



City of Palo Alto

City Council Staff Report

(ID # 14028)

Meeting Date: 2/14/2022

Title: Independent Police Auditor's (IPA) Report of Review of Investigations Completed Between 7/1/20 to 11/1/21 and the Police Department's Use of Force Report for December 2020-December 2021

From: City Manager

Lead Department: Police

Independent Police Auditor's Report on Investigations Completed: 7/1/20 to 11/1/21

Since 2006, Palo Alto has utilized an independent police auditor (IPA) to conduct secondary review of defined investigations of uniformed Police Department personnel and provide related services. Since the inception of the independent police auditing program, the City has contracted with the Office of Independent Review (OIR Group), to provide these services.

Prior to this report, the most recent IPA report was published was on August 30, 2021 as Informational Item AA2 (starts on packet page 145) at the following link:

<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2021/08-august/20210830/20210830pccsm-amended-for-print-linked.pdf>.

For an overview of the history of the expanded scope of the IPA work, please visit the City's Race and Equity webpage at: www.cityofpaloalto.org/raceandequity.

POLICE DEPARTMENT'S USE OF FORCE REPORT FOR DECEMBER 2020-DECEMBER 2021

The City Council also voted in November 2020 for staff to include use of force information with the IPA report submitted to the City Council. This information is being reported on an annual basis. The current report (**Attachment B**) starts after the November 2020 City Council direction and goes through the end of calendar year 2021. Staff shared similar information during the 2020 Racial Equity ad hoc meetings through Transmittal #3 online at:

<https://www.cityofpaloalto.org/files/assets/public/city-manager/communications-office/race-equity/race-and-equity-data-transmittal-3-august-26-2020.pdf?t=51654.01>.

PROCESS TO FILE A COMPLAINT TO THE IPA

The public can find more information about filing a complaint through the link here:
<https://www.cityofpaloalto.org/Departments/Police/Accountability/Employee-Complaint>

Complaints may also be directed to the Independent Police Auditor as follows:

| | |
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| Contact: Mr. Mike Gennaco Phone: (323) 412-0334 Email: Michael.gennaco@oirgroup.com | Or mail to: OIR Group 1443 E. Washington Blvd., #234 Pasadena, CA 91104 |
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Attachments:

- **Attachment11.a:** Attachment A: Independent Police Auditor Report Jul. 2020-Nov. 2021
- **Attachment11.b:** Attachment B: 2021 Annual Use of Force Report

INDEPENDENT POLICE AUDITORS' REPORT:

Review of Investigations Completed: 7/1/20 to 11/1/21

Presented to the Honorable City Council

City of Palo Alto

February 2022

Prepared by: Michael Gennaco and Stephen Connolly
Independent Police Auditors for
the City of Palo Alto



Introduction

This report is both the latest in a long series and the product of a new paradigm. OIR Group has served as the Independent Police Auditor for the City of Palo Alto since 2007. Public reporting has been a cornerstone of our responsibilities in the City since the beginning of that relationship, and the idea has been a straightforward one: we would utilize our access to confidential investigation files and records to review completed cases across certain key categories, and would share our assessment of the effectiveness of the Palo Alto Police Department (“PAPD”) handling of the underlying issues and allegations in each matter.

The involved categories included complaint investigations, other Internal Affairs reviews, Taser deployments, and other critical incidents.¹ The reports were designed to cover six months’ worth of material at a time and to be released on a twice-yearly basis. And the process was meant not only to provide transparency as to how the system worked (or, at times, fell short of working) but also insight into the types of incidents that led to complaints and investigations in the first place. It was also a forum for us – as longtime practitioners in the field of oversight – to offer recommendations that would ideally strengthen the rigor of the PAPD internal review systems.

That pattern continued without significant disruption for several years. Then, in 2019, we experienced a pause as we worked with the City to sort through an ambiguous issue within our scope of work: namely, whether internal personnel complaints about other PAPD employees which were investigated and resolved by the City’s Human Resources Department were within our intended purview. As that question was being clarified, we developed a backlog of completed cases that we have been working to clear; accordingly, this report covers cases completed by PAPD between July 1, 2020 and November 1, 2021.

More significantly, the City joined jurisdictions across the country in re-evaluating its approach to police accountability in the aftermath of the George Floyd murder and subsequent movement for change. We met with the City Council in September of 2020 to talk about our role in the context of the City’s larger Racial Equity initiatives, and we responded to their questions about possible adjustments to our scope of work.

Our new contract, which was finalized earlier this year, retains the elements of our previous model and includes important additional opportunities to monitor the Department and inform the public. Perhaps most significantly, we have a new window into uses of force and the process by which PAPD investigates and evaluates them for compliance with policy. We have also clarified our

¹ PAPD has had one officer-involved shooting during our tenure as IPA; it occurred on December 25, 2015, and we provided a detailed assessment into the Department’s administrative review into the case.

commitment to engage publicly with the Council on a regular basis, and we have a newly established ability to engage in special audit projects at the Council's request.

The seventeen cases covered in this report fall into several categories. There are two Taser deployments and five other "force reviews" (including two canine bites) that we assess. There are four Internal Affairs cases into allegations of misconduct that were initiated by the Department. Four complaints from the public that are discussed here were handled as "supervisor inquiry investigations" – a review and resolution that are based on initially available evidence that is sufficient to reach the appropriate outcome. Two other public complaints required additional investigation and therefore fall into their own category. Lastly, an encounter that drew some social media attention at the outset of the pandemic was resolved informally; we discuss that case and our reaction to the Department's approach.

As in the past, our overall sense was that the dispositions reached by the Department were reasonable and supported by the evidence. Its investigations are generally robust and undertaken in earnest, and they often benefit from an extensive amount of recorded evidence that captures the conduct at issue. The agency's long-standing adoption of body-worn cameras, in conjunction with its previously established in-car camera video system, has elevated PAPD into the top tier of California agencies in this regard.

It was also consistent with our prior experience to note areas of concern and even disagreement with specific elements of the conduct being scrutinized, or specific aspects of the investigative process and its effectiveness. We discuss these below – and generally accompany such observations with suggestions on how to improve Department operations going forward. While law enforcement transparency and accountability have been prioritized more than ever, we have always thought that our reports are most valuable when they also contribute to constructive change.

Whether that happens or not is very much a function of the Department's receptivity and engagement. Accordingly, we are happy to acknowledge that Department's leadership has been consistent in honoring – or going beyond – its obligations when it comes to interacting with us. They take initiative in outreach, ensure that our access to necessary materials is unfettered, welcome questions and input, share their own views with candor, and remain receptive to criticism and ideas for reform.

At a time when law enforcement nationally has struggled with new expectations and a perceived loss of support, and when the Department has dealt with high profile incidents of its own, PAPD's collaborative relationship to oversight is especially noteworthy. Our hope is that this public report and the discussions it engenders will contribute to an ongoing process of improvement and adaptation.

Misconduct Investigations

Case 1: Allegation of Harassment

Factual Overview

The complainant alleged that an officer's decision to run the license plate of his parked vehicle for possible violations was an improper act of targeting him for being "residentially challenged." The officer at issue was one of four who responded to an unrelated call for service at an address near the street where this individual had his S.U.V. They were assisting with the removal of an unauthorized guest at a residential center. As other officers detained the guest on the sidewalk, the subject of the complaint walked over and got on the radio to run a check of the complainant's license plate number with dispatch.

This agitated the man, who was standing by his vehicle at the time – and who had apparently commented at the cadre of officers as they passed him while escorting their detainee away from the center, attracting their attention. He became angry that his car (among several parked on the block) was being singled out for the officer's scrutiny. He confronted the officer, spoke to him somewhat aggressively on a couple of occasions, and took the officer's business card with the expressed intention of complaining about him.

The vehicle's registration was apparently current, and there were no other issues; accordingly, no enforcement action was taken against the complainant, and the four officers left together soon thereafter.

A supervisor interviewed the man when he came to police headquarters to file his complaint. The supervisor then watched the body-worn camera recording of the incident. The supervisor determined that the officer had acted in a manner consistent with Department policy by initiating his investigation into the license plate status. Officers, of course, have the discretion to conduct such inquiries as part of their authorized, expected patrol functions. Accordingly, the review was closed with a finding of "Exonerated," and the complainant was notified accordingly.

Outcome and Analysis

We found this case disappointing in terms of both the subject officer's actions and the adequacy of the supervisor's review. It was clear from the body-worn camera recording that the complainant's own anger reflected poorly on him. But the relatively restrained nature of the officer's responses was undermined at times by his condescension and dismissive attitude, which at one point further – and unhelpfully – extended the man's last attempt at confrontation. More importantly, the

complainant appeared to have a point – namely, that the officer’s “investigation” did seem to single him out in a questionable fashion.

Perhaps as a reaction to the man’s earlier comments, the subject had said to a partner officer, “I’m going to go run his S.U.V. next, see if I can get false tags or something,” and walked half a block to engage with the man and his vehicle at the outset of the encounter.² Though nothing came of it in terms of citations or other enforcement actions, it nonetheless came across as the sort of officious exercise of authority that contributes to negative stereotypes about the police. Nor did the earlier minutes of body-camera recording (prior to his encounter with the complainant) reflect the highest standards of professionalism, marked as they were by multiple instances of casual profanity (though not directed at members of the public) and sardonic commentary.³

None of this, however, was discernible from the single-page review produced by the initial reviewing supervisor, or the half-page endorsement of it by another supervisor that effectively closed the case. Instead, the supervisor’s memo focused on the complainant’s poor behavior, on the authority that officers have under law and policy, and on the recorded concerns that had been expressed by a bystander as to the bothersome nature of long-term parking activity on the block – including by the complainant. It is telling, though, that the conversation with the bystander happened *after* the fractious encounter with the complainant, even though it is highlighted as a seeming justification for the “investigation” that had already occurred.

This strikes us as a lost opportunity. Statistically, Palo Alto generates very few public complaints. But even if there were more (thereby creating resource challenges and stronger arguments in favor of “bottom line” efficiency), we would still advocate a rigorous approach that treats the complaints not only as a forum for accountability but also as a chance to provide feedback and improve performance. That rigor did not happen here – even though we are hard pressed to believe that this is how PAPD’s leadership wishes its officers to approach their patrol responsibilities.

RECOMMENDATION ONE: PAPD should go beyond a “letter of the law” assessment when evaluating an allegation that an officer used his discretion in a retaliatory or otherwise improper fashion.

We were also provided with the letter that PAPD is required under state law to provide to the complainant advising of the results of the investigation. As with prior letters we have reviewed, this letter consists of four “boilerplate” sentences that does not provide any detail about how or why the Department reached the conclusion it did. As we have said previously, PAPD’s failure to

² “Go do it,” the other officer replied. “He’s fun.”

³ We recognize that officers are entitled to have a personality, and that few of us would welcome outside scrutiny of the informal remarks we make to colleagues in a casual workplace context. However, the officer presumably knew he was recording himself. At the very least, a reminder about the potential discoverability of all such materials seems warranted.

provide additional information about what was done to investigate the complainant's allegations and the reasons for its conclusion is a missed opportunity to "show its work" and demonstrated that the allegations were seriously considered. In fairness, though, we note that the command staff has expressed its acknowledgement of that point and the closing letter in this matter preceded our initial recommendation. More importantly, PAPD has shifted its approach in more recent communications, and provided us with examples of a more effective model. We appreciate that the Department considered and adopted our recommendation and commend PAPD for this increase in transparency.

Case 2: Allegation of Failure to Act

Factual Overview

This case involved a complainant's allegation that a PAPD supervisor had failed to take appropriate action regarding the enforcement of a Criminal Protective Order ("CPO") against his former spouse. The specific issue related to email correspondence that the ex-wife's attorney had sent to the complainant's attorney in the context of their ongoing legal disputes. The email concerned challenges to the legitimacy of medical claims being asserted by the complainant.

The complainant's contention was that this correspondence, which he provided to the PAPD supervisor, amounted to harassment that violated the terms of the CPO. Accordingly, when the supervisor declined to take enforcement action based on his own interpretation of the email in relation to the CPO's terms, the complainant contacted PAPD to register his concerns.

A Department manager completed the review as a "Supervisory Inquiry Investigation," and based his findings and conclusions on a series of documents related to the case.

Outcome and Analysis

The manager handling the "Inquiry Investigation" determined that the supervisor had properly assessed the underlying situation. The correspondence at issue was between attorneys of record in the litigation between the former spouses. The reviewer determined that the content served a legitimate purpose, was from one lawyer to another, and did not otherwise fall within the restrictions of the CPO – a copy of which the manager had obtained and reviewed.

Accordingly, the Department found that the supervisor's original decision had been legitimate and that no misconduct had occurred.

We concur with this assessment. The handling manager performed the review with appropriate due diligence and thoughtfulness, and the accompanying memo is well-written and persuasive.

This case lent itself well to the parameters of the Inquiry Investigation, since the complainant’s assertions revolved wholly around documents that were sufficiently available and clear. In short, a full-scale investigation (including interviews) was not needed to conclude that the complaint lacked substantive legitimacy.

Case 3: Allegations of Investigative Misconduct

Factual Overview

This case involved a series of claims that were made by an incarcerated individual who was challenging the legitimacy of his conviction on arson charges. He believed that the handling PAPD detectives who investigated his case and participated in the prosecution against him relied on several willful misrepresentations or other acts of misconduct in order to wrongfully incriminate him. His original complaint letter raised several specific issues and allegations, and offered to provide court records and other documentation in support of his claims.

The complainant originally reached out to our office in the belief that the Independent Police Auditor would facilitate the review of his complaint. We in turn directed his concerns to PAPD for proper handling. There was some initial reticence about delving administratively into issues that were the potential subject of a criminal appeal, but eventually the Department agreed that – apart from the complainant’s motivations and whatever other implications might arise from further inquiry – the allegations of misconduct against PAPD personnel merited formal attention. A supervisor took responsibility for conducting an assessment of the claims in relation to the extensive evidence and court history that the case had produced.

The underlying arson fire occurred several years ago, at the home of the complainant’s former employer. The complainant had been terminated from his job several weeks before the incident, and there was considerable physical and circumstantial evidence connecting him to the arson crime. He was charged within days of the incident, and convicted in a jury trial that occurred approximately a year and a half later. He was sentenced to several years in prison, and filed an appeal of his conviction on different grounds – some of which overlapped with the misconduct assertions in his complaint to PAPD.⁴

The complainant’s letter that ultimately led to the PAPD review consisted of six handwritten pages that detailed several different claims. The allegations vary in length, clarity, and complexity but revolve around assertions that officers acted “unethically and maliciously” in their efforts first to

⁴ The appeal proved to be partially successful in a ruling that was announced in 2020. But the court’s basis for remanding the case was *not* related to the allegations of investigative misconduct that drove the complaint.

secure a search warrant and then to present the extensive evidence that was discovered either at the scene or when the search warrant was approved by a magistrate.

Outcome and Analysis

After some initial breakdowns in communication that arose in part from the complainant's separate but overlapping outreach to both PAPD and the Independent Police Auditor, and some initial reluctance to "re-litigate" matters that had presumably been addressed at trial and were the subject of further court proceedings, PAPD agreed to review the complaint and take further action as needed. We supported this decision. While recognizing the unique circumstances from which the complaint emerged, we took the position that the assertions of officer misconduct were worthy of administrative attention apart from any implications in the courts. Accordingly, we appreciated the thoughtful consideration that the complaint was ultimately given.

The PAPD reviewer eventually produced a memorandum that addressed each of the claims in turn – and found no legitimacy to any of them. Some of the allegations were easily refuted. For example, the complainant argued that the affidavit in support of the search warrant had included multiple unjustified assertions about his mental state; however, unlike the complainant's characterization of the relevant language, the detective who wrote the affidavit was not opining himself but instead conveying the third-party observations of others and the deductions drawn from prior police contacts. He also cites discrepancies between language in the affidavit and the signed search warrant – an observation that is accurate but, per the supervisor's review, neither unusual nor substantively significant.

Claims regarding falsification of evidence at the scene of the crime are somewhat more detailed and convoluted, but the supervisor's memo refutes each one convincingly. In short, the memo addresses seven separate allegations of supposed misconduct and explains the misunderstandings, suppositions, or flawed assumptions upon which they rely. The supervisor concluded that none of the claims warranted further investigation, and recommended that the matter be closed as "Unfounded." We were provided with a large amount of the relevant reports and documentation in addition to the memo itself. We concurred with the Department's findings and conclusions.

Unfortunately, the Department took several months to finalize its review after the completion of the initial investigator's work. We received a helpful initial briefing from the reviewing supervisor himself, but did not get a copy of the memo or the supporting documentation until considerably later, with no explanation as to why. Our understanding is that the materials were simply waiting for evaluation and approval at the next rank level, and this simply did not happen in a timely fashion.

This is regrettable in terms of best practices and operational efficiency – to say nothing of the understandable confusion about the delay that was expressed by the complainant in his

correspondence with our Office. The Department has acknowledged that this was far from optimal – while reminding us of a number of other priorities that were taking precedence throughout the agency during the months that the completed investigation sat idle, such as the special challenges of the pandemic⁵, the demands placed on PAPD to engage with the new narrative on public safety following the George Floyd murder, and the strains placed on smaller Departments. With due respect for the competing demands on executive time and attention, we nonetheless urge PAPD to make a commitment to the prompt resolution of all administrative matters – particularly when the investigation itself is complete and awaiting managerial review.

RECOMMENDATION TWO: PAPD should address allegations of officer misconduct in straightforward and timely ways, apart from concerns about parallel proceedings that may involve some of the same concerns.

RECOMMENDATION THREE: PAPD should prioritize the timely resolution of cases, and should hold managers accountable as needed to ensure that this occurs.

Case 4: Allegation of Officer’s Failure to Address Concerns of Complainant and Concerns About Subsequent Investigation

Factual Overview

This allegation involved an individual who requested a patrol officer to intercede when he reported a man behaving in a concerning manner. The complaining party said that he had seen a male subject speaking to a female in a manner the complainant felt was inappropriate. As the complainant spoke to the officer, the male appeared. The officer spoke to the male briefly. Because no apparent crime had been committed, the officer did not pursue the matter.

Subsequently, the complainant alleged that the investigator assigned to the complaint did not fully or timely investigate the concerns he had raised.

Outcome and Analysis

IPA’s independent review of the body camera footage determined that the officer responded appropriately and there was no legal basis for any further detention of the male. IPA also reviewed the work done by the investigator assigned to the matter and found that his investigation was both timely and thorough.

⁵ With particular regard to the challenges of the pandemic, the Governor granted an extension to law enforcement entities to complete internal investigations beyond the normal one year period.

Case 5: Allegation of Inadequate “Missing Cell Phone” Investigation

Factual Overview

The complainant in this case reported that she had left her cell phone at the library. When she returned the next day, the phone was missing. The complainant reported the matter to library staff, but a search was not able to locate the phone. The complainant reported the missing phone to PAPD, and an officer contacted library supervision, made inquiry about the missing phone, and prepared a police report.

The complainant then lodged a complaint against PAPD alleging that its investigation into the missing phone was inadequate. The complainant believed, for example, that it was incumbent upon PAPD to interview all library employees about the missing phone – a step that had not been taken.

PAPD concluded that the inquiry into this matter met Department and industry standards and that it was not a violation of policy to conduct the missing phone investigation as extensively as requested by the complainant.

Outcome and Analysis

IPA has reviewed the allegation and underlying materials and concurs with PAPD’s determination that there were no violations of policy or performance issues.

Case 6: Allegation of False Arrest, Illegal Search and Racial Profiling

Factual Overview

The complainant alleged that during their investigation of a traffic accident, PAPD officers falsely arrested him, illegally searched him, and subjected him to racial profiling.

The underlying incident was initiated when PAPD responded to a two car non-injury collision. During the subsequent investigation, responding officers suspected that one of the drivers (the eventual complainant) was under the influence of marijuana. Indicia of that suspicion was an unsteady gait, the detected odor of marijuana emanating from the driver’s person, and eventually an admission from the driver that he had smoked marijuana. As a result, the driver was given a

series of field sobriety tests that he was not able to successfully perform, and he was then arrested for driving under the influence of marijuana.

As a result of the detection of marijuana odor from the vehicle, officers conducted a search prior to it being towed away, and did in fact discover marijuana. The driver was transported to jail, but booking was refused by jail authorities as a result of a high blood pressure reading. As a result, PAPD offered to transport the driver to a hospital for medical attention or to cite and release him. Per the driver's request, he was then cited and released.

The District Attorney declined to pursue any charges against the driver, citing the failure of PAPD to obtain a blood draw from the driver.

Outcome and Analysis

PAPD conducted an investigation into the allegations raised by the complainant. Several attempts to reach the complainant for an interview were not successful. Nonetheless, PAPD continued to conduct a thorough investigation, including a review of body-worn camera⁶ and in-car video evidence of the responding officer. The analysis was thorough and concluded that the arresting officer did not violate policy, and that the allegations of false arrest, illegal search, and racial profiling were not substantiated. The investigative report noted that the recorded evidence was consistent with the information in the responding officer's arrest report and that there was sufficient cause to search the vehicle. The investigative report found a lack of evidence that the detention and arrest were racially motivated, noting that officers were "responding" to a traffic collision (as opposed to initiating the stop), and that both drivers were asked if they had been drinking or under the influence of a drug.

PAPD did recommend that both responding officers be verbally counseled on their failure to obtain a blood draw from the driver, which had resulted in the District Attorney's decision not to prosecute.⁷

IPA concurs with PAPD's findings that the allegations were not substantiated by the evidence. It also appreciated PAPD's recommendation that the officers be verbally counseled as a learning

⁶ The report noted that after the arresting officer put on a traffic vest, it blocked any further video recording of the incident, although the audio continued to record.

⁷The body-worn camera recording depicts a conversation between the newer officer and a more tenured officer, in which the newer officer asked if they should call for a blood technician to respond to the station. The senior officer stated that they would take care of that issue upon arrival at the station; however, there is no indicia that any further arrangements were made to obtain a warrant or arrange for a blood draw. The paperwork supporting the arrest notes that the driver refused a blood draw, with no further information being provided.

opportunity for the future. If the District Attorney is not filing certain kinds of cases without a blood draw, in-service officers should be aware of that practice. To be sure, all PAPD officers would benefit from the apparent need to obtain a blood draw in order to support a viable prosecution. However, there is no evidence in the file to indicate that the verbal counseling occurred.⁸

The fact that the arresting officer's body-worn camera was blocked when he donned the traffic vest was identified during PAPD's investigation, but there was no apparent follow up on this issue. In order to further guide officers on where to place a body-worn camera when donning a traffic vest, the investigation should have determined how the equipment could still fully function while wearing the safety equipment. With that knowledge, PAPD could then have advised the involved officer and the Department of the appropriate "fix" to this important and recurring equipment issue.

RECOMMENDATION FOUR: PAPD should advise its members of the apparent need to obtain a blood draw in order to support a successful prosecution and consider changing policy to require it in cases involving suspected driving while intoxicated (marijuana or other drugs).

RECOMMENDATION FIVE: PAPD should ensure, through documentation, that any recommended verbal counseling does in fact occur.

RECOMMENDATION SIX: PAPD should determine how a body-worn camera should be placed that would still successfully video events when wearing a traffic vest and impart that knowledge to the involved officer and the Department as a whole.

Case 7: Investigation into Improper Database Access and Allegations of Off-Duty Misconduct

Factual Overview

This case was generated internally, when a dispatcher became aware that an unauthorized name had been entered into the Department's criminal records database via an in-car computer terminal. At the time, the patrol officer who was assigned to the relevant car was working a normal shift and

⁸ We have been advised that recently PAPD has developed a case disposition form that will document that any time that verbal counseling has occurred.

accompanied by a female ride-along (with whom he also was in a dating relationship⁹) and whose name had been the subject of the possibly inappropriate query.

While conducting an initial investigation in the database entry, a supervisor reviewed recordings made by the officer on his body-worn camera at around the relevant time. In doing so, he overheard a recorded conversation in which the officer apparently alluded to a recent recreational use of illegal drugs. This caused the Department to put the officer on administrative leave during the pendency of a now-expanded misconduct review.

The Department interviewed several people as witnesses, including the dispatcher who identified the issue, the officer's direct supervisors, and a friend of the officer who had attended the gathering where illegal drug use had occurred. The officer himself was also interviewed about the various issues.

Outcome and Analysis

The case presented several issues, including the circumstances under which the woman's name had been entered into the database, whether the officer had properly notified supervisors and maintained appropriate control of the woman's actions in her capacity as a ride-along, whether the officer had knowingly been in a social context where illegal drugs were being used, and – most significantly – whether he himself had used illegal drugs in this and/or other contexts.

As for the drug use in question, the Department (after consultation with both the City Attorney's Office and City Human Resources) decided not to administer a physical test of the officer.¹⁰ This meant that the issue on possible drug use turned on different people's testimony about the event – in addition, of course, to the statements made by the officer on the recording as he chatted with his ride-along about the conversation with another officer in which the drug use had been mentioned.¹¹

Based on the representations of the woman, the other friend, and the officer himself – all of whom acknowledged that drug use had occurred at the party, but who steadfastly denied that he had participated as anything other than an observer, the Department determined that it could not prove

⁹ We recognize that the existence of a personal relationship does not *inherently* make applicable ride-along pairings a bad idea. But we encourage PAPD to consider the issue and reinforce the importance of professionalism in that distinctive context, particularly when a dating relationship is part of the dynamic.

¹⁰ One factor was the reality that even if the alleged use had occurred, enough time had passed that the drug's presence would no longer be detectable.

¹¹ It is unclear as to why the officer would have had his camera activated at that point in the ride along.

that the officer had engaged in illegal drug use.¹² His attendance at that party and tacit endorsement of other people's illegal activities did, however, constitute a separate policy violation that was found to be sustained.

As for the inappropriate entry in the Department computer system, the officer's girlfriend accepted responsibility for being the one to physically make the entry. The officer, for his part, claimed to have no knowledge of how the entry came to be made – though he accepted responsibility for her having done so by apparently failing to provide sufficient monitoring. This too was a violation of policy that contributed to the disciplinary consequence the officer ultimately received.

Having reviewed the investigation, we find the Department's different conclusions to be reasonable. However, and especially given the seriousness of the allegations and the discrepancies in certain of the parties' respective stories, it is unfortunate that the investigation itself was not more rigorous, effective, and convincing.

For example, the investigator's interview of the officer to whom the subject officer had originally made his supposedly "joking" reference to illegal drug use was notably short and unsatisfying. The substantive part of the interview lasted approximately three minutes, with the inquiry largely truncated by the officer's assertion that he did not remember such a conversation (which had occurred, if at all, a month earlier). This is, of course, not the same thing as denying that it ever occurred – a distinction that the interview did not pursue.

More pointedly, we found the subject officer's own testimony to strain credulity in several self-serving ways.¹³ But the supervisor who conducted the investigation seemed to accept these at face value rather than probing for explanations – especially in light of the other evidence that was at least partly conflicting.¹⁴

Part of the issue may have been that most of the key interviews – including the subject interview – were conducted only by the supervisor who handled the case. It is common investigative practice (both in criminal cases and in our experience of internal affairs best practice) to have two people

¹² In his interview, he explained that his conversational claim to the contrary had merely been an effort to impress his girlfriend, and not a reflection of his actual behavior. The recorded exchange is ambiguous enough to lend itself to this interpretation, particularly since it gets cut off by radio traffic and interceding events.

¹³ This included his professing to having no independent recollection of the incriminating conversation with his girlfriend that was recorded on his body camera, and his surmising that he must have been out of the car when the inappropriate entry of his girlfriend's name occurred.

¹⁴ For example, the officer's girlfriend recalled his sitting right next to her when she was using the illegal drugs at the gathering in question, whereas he described himself as moving from room to room and distanced from the activity itself.

assigned as questioners. This is for the simple reason that the presence of a “backup” listener and participant increases the likelihood that all relevant ground will be covered and that appropriate follow-up questions will get asked.

We acknowledge that the evidence for the allegation of drug use was insufficient, and recognize that there was value to the accountability that did emerge from the case and the other sustained policy violations. Nonetheless, in light of the shortcomings we noted above, we encourage the Department to consider standardizing the staffing of administrative interviews with two investigators to help promote appropriately robust reviews.

RECOMMENDATION SEVEN: The Department should assign two investigators to key interviews in its internal affairs cases, and at a minimum should ensure such staffing for the interview of the subject employee.

Case 8: Complaint about Rudeness/Interference with First Amendment Activity

Factual Overview

This case arose in the early weeks of the COVID-19 pandemic. It involved a male subject who approached a PAPD traffic stop on foot and began to record it. The PAPD supervisor who had initiated the stop called for backup out of concern that the individual, who was standing nearby and uncooperative with requests to move, presented a potential officer safety issue. Three additional officers responded and interacted with the man over the course of approximately fifteen minutes. Ultimately, the traffic citation was issued, and everyone left the scene.

The man who was recording on the sidewalk eventually posted a video of his encounter with the officers. It attracted a number of views on social media, and some of the attention in that forum centered on a moment when one of the officers (who was unmasked) coughed while standing near the man. Though the officer did cover his mouth, the action provoked additional tension with the subject and led to the officer making a glib reference to coronavirus that was highlighted on the man’s resulting video version of the exchange.

The other officer took the lead on the last few minutes of monitoring this individual, who remained verbally antagonistic. This second officer used a derogatory profanity to characterize the man toward the end of the encounter. Meanwhile, each of the involved officers was also filming the incident with their respective body-worn cameras. The second officer’s recording depicts the man lowering his own mask and coughing repeatedly in her direction at one point in the incident.

The man's subsequently released video shows most but not all of the various exchanges. The Department became aware of the video via the internet soon after it appeared – approximately three weeks prior to the subject's emailed complaints, which separately named both the coughing officer and the officer who had used profanity. The complaint alleged various elements of misconduct, including interference with the man's First Amendment rights, his potential exposure to COVID-19, and different instances of discourtesy.

Outcome and Analysis

The Chief chose to take action after being notified of the relevant social media posting – and before the man's complaints were received by the Department.¹⁵ The Chief reviewed not only the relevant social media posting, but the body camera recordings of the involved officers, which offered a more complete version of the events. He determined that the officers' actions did not rise to the level of a policy violation that required formal investigation or disciplinary consequences. Instead, he met with each officer and provided verbal counseling as to the conduct at issue and the need to meet the Department's expectations for professionalism.

By the time the complaint was received, then, the matter had been addressed internally to the Chief's satisfaction, and he did not feel the need to revisit it. Accordingly, the complaint was lodged for tracking and retention purposes, and no further action was taken.

We have reviewed the body-worn camera recordings (as well as the video posted by the complainant) and have a clear sense of what occurred. Although we were not privy to the substance of the Chief's relevant interactions with the named officers, we consider the approach that was taken to be a reasonable one.

Much of the conflict revolved around the man's assertions that his right to stand on a "public sidewalk" and make a recording was being improperly impinged upon by the officers' directing him to move back. For their part, the officers were careful to distinguish between the man's right to record (which they repeatedly acknowledged) and authority of the officer who was handling the original traffic stop and was entitled to have the man move a safe distance away so as not to create a distraction that interfered with her investigation. Unfortunately, the explanation was not always as clear as it might have been,¹⁶ and the officers gradually allowed their exasperation with the

¹⁵ Different third parties had also contacted the Independent Police Auditor to inform us of the issue after viewing the video on social media.

¹⁶ It is also difficult to know how much of the man's professed lack of understanding was more tactical in nature, given his apparent animosity and desire to provoke. In fact, the man has produced and posted a number of videos of himself engaging in contentious interactions with law enforcement in several different jurisdictions.

man's recalcitrance and contentious, disrespectful manner to influence aspects of the exchange for the worse.

While the officer's cough was apparently unintentional, his subsequent sarcastic reference to maybe carrying the virus was obviously a poor choice – especially in the highly charged and uncertain atmosphere of the pandemic's earliest weeks. Similarly, the other officer's use of profanity betrayed her (understandable) annoyance in a way that not only fell below Department expectations, but also played into the man's apparent eagerness to antagonize.

None of this is optimal. At the same time, in the overall context of the encounter and in light of the brief, passing nature of the respective lapses, it was reasonable for the Department to address the concerns in a relatively low-level manner. Not every performance issue – even those that are arguably or technically in violation of policy – need result in formal discipline in order for the goals of correction and future improvement to be achieved.

Case 9: Complaint about Ineffective Response to a Medical Emergency and Alleged Disclosure of Confidential Information

Factual Overview

This case involved the response to call for service involving an adult woman who was experiencing a medical emergency outside her home in a residential neighborhood. Encountering a young neighbor in her distressed condition, she was able to walk and speak, but had difficulty completing thoughts and expressing the type of help that she needed. The young man called 911 as well as enlisting the aid of his father.

During the communication with the Palo Alto Public Safety Dispatcher, ambiguity as to the cause and nature of the woman's ailment led to the Dispatcher's decision to notify the Police Department in addition to the Fire Department and Medic units that she initially summoned. This led to a delay of several minutes as the Fire and Medic personnel staged a short distance away and waited for PAPD to arrive and clear the situation as safe. PAPD personnel (an officer and a supervisor) eventually made initial contact, with the goal of determining whether the woman was having a mental health episode and potentially posed a danger to herself or others.

Thirteen minutes after their own arrival on scene (and shortly after the PAPD personnel had done their initial assessment), the medics contacted the woman and began treating her. (She was eventually taken to the hospital and admitted with a serious medical condition.) Meanwhile, the PAPD officer who was handling the call made a search of the woman's home in an effort to locate possible evidence that would account for her incapacity and potentially assist with treatment.

Within a few weeks, the woman and her husband had initiated an inquiry with various city officials as to what had occurred and why.¹⁷ There was a focus on several different issues, including the delay in allowing the on-scene medical professionals to begin their work, and the propriety of the officer's search of the woman's home and belongings. An additional question arose regarding the officer's later sharing of information about the call with her own spouse, who was acquainted with the woman; the allegation was that confidentiality protocols had been breached by whatever disclosures had occurred. Lastly, the absence of a body-worn camera recording from the supervisor was investigated for possible violation of PAPD's activation policies.

Because the incident had involved multiple entities within Palo Alto, the City ultimately decided to hire an independent investigator to assess the possible culpability of implicated personnel. There were three identified subjects: the PAPD officer, the supervisor who had also been at the scene from the outset of the response, and the dispatcher who had handled the original 911 call from the neighbor of the ailing woman.

Outcome and Analysis

Dispatcher

Much of the accountability assessment centered on the thirteen-minute gap between when the Fire Department units first arrived on scene and when they initiated treatment of the woman. It is of course preferable to address a medical emergency sooner rather than later. However, the woman's very serious physical distress was manifesting itself in ambiguous ways. She was conscious but agitated, and had difficulty articulating complete thoughts. The young neighbor bystander who first sought to assist her was unsure of her status, and his answers to the dispatcher who handled his 911 call led the dispatcher to request a police response to ensure that the situation was safe for medical personnel. This decision, in turn, led to much of the ensuing time lag: both officers arrived after the Fire Department units were in place and then took several minutes to question the woman before summoning Fire personnel forward.

For purposes of the investigation, the dispatcher's performance (as captured in a recording that was transcribed) was analyzed by multiple subject-matter experts in relation to both policy and to "Universal Standards" for Emergency Medical Dispatch. The ultimate finding was that the dispatcher had deviated from protocol by asking the caller a "freelance" question about the woman's condition, and then failing to return to the standardized checklist in a way that may have better clarified the situation. At the same time, the choice to involve the police and initially "stage" the Fire Department for safety reasons was found to be reasonable based on the

¹⁷ She also corresponded by email and phone with our Office as she was initially exploring her options and seeking a response to her different concerns. We clarified our role in the process and did not hear from her subsequently.

dispatcher's developing sense of the call – even though the *foundation* for that sense was at least partially flawed.

Officer

As for the PAPD personnel, the investigator determined that neither the officer nor the supervisor had violated policy in their decision-making or actions in responding to the call for service. Overall, these outcomes seemed reasonable from our assessment of the investigation.

The officer's five-minute wait for the supervisor obviously slowed her own response to the scene, but it was in keeping with the supervisor's direction (which was in itself based on standard officer safety protocols of waiting for backup in certain contexts). The officer's interactions with the woman seemed well-intentioned, appropriate to the circumstances, and of limited duration. Similarly, her search of the woman's home (which was recorded in full on the officer's body-worn camera and which was authorized on a phone call with the woman's husband) seems to have been undertaken in a good faith effort to gain insight into the woman's condition.

The issue of a possibly inappropriate disclosure was also explored in the investigation. The officer acknowledged sharing information about the service call – specifically and limited to the identity of the woman and the fact she had been transported to the hospital – with her wife, who was familiar with the woman from different contexts.¹⁸ However, the investigator found that these details were not of a type or nature that PAPD confidentiality restrictions forbid.¹⁹

Though the investigator's analysis makes sense in the context of the case and existing policy, the situation and its aftermath raise the question of whether further consideration (or guidance) regarding disclosure of sensitive information is warranted. While the facts and overlap of relationships here were unusual, it is far from inconceivable that similar paradigms will arise in the future. The difference between “can” and “should” seems to be one worth pursuing by Department management.

Supervisor

The supervisor's actions were also evaluated and found to be reasonable, for many of the same reasons as those of the officer. Her choice to have the other officer wait so that they could communicate at the scene and then respond together was considered appropriate to their (limited knowledge) of the situation. If anything, the supervisor was intent on *not* having the Fire Department cede responsibility for handling a case that was medical in nature, and ultimately

¹⁸ The wife's subsequent communications about the matter with third parties also received public attention in the aftermath of the incident.

¹⁹ Notably, the wife was not interviewed as a witness.

sought to hasten the medics arrival by waving them forward and then getting on the radio when they did not seem to react.

The independent investigator also reviewed the supervisor's lack of a body-camera recording. Apparently, the supervisor had inadvertently left the camera in its charging cradle within the police vehicle upon arrival at the scene. By the time the supervisor realized her error, the thought was that getting to the woman and beginning to engage was a higher priority than returning for the camera. The investigator found "insufficient evidence" of a policy violation under these facts. Because the other PAPD officer was properly equipped and had activated her camera (as the supervisor confirmed), the investigator determined that key events were in fact being recorded and that the supervisor's breaking away from the scene to get her own camera would not have been "reasonable." Thus, per the investigator, she was not in violation of the PAPD policy that requires officers to make all "reasonable" efforts to activate their camera system when responding to calls for service.

This is perhaps the least convincing of the investigator's conclusions. The supervisor's mistake in forgetting the camera initially may well have been an innocent one, and the decision to forego retrieval of it made sense as well. But it *was* a mistake, and it compromised the totality of the available evidence in a call that became the subject of some controversy. Moreover, her identity as a supervisor raises expectations and makes accountability even more appropriate. In our view, a better approach would have been to acknowledge the lapse as a violation, and consider mitigating factors as needed with regard to any consequence.

Policy Change

Importantly, the incident itself also proved to be an occasion for a thorough revisiting of related policies and practices. This systemic review resulted in concrete operational changes. These included updates that refined expectations for the timelier delivery of medical aid in situations where the police and fire department personnel are both responding. Notable shifts included the direction for the police to employ lights and sirens in speeding their own arrival to such scenes, and more overt references to prioritizing necessary medical care even when the subject is a candidate for a possible mental health commitment.

To us, these steps appear to make practical sense. They also show a commendable ability to glean lessons from experiences in the field, and to make adjustments in an effort to improve future performance.

Taser Deployments

Case 1: Non-contact Deployment during Foot Pursuit

Factual Overview

Officers responded to two calls that emerged in a short span of time and involved similar allegations. Individual female victims described being approached by two subjects while walking in a residential neighborhood. In both instances, the females were pushed and had their cell phones physically wrested from them. This constituted a “strong arm robbery,” an obviously serious offense. Responding officers soon located the subjects, who were both on bicycles, and attempted to detain them. One subject fled on foot and was pursued by an officer who used his Taser in an effort to facilitate the apprehension. The activation failed to connect, and the foot pursuit continued.

Soon thereafter, the subject stopped and was taken into custody without further incident. He was found in possession of the two phones that had been taken from the victims.

Outcome and Analysis

This use of force was reviewed by a supervisor, who interviewed the subject and assessed recordings and reports from the involved officers. The recounting of the Taser deployment was essentially consistent across the different individual versions. The subject acknowledged recognizing that it was a police officer who was ordering him to stop, admitted to running away, and repeatedly confirmed that he had not been struck by the darts or otherwise injured.

That said, a few additional factors needed to be weighed in terms of reaching the supervisor’s ultimate conclusion (which was endorsed up the chain of command): that the use of the Taser had been objectively reasonable and consistent with Department policy. We found the underlying analysis at this initial level of review to be less than robust, as we discuss below.

The first issue was the fact that the subject was running away at the time the officer used the Taser. Per PAPD policy, “Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the [device] to apprehend an individual.” The resulting question, then, was whether “other known circumstances or factors” warranted the exception here to the normal limitation.

The officer himself cited various reasons why he believed that such justification occurred. These included the physical nature of the crimes the subject was believed to have recently committed and the fact that he was “grabbing at his pockets” as he ran – thereby raising the possibility of a weapon. The supervisor seemed to accept this representation (and not illegitimately). But his

memo in connection with the case did not even flag the flight issue as one worth citing and explicating.²⁰

The second issue was the lack of a warning. The Department's "Conducted Energy Weapon" policy stipulates that a verbal warning should precede activation of the device unless it "would otherwise endanger the safety of officers or when it is not practicable due to the circumstances."²¹ The officer in this case did not issue a warning, which he attributed in his report to the fact of their running, and that the "incident was evolving."

Again, it was disappointing that the supervisor again did not make an overt, specific analysis of this element as part of his overall assessment of the Taser use. Nor did the subsequent memo produced by a higher ranking officer close this gap.

An issue that the second-level reviewer *did* address (though the original supervisor had not) was the subject's status as a juvenile. The relevant PAPD policy regarding "Targeting Considerations" cautions that "obvious juveniles" are among the groups for whom use of the Taser should "generally be avoided." The supervising reviewer correctly noted that the size and appearance of the subject (6 feet tall, 205 pounds) moved him beyond the realm of an "obvious" juvenile. Nonetheless, the supervisor's memo should have flagged the subject's actual age (16) and considered it as part of the analysis.

The initial reviewer did identify and contend with an additional concern in the case: namely, the fact that the officer wore a jacket over his body camera in a way that obscured the key parts of the encounter (and meant that there was no visual evidence of the actual Taser discharge). This obvious shortcoming seems to have been appropriately addressed in direct communications with the officer, as documented in the memo.²²

Lastly, the memo features an extended discussion of a profanity used by the partner officer in the seconds before the subject surrendered and was handcuffed. Specifically, the approaching officer (after a tiring foot pursuit of some 150 yards) yelled for the subject to "get on the fucking ground." To his credit, the supervisor identifies the issue in his write-up and engages in a thoughtful analysis of it. He ultimately determined that this statement fell within the "deliberate verbal tactic"

²⁰ Interestingly, the manager who reviewed the first supervisor's work and prepared his own memo added a reference to the "densely populated" neighborhood where the pursuit occurred, "where it has been historically difficult to apprehend suspects." This potential rationale would have been more compelling if the officer himself had articulated it. We write elsewhere in this report about the importance of supervisors refraining from adding their own after-the-fact supports for officer actions in the review context.

²¹ Interestingly, the subject made reference to this expectation when he was interviewed by the supervisor about the force deployment; he wondered why no warning had occurred and shared his impression that the officer was "supposed to" issue one.

²² Conversely, another case discussed in this report involved the donning of a safety vest by an officer that prevented a video account of the incident, but there was no such proof of direct intervention. (See Misconduct Case 6, above.)

exception to the usual Department prohibition against profane language. We concur. However, in our own review of that officer's body-worn camera recording, we noted additional instances of subsequent profanity that seemed more gratuitous in nature. More importantly, they were omitted from the supervisor's memo, which went so far as to (incorrectly) say that the "obscene language ceased when the suspect was taken into custody."

We have discussed profanity concerns in multiple prior reports, and need not belabor them here. The supervisor's attention to the topic as part of his review is a form of progress, and we think the framework for analysis is a sensible one. At the same time, effectiveness in the setting and upholding of *any* expectations depends on consistency and rigor, and these latter qualities were missing from that part of the discussion in this case.

Case 2: Arrest of Carjacking Suspect

Factual Overview

A PAPD supervisor responded to a call for service involving a carjacking in progress. When the supervisor arrived, he observed an individual sitting in the driver's seat of a vehicle and was advised by the victim that he was the subject who was attempting to steal her car. The supervisor ordered the subject to get on the ground; instead of complying, the man told the supervisor to "back the fuck up." At that time, according to the supervisor, the subject made an abrupt move in his direction. The supervisor, who had already unholstered his Taser, deployed it and struck the subject, causing him to fall to the ground. The supervisor then took the man into custody.

The subject was transported to a local hospital for treatment, cleared for booking, and booked for carjacking and resisting arrest.

Outcome and Analysis

The supervisor who reviewed the force incident determined that the use of force was within PAPD policy. Below, we discuss our own impressions in two categories: procedural issues in the investigation, and substantive questions about potential inconsistencies in reporting.

1. Procedural Shortcomings

Attempted Interview of Subject

The reviewing supervisor traveled to the jail in an effort to interview the subject. According to the reviewing supervisor's report, the subject was falling in and out of sleep and did not respond to questions asked of him. As a result, the reviewing supervisor ended his efforts to interview the subject.

The reviewing supervisor's report regarding the physical and/or mental state of the subject suggests that his then-condition may have precluded his ability to respond to the questions being posed. In such cases, which presumably arise with some regularity, we recommend that the reviewing supervisor revisit the subject when practicable to again attempt the interview under better conditions.

RECOMMENDATION EIGHT: PAPD should revise its force review protocols to instruct supervisors that when an initial attempt at a subject interview is not productive as a result of an observed physical or mental condition, the reviewer should attempt to re-interview the subject at a later, more favorable time, or document why such an attempt was not made.

Delay in Supervisory Review of Recording

According to the reviewing supervisor's report, fifteen days after the incident he reviewed the footage from the supervisor's body-worn camera. In our view, a lapse of more than two weeks between the date of the incident and a review of body-worn camera evidence is problematic, since it inherently slows the identification of potential issues warranting further exploration. No explanation was documented for the delay; it is important that the reviewer examine any body-worn camera video much closer in time to the incident.²³

RECOMMENDATION NINE: PAPD should develop protocols to ensure that body-worn camera evidence of any reportable force be reviewed by the supervisor assigned the force review close in time to the date of the incident.

2. Substantive Review of Evidence as to Deployment

In our own review of the available evidence here, we found inconsistencies that we believe warranted further attention. Specifically, we found that the video recording did not clearly corroborate some aspects of either the involved supervisor's version or the reviewer's recounting of it. And we noted that the report of the additional officer on scene included an observation worth exploring further.

The reviewing supervisor wrote that he spoke with the supervisor who deployed the Taser. According to that report, the supervisor stated that after he arrived on scene, obtained information from the victim, and observed the subject seated in the vehicle, he called for back up and ordered the subject to get out of the vehicle and on the ground. The subject responded by telling the supervisor "to back the fuck up," at which time the supervisor deployed his Taser and again

²³ We were advised that a supervisor did review the body worn camera footage within 48 hours of the incident, but this was not the supervisor assigned to conduct the force review.

ordered the subject to get out of the vehicle and on the ground. According to the supervisor, the subject exited the vehicle and took an “aggressive stance,” lunging toward the officer with his left shoulder. The supervisor said that he believed the subject was maneuvering to assault him and therefore deployed his Taser.

In a supplemental police report, the supervisor who deployed the Taser wrote that after he arrived on scene, he told the subject to get on the ground. The report indicated that the subject quickly looked at the supervisor while “aggressively and threateningly” pointing his finger at the supervisor and yelling: “back the fuck up”. The supervisor wrote that he then unholstered his Taser, pointed it at the subject and repeatedly told the subject to get on the ground.

The supervisor wrote that the subject then paused a moment before suddenly and quickly stepping fully out of the vehicle and towards the officer in an “aggressive” manner. The supervisor wrote that he believed that the subject was moving to assault the officer. The supervisor wrote that he believed that if he attempted to go hands on, the subject would fight him or resist arrest, which would have likely caused injuries to the officer, the subject, and responding officers. The supervisor wrote that the subject provided no indication or statement that he was going to peacefully comply with his commands.

The supervisor reported that as the subject stepped out of the vehicle and quickly turned his head to his left, the officer immediately activated his Taser, once, striking what appeared to be the subject’s stomach and leg. The supervisor stated that the subject appeared to feel the effect of the Taser application and collapsed to the ground. The supervisor advised that he did not provide a verbal warning of his intended use of the Taser before activation because the subject could clearly see that the officer was pointing the Taser at him and because the situation was unfolding quickly. The supervisor indicated that he could observe the red laser dots on the subject’s body.

In contrast to the rationale offered by the supervisor, a responding PAPD officer who observed the Taser deployment and was tasked with writing the main police report wrote that once the subject exited the vehicle, he made an attempt to flee on foot, but police prevented his escape by using a Taser to incapacitate him.

The force memo prepared by the reviewer also and separately summarizes what occurred and includes the reviewer’s description of the video evidence and what it shows. For instance, the supervisor reported that the footage begins with the involved supervisor arriving on scene and asking “what’s going on,” to which a woman depicted in the video replied: “some guy tried to steal my fucking car.” The supervisor reported that the video shows that the man in the car steps out and remains within the driver’s side door area and appears agitated as he motions about “wildly.”

The reviewing supervisor reports that the footage captures the supervisor asking for emergency backup and telling the subject: “Hey sir, get on the ground”. The supervisor review reports that the

subject looks back to the supervisor, waves his hand at him, and says “back the fuck up.” The supervisor indicates that the subject does not comply with officer commands and still has one leg inside the driver compartment of the vehicle. According to the report, the footage shows the supervisor deploying his Taser and while pointing it at the subject continues to order him to get on the ground. The report states that the footage shows that the subject again responds to the supervisor to “back the fuck up” and then makes a quick turning movement toward the supervisor. The reviewing supervisor describes the footage as showing the subject turning and pulling his leg out while lunging outward from the driver side of the car. Finally, the reviewing supervisor notes that the video shows the supervisor deploying the Taser which causes the subject to immediately fall to the ground.

Based on his assessment of the evidence, the reviewing supervisor determined that the use of the Taser was within policy. He noted the PAPD policy requiring verbal warning of the intended use of the Taser but found that it was a “rapidly evolving event” that required immediate police intervention; additionally, because the involved officer was by himself, there was no need to warn other officers of the Taser activation.

The reviewing supervisor further concluded that since after the subject exited the vehicle and took an “aggressive stance, lunging toward him with his left shoulder,” the supervisor reasonably believed that the subject was maneuvering to assault him, which provided a sufficient threat to justify the deployment of the Taser.

OIR Group Analysis

Current Taser policy requires a verbal warning of its intended use unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The current policy also states that “mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the [Taser] to apprehend an individual”.²⁴

IPA’s review of the body-worn camera of the supervisor who deployed the Taser depicts the officer arriving on scene, asking “what’s going on”, and being advised by the victim that the subject was trying to steal the victim’s car. The video recording further depicts the supervisor telling the subject to get on the ground and unholstering and pointing his Taser at the subject. The video recording also depicts the subject telling the supervisor to “back the fuck up.”

The video shows the subject gesticulating and pointing but neither the supervisor who used force nor the video shows the subject motioning about “wildly” as written by the reviewing supervisor. There also appears as if there would have been time to issue a verbal warning to the subject before

²⁴ The relevant passage of the current PAPD policy had a “typo” with a critical word missing. The typo has subsequently been corrected.

deployment of the Taser. And significantly, the video shows the subject stepping out of the car and taking a step or two towards the back of the car as if he is moving to flee as opposed to moving aggressively towards the supervisor.

The potential discrepancy between what the video shows and the arguably varying accounts from the involved supervisor and witness officer suggests that this matter should have been elevated to a formal internal affairs investigation. That process provides for formal interviews of witness officers and the involved supervisor who deployed the Taser. A more formal investigation would provide an opportunity to fully flesh out any discrepancies from PAPD personnel and potential variances from what the video appears to portray. In turn, PAPD would have had a more complete basis to determine whether the supervisor violated policy in failing to provide verbal warnings or deploying the Taser on a subject whose actions may not have met the threshold of provocation. While PAPD might have well determined after a formal investigation that the Taser use was consistent with policy and Departmental expectations, this matter would have benefitted from a more formal investigation to flesh out the incident.

RECOMMENDATION TEN: PAPD should ensure that in force cases for which there is a seeming discrepancy in the evidence (as in gaps between officer versions, or between reports and body-worn camera footage), the review is elevated to a formal internal affairs investigation.

Other Force Cases

Case 1: K-9 Deployment in Back Yard

Factual Overview

Police in a neighboring jurisdiction were responding to a kidnapping call with a suspect at large and called PAPD for assistance from the K-9 unit to assist in locating the individual. PAPD deployed a K-9 police officer, who met with the neighboring agency's scene supervisor and then deployed his dog to track in the area where the suspect had last been seen. Prior to this, the K-9 officer made repeated announcements of his intent to deploy the dog.

Eventually, the K-9 officer began to conduct yard to yard searches. The first yard search was of a residence that was under construction and not inhabited. The K-9 and the handler were able to make entry with the dog off leash; once inside the fence the handler made announcements. No one was located in this yard.

The second house was dark and there were no signs of people awake in the house. There was no effort to contact anyone in the house. The K9 officer made entry into the rear yard, again with the

dog off leash, and then made announcements. The yard search was conducted but nothing was found.

Prior to entering the residence in question, the K-9 officer and his cover team (another PAPD officer and a K-9 officer from a neighboring agency) observed people in the front rooms of this residence. The PAPD officer assigned to provide cover to the K-9 officer went to the door and spoke to a resident. The information provided to the K-9 handler by the cover officer prior to his entry into the back yard was that the residents had not heard anything, that nobody was in the backyard, and that the officers could go into the yard and search.

The officer and the K-9 then went into a back yard with the K-9 off leash, at which time the officer observed an individual in a small structure whom he believed was the suspect. The officer wrote in his report that he observed the individual fighting with the dog (kicking him, choking him, and hitting him repeatedly on the face) and then ordered the dog to bite. The individual was bitten on the leg by the K-9. The officer said he kept the dog on the bite until the cover officers could successfully take the individual into custody, a duration he estimated as approximately 40 seconds.

After the individual was handcuffed, officers examined the man's wallet and it was determined that he was not the suspect, but rather a relative of the location's residents. The man was taken out of handcuffs and medical attention was promptly provided to him.

Prior to entering the back yard, the K-9 officer had not provided announcements warning of the deployment of the K-9. The officer explained it was his intent to do so once he had entered the yard, but because the individual ended up being situated so close to the entry area, he was not able to do so.

The K-9 handler spoke with the victim at the scene, while he was in the ambulance and awaiting transport to the hospital. In later reviewing a recording of this interview, the investigator noted that he was able to discern that English did not appear to be the victim's primary language; he also noted that understanding the man's speech was difficult at times.

The K-9 officer asked the victim why he did not come out when he had made the earlier announcements, and the victim replied that he had not heard them because he was sleeping. The K-9 officer asked why he did not show his hands, why he choked the dog, and why he tried to run. The victim responded that he did not know what was happening to him and was trying to get the dog off of him. The victim said he did not try to run. The officer asked why the family did not know he was in the back yard; the victim said he had left to get something to drink and had not told them he was back.

A PAPD supervisor also interviewed the victim in the emergency room of the hospital. The victim said he did not hear the officers make any announcement. He further said that he did not know

what was going on and that he was trying to stop the dog by pushing him away. The victim denied trying to choke the dog.

PAPD Findings:

PAPD conducted an internal investigation and determined that the deployment of the K-9 was consistent with current training and policy. However, to the Department's credit, the review did identify policy issues worthy of potential revision.

First, a PAPD reviewer recommended that policy be revised to clearly state that the deployment of a canine was a use of force, with the potential for serious injury, and is accordingly governed by the Department's overall use of force policy. This recommendation was in fact adopted, and the canine policy was revised.

The reviewer further recommended that the "serious offense" language in current policy that was intended to describe the types of matters for which a K-9 deployment was authorized be replaced by "crime of violence" or "violent felony" in order to provide more clarity on the types of offenses that would warrant the use of a K-9. The reviewer specifically noted that the policy did not define what constituted a "serious offense" whereas "crimes of violence" or "violent felonies" are defined in state law. Again, this recommendation was accepted, and the policy was revised to authorize K-9 deployment for any "violent felony as defined by PC 667.5 or misdemeanor involving the possession or use of a deadly weapon."

The reviewer recommended that additional language should be added to current policy clarifying that the mere presence of a police canine can be an effective tool for facilitating a peaceful surrender and that an announcement should be made prior to entry or deployment to provide a meaningful opportunity for peaceful surrender to occur. Again, this language was adopted and codified into the Department's canine policy.

The reviewer further proposed changing the policy to permit the absence of an announcement only when specific and articulable facts exist to indicate that making the announcement would increase the risk of injury to officers or the public, and eliminating current language which excuses the absence of an announcement when there is an increased risk of escape. This recommendation was accepted and PAPD's canine policy was revised accordingly.

The reviewer noted that the investigation had revealed that the K-9 officer had been trained to make entry to an enclosed yard and reach a position of safety where he could assess the terrain prior to making the announcement. The reviewer recommended reconsideration of the use of this tactic. The reviewer opined that had the handler made an announcement prior to opening the gate (or even after opening the gate but before making entry), it was possible the individual would have made his presence known and avoided the bite.

Analysis

Interviews Not Conducted

In reviewing the investigation, the IPA determined that the victim and an officer witness to the incident were not formally interviewed as part of the internal affairs investigation.

With regard to the victim of the dog bite, the internal investigator reported that he decided not to interview him because he was represented by an attorney and had filed a claim with the City. The fact that an individual has representation does mean that any outreach to him should go through his attorney, and it is possible that cooperation will not be forthcoming. Still, in such situations a police agency should still make all reasonable efforts to obtain an account of the event from the victim of a K-9 deployment. While an attorney may decide that it is in the best interests of his client not to sit for an administrative interview, we also have experience to the contrary. It was disappointing that PAPD used the victim's represented status as a reason to forego any outreach.

RECOMMENDATION ELEVEN: PAPD should revise its protocols to ensure that PAPD personnel assigned to administrative investigations attempt to interview all civilian victims and witnesses, even when they are represented by counsel.

Additionally, the investigative report indicated that another agency's K9 handler was present during the deployment of PAPD's K9 but was not interviewed. While there is body-worn camera footage of the deployment, the video does not capture events preceding the incident, and the night-time and confined conditions of the deployment provided a less than optimal video/audio account. The K9 handler wrote a report that was obtained by PAPD, but a written report is a poor substitute for a thorough interview.

RECOMMENDATION TWELVE: PAPD should advise those assigned to conduct internal investigations that witness officers to any force incident should be interviewed if possible, even if they are employed by another police agency.

Body-Worn Camera Evidence

The other agency officer wrote in his report that he had activated his body-worn camera prior to the incident. However, there is no evidence that PAPD attempted to retrieve the body-worn recording of that event from the other agency. Obtaining that recording would have provided an additional vantage point from which to evaluate the incident.

RECOMMENDATION THIRTEEN: During internal investigations into uses of force, PAPD should retrieve and review any body-worn cameras of other agency witness officers.

Additional Issues Identified by PAPD during the Review Process

1. Failure to Attempt to Contact Residents Before Conducting Yard Search

As detailed above, the investigation revealed that prior to the entry in question, the K-9 officer had made at least one other backyard entry with the police dog off leash and without contacting the residents. Current PAPD policy has no requirement that residents be contacted prior to entering into a yard and deploying a K-9.

A failure to even attempt to contact residents prior to deploying a K-9 in their back yard could easily lead to the sort of harmful outcome that occurred later in this incident. While the report was that the relevant residence was dark, a knock on the door and advisements should nonetheless have been undertaken prior to entering the back yard of a residence with a K-9 off leash.

2. Conversation Between Resident and PAPD Cover Officer

The internal investigator reviewed the recorded conversation between the PAPD cover officer and the resident who answered the front door. According to the investigative report, while the officer inquired about possible pets or pools in the back yard, he did not ask if there were any people there. Nor did the cover officer indicate to the resident that the officers intended to search the back yard with a police dog.

While the failure of the PAPD cover officer to specifically ask whether there were any people in the yard to be searched and to expressly advise of the Department's intent to deploy a K-9 was identified during the Department's investigation, there was no recommendation in the review documents on how to ensure that future deployments avoid similar pitfalls. We were advised, however, that a training memorandum was issued subsequent to this incident and were provided a copy of that memo. The

memorandum indicates that a policy modification will be made consistent with the instruction in the training memorandum and urge PAPD to revise its policy accordingly²⁵

RECOMMENDATION FOURTEEN: Per its stated intent, PAPD should modify its policy requiring officers to contact residents of yards prior to searching, ensuring that specific questions are asked about potential individuals in the back yard, the Department's intent to deploy a K-9, an advisement to residents to stay inside during the search, and a follow up contact when the search has been completed.

3. Failure to Provide Warnings Before Entry into the Back Yard

PAPD's then-policy regarding warnings read in pertinent part:

318.5.2 WARNINGS AND ANNOUNCEMENTS

Unless it would increase the risk of injury or escape, a clearly audible warning announcing that a canine will be used if the suspect does not surrender should be made prior to releasing a canine.

In this case, the handler asserted that by waiting to make announcements until they breached the yard, it avoided officers getting "ambushed" or the suspect escaping, and that they were better positioned inside the yard to ascertain the intent of the suspect. The investigation also corroborated the K-9 handler's statement that this approach had been regularly approved and trained as a technique by PAPD's K-9 program.

The internal investigator recognized that this tactic is problematic if the person sought is within a few feet of the entry point, as in this case, and could lend itself to the unfortunate result that occurred here. However, based on the plain language of the policy and the training provided at the time of the incident, he found that the handler's actions were consistent with policy.

As noted above, the reviewer of this investigation recommended that the tactic of having an off-leash K-9 enter the back yard prior to warnings should be reconsidered. And the canine policy was revised consistent with the recommendation:

A clearly audible warning to announce that a canine will be released if the person does not surrender shall be made prior to each entry, deployment, or

²⁵ The Department should also consider in the policy modification an instruction to residents to stay inside during the pendency of the dog search, and a provision for subsequent contact to advise of when the search has been completed.

release of the canine. When a search involves entering multiple distinct properties, a warning should precede each such entry.

4. Deployment of K-9

PAPD determined that because the handler believed that the individual in the back yard was a person wanted for kidnaping, the situation met the criteria for deployment. PAPD concluded that the handler perceived that the man's attempts to fend off the dog was violent resistance and the command given to the K-9 was appropriate under the circumstances believed by the officer.

The investigator noted that the officer gave repeated bite commands, somewhere in excess of 35 times. However, the investigator noted that the repeated commands were an instruction to hold the bite, not to release the bite and continue to bite repeatedly. PAPD found that after the cover officers had control of the man's hands, the K-9 officer called the dog off the bite.

5. Failure to Identify Oneself During Arrest

A review of the body-worn camera of the dog deployment showed that none of the three responding officers identified themselves as police to the man. As noted above, the victim said that he was shocked and had no idea what was going on. However, the investigator concluded that because the officers believed they were arresting an individual who should have known that he was the subject of a police response, they would not have had the mindset to advise him that they were police.

In this case, while it may have not been *necessary* under policy and law to identify themselves as police officers, law enforcement is universally trained on the advantage of doing so to eliminate any potential confusion as to their status. This provided a learning opportunity to the responding officers that was not apparently pursued.

RECOMMENDATION FIFTEEN: The K-9 handler and PAPD cover officer should be counseled on the importance of identifying themselves as police officers during any attempts at apprehension.

6. On-Scene Interview of Victim by K-9 Handler

As detailed above, the K-9 handler interviewed the victim in the back of the medic van. The internal investigator expressed concern with this conversation due to the stance that the officer took, asking questions that were leading and accusatory. The investigator noted that by this point, it was clear to the handler that the man was not

the suspect, but that it was evident from the officer's line of questioning that he was nonetheless trying to shift blame to the victim for fighting with the police K-9.

The investigator concluded that the victim had no intention of harming the dog but was merely defending himself from an unprovoked attack. The investigator concluded that the K-9 handler's attempt to shift blame to the victim was not appropriate. Instead, the investigator opined that the officers should have acknowledged that an error was made and that the wrong person was bit. As the investigator aptly summed up: "We should not try to blame the innocent person, or their response, because of very unfortunate circumstances that fell upon them."

While the investigator should be credited with identifying this issue, the Department did not appear to consider any remedial action designed to address the situation. One reform worth considering is systemic: in order to create more neutrality to any post-incident interview, it would be more appropriate in the future to have a supervisor exclusively handle that task.²⁶

Moreover, as for this specific case, the handler should be counseled on the inappropriateness of his conversation with the victim who had been wrongly bit by his police dog. While there is no documentation indicating that such counseling did occur, we have been advised that the dog handler was so advised.

RECOMMENDATION SIXTEEN: PAPD should revise policy to ensure that any post-incident interview of a person subjected to a K-9 deployment be handled by a supervisor.

Case 2: K-9 Deployment on Fleeing Suspected Felon

PAPD received a report of a carjacking occurring in a neighboring jurisdiction. One of the subjects was reportedly armed with a long gun. A PAPD K-9 officer was on patrol when he observed a car traveling at a high rate of speed. The license number matched the stolen car. The officer went in pursuit of the vehicle.

Eventually the vehicle came to a stop and five occupants ran from the car. The officer, his K-9, and two backup PAPD officers all chased after the driver of the car. The police K-9 bit the driver who had fled from the scene, and he was arrested. It was learned subsequently that the driver was a minor. He was transported to a hospital for medical attention after sustaining puncture wounds and bite marks to his left shoulder, left elbow, and left thigh. He was then booked into Juvenile Hall.

²⁶ And as detailed above, a supervisor did interview the victim at the hospital.

The PAPD reviewer determined that the decision to pursue the car was within Department policy and expectations. He also found that once the vehicle pursuit came to an end and the driver fled, the decision to deploy the K-9 to effectuate the apprehension was also consistent with PAPD policy.

Additionally, the reviewer considered the expectations of policy that warnings be given and concluded that under the circumstances, the formal warnings normally provided would have been ineffectual. However, the reviewer did recommend that K-9 handlers be advised that using a shorter improvised verbal warning such as “Police Dog” should be considered. OIR Group agrees with this recommendation. Such a warning would not slow down the deployment of the dog, might cause the desired goal of self-surrender, and would provide potential warnings to uninvolved individuals that an unleashed police dog was about to be deployed.

The reviewer also considered current policy’s restrictions regarding deployment of K-9 on juveniles. He determined that based on the physical features of the driver, it would not have been possible for the dog handler to know that he was a juvenile.

Finally, the reviewer noted that one of the backup officers was not wearing his body camera at the time of the foot pursuit. The officer reported that his camera was being charged and under the exigency of the situation, he had not remembered to retrieve it prior to going into foot pursuit. The reviewer indicated that the officer’s oversight would be verbally addressed with him.

The review of this matter by PAPD was thorough and addressed both central and collateral issues regarding the officer’s performance. One important internal recommendation was made to ensure that some type of modified warning be provided when a dog is about to be released under exigent circumstances would be helpful. There is no indication that this recommendation was implemented. It should be.

RECOMMENDATION SEVENTEEN: PAPD should advise all members of the K-9 program (including the involved officer in this incident) that even when formal announcements are not practicable, officers should provide a modified warning so that the subject and other potential uninvolved individuals are advised of the impending intent to deploy the police dog.

UOF Case 1: Knee Injury After Foot Pursuit, Takedown

Factual Overview

The subject in this incident injured her knee at some point in an encounter with a PAPD officer. She was a shoplifting suspect who attempted to run away from the scene, ignoring the officer's commands to stop. He ran after her, caught her, and took her to the ground from behind after grabbing her sweater and hair and pulling her down. She was then taken into custody without further incident.

Two different supervisors came to the scene and were notably responsive to the issue of potential knee pain. The subject herself did not seem to initially emphasize the issue, focused as she was on whether she should have been arrested in the first place.²⁷ Indeed, she did not mention it at all for several minutes, and walked a considerable distance with no issues after her initial apprehension. However, as time passed and it became clear that she was going to be faced with multiple charges, she began to accentuate the knee problem as if in a reactive way.

In spite of some skepticism as to the severity of the injury and the sincerity of the subject's assertions, the Department facilitated her transport by medics to the emergency room for treatment.²⁸

A different officer responded to the hospital to conduct further investigation. That officer eventually cited and released her at the hospital for the crimes of petty theft and resisting arrest.

Force Review

The force review was conducted by one of the responding supervisors, who ended up having the majority of the interactions with the subject. She was able to make her assessment about the force based on several factors, including a statement from the subject, the involved officer's written report and body-worn camera recording, and witness testimony and other evidence as to the underlying crime. This was a comprehensive basis for evaluation – with one minor exception.

This involved documentation of the woman's injuries. The supervisor made the decision on scene not to attempt photographs in light of the obstacle presented by the tights the subject was wearing.

²⁷ She repeatedly asserted that the store Loss Prevention personnel had told her she could leave after she returned several items she was apparently intending to steal.

²⁸ This was the criterion that brought the case within our notification protocol with the Department.

This seemed reasonable, but, as the force memo later explained, “volume and staffing needs” also prevented any follow-up at the hospital as to photos or other information about her condition.²⁹

The force itself was limited in its application: the officer’s grabbing and “takedown” of the woman from behind lasted only a couple of seconds, and she did not offer any resistance after going to the ground. The woman herself seemed unsure what had happened, and thought that she had tripped either right before or right after coming into contact with the officer. Nor did she seemingly take exception to his pulling on her long hair as part of his seizure of her – in fact, she did not allude to that detail in her descriptions of what occurred. Again, the fact that he had taken her into custody at all seemed much more of a preoccupation than the manner in which it happened, or the legitimacy of the force that was used.

The supervisor determined that the use of force was justified and consistent with policy, and that no further action was required. This analysis was endorsed by three other reviewers of higher rank.

We concur with the conclusion that this minor force event authorized to apprehend the subject and consistent with Department policy. Although the officer neglected to identify himself as law enforcement as he gave commands to the woman from behind (thus providing a window for her to claim uncertainty about what was happening), he believed she had looked right at him as she initially ran by and was undoubtedly aware of his status. He also seems to have been physically controlled, and was quick to de-escalate when it became clear that no further force was necessary.

Apart from the claim of injury and the loose ends regarding any medical outcomes, the most noteworthy aspect of the force deployment was the technique of grabbing the woman’s hair. This was unorthodox – if effective – and it was interesting that the officer omitted this detail when writing his supplemental report about the incident.³⁰

While the reviewer’s analysis seemed reasonable on the whole, it also took pains to justify the force through rationales that seemed unduly elaborate. This included reference not only to potential traffic hazards and collisions had the foot pursuit continued, but also to the possibility of the suspect retrieving a weapon from a parked vehicle, or an “ambush scenario” if accomplices were nearby.

We question the value of – and need for – this emphasis on speculative dangers. Importantly, the officer himself did not mention any of these factors in his own report; the use of force happened

²⁹ The records in the case file also include a partially completed authorization for disclosure of medical information. But it is not signed, and apparently was not pursued.

³⁰ Notably, and to his credit, he did verbally relay it to responding supervisors, and explained it to the handling medics so as to ensure that they would have an accurate sense of possible issues.

quite quickly and as a reaction to the subject's sudden appearance, and it seems unlikely that this detailed calculus of potential threats occurred to him in the moment.

Here, the officer had every right to apprehend her, and did so in a way that involved proportional force. Law enforcement's credibility with the public depends in part on taking ownership of the choices it makes, and that credibility is strained when the potential for harm is exaggerated in this fashion.

RECOMMENDATION EIGHTEEN: PAPD should follow through where possible on obtaining relevant photographs of injuries and medical records in force cases resulting in hospital visits.

RECOMMENDATION NINETEEN: PAPD supervisors should refrain from going beyond the involved officer's own claims in justifying force through the listing of possible threat-based rationales.

UOF Case 2: Leg Sweep and Take Down to Effect Arrest

Factual Overview:

Officers responded to the scene after getting a report of a transient individual pushing newspaper racks in the middle of the street. The first officer to arrive found the male subject to be immediately confrontational – including spitting at the officer as he sat in his patrol car. The officer eventually got out of his car and tried to verbally engage with the man (who was in his sixties and very slender) from a safe distance, but he remained agitated and antagonistic.

As the standoff continued, a second officer arrived in response to his colleague's radio request for emergency backup. He approached by car from behind the subject, took a moment to observe the situation (including the subject's aggressive stance), and decided that his best option was to decisively move to grab the subject and take him to the ground with a leg sweep. He was able to effectuate this tactic, and the first officer placed the subject into handcuffs.

Seeing a small amount of blood on the man's head from where he may have impacted the ground (as well as scrapes on his bare feet), the officers summoned medical aid to the scene. The man was eventually transported to the hospital for treatment and placed on a psychiatric hold in light of his aggressive behavior and his repeated outbursts.³¹

³¹ This was the criterion which brought the case within our notification protocol with the Department.

Force Review

The primary memorandum regarding the use of force was prepared by a supervisor who had responded to the scene. He followed the format/template established by the Department, which we find to be thorough and very useful in the topics that it requires supervisors to address. One of these, for example, relates to “De-Escalation” and requires a summary of the efforts that were made (or an explanation as to why such attempts were not feasible).³²

The supervisor showed patience and diligence in conducting an interview with the subject. He also took photos, evaluated recorded evidence (including looking for possible surveillance cameras from the nearby business), and did a methodical analysis of the relevant factors in reaching his conclusion: namely, that the force was reasonable and justified.

Unfortunately, the overall body of evidence was lessened by the first officer’s initial failure to activate his body-worn and in-car camera and audio systems. The supervisor (and the higher-ranking manager who later reviewed the case) properly flagged this as a concern and designed an intervention to remediate the issue.

We concur with the finding that the force was in policy.

UOF Case 3: Controlling Force and Use of Restraint System Leading to Minor Injury

Factual Overview

Officers responded to a call for service arising from a confrontation in the street and the alleged robbery by force of the victim’s personal property. Officers were able to locate, detain and handcuff the alleged perpetrator, a male in his fifties. Because the victim was disabled and in a wheelchair, officers decided to drive the subject the short distance necessary so that the victim could provide a field identification. It was when officers tried to place the handcuffed subject in the back of a patrol car that he began to resist energetically. The officers struggled unsuccessfully to force him into the car, and eventually decided to change their plan. They seated the subject on a curb and arranged for the victim to come to them. However, the subject’s ongoing lack of cooperation, which included his getting up and attempting to walk away, made the officers decide to deploy a restraint system that would greatly limit his ability to move.

³² Here, the supervisor credited the first officer’s efforts at verbal persuasion and non-confrontational demeanor. The second officer made the conscious – and seemingly reasonable – choice to use the “element of surprise” upon his own arrival in an effort to resolve the situation.

Officers used further force to hold the subject's head in an effort to overcome his movements during the attempted identification; the man repeatedly turned his face away to thwart the victim's efforts at seeing him. The subject then began to complain of breathing issues and neck pain. This prompted the on-scene PAPD supervisor to call for medics to respond.

The man was transported to the hospital to be evaluated.³³ Several hours later, he was cleared for release and booking into jail. A supervisor responded to the jail (where the subject was being housed in a special unit for those experiencing mental health concerns) for an interview; he described lingering neck stiffness as well as swollen, painful wrists.

Force Review

The memo that was prepared by the supervisor in this case was the product of a thorough investigation and a thoughtful, detailed analysis. It included a lengthy interview with the subject, whose version of events largely coincided with the officer reports and other evidence (though the man took particular exception to the "twisting" of his head, to which he attributed his neck discomfort).³⁴

The various body-worn camera recordings created by the responding officers establish the persistent lack of cooperation from the subject, beginning with when he was first contacted by an officer and refused to stop for questioning. The force was controlled and entirely driven by the man's ongoing lack of cooperation, which took many forms. It included his going completely limp and his twisting and kicking to prevent officers from placing him in the back seat of the vehicle.

For their part, the officers maintained their composure and made repeated efforts to verbally persuade the man to stop resisting. To their credit, they also regrouped and made a new plan when the struggle to force the man into the back of the patrol car began to exceed the value of transporting him at that moment. The decision of on-scene supervisors to enlist the "WRAP" restraint device in order to limit the man's movements and lessen the amount of "hands-on" physical control they needed to exert during the waiting periods before he was finally transported to the hospital.

The memo that resulted from the supervisor's review ran for several pages. It documented the events in a thorough, objective fashion and analyzed the legitimacy of the officers' actions across a variety of factors. The force was found to be reasonable under the circumstances – an outcome with which we concurred.

³³ This was the criterion which brought the case within our notification protocol with the Department.

³⁴ The supervisor also spoke with the subject about the issues he had raised with jail staff concerning possible officer misconduct in deriding his sexuality or style of dress. The subject did not substantiate any of these concerns with specific details of any kind, but the supervisor was conscientious in asking about them.

Conclusion

As we moved forward with the review process and drafting of this report, we have received ongoing communications from PAPD management about new and developing matters, as well as investigation materials from five cases that were completed in more recent months. We have conducted our initial assessment of those investigations, and will feature them in our next public report, which is scheduled to be released in August.

On the whole, the cases covered in this Report are illustrative in several ways. They show the range of issues and allegations that generate concerns by the public and/or the Department as to improper officer behavior. They offer insight into the process by which Taser deployments (long a source of community concern in Palo Alto), dog bites, and lesser uses of force are scrutinized by the agency – both for compliance with policy and (at times) thoughtful consideration of peripheral issues. And they display the strengths, and occasional limitations with which PAPD evaluates officer conduct and pursues appropriate remediation.

Our sense is that the Department's leadership is attuned to the high expectations of its public as well as the engagement of the City's elected officials. The observations and recommendations in this Report are meant to be useful in meeting those recommendations, and we look forward to furthering our efforts in that regard as our enhanced role with the City continues.



DATE: JANUARY 27, 2022

TO: HONORABLE CITY COUNCIL

FROM: CHIEF OF POLICE ROBERT JONSEN

SUBJECT: 2021 USE OF FORCE REPORT

Background:

In early June 2020, the Palo Alto City Council approved a Race and Equity Framework and action plan and guided the Human Relations Commission to collaborate with the Police Department to lead a review of the “8 Can’t Wait” campaign in relation to Palo Alto to proactively revise the Police Department’s use of force policy and add a greater emphasis on de-escalation and crisis intervention techniques. As the City’s race and equity work continued into the fall of 2020, a series of community engagement opportunities and City Council ad hoc conversations concluded with the City Council adopting new actions in November 2020 that increased transparency with the Police Policy Manual, expanded the scope of administrative investigations reviewed by the Independent Police Auditor (IPA), and provided direction to include use of force information with the IPA report submitted to the City Council.

This memorandum satisfies the City Council’s direction to provide an annual use of force summary which encompasses all use of force incidents in which a “Supervisor’s Report on Use of Force” has been completed by the Police Department. Most commonly, a Supervisor’s Report is completed when there is a visible or apparent physical injury, the subject complains of pain, or the subject alleges they were injured. This initial summary covers the period from the City Council’s direction on November 16, 2020, through December 31, 2021. Subsequent reports will be published annually in January or February covering the prior calendar year. The Police Policy Manual requires that all uses of force by Police Department members “be documented promptly, completely, and accurately in an appropriate report.” Such reports are required to be reviewed by a supervisor and approved in writing. In certain circumstances, section §300.5.2 of the Police Policy Manual enumerates the circumstances where the “Supervisor’s Report on Use of Force” also requires review up to and including the Office of the Chief.

Summary:

From November 16, 2020, until the end of 2021, PAPD officers used force requiring a “Supervisor’s Report on Use of Force” pursuant to §300.5.2 a total of sixteen times. Of these sixteen incidents, officers used no more than bodily force ¹ on twelve subjects, a less lethal Sage round ² on one subject, a Taser on one subject, and a canine on two subjects. Eleven of the sixteen reports have been or will be sent to the

¹ Bodily force includes control holds, takedowns, or other uses of the body that does not involve the use of a tool.

² A Sage round is a 37 millimeter less-lethal foam rubber projectile.

IPA for review and recommendations, as they meet the criteria for the IPA's expanded scope of administrative review established by the City Council in November 2020. The expanded criteria for IPA review of use of force reports includes all administrative use of force reports where a baton, chemical agent, Taser, less-lethal projectile, canine, or firearm is used, and all cases where the subject's injuries necessitate any treatment beyond minor medical treatment in the field. The remaining five cases did not meet the criteria set forth by the City Council. The current IPA report attached to this informational memorandum reviewed seven of those eleven force cases. The remaining cases will be reviewed and reported on in the next IPA report due to Council in August 2022.

During this same period, Palo Alto Police Officers responded to 42,405 calls for service; this equates to officers using force on 0.03% of dispatched calls. A call for service is generated by a dispatcher in the Computer Aided Dispatch (CAD) system as a result of a community member calling for assistance or an officer initiating field activity, such as traffic stops, pedestrian stops, and/or directed patrol. Of the sixteen incidents requiring a Supervisor's Report, thirteen were associated with calls for service initiated by a community member, and three involved officer-initiated pedestrian stops. None of the sixteen incidents required the disclosure of police personnel records under the California Public Records Act pursuant to Senate Bill (SB) 1421 or Assembly Bill (AB) 748. SB 1421 amended Penal Code section 832.7 to require the release of records relating to the discharge of a firearm at a person, officer use of force incidents resulting in death or great bodily injury, sexual assault, and acts of dishonesty. AB 748 requires law enforcement agencies to disclose video and audio recordings of "critical incidents" involving the discharge of a firearm at a person, or an incident in which the use of force resulted in death or great bodily injury.

Enhanced Transparency, De-Escalation, and Training Initiatives:

Building on the significant amount of work undertaken since the summer of 2020 to revise policy, increase transparency and build greater trust with our community, the Police Department continues to actively seek ways to improve policy, emphasize de-escalation alternatives, and expand use of force training opportunities. In August 2021, the Department revised its canine policy to clearly state the deployment of a canine was a use of force and is governed by the Police Department's overall use of force policy. The revised policy also provided for fewer circumstances when a canine can be deployed for apprehension purposes and fewer circumstances when a canine could be deployed off-leash for any purpose. It also clarified pre-deployment announcement procedures and officer actions prior to searching with a canine.

Over the summer, the Police Department acquired a Virtual Reality (V/R) Force-Options Simulator via a grant program administered by the California Commission on Peace Officer Standards and Training (CA POST). This simulator allows personnel to participate in "real-life" training scenarios that focus on de-escalation strategies including skilled communication, decision making under stress, conflict resolution, and crisis intervention. Multiple officers have already participated in this V/R training simulator and the Police Department will expand the use of it moving forward to incorporate all sworn personnel. Additionally, the Police Department provided use of force and de-escalation training to all Police Department members as part of its on-going Continuous Police Training (CPT) curriculum and added a specific heading titled "De-escalation" to the "Supervisor's Report on Use of Force." This heading allows the incident reviewer to specifically highlight any de-escalation tactics used or explain why the circumstances and/or subject behavior did not allow the officer to use de-escalation.

Lastly, in November 2021, the Police Department launched its Psychiatric Emergency Response Team (PERT), where a police officer is paired with a licensed mental health clinician from the Santa Clara County Behavioral Health Services Department. The team's primary objective is to provide rapid intervention to a person in mental health crisis by de-escalating the situation and stabilizing it in the

least restrictive way possible. The team then strives to connect that person to services and get them the help they need. The team is making very meaningful connections with the community thus far.

Conclusion:

As we enter 2022, the Department will continue to evaluate its use of force policies, take advantage of de-escalation training opportunities, and continue to connect with the Palo Alto community to institutionalize sustainable, positive, and transformative positive law enforcement interactions with the public. This summary report will be presented annually to cover one year of use of force data as done with this summary memorandum. The Police Department's initial Use of Force Analysis memorandum included in the Race and Equity *Ad Hoc* Transmittal #3 in August 2020, can be viewed using the following link: <https://www.cityofpaloalto.org/files/assets/public/city-manager/communications-office/race-equity/race-and-equity-data-transmittal-3-august-26-2020.pdf?t=51654.01>