

# Exhibit A

# Report on Monitoring of the Burbank Police Department

FOURTH REPORT ◦ OCTOBER 2016



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# I. Introduction

Pursuant to the Independent Monitor agreement with the City of Burbank, this constitutes OIR Group's fourth report regarding internal investigations and administrative reviews conducted by the Burbank Police Department ("BPD"). As in the past, our role is not to conduct our own investigations, or to re-litigate the outcomes in the individual cases that BPD has addressed. Instead, we use the "raw material" of completed case files to assess the effectiveness of the BPD investigative and review processes, and to offer substantive or procedural recommendations that might enhance the Department's performance in the future.

The critiques and suggestions that follow are best understood with recognition that our review process is inherently focused on high risk and/or potentially problematic events. For that reason, it is important to emphasize that the vast majority of police contacts that occur in Burbank do not result in the use of force or a citizen complaint. The BPD's law enforcement profile extends far beyond the incidents and investigations that are the focus of our subject matter, and the "routinely" effective policing that occurs in the City each day should be acknowledged as a baseline.

We should also note our approach in performing these reviews. Our examination effectively places every document, report, police action, and analysis under a microscope in which any imprecision is identified and magnified. We are oriented towards a deep-dive in identifying and reporting out irregularities or areas where a police agency could have performed better. We understand how potentially unsettling such oversight can be, but the City and BPD have continued not only to invite it but to embrace it as part of a commitment to improvement and reform.

Another way said, our review does not consider BPD in terms of whether it and its officers are simply performing adequately. Rather, we have calibrated our scrutiny in an effort to bring the Department's practices and procedures to a "gold standard" level of policing. Our objective is to continue to work with the Department and other City stakeholders so that it can be held out as a model law enforcement agency.

Our access has never been an issue, even with regard to investigations or incident reviews where the Department has not been at its best. BPD management's willingness to cooperate with and facilitate our audits, and to engage in candid dialogue about our reform recommendations, has contributed greatly to our own ability to have a constructive impact. More recently, the Department has reached out to us on its own initiative at the early stage of developing cases that have significant implications for accountability and/or risk management. These briefings have obviously given us a beneficial awareness of what's happening; they've also afforded us the

chance to evaluate the scope and strategy of the pending investigations and potentially offer useful feedback or suggestions.<sup>1</sup>

Just as importantly, the Department has been receptive to new ideas and willing to move in new directions. The best law enforcement agencies recognize that they cannot simply rest on their laurels or cling stubbornly to what has worked in the past. BPD has shown itself to be progressive and attuned to the changing priorities and expectations of the City and its communities.

The years of our relationship with the City of Burbank have been a time of evolution and progress for BPD. Past reports have noted significant changes in policy and procedure that have brought the Department in line with contemporary “best practices” for internal review, risk management, accountability, and officer safety. We recently attended a joint meeting of the City Council and the Police Commission that focused on BPD in the context of the Department’s 2011 Strategic Plan. The BPD command staff offered a presentation that night that detailed real accomplishments across a range of categories. The largely positive reaction from the Council and Commission members resonated with our own impressions and sense of how the Department is doing.

This is not to say that BPD is immune from valid criticism or gets a “perfect score” in all categories. One of its most publicized episodes in the last several months involved an email controversy that reflected poorly on a former Department executive. It also offered a reminder that evidence suggestive of racial or ethnic insensitivity is rarely more upsetting than in the law enforcement context. In the public aftermath of that story’s emergence this spring, the City asked us to evaluate the original incident, which first came to light internally in 2014. We also looked at the Department’s broader procedures for monitoring Internet use and promoting professionalism and respect for diversity within its ranks. Our report on those subjects – including recommendations for additional reform – is featured below.

As for the rest of the audit, the subject matter of our monitoring efforts tracks the same categories as in the past. These include administrative investigations into alleged officer misconduct, supervisory evaluations of uses of force by BPD officers, and formal assessments of vehicle pursuits. We looked at a total of 29 IA cases, 11 force incidents, and 5 pursuit reviews that were completed during the rating period. As with previous reports, the investigations and outcomes were all completed prior to the inception of our evaluation.

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<sup>1</sup> These preliminary briefings have included timely presentations about two officer-involved shootings that occurred in 2016; these were the first such incidents in the city in several years. In keeping with established protocols, the District Attorney’s Office is reviewing both cases to evaluate the legality of the officers’ actions in using deadly force. When that process is complete, BPD will pursue its own administrative review in more detail, and OIR Group will eventually have the opportunity to assess both shootings and the Department’s response.

The Department's handling of misconduct allegations was, for the most part, conscientious and effective. The sustaining of allegations in several of the cases – including some initiated by public complainants – shows a willingness to hold people accountable. And the investigations themselves are solid and often excellent, particularly when handled by Internal Affairs.<sup>2</sup>

We had more concerns when it came to the force and pursuit review processes. Here, BPD is still adjusting to policies and practices that are relatively new, and the individual cases featured moments of questionable analysis. The problems were not alarming, necessarily, and we have no reason to believe that there was improper *intent* behind any of the discrepancies or shortcomings that we discuss below. Nonetheless, we see room for continued strengthening of BPD's internal evaluations in these critical areas.

We have raised these points with BPD executives and found that, as usual, there was good dialogue and a genuine interest in understanding our perspective and trying to benefit from it. At the same time, we recognize that our recommendations are often more refinements and reinforcements than large-scale reforms – an indication that the “quality of problem” has changed in ways that reflect well on the Department.

## II. BPD's Commitment to Progressive Policing

A sustained series of police uses of deadly force over the past two years have resulted in outcry and dialogue regarding the type of policing America expects. The national level discussion caused the President to convene a Task Force of law enforcement leaders to make recommendations on how policing should evolve through the 21<sup>st</sup> Century. While these processes unfolded, BPD had already previously charted its course through new leadership and changed policing strategies that foresaw many of the findings of the Task Force.

The efforts of recent leadership at BPD have involved changing the traditional simplistic police culture of “chasing bad guys and taking them to jail” to a more tactically superior apprehension strategy that relies on coordination, communication, and resolution protocols that deemphasize force. Research of uses of force have shown that officers are more likely to use force, particularly deadly force, when they deviate from principles of officer safety in ways such as unsafe and unregulated vehicle and foot pursuits. As a result, progressive policing has guided

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<sup>2</sup> Though IA investigators handle the more serious and complex matters, lesser allegations are routinely distributed to the unit of origin for initial investigation. This is a common practice in law enforcement, partly as a reaction to limited resources but also in keeping with the theory that “discipline is everybody's responsibility” rather than the exclusive, mysterious purview of Internal Affairs alone. We support this concept, especially since BPD builds in additional review protocols (including an assessment by IA staff of completed cases) to make sure that the quality of investigation is sound.

and trained its officers to use safer containment techniques to achieve the same results, resulting in less risk to its personnel and the public.

BPD has also recognized the importance of training its officers to move away from force options as the default when encountering recalcitrance. Instead, they are taught to deploy de-escalation and other force prevention techniques to resolve the situation. In doing so, the Department seeks to avoid force incidents that are “lawful but awful,” and emphasizes strategies in dealing with the mentally ill and other non-compliant individuals that do not result in force.

As important, and as further discussed below, BPD has devised a robust force review protocol designed to critically examine force incidents and vehicle pursuits through various prisms. The process not only ensures compliance with policy, but also identifies training moments and ways in which it can help its officers be better prepared for future challenges in the field. This type of force review process – once derided as “Monday morning quarterbacking” – is now recognized as a beneficial and constructive means of using completed incidents to ensure that the “team” is better equipped to resolve future challenges.

As with any shift in course or change in culture, some may question or chafe at the recent reform efforts. For example, it would be understandable if some veteran officers, accustomed to another paradigm, would prefer a return to an era where there were fewer restrictions and less emphasis on documentation and review. However, the ongoing evolution in policing standards – and the heightened expectations of the public – demand increased guidance, training, accountability and responsiveness. Not incidentally, the new approaches also help manage risk and promote greater officer safety. It is a testament to the resolve of City and Police Department leadership that BPD has remained steadfast in pursuing progressive ways to fulfill its public safety mission.

### III. BPD Emails: Issues, Audits, and Recommended Reforms

#### A. Introduction

In April of this year, it was publicly reported that the former Deputy Chief of the Burbank Police Department had received racially derogatory and insensitive emails on his City email account and forwarded them to a private account while he was serving as Deputy Chief. The objectionable emails dated back to 2012 and 2013, and initially came to the Department’s attention in 2014 when they were reviewed in response to a wide-ranging Public Records Act request made by a local attorney.

The original 2014 PRA request had sought a multitude of documents, including any derogatory emails that had been sent or received by BPD’s command staff. The City indicated

that in response to the PRA request seeking derogatory emails, 5,187 emails were reviewed, resulting in the identification of five emails that were then provided to the attorney who had made the request; all of them had passed through the Burbank City email account of the Deputy Chief.

As discussed in greater detail below, the Department addressed the issue internally at that time. Subsequently, the Deputy Chief left BPD to take an executive position with another law enforcement agency. This spring, however, the matter re-surfaced. It began when a local media outlet made a similar PRA request and wrote several stories about the ensuing reaction and controversy.

OIR Group had not been aware of the PRA request – or its results – in 2014. Since the story became public this spring, however, we have met with BPD and City officials to learn more about what happened at the time, and also to assess the Department’s recent history of email audits with an eye toward possible reform recommendations.

## B. 2014 Response

When the offensive emails came to light in 2016, there were questions about the sufficiency of the Department’s initial handling of the issue at the time of the 2014 PRA. We address that topic first.

The Chief was made aware of the emails at some point in the collection and review process required by the Department’s obligations for disclosure, and the Deputy Chief immediately acknowledged responsibility. This obviated the need for further investigation as to whether a violation of City and Department email and computer use policies had occurred. It clearly had. The remaining question, then, was one of consequence.

Given the Deputy Chief’s performance history, acceptance of responsibility and apparent remorse – all standard factors in evaluating the necessity for and degree of formal discipline, the Chief determined that a verbal warning was sufficient to address the problem and ensure it would not recur.<sup>3</sup> Moreover, the Chief informed the then City Manager about the emails; the City Attorney was also aware of and involved with the response. We were also informed that the Deputy Chief had apologized to the City Manager and fellow BPD command staff members for his transgression.

In spite of our role as independent auditors for the City of Burbank, OIR Group did not receive notice of the email discoveries when they first surfaced in 2014. Technically, there was nothing improper or deficient about this. Because there was no formal investigation, the incident did not fall within our regular auditing domain as defined by contract. Moreover, as City

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<sup>3</sup> The Chief also noted that the concerning emails were of 2012 and 2013 vintage and that there had been no more recent transmissions, which may have been indicative of self-correction.

executives have recently explained it to us, the emails that surfaced did not stand out to them as especially egregious in the context of a particularly busy and challenging period.

Nonetheless, we were disappointed that we had not been informed about the matter, even as we acknowledge that our reaction comes with the advantage of hindsight. Considering the sensitive nature of the transgression, and our past experience at providing an independent perspective and “fresh set of eyes,” we can see ways where our timely involvement might have been useful.<sup>4</sup>

Had we been informed of the incident in real-time, for example, we could have encouraged BPD to consider additional remedial options to heighten accountability while benefitting other Department members. If, for example, the Deputy Chief had appeared at Departmental briefings to discuss his mistakes, it would have ensured a stronger level of atonement, sent a powerful deterrent message, and emphasized to members that no one in the Department is immune from accountability. Our support for alternatives to traditional discipline might have provided an opportunity for a meaningful teaching moment.

That said, while the email misconduct was plainly improper and the material disappointingly offensive, it was also limited in scope and not recent in time. Of particular importance was that none of the offensive “jokes” received by the Deputy Chief had been forwarded by him to other Department email addresses or members. While, we might have pushed for further and more creative responses, the Department’s 2014 reaction was commensurate with industry standards for accountability in such matters.

### C. BPD History of Email Audits

In the aftermath of the story’s emergence this spring, one of the concerns was the extent to which the Deputy Chief’s highly publicized emails might be reflective of a larger cultural problem. Accordingly, the City asked OIR Group to review the internal email audits that BPD had *already* been conducting pursuant to its 2011 Strategic Plan. The random audits of employee accounts were intended to ensure compliance with the City’s Technology Use Policy and the Department’s policy on use and application of the BPD’s electronic mail system.<sup>5</sup>

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<sup>4</sup> As we report above, BPD command staff has taken an increasingly proactive approach towards debriefing us in real-time of critical incidents and internal investigations. That practice of early consultation was not as evolved when the emails surfaced in 2014.

<sup>5</sup> The commitment to this and other systemic audits by BPD reflects an interest in internal rigor and proactive self-scrutiny that is far from common. To the degree that we offer refinements intended to improve the process, we recognize that BPD is already well ahead of many similarly situated agencies who do not conduct such systemic audits.



In June 2012, the first formalized email audit was conducted responsive to the Strategic Plan.<sup>6</sup> Twenty-five employees were randomly identified. The sergeant who conducted the audit opened and reviewed emails on the servers that appeared to have the potential of being non-work-related. The audit revealed that four employees had received and forwarded inappropriate emails in violation of City and Department policy. Moreover, by following the email chain of inappropriate emails, it was learned that four additional BPD employees had forwarded inappropriate emails to the employees identified for audit. All eight employees who had inappropriate emails in their account were reportedly counseled about the policy and advised that any future misuse of Departmental email accounts would result in more significant accountability.<sup>7</sup>

In addition to these counseling sessions, the employees who had been audited and who “passed” (no inappropriate e-mails) were also notified of this fact. Finally, BPD employees were informed through a Daily Bulletin message that the Department had conducted an email audit and that some inappropriate emails had been discovered – a reminder and fair warning regarding the policies.

After the 2012 audit, it was recommended that the random selection of employees be conducted by a lieutenant, so as to create some separation with the performance of the audit itself by the designated sergeant. In December 2013, pursuant to that recommendation, the Audits and Inspection Lieutenant randomly selected fifteen BPD employees.<sup>8</sup>

A process similar to the 2012 audit was employed and five employees were discovered having inappropriate emails in their accounts. Three additional employees were identified through email chains as having forwarded inappropriate emails to the employees selected for the audit. The after-action protocols for notification, counseling, and Department-wide briefing also reportedly followed the prior model.

In September 2014, another email audit was conducted of ten BPD employees. While this audit discovered no inappropriate emails in the audited employees’ accounts, it did locate emails in two accounts that contained non-work related materials. Remedial processes similar to prior years were undertaken in 2014 as well.

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<sup>6</sup> We were informed that there had also been intermittent email audits prior to 2012.

<sup>7</sup> The recommendation from BPD command staff overseeing the audit was to provide verbal counseling and comment card documentation for first time offenders. Because the employees were not subject to formal discipline, and because comment cards are to be destroyed after two years, there is no existing corroborative documentation that such counseling did, in fact, occur.

<sup>8</sup> It is unclear why the sample size was decreased.

According to BPD, no email audit was conducted in 2015 due to “competing organizational priorities.”

We were able, after the fact, to review the results of the audits and the inappropriate emails discovered therein. Based on that review, the verbal counseling that was provided to the offending employees appears to be an appropriate remedial response that is consistent with industry standards. The audits’ thoughtful features also included the decision to individually inform employees who were subject to the audit and had no offensive emails, to publicize the fact of the audit, and to use the audit results to remind all employees of the pertinent policies. Evidence the audits may have been having a deterrent effect is the fact that in the last audit conducted, no inappropriate emails were discovered among the target group.

Our review, however, did find aspects of the audits that could have been improved. Unfortunately – and ironically, in light of the Deputy Chief’s subsequent travails – the audits had excluded Departmental supervisors from their purview. Because the internal audit was to be assigned to a first level supervisor, BPD had determined that it would be inappropriate for the individual to be reviewing emails of his peers or those higher in rank.

Whatever the rationale, this decision to exclude supervisors and command staff amounted to a double standard. It created a significant gap in accountability that was obviously exposed as problematic by subsequent events.<sup>9</sup> Although the concern about a sergeant reviewing emails of peers and superior officers has validity, it is far from unprecedented or insurmountable. A sufficient “workaround” could have and should have been devised.

In addition, it would have been beneficial to include all once-identified transgressing employees in future audits as a way of ensuring they had “gotten the message.” Such a step makes obvious sense, and seems fair in the context of the Department’s measured, moderate response to first offenses.

Finally, because in our experience audits are often candidates for cessation or suspension due to the competing demands of police business, approval for any such shift in resources should be obtained from the highest levels of the Department.

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<sup>9</sup> In fact, the officers’ labor representatives formally raised this point after the Deputy Chief’s email issue became public.

*Recommendation 1:* BPD should improve its email auditing through the following measures:

- a. BPD should resume its annual email audit program. It should also develop a written protocol indicating that any suspension or delay of the annual email audit program requires written approval of the Chief of Police and notification to the City Manager.
- b. BPD should randomly select at least 20 non-supervisory staff to be subject to the annual email audits, and BPD should continue to use the audit process devised for the 2012-14 audits.
- c. Any employee who was identified as having inappropriate emails in any previous audits should also be automatically subject to the next two subsequent audits.
- d. At least one-third of all sergeants, lieutenants, and civilian supervisory staff should be randomly selected for an audit to be conducted by the Lieutenant in the Audit and Inspections Unit.
- e. All BPD command staff (Captains and above) should be subjected to an annual email audit.
- f. BPD should develop written disciplinary guidelines specific to the City and Department's email use policies. Under those guidelines, first time offenders without any aggravating circumstances should be subject to at least verbal counseling and a comment card. Repeat, aggravated, and/or supervisory offenders should be subject to formal discipline. Once disciplinary guidelines are developed, all BPD employees should be notified of them through dissemination of a Department-wide bulletin.
- g. BPD should consider developing protocols that would incorporate briefings or other internal acknowledgements as an alternative or supplemental "teaching moment" for those employees who violate the policy.
- h. New BPD employee orientations should include a training segment on the City and Department's email policy, Department's email audit program, and the disciplinary guidelines.
- i. BPD should provide OIR Group with a memorandum reporting on the results of annual email audits so that those results can be included in its Reports to the City Manager, City Council and the Police Commission.

## D. Additional Considerations for Reflection and Reform

Misuse of an employer's email system can take many different forms. Some of these are relatively benign, such as the sending of a harmless but nonetheless personal communication on "work time." One of the audits, for example, captured the forwarding of a vacation photo. Nonetheless, because computers have become so integral to the modern workplace, it makes sense to establish basic guidelines that prevent abuse, and the City of Burbank has done so.

But it also makes sense to distinguish between different gradations of the problem. Accordingly, we recommend that Burbank focus special attention – and more stringent consequences – on content that is not only technically "non-work" but is also profane, obscene, and/or disparaging of people's race, ethnicity, gender, or religious beliefs.

While few employers tolerate the abuse of workplace computer privileges, the problem of inappropriate or offensive Internet conduct is magnified in a law enforcement setting. The email misuse that falls into the worse end of the spectrum – such as the "jokes" that were publicized in the recent controversy – has a special significance when it comes to the police. It feeds into perceptions about bias and cultural insensitivity that underlie some of the current tensions across the country.

When evidence reveals that police are receiving and forwarding such messages on their work computers, it damages public confidence significantly. At worst, it reinforces the concerns of certain groups that the police encounter them in discriminatory ways.

In the case of BPD's recent controversy, the involvement of a prominent member of the command staff<sup>10</sup> magnified potential concerns about the culture of the Department. These realities fuel the need for BPD to continue to address the issues in a comprehensive and constructive way.

Obviously, unequivocal policy, vigilant auditing, and swift remediation for Internet and email violations have become baseline expectations in the aftermath of this controversy. We are also encouraged by other relevant initiatives in which BPD has been engaged. This includes its commitment to diversity in recruiting, its commitment to provide its officers implicit bias training in the near future, and other curricula and mentoring that foster cultural awareness and make the Department more responsive to the community it serves.

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<sup>10</sup> In this context, we also wish to note our high regard for the former Deputy Chief. We had extensive dealings with him, and were regularly impressed with his work ethic, integrity, and commitment to bringing substantive reform to BPD. For such a distinguished career to end on such a discordant and uncharacteristic note was painful for the many people who respect him. We hope, though, that his legacy will include an appreciation for the considerable good he accomplished in law enforcement.

## IV. Review of Internal Affairs Investigations

### A. Introduction

As mentioned above, OIR Group looked at twenty-nine separate cases from this period. These were selected from the larger total of cases investigated by BPD, based on pre-established criteria. The selection standards are intended to ensure that a range of cases is covered, but also stipulates that OIR Group will see all cases in certain significant categories. These include all allegations of racial profiling, excessive force allegations, and cases involving supervisors as the subject.

We saw several ways in which BPD brought impressive levels of diligence and thoroughness to these investigations. As mentioned above, the more substantive misconduct cases are handled by the Department's small but highly skilled Internal Affairs Bureau. That team has shown an ability to conduct unusually comprehensive investigations. It particularly distinguishes itself when allegations concern a pattern of misconduct (as opposed to a particular incident).

That trend continued during this review period. In a pair of investigations that involved serious misconduct charges against the same officer, BPD investigators showed a remarkable degree of thoroughness and organization in compiling evidence of wrongdoing. One of the cases, for example, involved an allegation of theft of overtime, and each one of multiple instances was pursued and explained in meticulous fashion. The resulting case file was extremely comprehensive and persuasive in establishing that misconduct had occurred.

Similarly thorough and effective work drove the investigation into performance deficiencies by a patrol officer. After BPD executives became concerned about the way an allegation of abuse at a nursing home had been handled by the officer, it decided to review a broader range of calls to ensure that the "under-reaction" in the nursing home case was not a characteristic approach. In going back through a few months of the officer's history, it found two other examples of problematic failure to provide an appropriate response to crime reports from the public. The subsequent investigation resulted in founded charges and significant discipline.

Even in less complex cases, though, the Department's efforts are generally creditable. The Department's approach to citizen complaints, for example, was notable for the inclusiveness and rigor with which it responded to concerns. Some agencies might pursue outside allegations as narrowly as possible, and close out cases in the face of a complainant's lack of subsequent cooperation or follow-through. BPD, conversely, pushed to address issues to the best of its ability, even when it was not always easy to do so.

We noted multiple instances in which, even after the complainant failed to respond to requests for follow-up interviews or information, the Department moved forward with the initial information that it did have and investigated the complaint to a persuasive conclusion. In one case, involving a traffic stop and a racial profiling allegation, the Department took two notable steps. First, it persisted in arranging to speak with the complainant, who was dealing with health issues and personal concerns. And second, it followed through with the evaluation of recordings and other evidence, even after the complainant had effectively changed his mind about his claims upon further reflection.

In another case with an undercurrent of possible profiling, the complainant subsequently recounted several different experiences and allegations with BPD officers that he believed had a racial subtext – some dating back years. Though this was intended by the complainant primarily as background to his current perceptions, investigators nonetheless pulled the relevant records and attempted to reconstruct the encounters.

In many of the cases, audio from the officers' individual recorders, and/or video from traffic cameras, jail cameras, or other BPD facilities, offered helpful or even decisive evidence:

- An allegation of “incivility” was sustained based on the officer’s own recording of an interaction with a cyclist who complained about being stopped.
- A complainant’s allegations of an improper traffic stop, followed by perjury by the officer in traffic court, were plainly belied by the audio recordings from the stop.
- One allegation that officers had failed to wear their identifying badges, which had come up in the context of a different complaint, was unfounded after investigators found video of the officers that showed them appropriately in full uniform.
- 911 calls and audio recordings by responding officers were plainly supportive of a decision to take custody of a young mother for a psychological evaluation, in spite of her later complaint that it had not been a proper decision.
- A video recording was proactively obtained from a local business as part of an investigation into a roadside detention of two suspects that deteriorated into a use of force. One of them had suddenly attempted to run away, and the other took advantage of the momentary distraction to get back into their vehicle and drove away; this induced a Taser deployment that was found to be out of policy. The video cleared showed the questionable tactics of the handling officers.
- In a case in which the complainant alleged that he was maliciously handcuffed, causing him injury, the audio recording captures the discussion about the use of cuffs and the adjustments that were made in response to the complainant’s concerns, and supports the officers’ assertion that it was both minor and unintentional.

In short, we found much to commend in the investigative approach of BPD. The investigations are technically sound and appropriately rigorous, and appear to lead to legitimate

outcomes. Our overall impressions are favorable. Below, we discuss additional specific elements of the process, and offer affirmations and recommendations where relevant.

## B. Letters

We have noted in the past that BPD's "disposition" letters to complainants are among the best we have encountered for their individualized approach and generosity of detail. Encouragingly, the cases we reviewed in this audit period continue that positive trend.

State law requires agencies to provide information to complainants regarding the final outcome of a case review. This step in the direction of transparency, however, is limited by other state statutes that protect officer confidentiality and limit the information that can be shared about personnel investigations. Many departments are therefore leery about sharing details – an understandable concern that dovetails with traditions and organizational cultures that take a minimalist approach to communications with the public. This inclination results in form letters that are short and impersonal. Predictably, they are also unsatisfying to many complainants, particularly when they learn that their sincere allegations have not led to any consequences for involved officers.

While there is no way to avoid this dynamic completely under prevailing laws in California, BPD at least works to make the notification letters more meaningful as an interaction. The letters are personalized, and for the most part include specific details about how the Department arrived at its conclusions. (Often, the Department is able to cite its evaluation of recorded evidence, which tends to be persuasive.) In one case, for example, which concerned the length of time that a complainant was detained for a traffic citation, the Department explained that a trainee officer was handling the call. It acknowledged that, as a result, the stop lasted longer than it ordinarily would, and apologized for the delay.

This effort by BPD to personalize the correspondence and to "show its work" will not mollify all recipients. But it does reflect the ways in which the Department takes feedback seriously and strives to convey the legitimacy of its process.

## C. Racial Profiling Cases

The issue of bias in policing has received intense national scrutiny in recent years. The fiercely disputed circumstances of numerous high-profile cases say less about limitations to the investigative process than about the highly disparate ways different communities perceive the police. Some of these perceptions were evident in six of the complaint cases that we reviewed during this period, all of which featured an allegation of racial discrimination as an element to the citizen complaint.

BPD does a creditable job of responding to these allegations – none of which were sustained. Two involved car stops in which the driver was African-American and alleged bias

(though one later recanted). Two others involved pedestrians who believed that their respective citations for jaywalking were a function of race-based harassment. Another involved a woman who was frustrated over the Department's refusal to engage in what it believed to be a civil tenancy dispute. And the last was an African-American driver who was angered by the actions of a Burbank crossing guard, got out of her car to confront him, and alleged that he responded with offensive language.

Most of these cases featured relevant recorded evidence that supported the BPD findings that no misconduct had occurred.<sup>11</sup> BPD also takes the step of pulling computerized data that provides an overview of total contacts and enforcement actions by the involved officers, analyzing them along racial lines to look for disparities or statistical anomalies. This is relevant (if not dispositive) evidence.<sup>12</sup>

Also noteworthy was the marked politeness and courtesy of the officers as these recorded detentions continued. It was hard to fault their demeanor, and they seemed both concerned and dismayed by the allegations of racial bias. However, the recordings also provide insight into the mindset of the complainants, and show the difficulties of adjudicating these matters constructively.

In one allegation, for example, the driver took offense at being asked, "Is this your car?" as if the implication was that he had stolen it. In another, the Hispanic woman who filed the complaint believed that a sergeant's reference to the Constitution had been intended to challenge her citizenship or familiarity with the country. BPD determined after its investigation that there was no racial animus involved in either case, and this seemed to be the right result. But we were also struck by the complainant's subjective perceptions.

Similarly, the two African-Americans who were stopped for jaywalking offenses were aggrieved and bewildered by the officers' decisions to make an issue over seemingly insignificant infractions. At the same time, though, the officers' actions were both legal and objectively reasonable. For one of the complainants, her frustration over the officer's exercise of discretion was compounded by the fact that she had her young daughter with her, making the prolonged detention that much more of a negative experience. But this fact cuts both ways: for the officer, the dangerousness of the improper street crossing was made *more* noteworthy by the

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<sup>11</sup> We also noted that only one officer appeared in more than one complaint, and he had played a secondary role in both of the encounters where he was present.

<sup>12</sup> Without suggesting that we perceived a problem, we have encouraged BPD executives to consider additional ways of mining its collective data to look for trends. For example, to the extent that certain infractions – like jaywalking, for instance – are "easy pickings" for officers, and a potential arena for selective and discriminatory enforcement, it would be interesting to see whether citations for those offenses are given disproportionately.



daughter's presence. And the officer's initial attempts to simply give a warning deteriorated into a longer confrontation due to the woman's hostile reaction and initial unwillingness to cooperate.

These facts are all significant. Moreover, the lack of easy "fixes" for the current climate, or for the longstanding conditions that produced it, seems apparent. Parties on both sides of profiling allegations have been frustrated by the limitations of investigations, since central questions about officer motivation and intent are so subjective and difficult to prove or rebut. Still, it is incumbent on all law enforcement agencies, including BPD, to acknowledge the perceptions and look for ways to improve communication and understanding with all members of the diverse public it serves.<sup>13</sup>

Recent research has further complicated the analysis by introducing the concept of "implicit" bias and its effect on officer behavior. Academics and practitioners alike have increasingly agreed that the implicit biases inherent in each of us are impacting decisions police officers are making on whom to stop, whom to search, and whom to arrest. If bias is indeed implicit and universal, a more wide-ranging approach must be taken in how to combat the phenomenon.

We should emphasize that our audit did not provoke concerns that BPD has a significant problem in this arena; on the contrary, the officers' comportment in these cases (as reflected by recorded evidence) was often strikingly professional. Still, it is heartening that BPD leadership has committed to initiate and export the teachings in the field of implicit bias to its officers, field supervisors, and command staff.

#### D. Citing of Complainants' Criminal History

We noted multiple instances in which the investigation file for a citizen complaint case featured documentation about the prior criminal history of the complaining party. The relevance of this information varies from case to case. One example involved a plainly frivolous allegation of misconduct against a civilian employee because the lobby bathroom at BPD headquarters was closed for cleaning for some 40 minutes in the middle of the day. Though the investigation determined quickly that no misconduct had occurred, the case file included pages of information showcasing the arrest history of the complainant.

Much like in a criminal trial, where the evidentiary value of "prior acts" information is balanced against its prejudicial qualities – and often excluded, BPD should consider whether including such information is always necessary. Its gratuitous or automatic inclusion could

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<sup>13</sup> One approach worth considering is post-investigation mediation, in which the complainant and involved officer have the voluntary opportunity to come together in a dispassionate setting to express their respective points of view, as guided by a neutral third party.

potentially give an impression of trying to discredit the complainant in ways that do not promote the objectivity or effectiveness of the investigation.<sup>14</sup>

*Recommendation 2:* BPD should evaluate its practice of routinely including criminal history information for citizen complainants, and consider determining relevance and evidentiary value on a case-by-case basis.

## E. Supervisors as Subjects

A number of the cases we reviewed featured supervisors as the focus of misconduct allegations. Some of these were a function of public complaints, where others were internally generated; several of them led to sustained findings and discipline. They include poor decision-making in the field (including one force case and one instance in which supervisors used questionable legal analysis to authorize the arrest of a man in response to a call for service), discourtesy, and off-duty conduct. The Department's willingness to engage and to hold managers accountable for the range of shortcomings identified is a positive sign.

Additionally, two of the cases involved *internal* allegations of unprofessional conduct against supervisors, and were sustained. These are noteworthy to the extent that they suggest a lack of professionalism, a calculated hypersensitivity by subordinates, or both. As with any agency, the potential for personality clashes and internal tensions is both inherent and worth monitoring. To BPD's credit, it followed formal protocols in addressing the complaints and reaching appropriate outcomes. Nonetheless, another goal should perhaps be to address whatever underlying dynamics might have been at work in these incidents.

## V. Review of Force Incidents

### A. Introduction

In this audit, OIR Group reviewed eleven uses of force. These covered a wide range of circumstances. BPD demonstrated a strong commitment to debriefing of incidents and follow up training, and its "Critical Incident Review Board" process of executive evaluation is a clear manifestation that thoroughness continues to be a priority.<sup>15</sup> There were also a number of areas

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<sup>14</sup> We, of course, recognize that prior criminal history could sometimes be relevant, as with an excessive force allegation when the complainant has prior convictions for assault on a peace officer.

<sup>15</sup> The CIRB, as we have discussed in the past, is a relatively new and forward-thinking innovation that subjects each force incident to a "round table" review by a panel of executive managers and subject matter experts. The panel identifies issues and develops responsive action plans as needed for involved personnel and/or the Department as a whole.

where BPD improved the thoroughness of its review and documentation, including subject injuries, attempts to identify witnesses, and attempts to locate video recordings – all issues which we have touched on in the past.

For instance, in a number of the Use of Force Investigations the supervisors did a thorough job of specifically identifying each injury to the subject and documenting the likely source. Also, some of the investigations expressly documented when video recordings and witnesses were looked for and, when appropriate, the absence of video and witnesses.

We had previously commented that Use of Force Investigations should not be performed by supervisors who were present for and supervised the use of force. We are pleased to see improvement in this area as well. Cases in which supervisors were present when force was used, or were involved themselves as force users, led to the involvement of a different supervisor to conduct the administrative review. This is a positive step – though not a universally followed one. We saw two cases in which the investigating supervisor had in fact been present (though minimally involved). While this is less than ideal, it was encouraging to note that the CIRB reviewed the issue; the staffing limitations that resulted in there being no other available supervisor were explained and documented.

The layers of attention that each use of force receives reflect the Department’s recognition that force plays a necessary but risk-intensive part of effective law enforcement. While the analysis tends to be most sophisticated at the CIRB level, we saw instances of effective issue-spotting at other levels as well. In one case involving a TASER deployment, for instance, the “Watch Commander Insights” report listed several small but relevant performance deficiencies in the Use of Force investigation and did a good job of addressing other matters.<sup>16</sup> This thorough a review is commendable and helps to prevent small training issues from turning into bigger issues.

Additionally, we were very impressed by the regularity with which BPD is now debriefing these incidents at the roll call of the involved watch. Debriefings were even held to engage officers in discussions about force incidents that could have been handled differently for a better result – even when the officers’ approach was in policy and appropriate. This type of discussion instills and reflects a culture in which continuous improvement is a priority. Impressively, we also noted cases in which the officers provided useful feedback on ways in which Defensive Tactics training might be improved through the use of a resistive subject in a special protective suit. This suggests an encouraging level of engagement at all ranks, and a dialogue that beneficially goes in both directions.

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<sup>16</sup> For example, the Watch Commander noted that the officer had removed TASER probes from the subject himself, in contradiction of policy, and that his testing of the TASER was for only one second instead of the required five.

In short, there are many positive signs that were evident in our review. At the same time, though, several of the uses of force, in particular those involving TASERS, presented noteworthy issues that we discuss below. We also provide updates on prior recommendations, and offer suggestions on a range of lesser topics that BPD might benefit from considering.

## B. Use of Conducted Energy Device (TASER)

Six of the uses of force reviewed in this audit involved uses of a TASER, a type of conducted energy device. These cases raise questions about whether BPD is appropriately applying its policy in light of current court decisions that label use of a TASER an “intermediate significant use of force.” We noted instances in which BPD’s use of the TASER, and subsequent analysis, are arguably out of sync with BPD’s own policy requirements as well as the evolving and more restrictive legal standards for appropriate deployment.

Like many agencies in the west, BPD revised its TASER policies in the aftermath of a federal court decision from 2010 that raised the threshold for when use of a TASER would be justified under Fourth Amendment principles. “Mere flight,” or passive resistance/failure to cooperate, was no longer considered sufficient cause. Instead, as BPD policy now states, “the TASER device is intended to control a violent or potentially violent individual.”

BPD’s policy language comports with the relevant standards and reflects the court’s recent attempts to restrict the TASER’s use in new ways. However, in the cases we reviewed, the *interpretation* of that language by Department officers and supervisors was broad and permissive in ways we found debatable. We ended up in some cases with lingering questions as to how BPD is applying its own policy, the accuracy with which supervisors investigating these incidents are documenting and summarizing facts, and the analysis being used to determine compliance with policy.<sup>17</sup>

In one case, for example, the subject first offered some level of active resistance while inside a commercial establishment, then turned and attempt to run away; it was only then that the officer deployed the TASER as the subject ran across the front portion of the building from one entrance/exit to another.

We had the opportunity to review recordings – including the involved officer’s personal audio and the establishment’s camera footage – as well as reports and other written documentation. Based on this material, and from a perspective that is admittedly limited, we question whether the circumstances met the policy threshold. In our view, it at least warranted a

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<sup>17</sup> The fact that, as noted above in the Internal Affairs section of this report, BPD found a deployment out of policy is indication that it is willing and able to; our concern is with the *effectiveness* of the review process, more so than whether the appropriate intentions are in place.

spirited discussion and some training and counseling about the requirements of the policy as applied to these facts.

Instead, the BPD review process found justification in ways that were not always clearly supported by the evidence. This included the CIRB process of executive level review, which we ordinarily respect, but which here seemed to rely on evidence selectively, and to incorporate supportive facts that extended beyond the officer's own articulated perceptions and justifications – which are central to any reasonableness determination.

We also noted gaps between the officer's "real-time" descriptions in speaking to supervisors shortly after the event (as captured by his individual recorder) and his later written documentation. The latter portrays the suspect's level of physicality in ways that the accompanying recordings do not clearly support. We recognize that discrepancies or inconsistencies in reporting can occur under benign or explainable circumstances,<sup>18</sup> but it does not appear that they were initially noted or pursued by the supervisors responsible for evaluating the force.

Instead, if anything, the written evaluations by a sergeant, the Watch Commander, and CIRB itself seem intent on characterizing the event so as to convey that the TASER *was* an appropriate option – even to the point of mischaracterizing witness testimony and drawing inferences that the officer himself did not cite as part of his rationale.

To its credit, BPD took a careful second look at this case at our request. It clarified its own analysis, offered a more thoughtful and coherent discussion of the video evidence, and acknowledged the way that "loose language" and the involvement of multiple supervisors gave legitimacy to our questions and concerns. The additional information was helpful. Beyond the procedural inefficiencies in the original review process, though, our larger point is this: the threshold for appropriate and justifiable use of the TASER has been raised by recent court decisions. For this reason, BPD must be as clear in policy and training as it can be in terms of establishing the level of actual or potential physical aggression that merits this unique category of force.

Similar concerns about the application of the policy and the managerial analysis arose in our review of another TASER case, this time involving a potentially mentally ill subject who was behaving in a way that was potentially dangerous to him and others. Responding to 911 calls about the man's erratic behavior, a sergeant found the subject, gave him commands to stop that the subject ignored, and then used the TASER to take him into custody.

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<sup>18</sup> For example, the involved officer could have recalled more detail after having the chance to gather his thoughts – as opposed to in the immediate aftermath of a force encounter. However, it would have been helpful to explore this potential with the officer as part of the force review process.

BPD found the use of force to be in policy. The sergeant had apparently concluded that the man represented a significant danger to himself or others. However, though the sergeant did have good intentions and a basis for arresting him, the use of the TASER raised questions for us in terms of the plain language of the policy – and the seeming absence of the violent or physical resistance that constitutes a pre-condition for the TASER’s justification.<sup>19</sup>

As with the previous case, the force here was neither egregious nor seemingly malicious. But we nonetheless would like to have seen a more rigorous engagement with the policy issue. Instead, the various written analyses seem devised to support what occurred<sup>20</sup>. Given the recent trend of courts limiting the use of TASERS, especially on the mentally ill, this incident deserved closer consideration at CIRB.

*Recommendation 3:* BPD should continue to ensure that officer performance and supervisory evaluation of TASER use are consistent with Department policy and legal mandates.

*Recommendation 4:* The CIRB should work to ensure that the materials it reviews, prepared by lower-level managers, are themselves comprehensive and accurate and provide a sound basis to reach findings and conclusions. It should also consider reviewing available videos as part of the CIRB meetings, rather than relying on the descriptions by others.

## C. Other Issues, Observations, and Recommendations

### 1. Subjects with Mental Health Issues

BPD has an exemplary Mental Health Evaluation Team protocol in which a mental health practitioner is available as a resource for Department members. However, because BPD is a 24/7 operation, the clinician is not available round the clock for Department members. To date, BPD has found the mental health professional most effective in helping provide more effective placement and treatment solutions for community residents it encounters.

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<sup>19</sup> Another case from the audit period has a similar fact pattern, but with additional circumstances that seem to warrant the use of the TASER more unequivocally. It also involved a mentally ill individual in the street. This subject, however, was behaving more aggressively, and at one point had taken a bladed stance with clenched fists. The involved officer documented that there was traffic on the roadway, even at that late hour and that he was concerned that he and the subject were wearing dark clothing and might be struck by a car, or that the subject might try to fight him, having previously demonstrated assaultive behavior. Unlike the other case, where two officers were just steps away from the sergeant when he used the TASER, the officer here was alone, as backup had not yet arrived.

<sup>20</sup>For example, the documentation paints a picture of the sergeant having no back up at the point of deployment, when in fact his backup was mere steps away.

The acceptance and integration of a mental health professional into BPD's strategy in dealing with the mentally ill in its community is an important step; at least five of the use of force cases we reviewed involved mentally ill subjects. BPD should lead the dialogue towards increasing the resources of mental health practitioners it can partner with through regional sharing or other forward-thinking approaches.

*Recommendation 5:* Given the number of uses of force that result from encounters with the mentally ill, BPD and the City should continue its emphasis on supporting the work of the MHET program from a resources perspective, and continue to look for ways to continue to expand mental health and crisis management training for the "first responder" officers who are often the ones to confront individuals in distress.

## 2. Officer Tactics – Coordination and Communication Between Officers

An important aspect of any review of a use of force is the tactics the officers employed and whether they increased or decreased the likelihood of a physical or violent interaction, and increased or decreased the safety of the officers and the public. One case, for example, involved a call for service regarding an intruder in a house, and revealed some very good tactics and communication. Dispatch told the officers that the resident's son was on the way to the location of the call so that when the officers arrived they did not mistake him for the suspect. Once they arrived, the officers established a perimeter and then patiently waited until they had the appropriate resources in place, including a K9. They assigned specific roles before attempting to confront the suspect.

In a number of the incidents, however, multiple officers were present, but there was no apparent communication or coordination to plan how to approach the incident. This raises questions about whether a different or better outcome might have been possible with better coordination. In a case involving a suspect who was trespassing and contained, he had already indicated that he would not cooperate with the officers. Nonetheless, rather than formulating a plan, one officer simply approached the subject on his own, and a use of force followed. A TASER case discussed above provided another example of unilateral action that seemed to miss an opportunity to use backup officers in a more coordinated way.

After a case involving an extended physical struggle inside a subject's apartment, the CIRB appropriately noted that the officers could have made better use of department resources to determine the subject's history before encountering him and should have called for a supervisor and back up. It is also apparent that they should have (but did not) plan how they would contact the subject, who had been reported as aggressive by his mother. This may have caused them to

enter a dark apartment, without working lights, in order to apprehend him, and a struggle ensued when he resisted.<sup>21</sup>

*Recommendation 6:* BPD should consider a renewed emphasis on tactical principles of coordination and communication through training, de-briefing of incidents, and CIRB reviews and feedback.

### 3. Reporting Force

A number of the reviews presented issues about what force needs to be reported. While BPD policy is seemingly clear, more minor uses of force (such as that needed to overcome resistance to handcuffing) are not consistently reported. This has implications both for what is included in reports, but also for which officers are considered appropriate for participating in the transport of the subjects.

We noted two cases, for example in which resisted handcuffing was not reported as force, as required by policy. A third case reflected not only this specific omission, but others as well: in addition to overcoming resistance in order to handcuff the subject, the officers in the incident also had to either carry or drag<sup>22</sup> the subject out of the street because he would not walk, and one of the officers repeatedly pushed the subject back onto the bench he was seated on because he kept standing up. They also overcame the subject's resistance in order to place a spit mask, padded helmet and leg restraint on the subject because he was resisting allowing the paramedics to treat him. Moreover, these two officers were then assigned to transport the subject to the hospital, in a conflict with established protocol.

*Recommendation 7:* BPD should develop training to clarify the requirements of its policy as to how "low-level" physical interventions should be classified and reported, and should ensure that officers are meeting expectations accordingly.

### 4. Applying Appropriate Policy to Use of Force Review

In our July 2015 report, we noted that the Watch Commander Insights should reference the policies applicable to the specific use of force, and not just the general use of force policy. During this audit period, we did see Watch Commanders citing the more specific policies, such as the K9 and TASER policies, when appropriate. However, there is still room for improvement in this area. We noted three cases involving the use of leg restraints in which the Watch Commander Insights do not cite the specific requirements of the specific restraint policy.

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<sup>21</sup> The analysis of CIRB in this case demonstrates its wide-ranging identification of issues and its critical importance in BPD's force review process.

<sup>22</sup> One officer describes it as carrying, the other as dragging. In the video recordings it appears that the officers carry the subject's upper body while dragging his legs.



Similarly, in another case the Watch Commander Insight did not evaluate the use of the spit mask and padded helmet.

## 5. Watch Commander Insights Checklist

The “Watch Commander Insights” section of the Use of Force Investigation includes a checklist of actions the investigating supervisor is supposed to have taken that the Watch Commander then verifies as completed. We found in the audit, however, a lack of consistency in the actions included in the checklist. In order to standardize this process and ensure the Watch Commander has verified the appropriate actions by the Supervisor, it would be appropriate to assemble a standard checklist, using the requirements of the relevant policy.

*Recommendation 8:* BPD should develop a checklist that would facilitate the consistent and comprehensive review of issues at the Watch Commander level during the standard use of force investigative process.

## 6. BPD Jail Booking Sheet

One booking sheet asked the arrestee for his or her “sexual preference.” This should be updated to ask for “sexual orientation,” as the use of the word preference is considered to be factually inaccurate.

*Recommendation 9:* BPD should update its booking sheet to reflect current parlance and thinking as to issues of sexuality.

# VI. Review of Vehicle Pursuits

## A. Introduction

In this audit, OIR reviewed five vehicle pursuits that occurred in 2015. It is notable that BPD did not have a single vehicle pursuit for the first nearly eight months of the year. However, the ones that then occurred, while low in number, demonstrated apparent shortcomings among officers and supervisors in the understanding and application of the vehicle pursuit policy. CIRB found two of the pursuits, of DUI suspects, to be within policy and three of the pursuits, one DUI suspect and two suspected property crimes, to be out of policy.<sup>23</sup>

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<sup>23</sup> As a statistical matter, the relative spike in pursuits in the last third of the year seemed on its own a basis for further inquiry and introspection by BPD management as to the reasons for the trend; that problems existed with a majority of them only compounds the importance of a collective “big picture” review.

These totals prompt a range of reactions, some of them conflicting. For example, five pursuits is not a troubling number in terms of volume, but it also seems noteworthy that a majority of them were out of policy. Similarly, this latter statistic can be viewed both as a cause for concern and as a tribute to the rigor of the CIRB's review process.

The relevant policy continues to be relatively new, and the struggles in applying it correctly are in some ways directly related to the encouraging infrequency of incidents and chances to "practice." The willingness of BPD management to identify and address issues when they arise seems as apparent as it is fundamentally necessary.

We are largely comfortable with BPD's approach to remediation. In lieu of discipline for policy violations in this arena, executive reviewers have been meeting with the involved officers for an extended "de-brief" discussion that presumably constitutes a positive and impactful learning opportunity. This type of direct, timely intervention may not be ideal for every situation – a repeat offense, for example, may warrant more formality and even discipline. Here, though, it shows a level of engagement and interaction that seems beneficial.

Nonetheless, we do have concerns about aspects of the review process, and by extension the overall efficacy of the new policy's implementation. As discussed below, there seems to be misunderstanding at some managerial levels about the particulars of the policy and its application in certain circumstances.

We also saw instances in which the broadcast communications required under policy were not provided in a complete or timely manner by participating officers. One positive response to this since our last report was the creation of pursuit "stickers" to go in each radio car. These are bright yellow and list the various facts and circumstances that officers should convey to supervisors to ensure a full and effective assessment of a potential or ongoing pursuit. This strikes us as a practical and constructive innovation, and one that we recommended previously.

Taken together, the incidents and their evaluations suggest there is a need for BPD to continue emphasizing training and performance review when it comes to pursuits.

## **B. Pursuits of Impaired Drivers**

Three of the five pursuits involved a suspected DUI driver, a common scenario that is covered extensively in the relevant policy and which we discussed in our last report. In the three relevant pursuits from the current audit, one of them properly applied the policy. However, in our view, BPD demonstrated continuing uncertainty when applying the policy to the facts of the other two incidents.

For example, the CIRB process found the second pursuit case of the year to be compliant with policy, but our analysis raised questions about this conclusion. While there were clearly enough facts to justify the suspicion that the driver was under the influence of an intoxicant, we

were less persuaded by the determination that the policy’s “flagrantly reckless” and “imminent and life threatening danger” requirements had been clearly met at the point the pursuit was initiated. Instead, the different levels of review seemed to rely on facts that supported the pursuit – even though some of the relevant suspect behaviors did not happen until after initiation.

The fifth pursuit case of the year, which lasted for some 11 minutes at low speeds, presented similar concerns. Here, the CIRB did find the pursuit to be out of policy – but only after several lower levels of review, and the supervisors in real time, had found it to be legitimate by focusing on the lack of danger from the pursuit itself, and not on whether the necessary requirements for initiation had been met.

We encourage BPD executive management to consider additional training and other reinforcement that could strengthen their members’ grasp of these important principles.

### C. Pursuits After Property Crimes

The other two pursuits involved suspected property crimes. Again, there seemed to be internal issues regarding how to apply the policy to the circumstances. The policy allows a pursuit of a subject known or suspected of committing a “serious or violent felony” as defined by the Penal Code. This includes first-degree burglary, but not property crimes. While the policy is clear, twice BPD personnel incorrectly believed they could pursue for a property crime.

It is encouraging that the CIRB review ultimately determined that both incidents had been out of policy, but this appears to be another area where more consistency of understanding is needed.

### D. Recommendations

Based on the pursuits covered in the review period, it appears that additional training on and reinforcement of the policy would be beneficial. A Watch Commander put it effectively in the context of one evaluation when he wrote, “As vehicle pursuits are a critical performance area, it would be prudent to provide live practice in a closed course or via a simulator. This would allow officers to simultaneously balance written policy with live evaluation and radio broadcasts of a pursuit.”

Scenario-based, live or simulated training would not only afford officers practice in making decisions and executing broadcasts while under the pressure of a pursuit, but also assist them in better understanding how the policy is applied to real fact scenarios. Being confronted with multiple scenarios of potential DUI drivers, would allow them to better recognize which allow a pursuit and which do not. Similarly, practicing scenarios with suspects of other crimes, known and unknown suspects, different road, speed and driving conditions would also help officers learn how to make these decisions, under simulated stress.

In addition, a slight change to the order of the policy language might help to emphasize that an applicable crime is a prerequisite. Currently Section 314.3.1, which states which types of crimes can justify a pursuit, comes after the first part of Section 314.3, which discusses the balancing test for a pursuit. Moving section 314.3.1 to the start of section 314.3, before the balancing test that identifies multiple factors to be considered in determining whether a pursuit is appropriate, would make it clear that satisfying the crime element is the first step. The balancing test factors are irrelevant if the underlying dangerous conduct requirement is not met and therefore should be considered only after first considering the underlying conduct.

*Recommendation 10:* BPD should institute scenario-based training of officers and supervisors on the pursuit policy. It should cover a wide range of factual scenarios to highlight how a slight change in facts can quickly change the outcome.

*Recommendation 11:* BPD should continue to teach, clarify, and reinforce the elements required for the proper initiation of a pursuit, including the relevant crimes and other necessary predicates.

*Recommendation 12:* BPD should consider a policy revision that rearranges the order of elements so that the prerequisites are established first, and the subsequent “balancing test” factors for continuing the pursuit come later.

## VII. Conclusion

The recent joint meeting of the City Council and Police Commission was a useful occasion for City officials and BPD to take stock of accomplishments, initiatives, and goals. The evolving subject matter of our Reports over the years, from the fundamental concerns of the past to the refinements of the present, are another indication that the Department has made important strides in its internal review systems.

Obviously, we have offered a number of specific criticisms and recommendations in this Report. To do so is our role, of course, and a function of the value we seek to bring as a source of independent scrutiny and perspective. We should reiterate, though, that our basic sense is that the Department is functioning at a high level, with a sincere commitment to effective policing, accountability, and responsiveness to the people of Burbank. If its review processes occasionally experience bumps and inefficiencies, this merits attention and adjustments – and BPD management continues to be receptive to our suggestions.<sup>24</sup> But it should not overly detract from

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<sup>24</sup> In fact, the Department has already made several responsive changes since receiving the initial draft of this Report for its review.

the good news that these systems are there in the first place, and often producing better police work in a range of ways.