD officers.”<sup>23</sup> This incident was the impetus for the establishment of the SAFE team.<sup>24</sup>

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<sup>23</sup> “The Crush at City College; An Inquiry Spreads Blame for Deaths at New York Gym,” *The New York Times*, January 16, 1992.

<sup>24</sup> Interview of Special Counsel to the Chancellor Dave Fields, November 26, 2012.





## **FINDINGS**

### **Planning**

#### *Public Hearing Planning*

The public hearing of the Board of Trustees was scheduled to take place at on the fourteenth floor of Baruch College at 5:00 pm on November 21, 2011. Prior to the hearing, the University undertook several steps to prepare for anticipated protests. Director Barry and City College's Director of Public Safety, John McKee ("Director McKee") created a series of workshops for individual college presidents. These workshops were designed to prepare the presidents and their schools for Occupy Wall Street activity that was expected to occur in the weeks that followed.<sup>25</sup>

In addition, issues related to the public hearing were discussed during several regularly scheduled meetings of the Emergency Management Committee. The Emergency Management Committee is a standing group that meets on a monthly basis to review security issues. The meetings, held in the Chancellor's conference room on the seventh floor of the CUNY central office, were arranged and chaired by Dobrin.<sup>26</sup> Attendees included Howard Apsan, University Director of Environmental Health, Safety and Risk Management; Frederick Schaffer, General Counsel and Senior Vice Chancellor for Legal Affairs;

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<sup>25</sup> Interview of Executive Vice Chancellor Allan Dobrin, May 4, 2012.

<sup>26</sup> Interview of Deputy Chief Operating Officer for Management Services Burton Sacks, April 10, 2012.

Arena; Director Barry; and Burton Sacks (“Sacks”), Deputy Chief Operating Officer for Management Services. Among the issues discussed were the number of DPS officers needed for the event, the number of protesters expected, and the appropriate crowd control procedures to be employed.<sup>27</sup> Director Barry told Kroll that CUNY Public Safety anticipated an unruly crowd and planned accordingly.<sup>28</sup> Additionally, one week prior to the protest, Director Barry held a meeting at headquarters with senior DPS officers and administrators to plan a training session to be provided at roll call on November 21.<sup>29</sup>

In addition to the Emergency Management Committee meetings, preparations for tuition-related protests were also discussed at the regular Council of Presidents meeting. These meetings, chaired by Chancellor Goldstein, are held every month with presidents of the local campuses. At one particular meeting, preparations for the anticipated protest at the November 21, 2011 public hearing were specifically discussed, including the possible deployment of additional peace officers and SAFE team members.<sup>30</sup>

### *Intelligence Gathering*

Kroll interviewed both CUNY administrators and DPS officers regarding the steps taken to gather intelligence in advance of the protest planned for the public hearing. CUNY administrators told Kroll that University staff routinely checked social media sites, including but not limited to Facebook, where they found indicators that the protesters were possibly planning a “sit-down” protest at Baruch.<sup>31</sup> CUNY DPS Sergeant Angel Henriquez (“Sgt. Henriquez”) told Kroll that the Emergency Management Committee discussed intelligence regarding the protest that was collected in part through observing bulletin boards around the campuses where student flyers were posted.<sup>32</sup>

In addition, Dave Fields (“Fields”), Special Counsel to the Chancellor, told Kroll that CUNY had received intelligence from NYPD Community Affairs officers suggesting that, in addition to student and faculty

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<sup>27</sup> Interview of Director of Public Safety William Barry, April 10, 2012.

<sup>28</sup> Interview of Director of Public Safety William Barry, April 10, 2012.

<sup>29</sup> Interview of Director of Public Safety William Barry, October 24, 2012.

<sup>30</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>31</sup> Interview of Director of Public Safety William Barry, April 10, 2012.

<sup>32</sup> Interview of Sergeant Angel Henriquez, June 14, 2012.

groups, representatives of Occupy Wall Street were also expected to attend the protest.<sup>33</sup> As a result of the above-described intelligence, NYPD placed additional officers outside of Baruch College, according to Fields.

### *Expectation of a Protest*

Some administrators expressed to Kroll that public hearings at CUNY can often be raucous, and that attendees who disagree with the Board sometimes engage in non-violent conduct that eventually results in their removal from the meeting.<sup>34</sup> In the case of faculty, this type of protest activity is often coordinated in advance with the Professional Staff Congress (“PSC”); CUNY administrators will actually be told that the PSC intends to cause a disturbance in order to make a particular point, after which they will leave without incident.<sup>35</sup> One CUNY DPS officer told Kroll that, at every Board meeting, officers expect “something to happen.”<sup>36</sup> In contrast, a reporter from the Hunter student newspaper, *The Envoy*, told Kroll that public hearings of the Board are usually not well attended and that, in fact, he did not expect a large turnout when he decided to cover the protest.<sup>37</sup>

Due to the subject matter of the hearing and the intelligence described above, CUNY security and administrative staff believed that the November 21, 2011 protest had the potential to be different from the typical CUNY protest and planned accordingly. Donald Winters, Assistant University Director of Public Safety (“Assistant Director Winters”), told Kroll that, because of the expected OWS element, an additional thirty DPS officers were added to the normal contingent of between thirty and forty officers scheduled to work the public hearing.<sup>38</sup> Hershenson told Kroll that CUNY planned for a significant turnout due to the tuition increase under discussion.<sup>39</sup> The preparations taken by CUNY included:

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<sup>33</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>34</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>35</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>36</sup> Interview of Juan Velazquez, June 13, 2012.

<sup>37</sup> Interview of John Bolger, April 26, 2012.

<sup>38</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

<sup>39</sup> Interview of Senior Vice Chancellor Jay Hershenson, April 20, 2012.

1. The deployment of 79 CUNY DPS officers at Baruch, approximately 30 more than are typically assigned to public hearings of the Board of Trustees. The officers included 61 members of the SAFE team and eighteen non-SAFE team DPS officers. SAFE, an acronym for Special Assistance For Events, is a specialized team consisting of CUNY DPS officers who are supposed to receive specialized training in crowd control situations. SAFE team officers are assigned to each campus and not a central unit.
2. The use of metal detectors for any person entering the fourteenth floor meeting room where the hearing was to take place.
3. The establishment of a dedicated “overflow room” situated on the main floor of Baruch, adjacent to the lobby; the overflow room was intended to seat individuals who could not fit into the fourteenth floor hearing room and allow them to observe the hearing via a live audio/video feed.
4. The establishment of an escort system in which individuals in the overflow room who had signed up to speak would be brought up to the meeting room by DPS officers at the appropriate time.<sup>40</sup>
5. The holding over of a full shift of Baruch DPS officers.<sup>41</sup>

Several DPS officers told Kroll that officers were generally aware of a rumor that OWS might be involved in the protest but were still surprised by the size of the crowd that ultimately assembled in the lobby. For example, Sgt. Veronica Rodriguez (“Sgt. Rodriguez”) stated that there were many more protesters than she expected.<sup>42</sup> Officer Jonathan Simmons (“Officer Simmons”) told Kroll that, from past experience, he and his fellow officers knew to expect a protest when tuition hikes were being discussed. However, he had not seen anything “this bad”; “we did not expect this.”<sup>43</sup>

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<sup>40</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>41</sup> Interview of John Siotkas, April 3, 2012

<sup>42</sup> Interview of Sergeant Veronica Rodriguez, June 14, 2012.

<sup>43</sup> Interview of Officer Jonathan Simmons, June 13, 2012.

### *Notice of the Public Hearing*

On November 4, 2011, Hershenson issued a notice of the public hearing of the Board of Trustees that was published on the *CUNY Newswire*, detailing the time and location of the public hearing.<sup>44</sup> Under the Open Meetings law, CUNY is required to hold one public hearing in each borough per year.<sup>45</sup> As a matter of practice, CUNY typically does more than the law requires in this regard; for example, the November 11 hearing was the second one held in Manhattan in 2011.

However, some students interviewed by Kroll indicated that they only learned of the protest through word of mouth. A student reporter from *The Envoy* noted that he received an e-mail notification of the hearing, but only because he is assigned to the newspaper; according to him, most students would not have received this notice.<sup>46</sup> A female student told Kroll that she learned of the protest through student groups, many of which held “general assemblies” to rally other students.<sup>47</sup> According to this student, the general assemblies opposed the trustees because of their professional backgrounds and corporate experience; there was also a fear among these students that CUNY would be privatized.<sup>48</sup>

In contrast to the above, a reporter with *The Ticker*, the Baruch College student newspaper, told Kroll that all students should have been aware of the public hearing and planned tuition hikes because the information was clearly posted on the CUNY website.<sup>49</sup>

### *Involvement of Occupy Wall Street and Other Groups*

Based upon Kroll’s interviews, it appears that there was significant reason to believe that several groups, including Occupy Wall Street and related organizations, would be involved in the November 21, 2011 protest. According to a reporter from *The Envoy* who attended a “Student Day of Action” event at Hunter

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<sup>44</sup> Notice of the November 28, 2011 Board Meeting, *Secretary of the Board*, November 4, 2011. (See Appendix 3)

<sup>45</sup> Section 1.10 Borough Public Hearings, Board of Trustees Bylaws, The City University of New York Source: <http://policy.cuny.edu/text/toc/btb/ARTICLE%20I/SECTION%201.10/>

<sup>46</sup> Interview of John Bolger, April 26, 2012.

<sup>47</sup> Interview of Tiffany Huan, April 24, 2012.

<sup>48</sup> Interview of Tiffany Huan, April 24, 2012.

<sup>49</sup> Interview of Mathias Ask, April 24, 2012.

College and Union Square Park on November 17, 2011, leaders at the gathering urged all present to attend a public meeting of the CUNY Board of Trustees on November 21, 2011 concerning the proposed tuition hikes.<sup>50</sup> This reporter stated that the crowd was made up of approximately 50 to 100 students and faculty from the PSC. According to the reporter, the large turnout at the “Student Day of Action” prompted *The Envoy* staff to provide coverage of the November 21, 2011 public hearing.

Another reporter for *The Envoy* told Kroll that he knew of several organizations that planned to march on Baruch College the night of the public hearing. These groups included the following:

- Occupy CUNY<sup>51</sup>
- Occupy Hunter College<sup>52</sup>
- Occupy Wall Street
- Professional Staff Congress<sup>53</sup>
- Students for a Free CUNY<sup>54 55</sup>

The reporter, John Bolger (“Bolger”), indicated that Occupy CUNY spread the word to students that a rally would be held at Madison Square Park prior to the public hearing through their website and Facebook page.<sup>56</sup> Additionally, Bolger noted that OWS had been evicted from Zuccotti Park in recent weeks and that splinter groups such as those noted above had been formed. The reporter conveyed that he thought the groups all ultimately converged at Baruch College.<sup>57</sup>

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<sup>50</sup> Interview of Jenady Garshofsky, April 26, 2012.

<sup>51</sup> <http://occupycunynews.org/>

<sup>52</sup> <http://occupyhunter.com/>

<sup>53</sup> The Professional Staff Congress is the union that represents more than 25,000 faculty and staff at the City University of New York. It is dedicated to advancing the professional lives of its members, enhancing their terms and conditions of employment, and maintaining the strength of the nation's largest, oldest and most visible urban public university. Source: <http://www.psc-cuny.org>.

<sup>54</sup> “Students for a Free CUNY” is a student group founded on the principle that every person has a right to a free higher-education. Source: <http://studentsunitedforafreecuny.wordpress.com/about/>

<sup>55</sup> Interview of John Bolger, April 26, 2012.

<sup>56</sup> <https://www.facebook.com/pages/Occupy-CUNY/>

<sup>57</sup> Interview of John Bolger, April 26, 2012.

A reporter for *The Ticker* named Mathias Ask (“Ask”) stated that the main organizer of the protest was “Students for a Free CUNY.”<sup>58</sup> Another student reporter named Terrance Ross (“Ross”) agreed and told Kroll that Students for a Free CUNY had planned to enter the fourteenth floor public hearing in advance of the protest.<sup>59</sup> He stated that an OWS spin-off called Bottom up Baruch was present as well.<sup>60</sup>

Interviews of CUNY officials indicated that they were aware of the possibility of an OWS element at the November 21, 2011 public hearing. However, it is unclear if, and by what method, this information was disseminated to other members of the Department of Public Safety. John Siotkas, Assistant Director of Public Safety at Baruch College (“Assistant Director Siotkas”), told Kroll that, prior to the November 21, 2011 public hearing, he learned through the office of Director Barry that members of the Occupy Wall Street movement might be a part of the protest expected at Baruch College.<sup>61</sup> Kroll’s interviews did not, however, reveal evidence of a systematic method by which DPS officers were told in advance to expect members of OWS at the public hearing.

#### *Notice to and Deployment of DPS Officers*

On November 9, 2011, Director of Operations Michael Lederhandler (“Director Lederhandler”), Chief of Operations for CUNY Public Safety, sent an e-mail to all campus heads of security and administrators with the subject line, “Two Full SAFE Team Deployments.”<sup>62</sup> The e-mail (see Appendix 7) asked recipients to assign all SAFE team members to the November 21, 2011 Board of Trustees public hearing and the November 28, 2011 Board of Trustees meeting. Both events were scheduled to take place at the Baruch Vertical Campus and officers were directed to report at 1:00 pm sharp. Officers were told to bring

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<sup>58</sup> Interview of Mathias Ask, April 24, 2012.

<sup>59</sup> Interview of Terrance Ross, April 25, 2012.

<sup>60</sup> Interview of Terrance Ross, April 25, 2012.

<sup>61</sup> Interview of Assistant Director of Public Safety at Baruch College John Siotkas, April 3, 2012.

<sup>62</sup> “Two Full SAFE Team Deployments,” *Michael Lederhandler*, November 9, 2011. (See Appendix 7)

their “uniform of the day”<sup>63</sup> including the eight point hat and weather appropriate gear (there may be outdoor posts).”<sup>64</sup>

Director Lederhandler also sent this e-mail to Henry McLaughlin (“Director McLaughlin”), Chief of Public Safety at Baruch College, asking him to “hold over your day tour for these events.”<sup>65</sup> While Director McLaughlin was not present on November 21, 2011, his second in command, Assistant Director Siotkas, appears to have acted on Director Lederhandler’s request. Assistant Director Siotkas told Kroll that he reassigned Baruch College public safety officers who were regularly scheduled for the midnight and day shifts to cover the public meeting.<sup>66</sup> The remaining officers at Baruch College on November 21, 2011 were brought in from other CUNY campuses.

The timing and method by which CUNY DPS officers were notified of their assignment to the public hearing varied significantly from campus to campus. Judging from information gathered during interviews, it appears that most CUNY DPS officers were notified of their assignments one week before the public hearing. However, according to SAFE team member Sgt. Angelluis Rosado (“Sgt. Rosado”), most officers were informed two to three weeks prior to November 21, 2011 and were told only that they had been assigned to a detail at Baruch College; there was no mention of a protest. Some, like SAFE team member Sgt. Ayodele Adenusi (“Sgt. Adenusi”), were notified by e-mail. Others received a written order in their mailboxes, informing them of an assignment to a detail at a public meeting with no mention of a potential protest.

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<sup>63</sup> “Uniform of the Day” is a term that is commonly used in public safety and law enforcement circles to help officers identify the apparel that they will be expected to wear for a given assignment. For a funeral for example, officers might be told that the “uniform of the day” would be their dress uniform with white gloves.

<sup>64</sup> “Two Full SAFE Team Deployments,” *Michael Lederhandler*, November 9, 2011. (See Appendix 7)

<sup>65</sup> “Two Full SAFE Team Deployments,” *Michael Lederhandler*, November 9, 2011. (See Appendix 7)

<sup>66</sup> Interview of Assistant Director of Public Safety at Baruch College John Siotkas, April 3, 2012.



## November 21, 2011

### *Roll Call*

According to a log maintained by CUNY DPS, at approximately 1:15 pm on November 21, 2011, a roll call was held on the fourteenth floor of Baruch College for all CUNY Public Safety officers assigned to the public hearing detail. According to records provided by CUNY, a total of 79 DPS officers were present.<sup>67</sup> Of that total, sixty-one members of the SAFE team were counted present, including 59 officers brought in from non-Baruch campuses.<sup>68</sup> Complementing the SAFE team were eighteen DPS officers regularly assigned to Baruch College. According to Specialist Nicholas Frangoulis (“Spec. Frangoulis”), the meeting was led by Assistant Director Winters, Director McKee, Director Barry, and Spec. Frangoulis.<sup>69</sup>

Sgt. Anastasia Koustides (“Sgt. Koustides”) of the CUNY Academy at York College was in charge of assigning officers to their posts, and she did so based upon her personal knowledge of each officer’s skills. Sgt. Koustides was familiar with the officers’ abilities through her work as an academy instructor and, according to other DPS officers interviewed by Kroll, she is typically in charge of assigning posts at public events. When asked what criteria she used to deploy the officers, Sgt. Koustides told Kroll that she placed physically larger officers at the exits and used her personal knowledge of the skills and experience of individual officers to assign them to appropriate postings.<sup>70</sup> Additionally, she noted that she consulted with Director Barry when determining assignments.

Officers were assigned to one of three teams: (1) a rapid response arrest team; (2) a crowd control front line team; or (3) a back-up team, whose directive was to wait and respond only when additional support was requested.<sup>71</sup> During roll call, the twelve to fifteen officers posted to the crowd control team were issued wooden batons. Administrators then conducted a walk-through of the relevant rooms in the building for officers who were not familiar with the physical plant of Baruch College.<sup>72</sup>

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<sup>67</sup> Roll Call for Monday, November 21, 2011. (See Appendix 8)

<sup>68</sup> Roll Call for Monday, November 21, 2011. (See Appendix 8)

<sup>69</sup> Interview of Specialist Nicholas Frangoulis, April 3, 2012.

<sup>70</sup> Interview of Sergeant Anastasia Koustides, July 27, 2012.

<sup>71</sup> Interview of Sergeant Efren Maldonado, June 14, 2012

<sup>72</sup> Interview of Sergeant Angelluis Rosado, June 13, 2012.

The DPS officers were instructed that this was a public hearing and, therefore, the building was considered to be open to the public.<sup>73</sup> According to Director McKee, officers were specifically instructed that protesters were permitted to remain in the lobby unless they became rowdy, disruptive, or carried signs affixed to a pole or stand; they were told that people had the right to protest but should not be permitted to disrupt operations.<sup>74</sup> This message was initially communicated to the individuals gathered in the lobby by public safety officers onsite and later reiterated by Director McKee after he consulted with Eszterhas.<sup>75</sup> Officers were also told that their actions would be on camera, so it was important that they perform to the best of their abilities.

Some additional background information was provided during roll call. According to CUNY DPS Sgt. Rosado, officers were informed by CUNY DPS administrators that the board meeting had the potential to spark a protest because it was open to the public and the Board planned to approve tuition hikes. Sgt. Adenusi recalled being told that the protest was about tuition increases and health care coverage for faculty.<sup>76</sup> Additionally, officers were told that they might be called upon to remove individuals from the building when directed to do so by their supervisors.<sup>77</sup> Some officers told Kroll that OWS was not mentioned during roll call but was discussed between the officers themselves.<sup>78</sup>

The roll call also included a training session on the use of wooden batons,<sup>79</sup> flex cuffs,<sup>80</sup> and crowd control tactics.<sup>81</sup> The training session was planned the week before the protest by SAFE Team Leaders Spec. Frangoulis, Sgt. Koustides, Officer Aston Wilson (“Officer Wilson”), Sgt. Fausto Polanco (“Sgt. Polanco”), Director Barry, Director Lederhandler, and Assistant Director Winters during a meeting at DPS headquarters. The roll call training session began with a general briefing for the entire team followed by

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<sup>73</sup> Interview of Director of Public Safety at City College John McKee, September 18, 2012.

<sup>74</sup> Interview of Director of Public Safety at City College John McKee, September 18, 2012.

<sup>75</sup> Interview of Director of Public Safety at City College John McKee, January 3, 2013.

<sup>76</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>77</sup> Interview of Sergeant Angelluis Rosado, June 13, 2012.

<sup>78</sup> Interview of Sergeant Efren Maldonado, June 14, 2012.

<sup>79</sup> CUNY DPS officers do not use wooden batons on a regular basis.

<sup>80</sup> A Flex Cuff is a plastic strip that can be fastened as a restraint around a person's wrists or ankles. Source: <http://www.merriam-webster.com/dictionary/flex-cuff>.

additional training for those DPS officers assigned to the rapid response arrest team. The arrest team training was conducted by Director McKee and Specialist Anthony Laperuta (“Spec. Laperuta”), who both serve as instructors at the CUNY Department of Public Safety Academy. The training lasted approximately fifteen to twenty minutes<sup>82</sup> and included the following specific elements:

- Spec. Laperuta instructed DPS officers to carry the wooden batons with the lanyard wrapped around their fingers and to hold the batons diagonally across their chests.<sup>83</sup> He also instructed officers on how to move the crowd, should the order be given, by maintaining the horizontal position of the baton.
- Officers were given instructions on how to utilize “V formations” for crowd control and to direct those who were non-compliant.<sup>84</sup> According to Director McKee, officers were given clear direction on what to say to the protesters in specific circumstances.<sup>85</sup>
- Officers were also given an overview of the laws relevant to protests.<sup>86</sup>

In anticipation of the potential for arrests, rooms close to the boardroom on the fourteenth floor were designated for use as temporary holding areas and processing rooms for potential arrestees.<sup>87</sup> Spec. Frangoulis told Kroll that he assisted in coordinating DPS manpower and set up the command post in a room on the fourteenth floor down the hall from the public meeting room.<sup>88</sup>

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<sup>81</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>82</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>83</sup> Officers are normally trained on collapsible batons (ASP Batons), with the exception of SAFE team members who receive training on both collapsible and wooden batons.

<sup>84</sup> A “V Formation” is one of many tactics used by public safety and law enforcement officials to control, contain or disperse crowds of protesters.

<sup>85</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>86</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>87</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>88</sup> Interview of Assistant Director of Public Safety Nicholas Frangoulis, April 3, 2012.

### *Events Prior to the Confrontation in the Lobby*

The CUNY DPS officers assigned to the public hearing detail arrived at Baruch College between 1:00 pm and 2:00 pm on November 21, 2011. According to Assistant Director Winters, members of the SAFE team began to assemble and man their posts at approximately 3:30 pm after roll call.<sup>89</sup> Director McKee was assigned the leadership role over the SAFE team for this event. An officer who arrived at approximately 2:00 pm told Kroll that he noticed an NYPD presence outside the building with barricades, as well as a small crowd that had gathered.<sup>90</sup>

Shortly before the public hearing was scheduled to begin, student groups met for a rally in Madison Square Park, where attendees were exhorted to march with them to Baruch and demand free tuition.<sup>91</sup> As the group began to march through the streets toward the Baruch Vertical Campus, they were escorted by NYPD officers. The group chanted slogans and, along the way, some members of the crowd broke windows on East 23<sup>rd</sup> Street.<sup>92</sup> When the protesters arrived outside the lobby, they began a “people’s mic.”<sup>93</sup>

A reporter with *The Ticker* who was present with the group outside Baruch told Kroll that a male protester stood up and urged his fellow protesters to enter the building.<sup>94</sup> According to the reporter, this man appeared to be in his mid-twenties and yelled “let’s go inside.”<sup>95</sup> The protesters then began to move toward the building entrance. According to CUNY DPS Officer and SAFE team member Daniel Muniz (“Officer Muniz”), the crowd control front line team allowed the crowd to enter the Baruch lobby unimpeded.<sup>96</sup>

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<sup>89</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

<sup>90</sup> Interview of Sergeant Efren Maldonado, June 14, 2012

<sup>91</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>92</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>93</sup> A “people’s mic” is a form of communication, utilized by Occupy Wall Street demonstrators, in which the crowd gathered around a speaker simply repeats what the speaker is saying. This repetition has the effect of “amplifying” the speaker’s words without the need for amplification equipment.

<sup>94</sup> Interview of Mathias Ask, April 24, 2012.

<sup>95</sup> Interview of Mathias Ask, April 24, 2012.

<sup>96</sup> Interview of Officer Daniel Muniz, June 13, 2012.

At the same time, members of the back-up and arrest teams were observing the activity of the protesters via closed circuit television (“CCTV”) in a temporary staging room on the first floor. Officer Angel Irizariz (“Officer Irizariz”) told Kroll that he and his fellow officers were surprised by the size of the crowd they were seeing on the monitor.<sup>97</sup>

### *Composition of the Crowd*

Throughout Kroll’s interviews of CUNY DPS personnel, it became clear that many believed that the crowd of protesters was not composed entirely of CUNY students and/or faculty. In fact, some of those interviewed noted that “professional” protesters affiliated with the Occupy Wall Street movement were present.<sup>98</sup> While reviewing video of the incident, Officer Muniz identified a bald white male dressed in black whom he knew to be affiliated with OWS; he recalled that he saw this individual handing out OWS flyers outside of the Baruch campus prior to the protest.<sup>99</sup> A reporter from *The Ticker* also told Kroll that there were OWS participants and Baruch students in the crowd, but that most of the protesters were students from Hunter College.<sup>100</sup>

The belief that a majority of the protesters were students from Hunter College was echoed by numerous interviewees.<sup>101</sup> Others indicated that adjunct professors and students from Baruch College were also present.<sup>102</sup> Some DPS officers from campuses in outer boroughs indicated that they recognized one or two students from their campuses, but the general consensus was that most students were from Manhattan campuses.<sup>103</sup> There was also general consensus among DPS officers that the protest was led by students, as opposed to faculty or OWS members.<sup>104</sup>

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<sup>97</sup> Interview of Officer Angel Irizariz, June 15, 2012.

<sup>98</sup> Interview of Officer Daniel Muniz, June 13, 2012.

<sup>99</sup> Interview of Officer Daniel Muniz, June 13, 2012.

<sup>100</sup> Interview of Mathias Ask, April 24, 2012.

<sup>101</sup> Interview of Sergeant Veronica Rodriguez, June 14, 2012.

<sup>102</sup> Interview of Terrance Ross, April 25, 2012.

<sup>103</sup> Interview of John Bolger, April 26, 2012.

<sup>104</sup> Interview of Sergeant Veronica Rodriguez, June 14, 2012.

### *Board of Trustees Meeting*

While protesters were gathering on the street outside of the Baruch Vertical Campus building, the public hearing of the Board of Trustees was scheduled to begin at 5:00 pm in the fourteenth floor meeting room.<sup>105</sup> Metal detectors were set up on the fourteenth floor to scan all those who entered the room. Additionally, both male and female CUNY DPS officers were posted at the doors and screened the bags of all those entering the meeting room.<sup>106</sup> Hershenson told Kroll that a decision was made in advance by CUNY administrators that, if the fourteenth floor meeting room filled to capacity, an overflow room with an audio and video feed of the meeting would be made available for those who wished to view the hearing but were unable to make it inside.<sup>107</sup>

Ninety-five people signed up to speak at the public hearing.<sup>108</sup> According to Hershenson, 64 actually spoke and no one was denied an opportunity to be heard, whether they had signed up or not.<sup>109</sup> According to the Chancellor's message, "the trustees and members of the chancellery in attendance were prepared to remain at the hearing for as long as there were speakers."<sup>110</sup> This was reiterated by CUNY administrators interviewed by Kroll.

Assistant Director Winters told Kroll that he kept a count of how many people were being allowed into the meeting room, which holds approximately 120 people.<sup>111</sup> Under normal circumstances, the doors of Baruch College would open at 4:30 pm to allow attendees to enter the meeting. However, on November 21, 2011, the doors opened at 4:00 pm in anticipation of a larger-than-usual crowd; the meeting room was soon filled to capacity.<sup>112</sup>

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<sup>105</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

<sup>106</sup> Interview of Assistant Director of Public Safety Nicholas Frangoulis, April 3, 2012.

<sup>107</sup> Interview of Senior Vice Chancellor Jay Hershenson, April 20, 2012.

<sup>108</sup> "A Message From Chancellor Matthew Goldstein Regarding the November 21 Board of Trustees Public Hearing," *Office of the Chancellor*, November 22, 2011. (See Appendix 2)

<sup>109</sup> Interview of Assistant Director of Public Safety Nicholas Frangoulis, April 3, 2012.

<sup>110</sup> "A Message From Chancellor Matthew Goldstein Regarding the November 21 Board of Trustees Public Hearing," *Office of the Chancellor*, November 22, 2011. (See Appendix 2)

<sup>111</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

<sup>112</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

Outside of the Baruch Vertical Campus lobby, the NYPD set up designated protest areas directly in front of the building, on the left and right sides of the entry doors, where protesters could voice their opinions.<sup>113</sup> A pathway between the protest areas was initially cleared and secured so that pedestrians could enter and exit the building.<sup>114</sup> Video evidence suggests that protesters eventually filled this pathway.

A high-ranking NYPD official told Kroll that protesters at Baruch College protesters are typically only permitted on the sidewalks; however, due to the large number of protesters, the police allowed them to take up half of the street on this occasion.<sup>115</sup>

### *Confrontation in the Lobby*

As protesters who had gathered outside the building began to fill the lobby, CUNY DPS officers from higher floors were re-deployed to the lobby by Sgt. Koustides. Director Barry told Kroll that he was in the fourteenth floor meeting room when he heard security in the lobby calling for additional officers over the radio.<sup>116</sup> Director Barry went down to the lobby, where he witnessed Director McKee using a bullhorn to direct the protesters to exit the lobby; the crowd did not comply.<sup>117</sup> Director Barry attempted to ensure that the area past the turnstiles, where only students and faculty were permitted, remained clear. Assistant Director Winters was also on the fourteenth floor when, at approximately 5:15 pm, he received a call for assistance on the first floor over the two-way radio.<sup>118</sup>

At approximately the same time, Spec. Frangoulis received a radio call from a superior asking him to dispatch officers posted on the fourteenth floor to the lobby.<sup>119</sup> Spec. Frangoulis believes that approximately six officers went from the fourteenth floor to the lobby in response to his order, a sequence

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<sup>113</sup> Interview of Executive Vice Chancellor Allan Dobrin, May 4, 2012.

<sup>114</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>115</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>116</sup> Interview of Director of Public Safety William Barry, April 10, 2012.

<sup>117</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

<sup>118</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

<sup>119</sup> Interview of Assistant Director of Public Safety Nicholas Frangoulis, April 3, 2012.

that was repeated a short time later.<sup>120</sup> Spec. Frangoulis also went to the lobby himself to assist officers dealing with protesters.

According to Director McKee, by the time the protesters who had assembled at Madison Square Park arrived at Baruch College, the fourteenth floor meeting room was already filled to capacity.<sup>121</sup> As a result, protesters wishing to observe the public hearing were directed by DPS to the overflow room. Director McKee stationed DPS officers in front of the turnstiles leading to the elevator bank who directed attendees to the overflow room as they arrived. A small group complied with the directive to go to the overflow room but returned to the lobby unchallenged after realizing that the room was not where the meeting was actually being held.<sup>122</sup> Despite the fact that the overflow room contained a door leading out to the street, the protesters were permitted to go back into the lobby.

Director McKee was accompanied in the lobby by Eszterhas as protesters arrived. According to CUNY policy, the president of the college is responsible for security on campus at all times.<sup>123</sup> In this instance, Eszterhas was the ultimate decision maker on the ground, as the President of Baruch College was unavailable at the time. Fields and Director McKee also participated in the decision-making process.<sup>124</sup>

Director McKee told Kroll that, as the protesters filled the lobby, his main concern was the possibility that they would rush past the turnstiles to the elevator bank and create a hazardous condition. He indicated that a decision was made, with Eszterhas's approval, to hold the crowd in the lobby and keep protesters away from the turnstiles between the lobby and elevator bank. Director McKee described the turnstiles as a "line of demarcation" that needed to be preserved.<sup>125</sup>

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<sup>120</sup> Interview of Assistant Director of Public Safety Nicholas Frangoulis, April 3, 2012.

<sup>121</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>122</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>123</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>124</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>125</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.





**PHOTO 1:** Officers standing between the turnstiles (closest to the photographer) and the protesters situated against the wall.

Once the lobby was filled to capacity, CUNY security personnel prevented additional people from entering the building through the main entrance. According to Fields, as the crowd grew and began to push toward the turnstiles, a decision was made to direct the protesters back to the doors and out of the building.<sup>126</sup> Fields feared that they would lose control of the building if they allowed the protesters to remain in the lobby.<sup>127</sup>

At this point, the back-up teams were called down from the fourteenth floor staging room and deployed to the lobby.<sup>128</sup> This unit was led by Spec. Laperuta who, in response to a radio call, brought down twelve to fifteen officers.<sup>129</sup> Director McKee directed Spec. Laperuta and the back-up team to line up in front of the protesters, between them and the turnstiles, in an effort to demonstrate a strong law enforcement

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<sup>126</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>127</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>128</sup> Interview of Officer Angel Irizariz, June 15, 2012.

<sup>129</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

presence. Spec. Laperuta observed Eszterhas trying to convince the protesters to leave the lobby on their own volition.<sup>130</sup>

By now, the crowd in the lobby had grown to the point that protesters were now blocking the entrance to the overflow room.<sup>131</sup> Based upon Kroll's interviews and a review of video evidence, the crowd ranged from 100 to 150 protesters at its peak.<sup>132</sup> While the protesters were not engaging in violent or threatening behavior, administrators were becoming concerned that the protesters would breach the line of DPS officers and disrupt normal campus operations.<sup>133</sup> The protesters began chanting loudly. Eszterhas authorized Director McKee to issue a dispersal order to the protesters. In response, Director McKee directed DPS officers to direct protesters to leave the premises or face arrest.

During roll call, all DPS officers were provided with written arrest warnings for trespass (See Appendix 9). The trespass warnings called for DPS officers to follow a specific process. Initially, the trespasser was to be warned as follows:

You are occupying these premises unlawfully and without permission. You are hereby directed to leave this facility. If you leave voluntarily, you will not be arrested. If you do not immediately leave voluntarily, you will be arrested and charged with criminal trespass.<sup>134</sup>

If, after being given an opportunity, the trespasser refused to leave voluntarily, the arresting officer should then inform the trespasser that "because you have refused to leave this facility, I am now ordering your arrest" and that resisting will result in the additional charge of resisting arrest.

CUNY-provided video and YouTube clips of the protest clearly show Director McKee repeatedly using a bullhorn to direct the protesters to exit the lobby. Standing only a few feet away from the front line of protesters, Director McKee warned the protesters at least four times that those who remained inside the

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<sup>130</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>131</sup> Interview of Assistant Director of Public Safety at Baruch College John Siotkas, April 3, 2012.

<sup>132</sup> Interview of Officer Angel Irizariz, June 15, 2012.

Interview of John Bolger, April 26, 2012.

<sup>133</sup> Interview of Director of Communications and Marketing Michael Arena, April 10, 2012.

<sup>134</sup> Arrest Warnings. (See Appendix 9)

building would be subject to arrest. Several DPS officers confirmed that Director McKee's commands were audible despite the high levels of noise in the lobby. The majority of protesters did not comply.

While Director McKee was directing the protesters to clear the lobby, a female African-American protester, with glasses and a nearly shaved head, instructed the group to sit down on the lobby floor. Other protesters began to chant: "why not, take a seat" and gestured for the crowd to sit on the ground. Some protesters sat while the majority remained standing. Shortly thereafter, Director McKee ordered Spec. Laperuta to begin to move the protesters and remove them from the lobby.<sup>135</sup> At that point, DPS officers engaged the protesters with batons held horizontally while repeatedly saying the word "move." Protesters who were seated stood up and began to push back against the officers, chanting the word "shame."

DPS officer Juan Velazquez told Kroll that the protesters pushed back against the DPS officers as they moved forward, and that it "felt like a tug of war."<sup>136</sup> Despite repeated attempts by the DPS officers, they were unable to safely keep open the hinged doors in the lobby because protesters outside the facility were holding them closed.

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<sup>135</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>136</sup> Interview of Juan Velazquez, June 13, 2012.



**PHOTO 2:** DPS officers attempt to move demonstrators out of the lobby through the hinged door on the east side of the building. Photo by John Bolger of *The Envoy*.<sup>137</sup>

As a result, the DPS officers were forced to remove people from the lobby through the two revolving doors. Spec. Laperuta ordered seated protesters to stand and warned that they would be charged with resisting arrest if they refused. The protesters responded with physical and sometimes violent resistance. Spec. Laperuta noted that several protesters attempted to take his baton.<sup>138</sup> One of them, an individual who was later arrested, grabbed Spec. Laperuta's baton and wedged it between his legs.<sup>139</sup> A reporter with *The Ticker* told Kroll that he witnessed students striking the CUNY DPS officers.<sup>140</sup>

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<sup>137</sup> "Photographs from the Baruch Protest on 11/21," *The Envoy*, November 22, 2011.

<sup>138</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>139</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>140</sup> Interview of Mathias Ask, April 24, 2012.

In the struggle to remove the protesters from the lobby, one DPS officer lost a shield and another lost a two-way radio. It is unclear if these items were ever recovered. In addition, a reporter from *The Envoy* also witnessed protesters pulling decorations off of the shirts of DPS officers.<sup>141</sup>

While the protesters and officers were engaged in this struggle, students leaving regularly scheduled classes were gathering along the second floor balcony and observing the events occurring in the lobby below. Spec. Laperuta told Kroll that the students on the balcony appeared to be encouraging the protesters.<sup>142</sup> As noted in the Video Analysis section of this report, the students on the balcony dropped papers and other school materials, as well as a plastic drink bottle, on the CUNY DPS officers and protesters below. Shortly thereafter, DPS officers were ordered to clear the balcony of any onlookers.<sup>143</sup>

Sgt. Adenusi was one of the officers who responded to the second floor balcony.<sup>144</sup> After helping to clear the balcony, Sgt. Adenusi remained there for approximately one hour before returning to the lobby. CUNY DPS officer and SAFE team member Daniel Nizza (“Officer Nizza”) told Kroll that he was also directed to go to the balcony area in order to help clear it.<sup>145</sup> When he arrived, Officer Nizza met some resistance as some individuals refused to move away from the railing. He and other DPS officers subsequently pushed students to the rear wall, away from the railing.<sup>146</sup>

As protesters and DPS officers were engaged in a struggle in the lobby, members of the crowd control front line team pulled some of the most aggressive protesters from the crowd and brought them behind the line of officers to the arrest team. The physical engagement between the officers and protesters inside the lobby lasted approximately fourteen minutes, until all protesters were removed from the lobby and those arrested were taken to the fourteenth floor for processing.

Kroll found no evidence to suggest that any of the protesters were injured during the struggle. None of the witnesses interviewed observed or was otherwise aware of any protester suffering any type of physical

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<sup>141</sup> Interview of John Bolger, April 26, 2012.

<sup>142</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>143</sup> Interview of Officer Daniel Nizza, June 12, 2012.

<sup>144</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>145</sup> Interview of Officer Daniel Nizza, June 12, 2012.

<sup>146</sup> Interview of Officer Daniel Nizza, June 12, 2012.

injury. Further, CUNY DPS received no complaints indicating that anyone had been injured, even superficially.<sup>147</sup> Nor did Kroll find any evidence to the contrary in its review of public records, social media, and video evidence. A reporter from *The Envoy* who interviewed the arrestees and other protesters indicated that no one sustained serious injuries but that some protesters were “banged up and bruised.”<sup>148</sup> One DPS officer complained of chest pains and went to the hospital; Director McKee stated that he incurred some minor bruises during the incident.<sup>149</sup>

### Arrests

As a result of the protest, fifteen individuals were arrested by CUNY DPS officers on November 21, 2011. Five of the arrestees were transported by CUNY DPS officers via an NYPD police van to the 7<sup>th</sup> Precinct, where all OWS-related arrests were processed. Of these five, one was a graduate student and Baruch College adjunct faculty member and four were students from CUNY schools.<sup>150</sup> The identities of the ten remaining arrestees – all of whom were given desk appearance tickets and released – are not a matter of public record.

Officer Irizariz noted that his team secured a perimeter outside the Baruch Vertical Campus in order to escort arrestees to a police van.<sup>151</sup> Spec. Laperuta and Sgt. Koustides accompanied the five arrestees to the NYPD’s 7<sup>th</sup> Precinct along with Sgt. Rodriguez, Officer Anthony Rivera (“Officer Rivera”), and another male officer. According to Spec. Laperuta, Officer Rivera was the arresting officer for all arrestees. Officer Rivera recently left CUNY to accept another job in law enforcement.<sup>152</sup>

The majority of those arrested were charged with criminal trespass and disorderly conduct. Five individuals were charged with more serious offenses, including inciting a riot, resisting arrest, disorderly conduct, criminal trespass, and assault. Additional robbery charges were filed in connection with attempts to forcibly take Spec. Laperuta’s baton and another officer’s shield.

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<sup>147</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>148</sup> Interview of Bridgit Boulahanis, April 26, 2012.

<sup>149</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>150</sup> <http://www.dnainfo.com/2011/11/23/murray-hill-gramercy/five-baruch-students-held-overnight-after-tuition-hike-protest>.

<sup>151</sup> Interview of Officer Angel Irizariz, June 15, 2012.

<sup>152</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

Interviews of numerous CUNY DPS officers suggest that certain criteria were applied in deciding which protesters were arrested. According to DPS officers on the scene, senior DPS officials directed the front line crowd control team to arrest those protesters who were physically resisting and, at times, engaging DPS officers. Sgt. Efren Maldonado (“Sgt. Maldonado”) told Kroll that those who were resisting, pushing, or trying to grab a baton or strike an officer were targeted for arrest.<sup>153</sup> According to Director McKee, protesters who attempted to sit down, or would not move when directed to do so, were also among those arrested. As described above, arrestees were handed off to the arrest teams standing behind the front line. When DPS officers began arresting protesters, the majority of the crowd began to heed the orders to exit the building.<sup>154</sup>

The fifteen arrestees, who were brought to the designated holding room on the fourteenth floor during the confrontation, were processed by CUNY DPS officers after the lobby was cleared.<sup>155</sup> One officer told Kroll that the arrestees were sitting against a wall, some complaining that they were in pain due to the tight handcuffs or flex cuffs.<sup>156</sup> Officer Nizza said that he attempted to make the arrestees as comfortable as possible by loosening their flex cuffs.<sup>157</sup>

According to Director McKee, arresting officers followed a protocol in which they were required to ask the arrestees if they were physically injured and/or in need of medical treatment. None of the arrestees complained about an injury or requested medical treatment, a fact corroborated by Spec. Laperuta.<sup>158</sup> Director McKee did indicate that some of the arrestees complained that the flex cuffs were uncomfortable; for those arrestees, the flex cuffs were replaced with regular handcuffs.<sup>159</sup>

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<sup>153</sup> Interview of Sergeant Efren Maldonado, June 14, 2012.

<sup>154</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>155</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>156</sup> Interview of Officer Edward Hickey, June 14, 2012.

<sup>157</sup> Interview of Officer Daniel Nizza, June 12, 2012.

<sup>158</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>159</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.



During arrest processing, DPS officers also fingerprinted all arrestees and accessed their criminal histories. All were given the opportunity to make phone calls. Personal belongings were vouchered and arrestees were provided a receipt for their belongings.<sup>160</sup>

The Department of Public Safety Operations Guide states that “individuals arrested by members of the CUNY Public Safety Department will be subjected to a thorough search by at least one member of the service in order to ensure the safety of the officer at the time of arrest” and that “persons arrested will not be subjected to a strip search.”<sup>161</sup> Accordingly, all arrestees were patted down and their pockets and belongings searched in order to ensure that none possessed any weapons. Some of the arrestees complained about certain aspects of the arrest processing. Officer James Francis (“Officer Francis”) told Kroll that some arrestees, while being searched incident to arrest, stated that they did not consent to being searched.<sup>162</sup> Those arrestees were told that they were under arrest and that the searches were not optional.

A specific incident involving arrestee Tiffany Huan (“Huan”) is also worth noting. According to Spec. Laperuta, Huan appeared to become aggravated as he held her by the arm and escorted her to the NYPD van.<sup>163</sup> According to Spec. Laperuta, escorting an arrestee in this manner is standard operating procedure. This would appear to be consistent with the DPS Operations Guide, which states that “a member of the Public Safety Department shall treat a prisoner with only that level of restraint necessary to restore and/or maintain order, safety and security.”<sup>164</sup> Huan responded to Spec. Laperuta by grabbing her own arm and demanding that he let go of her.<sup>165</sup> Another arrestee, Conor Tomas Reed (“Reed”), was apparently observing and commented to Spec. Laperuta that his actions constituted sexual harassment.<sup>166</sup> In response, Spec. Laperuta told Huan, “I’m escorting you, you are in police custody – I

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<sup>160</sup> Interview of Officer James Francis, June 12, 2012.

<sup>161</sup> The City University of New York, Department of Public Safety – Operations Guide. (See Appendix 5)

<sup>162</sup> Interview of Officer James Francis, June 12, 2012.

<sup>163</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>164</sup> The City University of New York, Department of Public Safety – Operations Guide. (See Appendix 5)

<sup>165</sup> Interview of Tiffany Huan, April 24, 2012.

<sup>166</sup> Interview of Tiffany Huan, April 24, 2012.



can touch you to escort you.”<sup>167</sup> When interviewed by Kroll, Huan confirmed Spec. Laperuta’s version of these events and expressed disapproval for how she was treated.<sup>168</sup>

### *Video Analysis*

Kroll conducted an extensive review of a video recording captured by CUNY DPS Officer Richard Shannon (“Officer Shannon”) (“the CUNY video”) that provides a continuous view of the events that occurred inside the lobby of Baruch College on November 21, 2011. The video was taken inside the lobby near the turnstiles, facing the east wall. It begins at a point in time after the crowd of protesters had already gathered inside the lobby and ends shortly after all of the protesters had been removed from the building. The recording is thirty minutes and eleven seconds long.

In addition to the CUNY video, Kroll also reviewed and analyzed video clips posted to YouTube and other social media websites. Some of those videos appear to have been recorded and/or posted by students, while others appear to have been contributed by journalists or others not affiliated with the University. Detailed below is an aggregated minute-by-minute description of the events as they appear on the videos described above. While, in the interest of consistency, the timestamps below are taken from the CUNY video, the descriptions include information gleaned from Kroll’s review of the online videos as well.

**00:00** As the CUNY video begins, protesters are already present in the lobby and officers have aligned themselves in a formation in which they are standing in a straight line, shoulder-to-shoulder, between the protesters and the turnstiles. A line of DPS officers separates the protesters from students continuing to enter the building using the turnstiles, apparently for their scheduled classes. Protesters can be clearly heard beginning a “mic check” in the background.

**00:40** Director McKee addresses the protesters using a bullhorn. He can be heard asking the protesters to leave the lobby, but his calls are partially drowned out by the chanting protesters. A protester interrupts Director McKee by yelling “mic check” to which the crowd responds.

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<sup>167</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>168</sup> Interview of Tiffany Huan, April 24, 2012.

- 01:20** Eszterhas and Director McKee appear to be addressing the crowd and trying to persuade protesters to peacefully leave the lobby. DPS officers can be seen asking those observing or passing through the lobby to exit the building.
- 01:40** Students can be heard chanting “this is a school, not a jail” and “they’re treating us like criminals.” At this point, there appear to be approximately 100 to 150 protesters inside the lobby.
- 02:00** Eszterhas has his hands up and can be heard trying to address the protesters’ concerns about the meeting on the fourteenth floor. The students interrupt him with some clapping and cheering at approximately 02:15 and then begin a “mic check.”
- 02:25** An African-American female wearing glasses with a nearly shaved head leads the “mic check,” stating: “This gentleman says, people are upstairs, trying to attend class, what he doesn’t understand, is that, if we raise our tuition, lots of us won’t be able to attend class.”
- 03:20** Protesters begin chanting “this is a school, not a jail.” A few seconds later, Director McKee can be seen holding the bullhorn to his mouth, instructing the protesters to leave the lobby again.
- 03:44** The African-American female leading the earlier “mic check” begins speaking again. She says “this man is saying, we can move to, the holding area ...” Some students appear to say “holding cell” as they repeat her words. The female does not finish, as many of the protesters begin to boo after hearing “holding area.”
- 04:02** A male among the crowd who is not visible on film begins a “mic check” and states: “This is an open forum, where we cannot, one cannot be denied access, this is our right, our First Amendment right, and I and people like myself, members of this country, fought for, bled for, I want my rights, this is bullshit.” The protesters repeat his words as he pauses.
- 04:45** The crowd begins chanting “cops out of CUNY.”

- 05:22** The African-American female protester begins another “mic check”: “since we’re not allowed, in this public hearing, why don’t, we have our own hearing, right now.” Students cheer and put their hands up to make “spirit fingers to signal their approval.”<sup>169</sup>
- 05:50** A female can be heard yelling “I have a proposal, that ‘mic check’ teams get the fourteenth floor down here.”
- 06:30** A female can be heard doing a “mic check”: “It seems that, people are into, having a hearing right here, we’ll open it up, for people to speak, so everyone can hear, why we’re here.”
- 06:58** The African-American female leader does another “mic check”: “Maybe if, we formed a circle, we could have this meeting, and everyone could sit down.”
- 07:30** Protesters can be heard asking others to sit down. Seconds later some begin to chant “why not, take a seat.” Some students can be seen sitting down, but most remain standing. A CUNY DPS official, believed to be Director McKee, can be heard telling students that this is their opportunity to leave the lobby or go to the holding room because the lobby is going to be cleared immediately.
- 07:55** A “mic check” begins: “We are CUNY students, this is a CUNY school, the people here, have decided, that we have to... (inaudible).” Eszterhas can be observed among the crowd of protesters, engaging students.
- 08:15** A Caucasian woman with brown hair begins a “mic check,” stating: “I am alumni, and a teacher, and it breaks my heart, to see this school that I love, threatening our students.”
- 08:55** Director McKee can be seen and heard on the bullhorn saying, “Everybody clear the lobby, clear the lobby immediately.” Protesters can be heard in the background beginning another “mic check.” Director McKee then moves toward Spec. Laperuta and speaks into his ear.

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<sup>169</sup> “Spirit fingers,” also known as “twinkles,” is a hand gesture used by Occupy Wall Street protesters to negotiate consensus. Fingers pointed upward indicate agreement with what a particular speaker is saying.

- 09:11** Spec. Laperuta can be seen making a head gesture to an officer next to him and then another officer, possibly Spec. Laperuta, yells “move.” The DPS officers begin a coordinated push on the protesters. The officers hold their batons horizontally and use them to push the protesters toward the exits. The crowd yells “shame, shame, shame.” When the officers approach the protesters, those sitting on the floor stand up.
- 09:50** A DPS officer is observed trying to take a removable wall out of the lobby.
- 10:08** DPS officers pull a male behind the line of officers and place him in custody.
- 10:13** The camera pans toward the balcony where a group of approximately thirty students have gathered. They are chanting and slapping their hands against the walls.
- 10:31** The officers continue their push, making little to no progress. They are physically engaged with the protesters but appear to be at a standstill. Director McKee and Spec. Frangoulis can be observed assisting officers as they physically engage with the students.
- 10:34** An object is thrown from the back of the crowd behind the line of officers and Director McKee appears to notice it. Protesters begin chanting “the whole world is watching.” Administrators can be observed making gestures to the protesters, directing them to exit through the lobby doors.
- 11:05** The line of officers and administrators appears to have been pushed back and possibly behind their original starting position. Students remain in the lobby, refusing to heed the directives of the DPS officers, and again begin to chant “shame, shame, shame.”
- 11:35** Individuals can be seen capturing video footage of the event from behind the line of officers.
- 12:00** An officer asks the cameraman if he has seen his radio. The cameraman responds, “don’t worry about it.”
- 12:06** A protester is observed gesturing toward the crowd gathered on the balcony, waving with his arm outstretched and moving it towards his body, as if beckoning them to come down to the lobby. What appears to be a can is thrown from the back of the crowd of protesters toward the line of officers.

- 12:44** Director McKee and Assistant Director Winters, along with other administrators, continue to assist DPS officers in pushing the crowd back. The officers do not appear to be making progress in moving the protesters out of the lobby.
- 12:54** Protesters can be observed standing behind a removable wall among the crowd.
- 13:00** Students begin chanting “whose school, our school.”
- 13:17** Spec. Laperuta gestures and directs another officer who appears to be standing idly to “help out.”
- 13:43** The camera pans toward the hinged doors on the eastern side of the front entrance where officers appear to be pushing protesters out of the lobby.
- 14:18** Students located on the balcony above the lobby throw papers and other items down on to the crowd and the DPS officers. The protesters appear to cheer this action.
- 15:11** DPS officers have pushed the crowd back against the east wall of the lobby and appear to have made progress from their starting point. The crowd inside the lobby appears smaller than when the push was initiated.
- 16:40** A protester can be observed being placed into custody by DPS officers.
- 17:08** A female NYPD officer can be seen inside the Baruch College lobby. Within seconds, other NYPD officers are also visible. The NYPD officers stand behind the CUNY officers and, initially, do not appear to provide any active assistance.
- 18:01** More protesters can be observed being placed into custody by DPS officers.
- 19:12** An NYPD officer removes a table from the lobby. Multiple protesters can be seen on the ground being handcuffed and placed into custody by DPS officers. The majority of the protesters who were in the lobby when the push began appear to have been removed. Director Barry can be observed speaking to an NYPD officer.

- 19:37** DPS officers are crowded around the east side hinged doors, pushing students out of the lobby. DPS officers continue to remove protesters, now on an individual basis.
- 20:28** DPS officers can be overheard telling a female protester to “stop resisting.”
- 20:30** DPS officers can be observed handcuffing a female protester on the ground and placing her into custody. The female protester says “I’m not doing anything.”
- 20:50** Officers and administrators ask the remaining protesters to leave the lobby. Those that resist are being arrested. DPS officers now appear to be in control of the situation, allowing the NYPD to assist when necessary in making an arrest.
- 21:12** Officers have the remaining protesters contained near the east wall of the lobby. The crowd appears to be significantly smaller than at the outset of the CUNY video.
- 21:38** Assistant Director Winters and several DPS officers can be seen pushing protesters out of the lobby through the revolving doors.
- 21:40** Two students are pulled from the crowd by NYPD and DPS officers and arrested. The two appear to be holding on to each other as the officers attempt to pry them apart. Other officers join to assist and a female can be heard screaming. Students observing from the balcony can be heard slapping their hands against the wall. The camera then pans toward the east side hinged doors, where it appears that very few protesters remain.
- 22:56** Some DPS officers stand by as the remaining protesters are removed from the lobby by their colleagues.
- 23:15** DPS officers continue to push students through the revolving doors and out of the lobby.
- 23:45** All protesters appear to have been removed from the lobby. Students remain on the balcony, slapping the walls and calling out.
- 23:57** CUNY administrators call all DPS officers to the corner of the lobby.

**24:03** The CUNY video cuts to events on the fourteenth floor.

### *Post-Event Actions*

Immediately following the removal of protesters, the lobby was secured by DPS personnel.<sup>170</sup> Medical attention was sought for CPO Jonathan Simmons, who complained of chest pains, and the remaining DPS personnel were redeployed to their posts throughout the college. The public hearing continued for another ninety minutes until all speakers had appeared. It should be noted that, after the protest in the lobby, an additional ten speakers came forward and identified themselves to DPS personnel. After confirming that the speakers' names were on the speakers list, DPS officers escorted them upstairs to the hearing.<sup>171</sup>

Prior to dismissal, Assistant Director Winters and Sgt. Koustides held an informal briefing to thank the DPS officers for their service at the protest.<sup>172</sup> Officers were then dismissed between approximately 7:30 pm and 8:00 pm. In the days following the protest, CUNY DPS administrators reviewed the events of November 21, 2011 in an effort to assess the quality of their response and to identify areas for improvement. According to Assistant Director Winters, the review concluded that DPS officers should have better covered the balcony area overlooking the lobby and that access to criminal databases in advance of future protests would be of value to CUNY.<sup>173</sup>

On November 22, 2011, the Emergency Management Committee met and viewed the CUNY video and videos of the event that had been posted on YouTube, according to Sgt. Henriquez.<sup>174</sup> Sgt. Henriquez noted that Arena, after discussion with the Committee, prepared a written statement for release to the public. The Committee also discussed the need for enhanced officer training to prepare for this type of protest in the future.<sup>175</sup>

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<sup>170</sup> Interview of Director of Operations Michael Lederhandler, October 24, 2012.

<sup>171</sup> Interview of Director of Operations Michael Lederhandler, October 24, 2012.

<sup>172</sup> Interview of Sergeant Angelluis Rosado, June 13, 2012.

<sup>173</sup> Interview of Assistant University Director of Public Safety Donald Winters, April 3, 2012.

<sup>174</sup> Interview of Sergeant Angel Henriquez, June 14, 2012.

<sup>175</sup> Interview of Sergeant Angel Henriquez, June 14, 2012.

At the direction of Chancellor Goldstein, Dobrin met with the college presidents to review procedures in light of the facts learned after the incident. Dobrin told Kroll that he communicated to presidents that CUNY's priorities were "ensuring the safety of the University's students, faculty and staff; allowing those who wish to exercise their First Amendment rights to protest; and respecting the rights of students who are not protesters to pursue their educations without interference."<sup>176</sup>

Interviews with CUNY DPS officers indicated that they did not participate in a formal post-incident assessment. Sgt. Adenusi told Kroll that he was not aware of any official meeting called to discuss what took place on November 21, 2011 but said that officers discussed among themselves what to do if something similar happened at their local colleges.<sup>177</sup>

## NYPD Involvement

### *Memorandum of Understanding*

The relationship between CUNY and the NYPD is governed by the *CUNY Memorandum of Understanding Regarding Police Response to Incidents and Events Occurring at the City University of New York*, dated March 6, 1992, and signed by former NYPD Police Commissioner Lee P. Brown and former Chancellor W. Ann Reynolds. Under the terms of the Memorandum of Understanding ("MOU"), "whenever the police receive a report from any person that an emergency involving danger or potential injury exists or may exist on a CUNY campus, building or other property, the police, preferably a police supervisor, may enter CUNY property or facilities for the purpose of investigating the report of the emergency."<sup>178</sup>

The purpose of the MOU was to "develop a mutual understanding regarding the circumstances under which NYPD personnel shall enter upon CUNY campuses, buildings and other property."<sup>179</sup> According to

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<sup>176</sup> Interview of Executive Vice Chancellor Allan Dobrin, May 4, 2012.

<sup>177</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>178</sup> "Memorandum of Understanding Regarding Police Response to Incidents and Events Occurring at the City University of New York," *Office of the University Director of Public Safety*, March 6, 1992. (See Appendix 6)

<sup>179</sup> "Memorandum of Understanding Regarding Police Response to Incidents and Events Occurring at the City University of New York," *Office of the University Director of Public Safety*, March 6, 1992. (See Appendix 6)



the agreement, it was intended to encompass all situations that would require a police presence, including, but not limited to: “emergencies, reports of crimes occurring on CUNY property, enforcement of criminal laws, arrests of persons suspected of committing crimes, and other events or occurrences which, in the judgment of CUNY officials, require NYPD expertise or assistance.”<sup>180</sup>

Regarding the NYPD’s authority to enter CUNY facilities, the memorandum states that “NYPD personnel will enter upon CUNY campuses, buildings or other property to investigate reported emergencies, whether the report of the emergency is made by a CUNY official, employee, or student, or by a person who is not affiliated with CUNY, or becomes otherwise known to the NYPD.”<sup>181</sup> The NYPD is required to notify the college president or campus security office whenever officers enter CUNY property to respond to an emergency reported by someone other than the designated college official.

The memorandum specifies that the terms “emergency” and “reported emergency” shall have their ordinary meanings, but “shall also include any circumstances in which there is the potential for injury to any person or substantial damage to or loss of property.”<sup>182</sup> In non-emergency situations, the NYPD may only enter the campuses or buildings at the request or with the approval of a CUNY official with designated authority. The MOU provides examples of non-emergency situations, including “the report of a past crime (except for the immediate preservation of a crime scene), a peaceful and lawful demonstration, a campus event or the like.”

Kroll was told in multiple interviews that the NYPD typically assumes responsibility for anything occurring outside of CUNY buildings while CUNY DPS officers are responsible for anything occurring inside.

### *Coordination with NYPD*

Deputy Inspector Ted Berntsen (“D.I. Berntsen”), Commanding Officer of the NYPD’s 13<sup>th</sup> Precinct, told Kroll that the Community Affairs officers under his command have an excellent relationship with Baruch

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<sup>180</sup> “Memorandum of Understanding Regarding Police Response to Incidents and Events Occurring at the City University of New York,” *Office of the University Director of Public Safety*, March 6, 1992. (See Appendix 6)

<sup>181</sup> “Memorandum of Understanding Regarding Police Response to Incidents and Events Occurring at the City University of New York,” *Office of the University Director of Public Safety*, March 6, 1992. (See Appendix 6)

<sup>182</sup> “Memorandum of Understanding Regarding Police Response to Incidents and Events Occurring at the City University of New York,” *Office of the University Director of Public Safety*, March 6, 1992. (See Appendix 6)

College Public Safety.<sup>183</sup> According to D.I. Berntsen, CUNY and his precinct work very well together and often hold planning meetings prior to large events.<sup>184</sup> Additionally, he noted that CUNY and the NYPD sometimes share intelligence about potential future protests in order to plan manpower accordingly.

On the evening of November 20, 2011, the NYPD placed barriers outside the front of the Baruch Vertical Campus. None of the CUNY DPS officers or administrators interviewed by Kroll was able to definitively identify the individual who requested this assistance from the NYPD. However, according to Assistant Director Siotkas, this type of request is typically made to the 13<sup>th</sup> Precinct's Community Affairs Bureau by either him or Director McLaughlin. In some cases, the initial contact is made by Director Barry or another representative of the Office of the University Director of Public Safety.

For the protests at other CUNY campuses in the days preceding November 21, 2011, notification to the NYPD was made through the Office of the University Director of Public Safety.<sup>185</sup> As such, it is likely that notification was made in a similar manner prior to the Baruch protest.

#### *Police Activities Inside the Lobby*

On November 21, 2011, Deputy Inspector John D'Adamo ("D.I. D'Adamo") of NYPD's Patrol Borough Manhattan South was the officer in charge outside of the Baruch Vertical Campus, supported by D.I. Berntsen.<sup>186</sup> At some point during the protest, an officer under D.I. Berntsen's command communicated to his sergeant that the situation inside the lobby was getting out of control and that CUNY DPS appeared to need assistance.<sup>187</sup> At that time, approximately nine NYPD officers entered the lobby of Baruch College to assist DPS.<sup>188</sup> This sequence of events is generally supported by the video evidence. As discussed in more detail in the Video Analysis section above, it is clear that NYPD officers were present in the lobby beginning at the 17:08 mark of the CUNY video and there is no evidence of their entry into the lobby before that point.

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<sup>183</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>184</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>185</sup> Interview of Executive Vice Chancellor Allan Dobrin, May 4, 2012.

<sup>186</sup> Interview of Deputy Inspector John D'Adamo, August 21, 2012.

<sup>187</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>188</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

When interviewed by Kroll, D.I. Berntsen also noted that the decision to send NYPD officers into the lobby of Baruch College was not made at the request of anyone from CUNY. No one interviewed by Kroll – and no video or documentary evidence reviewed by Kroll – provided any information to contradict this assertion. At the same time, it seems eminently reasonable that the NYPD could have concluded that the situation in the lobby of the Baruch Vertical Campus posed the “potential for injury to any person or substantial damage to or loss of property,” thereby rendering their decision to enter the lobby wholly consistent with the terms of the MOU.

Once inside the lobby, the NYPD officers assisted CUNY DPS officers in making several arrests, securing the lobby and balcony, controlling unruly protesters, and transporting arrestees to the 7<sup>th</sup> Precinct.<sup>189</sup> As noted in an article in *The Envoy* written by John Bolger, NYPD officers participated in handcuffing and subduing at least one protester, a fact corroborated by video evidence reviewed by Kroll.<sup>190</sup> D.I. Berntsen, who entered the lobby shortly after his officers did, described the scene as chaotic.

In Kroll’s interviews of CUNY DPS officers, there was considerable variation in the descriptions of the NYPD’s presence and activities in the lobby during the protest. For instance, Officer Nizza told Kroll that he did not recall any NYPD officers present in the lobby. In contrast, Spec. Laperuta recalled that the NYPD entered the lobby toward the end of the protest, and he was “glad that they did,” as the DPS officers were “out-winded and outnumbered.” Spec. Laperuta specifically noted that an NYPD officer assisted him in arresting the student who tried to take his baton. Officer Simmons expressed frustration with the NYPD for not helping to push back the protesters and assumed that they were under orders not to assist CUNY DPS.<sup>191</sup> Given the chaotic environment inside the lobby and the extraordinarily similar uniforms worn by both DPS and NYPD (see *Photo 3 below*), the confusion regarding the timing and nature of police activities in the lobby is not surprising.

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<sup>189</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

<sup>190</sup> “NYPD Highly Involved in Baruch Protest, In-depth Video Analysis Shows,” *The Envoy*, February 1, 2012.

<sup>191</sup> Interview of Officer Jonathan Simmons, June 13, 2012.



**PHOTO 3:** This image shows both CUNY Department of Public Safety and NYPD officers inside the lobby. The male officer not wearing a hat on the right is a CUNY DPS officer while the officer to his immediate right is an NYPD officer.

On November 22, 2011, the day after the protest, Chancellor Goldstein issued a statement addressing the University's response to the Baruch protest. One line of the Chancellor's statement specifically referred to the activities of the NYPD: "while there were New York City police officers outside of the college building, CUNY chose to use its own public safety officers inside the building."<sup>192</sup> Given that no one from CUNY requested NYPD's assistance in the lobby, this part of the statement is factually accurate. However, it is also clear from Kroll's interviews with the Chancellor, senior CUNY administrators, and DPS officers that the full extent of police activities during the Baruch protest was unknown within the University until Kroll began its investigation. In Kroll's view, the fact that the statement does not mention NYPD activities inside of the building is simply a reflection of the incomplete state of knowledge that existed at the time the Chancellor's statement was drafted and released.

## Training

During interviews with CUNY DPS officers, the issue of training was addressed in detail. Findings in this regard are summarized in the sections that follow.

### *Public Safety Officer Training*

CUNY DPS officers interviewed by Kroll provided varying answers regarding the duration of the training program for new officers. For instance, Sgt. Rosado indicated that, when he joined the department approximately seven years ago, the CUNY DPS training academy was seven weeks long but is now thirteen weeks long.<sup>193</sup> Officer Irizariz recounted that, when he entered the academy in 2006, the training lasted twelve weeks but is now nineteen weeks.<sup>194</sup> Another officer who joined in 1997, who is also a member of the SAFE team, indicated that he initially received four weeks of training but that now the training program is nearly two months long.<sup>195</sup> Sgt. Adenusi stated that CUNY DPS officer training is held at York College and lasts two to three days.<sup>196</sup>

Kroll also found considerable variation in the officers' descriptions of the content of the training course. Sgt. Rosado told Kroll that every officer is trained on Penal Law Article 35, which encompasses the use of force, the baton, and pepper spray.<sup>197</sup> Sgt. Rosado indicated that he had not received any crowd control or riot training to date.<sup>198</sup> Officer Nizza told Kroll that the training he received included law, police science, defensive tactics, communication, community policing, domestic violence, and gang-related course work.<sup>199</sup> Sgt. Nicholas Monte ("Sgt. Monte") stated that his training included crowd control, a review of the penal law, evacuations, DWI issues, basic first aid, handcuffing, and the use of the baton.<sup>200</sup>

According to Dan Donahue, Director of the CUNY Public Safety Training Academy ("Director Donahue"), prior to 2008, the training curriculum includes a two hour crowd control component.<sup>201</sup> Director Donahue indicated that after 2008, the crowd control training was expanded to five hours.<sup>202</sup>

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<sup>193</sup> Interview of Sergeant Angelluis Rosado, June 13, 2012.

<sup>194</sup> Interview of Officer Angel Irizariz, June 15, 2012.

<sup>195</sup> Interview of Officer Daniel Muniz, June 13, 2012.

<sup>196</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>197</sup> Article 35 of the New York State Penal Law defines the justification for use of force. Source: <http://ypdcrime.com/penal.law/article35.htm#p35.10>.

<sup>198</sup> Interview of Sergeant Angelluis Rosado, June 13, 2012.

<sup>199</sup> Interview of Officer Daniel Nizza, June 12, 2012.

<sup>200</sup> Interview of Sergeant Nicholas Monte, June 14, 2012.

<sup>201</sup> Interview of Director Dan Donahue, November 6, 2012.

In addition to the training CUNY DPS officers receive upon joining the department, officers are also required to complete in-service training on an annual basis in order to renew their peace officer status with the State of New York. Officer Nizza stated that topics covered during in-service training included a recertification in the use of pepper spray, Article 35, community policing, and usage of the ASP baton.<sup>203</sup> He also noted that there is no crowd control training during in-service training.

Some officers commented that training can be specific to each college. Sgt. Adenusi told Kroll that front line crowd control training was offered to Bronx Community College DPS officers but was not sure if this was extended to DPS officers from other campuses.<sup>204</sup> Sgt. Adenusi told Kroll that, at Bronx Community College, training assignments come from headquarters and that the academy maintains a log of what courses individual officers have completed.<sup>205</sup>

### *SAFE Team Training*

According to Fields, the SAFE team was created in the immediate aftermath of the City College tragedy and is composed of CUNY peace officers who receive special training in crowd control situations.<sup>206</sup> Director Lederhandler is in charge of SAFE team operations, and other leaders include Sgt. Koustides, Spec. Frangoulis, Officer Wilson and Sgt. Polanco.<sup>207</sup> Sgt. Koustides told Kroll that each SAFE team leader is responsible for the team members from his or her borough.

Within the ranks of SAFE team members, the chain of command is not entirely clear. One team member told Kroll that she is not certain who is the head of the SAFE team but believed it was Director Lederhandler or Director McKee.<sup>208</sup> Another officer did not know who Director McKee was and noted that Assistant Director Winters is “always in charge.”<sup>209</sup>

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<sup>202</sup> Interview of Director Dan Donahue, November 6, 2012.

<sup>203</sup> Interview of Officer Daniel Nizza, June 12, 2012.

<sup>204</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>205</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>206</sup> Interview of Special Counsel to the Chancellor Dave Fields, March 29, 2012.

<sup>207</sup> Interview of Sergeant Anastasia Koustides, July 27, 2012.

<sup>208</sup> Interview of Elenor Robertson, June 14, 2012.

<sup>209</sup> Interview of Elenor Robertson, June 14, 2012.

The mission of the SAFE team also appears to be somewhat unclear among its members. One officer described the SAFE team as a detail responsible for traveling to CUNY campuses to cover large-scale events, including graduations, protests, and board meetings.<sup>210</sup> In contrast, Officer Muniz told Kroll that the SAFE team is mostly for crowd control when one college reaches out to the CUNY system for additional manpower.<sup>211</sup> Others told Kroll that officers join the unit mainly for the opportunity to earn overtime pay.<sup>212</sup>

Kroll received varying accounts of the specialized training that DPS officers receive upon joining the SAFE team. Some officers indicated that they had received no additional training. Officer Irizariz told Kroll that the SAFE team was essentially “security guard work” for special events and that no additional training was provided.<sup>213</sup> Officer Irizariz also told Kroll that he received crowd control training outside of CUNY on his own initiative, as none was provided during SAFE or regular DPS officer training.<sup>214</sup> Officer Nizza told Kroll that he has not received any specific SAFE team training.<sup>215</sup> Indeed, according to Director Lederhandler, SAFE team training has not been held across the department since 2009.<sup>216</sup>

In contrast, Sgt. Adenusi told Kroll that, when he was appointed to the SAFE team, he received additional training that focused on crowd control and the proper formation to be used by officers when handling protesters.<sup>217</sup> Sgt. Adenusi told Kroll that he has attended two to three SAFE team training sessions every year since 2006.<sup>218</sup>

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<sup>210</sup> Interview of Sophie McFarlane, June 14, 2012.

<sup>211</sup> Interview of Officer Daniel Muniz, June 13, 2012.

<sup>212</sup> Interview of Officer Ricardo DeJesus, June 13, 2012.

<sup>213</sup> Interview of Officer Angel Irizariz, June 15, 2012.

<sup>214</sup> Interview of Officer Angel Irizariz, June 15, 2012.

<sup>215</sup> Interview of Officer Daniel Nizza, June 12, 2012.

<sup>216</sup> Interview of Director of Operations Michael Lederhandler, September 7, 2012.

<sup>217</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.

<sup>218</sup> Interview of Sergeant Ayodele Adenusi, June 14, 2012.



Sgt. Rosado noted that the SAFE team is dwindling due to attrition and, as a result, officers are assigned to the SAFE team who have not received the proper training.<sup>219</sup> He also indicated that he did not believe that any SAFE team training had been scheduled for the near future. Another CUNY DPS officer noted that, in the past, training was held in Long Island at a U.S. Marine Corps base with FBI personnel.<sup>220</sup> She remarked that this was headed by a former leader who was more focused on training.

According to Director Lederhandler, the SAFE team currently has 68 members and, as officers have left, replacements have been brought on board.<sup>221</sup> He also noted that training sessions were held in early 2009 at the training academy for all SAFE team members.<sup>222</sup> Director McKee told Kroll that SAFE team training should be more structured and should be returned to the rigorous standards of the past.<sup>223</sup>

### *Permission to Carry a Firearm*

Kroll found some variation in the training and procedures regarding the carrying of firearms by SAFE team members. Some DPS officers are trained and licensed to carry firearms. Sgt. Maldonado<sup>224</sup> told Kroll that he is firearms certified but does not carry a weapon on a daily basis.<sup>225</sup> He is assigned to armed details only on the Kingsborough Community College (“KBCC”) campus at the discretion of the KBCC President and Public Safety Director. SAFE team member Officer Mario Diaz (“Officer Diaz”) confirmed this, but noted that the courtesy is typically only extended to Sergeants and Specialists.<sup>226</sup> Director McKee told Kroll that SAFE team members are trained on firearms but not permitted to carry them on duty. Spec. Laperuta, who is also licensed to carry a firearm, was in fact carrying a holstered firearm on November 21, 2011 at Baruch College, as he normally does when in uniform. Attorney Ronald McGuire apparently noticed this during the protest and exclaimed “he’s got a gun” while the DPS officers were attempting to

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<sup>219</sup> Interview of Sergeant Angelluis Rosado, June 13, 2012.

<sup>220</sup> Interview of Elenor Robertson, June 14, 2012.

<sup>221</sup> Interview of Director of Operations Michael Lederhandler, October 24, 2012.

<sup>222</sup> Interview of Director of Operations Michael Lederhandler, October 24, 2012.

<sup>223</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>224</sup> Sgt. Maldonado was not an active member of the SAFE Team on November 21, 2011 and was assigned to the protest to supplement the SAFE Team.

<sup>225</sup> Interview of Sergeant Efren Maldonado, June 14, 2012

<sup>226</sup> Interview of Officer Mario Diaz, June 12, 2012.

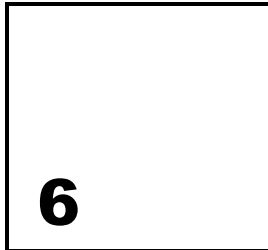


push the crowd out of the lobby.<sup>227</sup> McGuire later brought this to the attention of Fields and Director Barry.<sup>228</sup>

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<sup>227</sup> Interview of Specialist Anthony Laperuta, May 1, 2012.

<sup>228</sup> Interview of Ronald B. McGuire, July 24, 2012.



## ANALYSIS & RECOMMENDATIONS

As a general matter, the plan developed by CUNY administrators and the Department of Public Safety for the November 21, 2011 public hearing was conceptually sound. Limiting protesters to the fourteenth floor meeting room, the first floor overflow room, and/or the designated outdoor protest area would seem to have been a reasonable balance between public safety and the First Amendment rights of the protesters. However, Kroll identified weaknesses in both specific aspects of the plan and in its execution that contributed to the chaotic and potentially dangerous events that occurred in the lobby of the Baruch Vertical Campus. The section that follows contains a description of these issues and Kroll's recommendations for how to address them going forward.

### Finding 1:

- ***The decision to allow protesters to gather in the Baruch College lobby was a significant tactical error.*** Protesters were permitted to gather, *en masse*, in an area in which CUNY DPS officers were not prepared to deal with a large crowd.

The decision of CUNY DPS officers to allow protesters to gather in the lobby led directly to the formation of an overwhelming and unmanageable crowd. As the DPS officers were not expecting to manage a large crowd in the lobby, they did not secure the entrances and exits – the hinged doors, in particular – from the outside. This allowed protesters standing outside of the building to interfere with the opening and closing of the doors, therefore making it extremely difficult to move people out of the lobby.

For the same reason, CUNY DPS did not clear the lobby of obstructions to egress and other dangerous items that could have been used to cause serious injury to DPS staff or protesters. Kroll notes that Sacks and Fields removed rubber matting from the lobby during the protest for fear that it would cause others to trip.<sup>229</sup> The CUNY video also shows DPS officers helping to remove a free-standing wall, a small table, and folding chairs during the confrontation in the lobby.

In addition, the second floor balcony should have been secured in order to protect DPS officers from objects thrown by students down into the lobby. Spec. Frangoulis told Kroll that, in retrospect, CUNY should have considered placing an officer on the balcony overlooking the lobby to prevent students from throwing objects down on the officers.<sup>230</sup> Director McKee reiterated this point to Kroll investigators.<sup>231</sup> Kroll agrees and believes that the better practice would have been to secure the balcony and lobby prior to allowing protesters inside the building. In this regard, it should be noted that, for the November 28, 2011 Board of Trustees meeting at Baruch, the balcony was secured and the overflow room was not utilized.<sup>232</sup>

Finally, prior to authorizing the forced removal of protesters, senior members of the CUNY DPS staff considered the potential danger in pushing protesters out of the lobby, as well as the danger inherent in forcefully pushing protesters out of revolving doors and through a lobby surrounded by large panes of glass.<sup>233</sup> They determined that, on balance, the danger of clearing the lobby to avoid a CCNY-type situation where people on the ground were crushed and killed was less dangerous than allowing the lobby to fill with additional protesters and losing control of the space. Other options – including moving protesters out through the exterior door in the overflow room and/or requesting NYPD assistance in securing the hinged doors in the lobby – were not considered, however.

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<sup>229</sup> Interview of Deputy Chief Operating Officer for Management Services Burton Sacks, April 10, 2012.

<sup>230</sup> Interview of Assistant Director of Public Safety Nicholas Frangoulis, April 3, 2012.

<sup>231</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>232</sup> Interview of Director of Public Safety William Barry, April 10, 2012.

<sup>233</sup> Based upon video depicting protesters both inside and outside of Baruch College forcefully striking the lobby glass, it appears that the glass was of a thickness sufficient to resist the application of some significant amount of force.

**Recommendation 1:**

- All officers of CUNY DPS should be provided with at least some limited crowd control training. At a minimum, both members and non-members of the SAFE team should understand how to maintain formations and confront protesters during a protest. Consistent and repetitive training for all CUNY DPS officers would prepare them to handle and control spontaneous crowd-related events on campus, even prior to the arrival of SAFE team members.

**Finding 2:**

- ***An insufficient number of CUNY security personnel was assigned to the Baruch College protest.*** A total of 79 DPS officers were deployed to the Baruch protest, a relatively large number comprising 12% of CUNY's total force of 650 officers. In Kroll's view, this deployment would have been sufficient had protesters been restricted to the hearing room, the overflow room, and/or the designated outdoor protest area. However, the 79 DPS officers assigned to the protest were not enough to effectively control and remove the large group of protesters that had gathered in the lobby. While CUNY clearly recognized the possibility that the Baruch protest would be unusually large and unruly – and essentially doubled the number of officers in response by holding over the entire Baruch DPS shift and using the entire CUNY SAFE team – senior administrators did not provide the number of DPS officers that would be needed to mitigate the heightened risks of allowing such a protest in the lobby.

As discussed earlier in this report, protests at public hearings at CUNY are a regular occurrence. However, there was reason to believe that the November 21, 2011 meeting would be unique, at least partly due to contemporaneous events occurring in New York City involving the Occupy Wall Street movement. Specifically, there was reason to believe that the Baruch protest would be larger and more confrontational than a typical CUNY protest.

D.I. Berntsen of the NYPD's 13<sup>th</sup> Precinct told Kroll that he believes that Occupy Wall Street essentially co-opted this protest. He indicated that either OWS members were among the protesters and/or the general tone of the crowd was influenced by the movement. In D.I. Berntsen's opinion, this is why students decided to sit on the floor and cause a public safety concern about plans to possibly "occupy" the Baruch Vertical Campus. The recognition of this possibility – combined with the decision to allow

protesters to gather in the lobby – should have triggered the deployment of a significantly larger number of DPS officers.

**Recommendation 2:**

- CUNY Public Safety managers and supervisors should receive formalized training in crowd management. Crowd management focuses on planning for and effective supervision of large assemblies of people; it includes training on space assessments and the evaluation of means of ingress and egress. Crowd management differs from crowd control in that it emphasizes planning prior to an event as opposed to managing a crowd on the ground as an emergency is unfolding. This training would assist CUNY administrators in more accurately assessing the number of DPS officers required to manage public events in their facilities.

**Finding 3:**

- ***CUNY Public Safety should communicate and coordinate with the NYPD in a more formalized and structured manner.*** Proper formalized communication and coordination between CUNY Public Safety officials and the NYPD may have yielded more accurate and up-to-date information on the temperament and size of the expected crowd. This, in turn, would have helped CUNY determine the appropriate DPS staffing levels to properly control the crowd.

Kroll was told that informal meetings were held with officials from the NYPD's 13<sup>th</sup> Precinct, which provides police services for Baruch College and its surrounding area.<sup>234</sup> However, it does not appear that any formalized meetings with senior officers from the NYPD Manhattan South Borough Command were held in preparation for the public hearing on the evening of November 21, 2012.

A formal meeting with executives from the NYPD Manhattan South Borough Command who were familiar with the protests that OWS members had engaged in throughout lower Manhattan may well have provided CUNY with valuable intelligence that would have allowed for better planning. Better coordination with the NYPD may also have provided CUNY officials with intelligence about the plans of other groups involved in the Baruch protest, including Occupy Hunter College and Students for a Free CUNY.

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<sup>234</sup> Interview of Deputy Inspector Ted Berntsen, September 4, 2012.

**Recommendation 3:**

- The relationship between NYPD and CUNY DPS should be more structured. A formal liaison relationship should be established between staff in the CUNY Public Safety office and NYPD Borough Commands across the city. While these relationships may currently exist on an informal basis, a formalized association would ensure that support from the NYPD would be available for large-scale events irrespective of personal or professional relationships.

**Finding 4:**

- ***CUNY DPS officers used their batons in an appropriate manner.*** Kroll's review of video did not identify any instances of CUNY DPS officers striking or even attempting to strike students with their batons. Officers properly used their batons by holding them horizontally with two hands and using them to push the protesters back. Kroll found no video, documentary, or eyewitness evidence of DPS officers swinging batons, wielding them with one hand, or using them in an aggressive manner.

Administrators confirmed that they did not witness any instances in which DPS officers used their batons inappropriately. Dobrin told Kroll that “there was no evidence that I saw of officers raising their batons and striking demonstrators.”<sup>235</sup> Director Barry told Kroll that he did not witness any excessive use of force by DPS officers; batons were used solely to push the crowd back and no arrestees appeared to be injured.<sup>236</sup> Assistant Director Siotkas also told Kroll that he did not observe any inappropriate use of force on the part of the CUNY DPS officers.<sup>237</sup> Some students interviewed by Kroll complained of officers being overly aggressive, but the students did not indicate that DPS officers struck any protesters or otherwise engaged in excessive force.<sup>238</sup>

Overall, CUNY DPS officers demonstrated remarkable restraint in the face of physical resistance and, in some instances, assault. Not a single protester was hurt, and CUNY DPS officers avoided serious injury

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<sup>235</sup> Interview of Executive Vice Chancellor Allan Dobrin, May 4, 2012.

<sup>236</sup> Interview of Director of Public Safety William Barry, April 10, 2012.

<sup>237</sup> Interview of Assistant Director of Public Safety at Baruch College John Siotkas, April 3, 2012.

<sup>238</sup> Interview of Bridgit Boulahanis, April 26, 2012.

as well. More than any other factor, the steady and restrained performance of the DPS officers prevented a potentially dangerous situation from escalating. The DPS officers managed to scrupulously follow the instructions they received in roll call, received just a few hours earlier, even while under significant duress. In sum, the CUNY DPS officers never abandoned the mindset of attempting to defuse the situation, even while they were making arrests.

#### **Recommendation 4:**

- Members of the SAFE team who are designated to cover large public events should be provided with enhanced crowd control training. This would lessen reliance upon training provided immediately prior to public events and help ensure the continued proper use of batons in the future. Ideally, enhanced crowd control training would be obtained through a new, structured collaboration with the NYPD that would allow SAFE Team members to attend selected training sessions currently offered and coordinated through the NYPD's Disorder Control Unit.<sup>239</sup>

#### **Finding 5:**

- ***Public safety supervisors should not participate in the physical aspects of crowd control.*** Some senior DPS administrators responsible for directing the front-line officers were themselves involved in the confrontation with protesters and were therefore impeded in providing high-level guidance and direction.

Standard command and control practices dictate that command staff be stationed away from an incident so that they can provide objective direction and a detached layer of decision-making. However, the CUNY video clearly demonstrates that administrators, including Director McKee, Assistant Director Winters, and Spec. Frangoulis, were physically engaged with protesters in order to assist officers under their command. This direct engagement most likely inhibited the administrators' ability to maintain an ongoing objective view of a dynamic situation and hampered their ability to command their officers with the appropriate degree of professional detachment.

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<sup>239</sup> The NYPD Disorder Control Unit ("DCU") serves as the training arm of the department, conducting functional and full-scale training for police officers. DCU also assists with the NYPD's coordination and response to large scale events and/or demonstrations across the city. The comprehensive training that DCU conducts includes topics such as: Introduction to Civil Disorder: Command and Control for Civil Disorder; Crowd Behavior; Demonstrator Tactics; Use of Pepper Spray.

**Recommendation 5:**

- CUNY administrators should refrain from directly intervening when their officers are physically engaged with protesters so that they can maintain objective situational awareness and provide appropriate direction.

**Finding 6:**

- ***SAFE team training should be standardized and the recruiting and selection process should be more clearly communicated to DPS officers.*** As discussed earlier in this report, Kroll's interviews of CUNY DPS officers identified a mixed record of training; officers are not equally trained on crowd control and mass arrest procedures. In addition, while there is, in fact, a formalized, merit-based process for recruiting and selecting SAFE team members at the administrative level, this process does not appear to have been effectively communicated to the rank and file.

According to Director Lederhandler, the selection of DPS officers to serve on the SAFE Team is an ongoing and formalized process. Director Lederhandler speaks with the College Public Safety Directors on a regular basis in an effort to identify qualified candidates. Candidates are initially nominated by the College Public Safety Directors to Director Lederhandler, after which they serve in a probationary status. During this probationary period, candidates are evaluated for their fitness to serve on the team. Despite the existence of a formalized process, many of the DPS officers interviewed by Kroll were unaware of how SAFE Team members are recruited and selected.

Kroll also learned through numerous interviews that specialized training sessions for SAFE Team members are sporadic at best. The lack of an institutionalized, annualized training process for a unit designed to interact with students and members of the public in difficult and potentially volatile situations is an issue that should be addressed and corrected.

A related issue that was apparent from interviews was that SAFE team officers are not always familiar with their colleagues and sometimes meet them for the first time at the public events to which they are assigned. Some CUNY DPS officers present at the Baruch College protest told Kroll that they did not know all of their colleagues and were unfamiliar with their respective levels of training. Some suggested



that group training or a method for officers to familiarize themselves with their colleagues would be helpful.

One officer described the SAFE team as akin to the NYPD's elite Emergency Services Unit ("ESU").<sup>240</sup> If this is the perception of front line officers, Kroll recommends that it be reflected in their training.

#### **Recommendation 6:**

- Because of the critical and very visible role that members of the SAFE Team play at CUNY, Kroll recommends that CUNY Public Safety officials develop a more effective way of communicating the SAFE Team recruitment and selection process to both current and prospective members of the team. Kroll also recommends that CUNY Public Safety officials take steps to institute consistent annual training sessions and ensure that SAFE team members have an opportunity to train together.
- CUNY should consider exploring a training agreement with the NYPD Police Academy that would allow SAFE team members and select CUNY Public Safety officers to be trained in contemporary, industry standard methods of crowd management and control.

#### **Finding 7:**

- ***DPS officers are not outfitted with riot gear.*** A number of CUNY SAFE team officers stated that they were trained in the use of protective gear (e.g., batons, helmets) but were not actually outfitted with that gear prior to the November 21, 2011 public hearing.

Kroll's interviews with numerous SAFE team members revealed that only a small number of them were issued protective riot gear. Kroll was told that CUNY DPS officers are typically not provided with riot gear for public events, on the theory that such equipment may be intimidating to the students. However, Officer Diaz told Kroll that he thought he and his fellow officers needed helmets at the Baruch protest.<sup>241</sup> During roll call prior to the November 21, 2011 meeting, officers discussed the possibility that this "may be a

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<sup>240</sup> Interview of Corporal Susan Henry, June 12, 2012.

<sup>241</sup> Interview of Officer Mario Diaz, June 12, 2012.

rough one.” One officer told Kroll that most CUNY DPS officers at the Baruch College protest never anticipated the situation escalating in the way that it did. In particular, there was a fear during the event that protesters on the balcony could drop an object on an officer’s head, resulting in serious injury.

Kroll received differing accounts from DPS officers regarding what equipment they were issued, what equipment they were trained to use, and what equipment they were required to bring on November 21, 2011. An officer assigned to the arrest team told Kroll that he received a wooden baton and flex cuffs but did not have a helmet or gloves.<sup>242</sup> Sgt. Maldonado told Kroll that he was in possession of SAFE team equipment but did not bring it because equipment is typically issued during roll call; many officers do not have such equipment.<sup>243</sup> According to Director McKee, wooden batons are kept at Director Barry’s office and distributed only when needed.<sup>244</sup> He also noted that, in the past, SAFE team members were issued riot helmets, wooden batons, and radios, but that this is no longer done. The lack of riot gear, such as helmets, is a philosophical decision rather than a tactical one, according to Director McKee.<sup>245</sup>

The variation in the issuance of equipment and related training has created morale problems within the ranks of CUNY DPS. Since only a select number of SAFE Team members possess protective gear, CUNY DPS officials are not able to properly outfit and protect officers during situations in which their physical safety might be at risk.

#### **Recommendation 7:**

- CUNY DPS officials should issue protective gear to all SAFE team members, and all SAFE team members should be trained on the proper use of riot gear.

#### **Note – Updated Training**

During the course of this investigation, Kroll was informed by senior administrators of the CUNY Department of Public Safety that, since the November 21, 2011 protest, a new training regimen has been

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<sup>242</sup> Interview of Sergeant Efren Maldonado, June 14, 2012.

<sup>243</sup> Interview of Sergeant Efren Maldonado, June 14, 2012.

<sup>244</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

<sup>245</sup> Interview of Director of Public Safety at City College John McKee, April 11, 2012.

introduced for all officers.<sup>246</sup> In particular, a new training module on crowd management was added to the current year's annual in-service training.

Additionally, the Public Safety department has restructured training for members of the SAFE team. Beginning in August 2012, the SAFE team will now train two times annually as a group, in August and January. This comprehensive training includes classroom and practical field instruction on arrest techniques, flex cuffing, non-compliant crowds, verbal commands, basic formations, and the straight baton.<sup>247</sup>

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<sup>246</sup> Interview of Director of Operations Michael Lederhandler, September 7, 2012.

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