



## **CITY OF PALO ALTO OFFICE OF THE CITY CLERK**

**November 7, 2016**

**The Honorable City Council  
Palo Alto, California**

### **Independent Police Auditors Second Report- 2015**

Attached you will find the Independent Police Auditor's Second Report- 2015.

**ATTACHMENTS:**

- Attachment A: PAPD 2nd Half of 2015 IPA Final (PDF)

Department Head: Beth Minor, City Clerk





# **INDEPENDENT POLICE AUDITOR'S SECOND REPORT - 2015**

**Presented to the Honorable City Council  
City of Palo Alto**

**November 2016**

**Prepared by: Michael Gennaco and Stephen Connolly  
Independent Police Auditors  
for the City of Palo Alto  
[Michael.Gennaco@oirgroup.com](mailto:Michael.Gennaco@oirgroup.com)  
[Stephen.Connolly@oirgroup.com](mailto:Stephen.Connolly@oirgroup.com)**

## **I. Introduction**

This reports addresses materials received by the Independent Police Auditor (“IPA”) for review from the second half of 2015. Per an oversight protocol established by the City of Palo Alto in 2006, the Palo Alto Police Department (“PAPD”) sends completed cases to us from within three categories: complaint investigations, internally generated misconduct investigations, and reviews of Taser deployments. We then evaluate those cases for both the effectiveness of the process and the legitimacy of the results; where applicable, we also offer recommendations to the Department regarding best practices and systemic reforms.

The report features a discussion of five allegations of misconduct, and one use of the Taser to apprehend the suspect in an attempted burglary.

## **II. Case Reviews**

### Case # 1

#### *Factual Overview:*

A citizen complained that a PAPD supervisor refused to take a witness statement from him as his friend’s car was being towed for being in violation of a City ordinance. The supervisor had responded to the location because civilian police department employees had experienced issues with the owner of the vehicle in the past.

The supervisor’s body-worn camera video captured the encounter with the complainant and was available for review. The complainant told the supervisor that he was a friend of the vehicle’s owner and indicated that the vehicle should not be towed since he had seen it moved recently. The complainant repeatedly asked the supervisor to take his witness statement regarding his observation that the vehicle had been moved. The supervisor explained to the complainant that he was not the investigating officer and that his role was limited to keeping the peace. The supervisor told the complainant that if he caused a disturbance regarding the tow, he would be required to take action. The supervisor further explained that if the complainant obstructed the process, that he and the complainant would have some problems.

The supervisor advised the complainant that he could accompany the owner of the vehicle to contest the tow at a subsequent hearing. The supervisor declined to take the complainant’s statement and instead provided him the telephone number for PAPD Communications, told him the name of the supervisor who had authorized the tow, and suggested that he call her instead. The complainant asked the supervisor to call the watch commander to the scene but the supervisor indicated that he was unwilling to do so. The complainant made several phone calls to the police department, including the supervisor responsible for Internal Affairs, but was not successful at the scene in reaching the sought after personnel.

The towing process was completed without further incident.

*Outcome and Analysis*

PAPD determined that the physical evidence established that the car in question had not been recently moved and that the tow was consistent with Police Department and City policy. The investigation further noted that, in general, the supervisor sounded calm and professional when communicating with the complainant. The investigation found that the supervisor provided the complainant with answers to his questions and displayed good command presence without escalating the situation. Accordingly, it determined that the allegations were not supported. We concur with this outcome.

The investigation into whether the tow was consistent with Departmental and City policy was extremely thorough, and important documents, video, witnesses and audio evidence were identified and included with the investigation. We also agree that, overall, the supervisor's interaction with the complainant was professional and not in violation of Departmental policy.

However, the interaction might well have had a better outcome had the supervisor agreed to take a brief statement from the complainant about his assertion on behalf of the vehicle owner. While the supervisor was technically correct that he was not called to the location to conduct an investigation, interviewing the complainant on his (already recording) body camera seems to have been an alternative worth considering. Instead, the supervisor referred the complainant to an appeal process that could be engaged only after the towing was completed, and to other Department members whom the complainant could not successfully reach. The ensuing complaint required Departmental effort and attention that could perhaps have been preempted by a small investment of patience and flexibility on the front end.

A review of the body-worn camera footage also showed that the supervisor became aggravated with the complainant during parts of the encounter. At one point, the supervisor told the complainant that he was asking "dumb" questions and said that a comment made by the complainant was "ridiculous." More directly, the supervisor told the complainant at one point that he was starting to irritate him.

Though these small shortcomings did not rise to the level of a policy violation, in our view they did seem to merit at least an informal intervention by Department management as a means of strengthening performance. As controlled and professional as the supervisor managed to be on the whole, his flashes of annoyance and steadfast refusal to accept the witness statement were less than ideal – particularly as an example for lower-ranking officers. In our view, the encounter had the makings of a "teachable moment," and ideally some sort of relevant interaction would have occurred between the supervisor and PAPD command staff.

Dealing with sometimes difficult and emotional people comes with the job of being a police officer. Though occasional lapses in professionalism can seem understandable or

justified, these small moments can have a cumulative effect on Department culture and community relations. In situations like this, we encourage the Department to look beyond the “bottom line” outcome of a complaint and find creative ways to promote performance that exceeds the floor of a given policy.

Case # 2:

*Factual Overview:*

The complainant alleged that he had been subjected to racial discrimination after his vehicle had been stopped by a PAPD officer. In a written document, the complainant indicated that he had been stopped because the officer told him that one of his headlights was out. According to the complaint, the officer initially intended to only give him a verbal warning but when the complainant indicated his intent to file a complaint against the officer, the officer then wrote him a citation. The complainant indicated that he called for a supervisor and that while waiting for the supervisor to arrive he believed the officer called him the “N” word.

A PAPD internal investigator contacted the complainant but the complainant would not agree to be interviewed unless the citation was voided. When the investigator declined to dismiss the complaint, the complainant declined to participate further in the investigation, but to PAPD’s credit, the investigation proceeded without further cooperation from the complainant.

The vehicle stop and subsequent conversation between the officer and the complaint were captured on the officer’s patrol car video/audio recording. The recording indicated that the officer told the complainant that he was pulled over because one of his headlights was out. The officer then asked for the complainant’s driver’s license, registration, and proof of insurance, which the complainant provided to the officer. The officer called out information over the radio, soon returned to the complainant’s vehicle, returned the driver’s documents, and told him to get the front headlight fixed.

At that point, the complainant asked the officer his name and indicated that he intended to make a complaint against the officer because he had stopped him for no reason. The officer then instructed the complainant to give him his driver’s license back so that he could write a citation for the offense. When the officer returned with the citation for signature, the complainant said that he had asked for a supervisor to come to the stop because he felt threatened by the officer. Nowhere in the recording is there any apparent use of the “N” word (or any other racially derogatory word) by the officer.

Eventually, a PAPD supervisor responded to the location and talked with the officer. The officer provided the supervisor his account of the incident. The supervisor then talked with the complainant who focused on the fact that the officer had decided to cite him only after he had told the officer he wanted to make a complaint against the officer. The supervisor told the

complainant that the officer could have issued the citation to him immediately but that if the motorist wished to make a complaint he could do so the next day.

*Outcome and Analysis:*

PAPD determined that the allegation of racial discrimination was not supported by the evidence. However, PAPD did find that the officer's decision to issue the complainant a citation after he indicated that he intended to file a complaint against the officer could be seen as retaliatory, constituted offensive treatment of the public and was contrary to Department policy.

The IPA concurs with PAPD's findings. The audio/video recording provides strong evidence that the decision made by the officer to stop the complainant was not impacted by his race but instead was due solely to his headlight being out. Moreover, the recording provides no evidence that the officer ever spoke in a threatening tone to the complainant or used a racially derogatory term during the encounter. At the same time, the decision by the officer to cite the driver only after he indicated his intent to file a complaint could clearly be viewed as potentially retaliatory and therefore inappropriate and out of policy.

We also noted issues that were potentially worthy of additional exploration.

First, as noted above, when the supervisor responded to the scene, the officer admitted to him that he had issued a citation to the motorist after he indicated that he wished to make a complaint against him. That account of the incident was also provided to the supervisor when he talked separately to the complainant. However, in spite of the apparent retaliatory nature of the officer's action, the supervisor only informed the driver that he could file a formal complaint at the station the next day. This suggests that appropriate review and accountability might only have happened because of the complainant's decision to follow through – and not because the supervisor was already and sufficiently aware of an issue deserving of attention and at least a self-initiated review of the MAV recordings. In our view, PAPD would ideally have covered this point with the supervisor as part of its response.

After we shared this concern with the Department, we learned that, in fact, PAPD had addressed this issue with the supervisor and counseled him about his performance that evening. In fact, PAPD determined that the newly promoted supervisor could benefit from additional formal training classes on leadership, which he welcomed. As a result, the supervisor attended three separate classes on leadership and communication. This kind of holistic response is very much consistent with best practices in policing, and we commend the Department's use of this complaint as a basis for critical examination, learning, and holistic remediation.<sup>1</sup>

---

<sup>1</sup> A related issue is how to ensure that the entirety of PAPD's response is effectively communicated to the Independent Police Auditor. We recognize and endorse the concept of informal remediation in the context of an administrative review, but when such interventions are not documented or otherwise included in the case materials, it is obviously harder to know about

PAPD officers could also have benefited from a “lessons learned” Departmental briefing about this pitfall of traffic enforcement. Officers’ discretion about whether and how to enforce driving infractions can be a source of real friction – and allegations of unfairness – between law enforcement and the public. Most importantly, all PAPD officers need to know that when a member of the public complains about their conduct, the last thing an officer should do at that point is to take enforcement action against the person that otherwise would not have been taken.

Case # 3:

*Factual Overview:*

This matter was brought to the Department’s chain of command by the District Attorney’s Office when it reported that a PAPD officer had told prosecutors that he had problems with the probable cause relating to a traffic stop and ultimate arrest initiated by a PAPD supervisor. The stop was initiated by a PAPD supervisor who had observed damage to a vehicle and also observed the vehicle speeding and failing to signal prior to pulling the driver over.

Based on additional observations such as the distinct smell of alcohol emanating from the vehicle, the supervisor determined that the driver should be field tested for driving under the influence. Another officer was called to the scene and performed sobriety tests on the driver. Based on the field observations made by the officer, the driver was arrested for driving under the influence.

The matter was eventually set for a preliminary hearing and the second officer was subpoenaed to testify. The officer then sent an email and had telephone conversations with several prosecutors in which he expressed concern about the probable cause that was alleged to have formed the basis for the stop. As a result of those communications, the Office of the District Attorney contacted the Department, which initiated an investigation into the matter.

*Outcome and Analysis:*

The PAPD investigation found that the vehicle stop conducted by the supervisor was appropriate and consistent with the Fourth Amendment and Departmental policy. The internal investigation further found that the officer had violated Departmental policy by making false and/or misleading statements questioning the propriety of the actions of the supervisor.<sup>2</sup>

---

and evaluate them. To its credit, PAPD has resolved to find mechanisms to ensure that, in the future, IPA is provided all relevant information relating to the Department’s response.

<sup>2</sup> It is unclear whether the founded violations for false statements will create Brady implications for the officer (by constituting evidence of veracity that would have to be provided to defense counsel whenever the officer testified in court).



IPA concurs with PAPD's findings. The extensive investigation established that the supervisor had a legal basis to stop the vehicle in question. Moreover, the allegations made by the officer to the Office of the District Attorney against his supervisor questioning the propriety of the vehicle stop amounted to false or misleading statements.

While the conduct of the supervisor on the date of the arrest was found to be appropriate, one allegation that was learned by PAPD relative to this incident was not, in our estimation, sufficiently explored and addressed. The supervisor described having been approached by *another* officer shortly after the incident, and being told that the officer who eventually complained to the District Attorney's Office had issues with the probable cause of the stop.<sup>3</sup> However, there is no evidence from the investigation that the supervisor either addressed this matter with the officer or brought the allegation to the attention of Department executives. Instead, it wasn't until nine months after the incident, when the District Attorney was preparing for a hearing, before the allegation formally surfaced.

Given the seriousness of the officer's claim, the supervisor's inaction in response to first learning of it struck us as perplexing. One would expect that a supervisor whose integrity is potentially being called into question by a subordinate would not let such an allegation go unchallenged or unreported. In our view, this aspect of the scenario merited some response from the Department; PAPD protocols and policy obligate supervisors to ensure that appropriate notifications – and, if necessary, investigations – occur in the aftermath of a situation like this one.

The supervisor's ultimate status as the "victim" in this matter may have influenced the Department's assessment and contributed to the bypassing of this question. We also recognize that, from a conduct perspective, it is significantly less egregious than the false statements that drove the case forward. Nonetheless, in our view, this element merited further attention – whether formal or informal – in an effort to improve future performance.

#### Case # 4

##### *Factual Overview:*

The PAPD executive command initiated this investigation based on its awareness of a Department member's personal social media (Twitter) account and its contents. While the account did not directly or overtly identify its owner as a Department member, some individual (and publicly accessible) entries did have a nexus to PAPD, contained identifying information,

---

<sup>3</sup> Another issue with the supervisor's assertion is that the officer who allegedly reported to the supervisor that the officer had issues with the probable cause relating to the stop indicated that he did not recall such a conversation ever occurring. This is yet another potential consequence of the supervisor choosing not to pursue this matter contemporaneously resulting in no follow up with the "go between" officer and the Department for months.

and arguably conflicted with the Department’s policies on “Employee Speech, Networking, and Social Media.”

Additionally, one of the postings was an uploaded “training” video that had apparently been created while on duty, with Department resources, and without known authorization. Others of the entries related to Department business were posted while the relevant employee (a patrol officer) was apparently on duty.

The final concern was that some of the individual postings clashed with prior direction the officer had been given by a supervisor regarding his desire to share PAPD information online. In the months prior to the discovery of the account, the officer had twice requested permission to create a PAPD-endorsed site to highlight the activities of his specialty unit. Department officials had demurred, citing the desire to maintain a coherent and unified message.

#### *Outcome and Analysis*

PAPD determined that the officer had violated multiple Department policies in relation to the Twitter account (which he had earlier de-activated at management’s direction). These included different sections of the “Prohibited Speech, Expression and Conduct” policy as well as the policy prohibiting insubordination. However, the Department also cleared the officer of any wrongdoing in conjunction with the creation of the video on Department time and with Department resources.<sup>4</sup>

We concur with these outcomes, and with the attendant corrective actions administered by PAPD.

The investigation was thorough and thoughtful. It included an individualized analysis of each one of the more than 50 entries that had formed the substance of the account. Along with addressing the problematic “live posting” during on-duty time, the Department showed a sensitivity to the negative public perception that could attach to the some of the “tweets” that were posted or “re-tweeted” by the subject officer.<sup>5</sup>

---

<sup>4</sup> Although all three participants acknowledged that it had occurred, the content – and the exercise itself – was found to be appropriate. The involved parties were seemingly conscious of making the video efficiently, at a “slow” time in their overnight shift, and while remaining available for any calls for service. While ensuring the specific knowledge and approval of supervision would perhaps have been preferable, this omission did not rise to the level of misconduct.

<sup>5</sup> These included opinionated commentary about current events relating to law enforcement, and observations that were meant to be humorous but had the potential to be offensive.

The interviews with witnesses and the subject officer also were appropriately thorough and methodical. Although there was seemingly nothing malicious or intentionally provocative about the officer's actions in creating the account and sharing information, the Department concerns and response were also warranted.

Social media issues are a significant recent challenge for law enforcement across the country. The popularity and availability of the various forms of "networking" have pushed agencies to develop sound policies. Free speech rights are balanced against the pitfalls of private social media activity that overlaps with users' status as representatives of their respective departments. PAPD appears to have a sound policy, and to have enforced it effectively in this matter.

Case # 5:

*Factual Overview:*

This case was generated internally by PAPD executive command in the aftermath of an arrest and related use of force. The incident involved the response of specialized Department personnel to the scene of a garage where a suspect was hiding. The scene was contained, a command post was established, and a team eventually made entry. After a brief struggle, which included a K-9 bite of the suspect, he was taken into custody.

Subsequent to the arrest, questions arose as to what exactly had transpired inside the garage. An officer who was on scene (but not present inside the garage) became aware of rumors and concerns that he brought to the attention of Department management within days of the incident. More specifically, there were allegations that not only had unreported force occurred, but also that a supervisor had subsequently and intentionally deterred his team members from sharing required information about their actions.

This prompted the Department to initiate additional investigation, and it soon emerged that other team members had indeed used physical force to subdue the suspect. Further inquiry revealed that the additional force was both minor and seemingly appropriate in the context of the suspect's resistance. Nonetheless, it was troubling that it had not been reported immediately and per policy. It also turned out that one of the team members had been bitten by the K-9 during the apprehension; this was known to the same handling supervisor and not formally addressed, as it should have been. The allegations of a "code of silence" directive from the supervisor – in the form of text messages to team members – formed a separate and significant component of the case.

Additionally, the officer who was responsible for initiating these allegations brought forth other claims of past misconduct by the same involved supervisor. These included inappropriate statements during training activities, failure to report another accidental K-9 bite of a PAPD officer during a deployment, the countermanding of orders from a Department executive in the

context of a team operation, and instructions by the supervisor for team members to remain quiet about poor tactics during a multi-agency response in an outside jurisdiction, so as not to undermine PAPP management's willingness to participate in mutual aid events. Each of these allegations was fleshed out and framed for further investigation as part of the same Internal Affairs case.

*Outcome and Analysis:*

PAPP conducted a thorough review of the various charges. It found that the supervisor was culpable for various shortcomings in conjunction with the arrest in the garage. These included failure to report his own force (which was more in the category of attempts to assist in the context of a group struggle), and failure to properly execute his responsibility for assuring that all force inside the garage was properly reported, documented, and reviewed. The investigation also confirmed that the supervisor had failed to fulfill his notification obligations regarding the accidental K-9 bite that occurred that day.

We concur with these findings.

The investigation also produced substantial corroborating evidence regarding the "code of silence" allegation and three of the other claims about prior events. (Evidence established that the supervisor had not been involved at all with the fourth allegation, which related to a previous case of an accidental dog bite.) Nonetheless, the Department determined that ambiguity regarding the supervisor's intentions, and the potential for actual or willful misinterpretation by involved subordinates, was such that no conclusive determination of formal misconduct could be sustained.

We found this to be a debatable conclusion, and were not always as persuaded by the supervisor's explanations as PAPP executives turned out to be.<sup>6</sup> Additionally, we found that the investigator, whose work we have admired in the past for its thoroughness and objectivity, was seemingly reticent during the administrative interview of the supervisor when it came to follow-up questions and further clarification of key points.

These hesitations aside, we find that the Department's ultimate determinations were reasonable. Some of this is driven by evidence regarding the arrest and use of force that precipitated the allegations. The underlying actions in the garage appear to have been justified, minor, and proportional to the suspect's resistance – not an example of the rogue or abusive behavior with which the "code of silence" is commonly associated. This reality seemingly

---

<sup>6</sup> The plain meaning of the text message that initiated the investigation, for example, seemed more consistent with an instruction to team members to keep details to themselves than with the supervisor's subsequent claim that it had to do with maintaining professionalism.

undermines the more troubling interpretations of the supervisor's text messages and related comments at the scene.

Our concerns about the investigation and conclusions were also mitigated by further discussion with PAPD management. A credible stand-alone product within the "four corners" of the investigative file should obviously be the goal in every case. Occasionally, though, the full picture depends on an understanding of broader dynamics; this is especially true when it comes to matters of internal management and the relationship between supervisors and subordinates.

The strengths and weaknesses of strong, distinctive personalities seem to have been at play in this case. Even people who admire the supervisor in question recognize that his style is occasionally unorthodox, and that he is not always as meticulous a communicator as he can or should be. Furthermore, a pattern in the allegations and attendant evidence seems to be that good intentions and a "bottom line" sense of propriety were sometimes overshadowed by inattention to detail or poor judgment.<sup>7</sup>

These qualities certainly "gave a sword" to potential critics, and may well have raised sincere qualms on the part of subordinates. On the other hand, several witnesses put the individual episodes into a context of familiarity with the supervisor and his style, and recognition of his core strengths. The real meaning of disputed or problematic statements seemed a matter of genuine and reasonable disagreement.

Ideally, of course, a grain of salt is not a necessary interpretive tool when it comes to communications – and orders – that occur in a law enforcement setting. And it is important to note that though not all the charges were sustained, the Department recognized the significance of the situation as a whole and the need for managerial adjustments. There was appropriate discipline, and the relevant supervisor is now assigned to different responsibilities.

### **III. Common Issues: PAPD and Supervision**

We have identified above a number of performance issues regarding supervisors that could have been more fully addressed and encompassed as part of the Department's response to

---

<sup>7</sup> One example of concern in this regard relates to the accidental dog bite of one of the involved officers by the Department K-9 that was on scene. The injury was apparently minor, and the officer himself was apparently fine with not pursuing it. However, while the "no harm, no foul" approach might have a surface appeal, the relevant reporting protocols also have a purpose and legitimacy that extends beyond their mere (and in this case ignored) existence. There are worker's compensation implications, for example. And the performance history of a dog entrusted with helping to apprehend suspects has obvious relevance to operational effectiveness and risk management. Accordingly, the failure to follow up through documentation and appropriate remedial measures constitutes a significant gap in effective management.

underlying allegations.<sup>8</sup> In the case of the supervisor who was present when a vehicle was being towed, for example the Department could have more fully considered whether a different approach in dealing with the eventual complainant could have resulted in a better handling of the situation.

More significantly, in the case of the complainant who believed that he had been the subject of retaliation for making a complaint, the Department could have more carefully assessed the supervisor's seeming lack of proactivity in ensuring that a likely policy violation was investigated. And finally, and most importantly, the failure of the Department to identify and investigate a supervisor's failure to timely bring to PAPD's attention a significant internal concern against her by a subordinate officer calls into question whether sufficient diligence is always being directed toward evaluating supervisor's roles.

Modern day policing requires that first level supervisors perform at a high bar, set an example for their subordinates, and ensure that complaints are made known to the chain of command at PAPD. When investigations are launched, it is incumbent upon the Department to evaluate supervisor performance through that enhanced lens and take appropriate remedial action when supervisors fall short of those high expectations.

***Recommendation: When PAPD receives a complaint of violations of policy, it must ensure that part of that complaint evaluation considers the performance of supervisors, particularly with regard to fulfilling their duty to ensure that potential violations of policy are timely investigated.***

#### **IV. Taser Case**

##### *Factual Overview:*

The one Taser use case of this review period stemmed from the search for, and ultimate apprehension of, the suspect in a residential prowling/attempted burglary case. Officers responded to a call for service in daytime hours from a homeowner who not only spotted the suspect on his property but also followed him long enough to take a cell phone photograph. The picture was then distributed to other officers patrolling the area.

It was just a few minutes later and a short distance away that a PAPD patrol officer spotted the suspect at a train station platform and attempted to detain him. As he himself acknowledged later, the suspect was apprehensive and uncooperative. After a brief exchange, he broke away from the officer (who was in uniform) and hopped over a guardrail in an effort to flee.

---

<sup>8</sup> This is a separate point from the allegations of misconduct against supervisors that are covered above, which speak even more directly to the need for focused attention on managerial expectations and performance.

The officer pursued on foot for a short distance while putting out relevant information over the radio. He also enlisted the help of a bystander who was in the path of the pursuit, calling “Stop him!” The private citizen did attempt to block the suspect’s path, momentarily slowing him before the chase continued.

When they had covered a few hundred yards, the suspect abruptly turned around and came back in the officer’s direction. At that point, the officer perceived a threat. He warned the suspect, per policy, and then deployed his Taser. The prongs struck the suspect in the back and lower buttocks area. Only one of them pierced the skin, but the charge nonetheless affected the suspect, who dropped to the ground. Other responding officers were able to handcuff the suspect and take him into custody without further incident.

The suspect was transported to a local hospital for treatment of very minor injuries.

*Outcome and Analysis:*

The Department followed its usual protocol in reviewing the TASER deployment, and determined that the use of force was “in policy.” We concur.

The gathering of reports, witness statement, and other evidentiary materials was thorough and often thoughtful. The suspect agreed to release his medical records from the incident, and the Department collected and analyzed the “download data” from the Taser itself.

Interestingly, the Taser evidence showed two different and consecutive activations – a discrepancy from the officer’s reported perception of having pulled the trigger only once. This gap, while noteworthy on its face, did not seemingly have a significant impact on the suspect. Both activations were for five seconds only, with an “active charge” phase of less than one second in each instance. Moreover, the fragile positioning of the probes, and the resultant effects on the suspect’s response, may also have contributed to the officer’s confusion or the inadvertence of a second engagement. Nonetheless, the precision of the Taser data is clearly a valuable ingredient in the assessment process and the quest for accountability when it comes to this weapon.

Though the officer’s recollection about number of activations proved to be incorrect, his written report does include a thoughtful and persuasive account of his decision-making. It includes a description of the overall circumstances (including his own fatigue after the pursuit), and an assessment of other force options and why they seemed less viable. It reflects sound training and an emphasis by the Department on responsible, calculated use of the Taser.

The review process also included a detailed and useful interview with the subject for purposes of the administrative force analysis. This is an important component, and PAPD is generally conscientious about making sure it occurs and that the subject’s version of events is

documented. Additionally, as is standard, PAPD provided a recording of the exchange for our review.

In this case, the interview led to several significant concessions by the subject, who admitted that he was intentionally defying the officer's orders and that he heard the warning before the Taser was deployed. He did, however, deny that he turned back during the pursuit in order to aggress the officer. And he made a point of noting (accurately) that the prongs had hit the rear of his body – not the front, as might be initially be expected from the officer's description of events and his justification for deployment.<sup>9</sup> Moreover, the subject initially maintained that the officer did not have a justification for detaining him, which meant that his refusal to cooperate was justified.

A few minutes into the interview, the PAPD supervisor who was taking his statement challenged this account. He pointed out that the subject had been photographed by the reporting party homeowner in conjunction with the prowling allegations, and said that “We both know he had a right” to detain. This seemed to change the tenor of the interview, and the subject somewhat sheepishly began to make statements – some in response to leading questions from the supervisor – that overtly supported the officer's actions.

The supervisor's approach was not heavy-handed, and it clearly yielded information that was beneficial from the Department's perspective. Nonetheless, we would encourage PAPD to re-visit the goals of such interviews with its supervisory team.

In our view, the ideal interview in this context is one in which the subject feels able and willing to articulate his own version of events. Specific follow-up questions from the supervisor are often appropriate, but should be designed to evoke details that can later be weighed against the other evidence – not to discredit or “cross-examine” the subject. Any expressions of skepticism or challenge, however mild, can alter the tone of the exchange. And while this might produce “better” answers in the short run, it comes at a potential cost of undermining the objectivity of the review process.

***Recommendation: PAPD should work with supervisors to emphasize objective evidence-gathering – and not simply confirmation of the officers' accounts – as the goal of a subject interview in an administrative force review investigation process.***

---

<sup>9</sup> The Department's analysis of this potential issue hinged on the reality that a “target” can change quickly in a dynamic situation, and that gaps in reaction time can lead to someone hitting the back of a subject who has changed course at the last instant. Extensive research has been done with this topic, with a particular focus on officer-involved shootings. In our view, the concept has legitimacy. But it also lends itself to overuse and to the pre-emption of valid questions or concerns about a given set of facts. Here, though, in the overall context of the incident and in conjunction with the other evidence, it seems to be a possible explanation for what occurred.



Finally, we found the officer’s attempt to “deputize” the bystander by yelling “Stop him!” to be a noteworthy element of the incident. (The person did make an effort to impede the suspect’s progress and slowed him down, though the overall effect is hard to quantify.) Fortunately, the involved citizen was both unfazed by the request and unharmed by his involvement. But the *potential* for liability inherent in a spontaneous “deputization” seems significant and foreseeable.

On the few occasions that we have seen officers engage civilians in apprehension, we have cautioned against doing so because of the risk involved. Enlisting the physical help of an untrained and unequipped party in a police arrest action creates obvious grounds for civil exposure in the event that the encounter injured the person or suspect.<sup>10</sup>

At the very least, it seemed to merit some discussion and analysis from the Department in terms of the advantages and disadvantages of the tactic and the potential implications for training and briefing of officers on a going-forward basis. The documentation we received did not contain a specific focus on this issue or any indication that it was identified or addressed as part of the Department’s response.<sup>11</sup>

This is not to say that the Department *didn’t* address it; though the relevant lieutenant has retired and was not available for questions, it’s entirely possible that PAPD management did at least have an informal debrief with the involved officer and others.<sup>12</sup> We certainly recommend (as we did in our previous report) this kind of holistic assessment when it comes to Taser incidents. Additionally, we recommend the Department make an effort to “show its work” whenever it does look at tactical or training questions beyond the use of force itself. Formal documentation will help ensure that appropriate follow-through occurs, and will create a record of engagement that may benefit the Department in litigation or other contexts.

***Recommendation: PAPD should expand its review of Taser use cases to encompass the event more broadly, including any tactical decision-making preceding the Taser deployment, and should create a record of any relevant assessments and interventions for future reference.***

---

<sup>10</sup> While we can envision a situation where an officer appropriately feels the need to request civilian aid in the face of a serious threat to safety, those dire circumstances did not exist in this fact pattern.

<sup>11</sup> See Footnote #1, above.

<sup>12</sup> It might also have been a topic worthy of discussion with the City Attorney as well, for the sake of a heightened awareness of the legal implications; this kind of pro-active collaboration between City Departments can be constructive in various ways.

## **V. Conclusion**

Thank you for the continued opportunity to monitor PAPD on behalf of the community it serves. Please feel free to contact us at your convenience with questions or other feedback.