

Exhibit A

Second Independent Audit of Burbank Police Department

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OIR Group

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I. Introduction

Pursuant to the 2012 Independent Monitor agreement with the City of Burbank, this memorandum constitutes OIR Group's second semi-annual report regarding internal investigations and administrative reviews conducted by the Burbank Police Department ("BPD"). The subject matter of the report is a total of twenty-four cases that had been completed by BPD and reached final disposition during this initial reporting period. Thirteen were force reviews and eight were Internal Affairs investigations involving various allegations of officer misconduct. The remaining three were critiques of vehicle pursuits involving BPD personnel, an assessment we conducted at the request of the Department's executive team.

As with our initial report in 2012, we have evaluated individual case materials as windows into BPD's internal review process. The particular features of each investigation – both positive and negative – are helpful in this regard. But our purpose is not to endorse or reject any or all of the specific outcomes after the fact. Instead, we seek to offer an independent assessment of the Department's processes, and to provide recommendations where applicable in an effort to help strengthen reviews in the future.

Last year, our fundamental impression was of an agency that was moving in the right direction, but still had some strides left to make. A series of new protocols reflected a real commitment to accountability and self-scrutiny in the face of misconduct allegations and critical incidents. We saw much to admire in the thoughtfulness and scope of several force reviews; the Department's Critical Incident Review Board (CIRB) produced useful, constructive insights in a number of different cases. At the same time, we noticed that the various processes – and attendant mindsets – had not yet become ingrained at all levels of supervision. There were consistency issues regarding the quality and thoroughness of investigations, and occasional delays that undermined investigative effectiveness.

In sharing our impressions last year, we included twenty specific recommendations for refining or enhancing the various review systems. We were also gratified to note that, as always, the BPD executive leadership viewed our efforts as useful feedback rather than a nuisance or threat. Within weeks of receiving the report, BPD had assessed the recommendations, responded to them individually, and shared the results with us. The engagement and receptivity of individuals at different levels of city

government also helped to assure us that the culture of reform was taking hold, and that progress would continue.

Accordingly, we are encouraged but not surprised to note that this year's sampling of cases indicates the ongoing nature of BPD's positive evolution. Last year, for example, we praised the existence of the Critical Incident Review Board process: an executive level overlay on the three tiers of assessment each use of force now receives. New procedural features have strengthened that process, while the substantive thoughtfulness of the evaluations and training recommendations have consistently impressed us. Notably, supervisors at lower ranks also seem to be growing more proficient in identifying issues and promoting improved performance.

This report will also discuss significant policy reforms that emerged this spring in three areas: Audio Recordings (which are an important source of evidence that the Department is utilizing in expanded ways), TASER use (which can be an effective but controversial force option) and Vehicle Pursuits (which are an important law enforcement tactic that is also inherently dangerous and important to regulate).

In terms of Internal Affairs investigations into officer misconduct, several of the cases contained racial undercurrents that – appropriately – received careful consideration. More than one complaint touched on perceptions of racial profiling, and other detentions that we reviewed illustrated that the line between pro-active policing and harassment can be a fine one. The investigations were thorough, and the Department appeared to have an appropriate sensitivity to the relevant issues – including at the field level. However, this topic is important enough, and recurring enough, to merit further attention from BPD executives. Racial profiling awareness training for patrol officers could be considered as one way to help address this continuing concern among Burbank residents.

Finally, we looked at Vehicle Pursuit Reviews for the first time. While we had questions and observations arising from the individual packages, we commend BPD for devoting a formal and seemingly thoughtful process to these incidents. With implications for risk management and officer safety as well as law enforcement, pursuits deserve the kind of careful attention this process reflects.

II. Policy Changes

A. Audio Recordings

The period of time since our last report has been a significant and positive policy change. As of this June, BPD now requires uniform officers to carry the recording devices and to utilize them for the entirety of their contacts with the public. We support this initiative, and are impressed with BPD's thoughtful and comprehensive new policy.

Individual “in the field” recordings have been part of law enforcement for many years, and evolutions in technology have increased agencies' options in terms of

affordable, reliable, retrievable, and storable data. Recorded evidence from officer encounters with the public has considerable and obvious evidentiary value. Accordingly, the decision by BPD management to commit to the expense and high standards of the new policy is an excellent one.

The policy is robust and establishes guidelines about maintenance and activation of the equipment. If part of a given interaction is not recorded, the officer has a responsibility to explain why. The policy also authorizes supervisors to review recordings “anytime they are investigating alleged misconduct, reports of meritorious conduct, or whenever such recordings would be beneficial in reviewing the member’s performance.”

Since the cases we reviewed occurred *prior to* the final policy’s taking effect, though *after* the Department made (in mid-2012) a substantial move in that direction, the different incidents end up providing a “living laboratory” of sorts: we could see both the advantages in those cases where the tapes were used, and the limitations in those cases in which potentially available recordings were lacking.

Among our observations are the following:

- In one allegation of racial profiling, an officer admitted that he “forgot” to use his audio recorder to record the encounter. A recording of the dialogue between the officers and the complainant would obviously have been extremely helpful in assessing whether there was any indicia of bias based policing.
- In another incident involving the temporary detention of a pedestrian, the recording captured the final moments of the exchange. The officers can be heard taking pains to explain their actions and reassure the citizen that he was not being unfairly targeted or discriminated against. While this is impressive, questions arise when only portions of an exchange are captured. In particular, it raises the possibility of selective, self-serving recording on the part of the officer. The new policy addresses this by requiring complete, consistent use of the devices for all encounters.
- In one incident, a review of the contemporaneous audiotape indicated that the involved officer did an excellent job of capturing on tape the motorist’s consent for a limited search of the vehicle – thereby resolving a disputed fact and providing evidence of excellent police work.¹

¹ Importantly, the new policy also has an “audit” provision that encourages supervisors to review recordings – and to acknowledge effective work when it occurs. The recordings provide an excellent feedback loop, and we encourage the Department to commend the positive performance of employees whenever it emerges from that review process.

- In one force case, the CIRB had useful peripheral information from listening to the audio recording of the event. The Board noted that a leg restraint device, which had ultimately been used on the suspect, was not initially available to the officers, and that the officers needed a sergeant's explanation about how to properly use the device. This suggested some training opportunities that might otherwise have been overlooked.

The new audio recording policy is a significant step forward for BPD. That said, we do wish to add two notes of caution.

First, as valuable as the recordings can obviously be as evidence, they should not be considered dispositive by themselves. We reviewed cases in which the recorded evidence was deemed sufficient to negate a citizen complaint, and the involved officer was never interviewed. We encourage the Department not to rely on the recordings alone, or to assume that non-verbal or non-recorded evidence (including state of mind) would not be worth pursuing in order to assess the totality of a particular incident.

Second, we hope the Department is aware of, and prepared for, the various technological challenges associated with the capture, storage, and use of large volumes of data. In one of the cases we reviewed, the cd of the audio recording was blank. While this was not hugely significant in this case insofar as the recordings had been reviewed and summarized in the report, it has the potential to create suspicion and complications in future incidents.

B. TASER Policy

In March of 2013, BPD also updated its policy for its authorized "Conducted Energy Device," which is a TASER brand electronic less lethal weapon. TASER devices work by temporarily incapacitating subjects through currents of energy that disrupt normal muscle function and induce pain. This ideally promotes compliance and/or an opportunity for officers to control subjects by handcuffing or other restraints – and does so at less risk of injury for both officers and subjects. One case from last year illustrated the potential benefits, when a TASER deployment quickly and safely subdued a delusional young man who was behaving erratically and weaving through traffic on foot while under the influence of drugs.

At the same time, the TASER has been controversial – in part because of its "exotic" nature and a lack of public understanding about how it works, and in part because of its potential connection to some in-custody death cases (which generally have involved prolonged struggles and subjects with other risk factors.)

The new policy is consistent with contemporary case law (a major federal decision regarding electronic force options emerged in late 2009) and also shows an appropriate regard for the risks associated with these devices. It makes explicit the training requirements that are a prerequisite for use (and which have a regular "refresher training" component and establishes detailed expectations for supervisors in the aftermath

of a TASER deployment. The policy is detailed and comprehensive, and shows the Department's appropriate regard for both the advantages and potential pitfalls of TASER use.

C. Vehicle Pursuit Policy

BPD engages in relatively few vehicle pursuits a year, but it recognizes their significance in terms of public safety, officer safety, and risk management. Accordingly, it has recently revamped its relevant policy to eliminate gaps, clarify responsibilities, and enhance accountability.

We are impressed with the comprehensive nature of the policy, and the sensible boundaries it establishes. One important improvement, for example, is the specificity with which the policy frames and limits the circumstances under which a pursuit is authorized. It provides specific examples of the type of serious crimes that would warrant a vehicle pursuit, and the various factors that should influence the decision to terminate. The critical role of supervisors is also carefully, and appropriately, delineated.

BPD has also developed an investigation and review protocol that is reflective of its concerns.

III. Use of Force Reviews

In our previous report, we discussed the Department multi-layered force review protocol at some length. We were especially impressed with the Critical Incident Review Board, which is comprised of the Deputy Chief and multiple Captains. This Board serves as an executive-level "check and balance" on the formal reviews that begin with officer reports and move up through different supervisory levels. We are pleased to see additional progress – not only at the CIRB stage, but also, and very encouragingly, before the cases reach the highest-ranking evaluators. This shows that the commitment to an analytical mindset continues to "trickle down" as we had begun to see last year.

The thirteen force cases we looked at during this review period showed further growth in the efficiency and sophistication of these evaluations. For example, we encouraged the CIRB to build on its strong foundation by formalizing some of its feedback protocols; the Board refined its standard case "worksheet" to add more details and include documented verification that training recommendations were followed. The CIRB phase now includes outreach to involved officers in the form of an e-mail that specifies the outcome of the review.²

We were also impressed with the "checklist" format that was used in the later cases from our set of examples. At the Watch Commander level (which precedes the CIRB), the lieutenant confirmed in writing that the handling sergeant performed six

² Since many of these e-mails shared the same date from March of this year, it appears this is a new step in a process that is still evolving.

specific steps to ensure the completeness of the package, including the obtaining of photographic evidence and evaluation of relevant medical records. This type of standardization is a simple and very effective way of producing thorough and consistent evaluations. The later packages from our review also included performance histories, which provide a convenient and useful frame of reference.

We noted several instances in which the gathering of evidence for the force review was conscientious and highly effective.

- In multiple instances, responding investigators showed – and documented – their due diligence in looking for surveillance cameras that may have captured relevant parts of a force encounter.
- In one case, the sergeant investigator followed up by taking photos of the suspect hours after the event, since he had refused to cooperate initially as a function of his anger and intoxication.
- In another case, the sergeant investigator did well taking photographs of the inside of the patrol vehicle, which showed the suspect's shoe print marks on the door. The suspect had denied kicking the door/window. The sergeant also took photographs of the suspect's injuries and included them in the use of force package. Photographs were also taken of Officer B's injuries and included in the use of force report.
- In a different case, the involved officers did well documenting the suspect's injuries and indicating in the police report that the injuries were observed prior to their contact with the suspect. The officers took photographs of the suspect's injuries prior to transporting the suspect to the hospital for medical clearance and booking. Additional photographs were taken of the suspect at the hospital and included in the investigative file.
- In another case, officers responded to a "fight call" and one of the suspects fled but was eventually apprehended. A copy of the radio traffic was obtained and included in the investigative file.
- In other cases, the investigators did well noting in the report efforts to canvass the area for potential witnesses.

As in the past, the Board added value to many of the cases by identifying training or tactical issues that arose from the incident (even if peripheral to the force itself):

- The panel recommended that Training Staff develop situational tactical options after a case in which an officer successfully (but dangerously) reached into a running vehicle to remove the keys and prevent a drunk driving suspect from leaving the scene. It is our understanding that this

discussion has caused the Department to agree to develop a policy circumscribing this tactic. The policy modification is currently pending and we look forward to the resulting change.

- In one case involving the use of a TASER (prior to the adoption of the new policy listed above), the panel found the force justified but questioned the application of the device on a handcuffed subject.”³ Per the TASER policy (in effect at the time of the incident), officers were permitted to activate a TASER if a suspect exhibited “active aggression” or actively resisted an officer’s “attempt at control.” The policy did not advise against the application of the TASER on a handcuffed suspect. Although the facts indicated that the suspect was actively resisting, assaultive and non-compliant, and the Board did find that the application was within policy, it expressed concerns about the deployment. One was that the TASER was deployed while the suspect was in handcuffs. The Board also noted that the incident could have been avoided had the officers applied a leg restraint on the suspect before transport or requested assistance sooner. CIRB also noted that one of the stated justifications for the use of force was a fear that the suspect might escape. The Board asserted that this was not “compelling, convincing or logical” since the suspect was in handcuffs and had already demonstrated trouble standing on his own. Because this issue was not noted in the Watch Commander’s review, the CIRB noted the need for more thoroughness at the lieutenant level.
- In a case involving force being used against a mentally ill subject, the panel commented on the fact that BPD had previously responded to the subject’s residence just hours before, but background information that might have been helpful in the subsequent contact had not been included in any documentation.
- In another case, the facts indicated that when the suspect was observed the involved officers made initial contact while driving alongside the suspect and ordered the suspect to “Come here.” To the credit of the CIRB panel, it recognized that this type of tactic is inconsistent with best practices and potentially compromises officer safety. CIRB expressed the need to handle the matter as a training issue.
- In a case involving the transport of an intoxicated male, the suspect began to kick the patrol vehicle door and passenger side window and to threaten the officers. The officer warned the suspect that if he did not comply with orders to stop he would be “maced.” When the suspect failed to follow orders, the officer deployed one burst of O.C. spray at the suspect. Per

³ The new policy does not prohibit the use of a Taser with a handcuffed party, but lists it as a special risk factor that should be weighed before the decision to deploy.

Department policy, officers are permitted to use OC Spray to control a “violent or belligerent” suspect. There is no prohibition to use OC spray if the suspect is in handcuffs or inside a patrol vehicle, and the Department found the use of the OC spray to be reasonable and within policy. In this case, the CIRB panel also noted that, based on the suspect’s reported belligerent and combative behavior, in addition to the application of the spit hood and leg restraint, it would have been advisable to apply a soft foam helmet on the suspect. The helmet would have limited the potential for the suspect to cause injury to himself.

Significantly, we also noted instances in which the CIRB was affirming the excellent and probing analysis that occurred at lower ranks in the process.

- In a case involving an early morning confrontation at the end of a church social event, the use of force was straightforward, but the Watch Commander review identified some room for improvement in summoning the appropriate number of officers to the scene before engaging a crowd control event.
- A multi-phased confrontation with an intoxicated and extremely volatile female arrestee during and after the booking process was the subject of an excellent and thorough review that analyzed each component of the encounter and found room for improvement in several areas, including use of remote cameras, proper handling of the spit hood, and retention of keys on individual officer holsters – the loss of which in this case caused BPD personnel to have to re-enter the cell and engage again.
- An officer who had an encounter near a dumpster with a volatile subject was justified in his use of force, but his tactics were questionable – particularly his failure to specifically request backup sooner. Notably, the field sergeant recognized the developing situation and helped ensure that additional officers were on scene.

We also note the following issues, either systemic or specific, that perhaps merit further attention or improvement:

- The timeliness of the CIRB meetings, in relation to the incidents themselves, remains an issue, insofar as several months sometimes passed before force cases received this final evaluation.
- In a case involving force against an unruly and aggressive woman at a hospital, the Department rightly found the force to be justified, but seemingly missed out on opportunities to explore alternative strategies than force for dealing with a person who was clearly mentally ill. This is a common challenge among law enforcement agencies, and while there are no easy answers, it is all the more reason for the Department to focus

attention on training and the best approaches to dealing with this population.

- We noted cases in which the source of the suspect's injuries (including an eye abrasion and foot fracture) was ambiguous, and more steps could have been taken to investigate through witness statements, medical records, etc.
- In a case that had hospital personnel as witnesses, the investigator did not independently interview those individuals, presumably because the involved officers had taken their statements for their reports. In force investigations, written statements, while better than nothing, rarely can substitute for interviews.
- We saw one case in which a suspect interview was conducted by a lieutenant who had responded to the scene and actually gone "hands on" himself. Though the ultimate review of the whole incident was conducted (appropriately) by a different lieutenant, the pitfalls of having an involved officer directly involved in the administrative questioning of the suspect should be avoided.⁴
- In one case involving force at the end of a pursuit, an involved officer's use of the term "guided [the suspect to the ground]" was arguably misleading and, at best, insufficiently descriptive, suggesting as it did a less significant intervention than what the officers actually engaged in.
- The administrative files did not always contain updated information about the criminal charges against the suspect, the disposition of which could conceivably be relevant to the assessment of the force.

IV. Internal Affairs Investigations

In our view, the case files each provided a solid basis for BPD executives to make the relevant accountability determinations. We discuss below some of the substantive issues arising from the cases we reviewed.

A. Allegations of Profiling and/or Improper Detention

Most law enforcement agencies grapple with the concerns of individual citizens who have been the subjects of traffic stops or pedestrian detentions, and who believe the officer's actions to be wrongful in one or more ways. There is an inherent tension in

⁴ In an interesting counter-example, BPD personnel took pains to locate the only other Armenian-speaking officer on duty to perform translation services for a suspect who had been involved in a use of force with an officer who spoke Armenian himself, so as to keep the force-using officer out of the review process.

these encounters: people who have little or no experience with being stopped are often agitated and affronted, while people who are regularly stopped believe that law enforcement is “out to get them” and harassing them unfairly. Racial dynamics often add a volatile element to the situation.

Accordingly, we are not surprised to note that four of the eight Internal Affairs cases we reviewed related to these issues either in whole or part. For the most part, BPD investigated the allegations effectively and painstakingly. Proving racially discriminatory actions in this context is particularly difficult because so much turns on the subjective intent of the officer. As a result, it is not surprising that the required preponderance of the evidence did not substantiate the allegations of wrongful and/or discriminatory detentions in any of the cases. Even so, the Department clearly took a conscientious approach:

- In one case brought by a Hispanic complainant, the file included documented references to the neighborhood crime issues that had increased the vigilance of officers on the night of the pedestrian stop in question.
- In another case that alleged a pretext stop, overly long detention, and verbal misrepresentations by the officers, the Department recreated the different database searches and radio contacts that the officers engaged in as the stop evolved. These corroborated the legitimate rationales behind the officers’ stated belief that the complainant had an outstanding warrant for his arrest.

Given the sensitivity of these encounters, and the understandable nature of some complainants’ perceptions and genuine sense of grievance, we commend BPD for the care it seems to take in investigating these complaints when they arise. At the same time, we noticed room for possible improvement within the cases we saw.

- In an investigation into an allegation of bias-based policing, it was learned during the investigation that the complainant had alleged at the time of the incident that she had been selected for police scrutiny because of her race. It was also learned that despite this, there was no request by the involved officers for a supervisor to respond to the location. It is good practice that when involved officers have had a significant complaint raised against them, that they call a supervisor to respond to the scene. A non-involved sergeant that responds to a scene can often defuse the situation and immediately begin inquiry into the concern raised by the citizen.
- In one investigation, the citizen complained that she had been singled out for the police encounter because of her race. The supervisor who conducted the investigation into her allegations categorized the complaint as “rudeness,” thereby ignoring the racial component. Certainly, in a case in which a citizen believes she has been singled out because of the color of

her skin, the allegation should be framed in a way that ensures the addressing of that important issue.

- In one “discriminatory stop” complaint, the citizen mentioned feeling demeaned by the officer’s tossing of his property to the ground, where he then had to retrieve it. Neither involved officer could remember this moment, which suggests that it may well have happened. Although this is a common technique during a search, and promotes officer safety and the speed of the process, the public perception is understandable, and could perhaps be mitigated by further explanation, apology, or just a greater sensitivity.

B. Internal Personnel Issues

Two of the eight cases we reviewed arose from internal personnel matters, as opposed to citizen complaints. (A third, also internally generated, related to performance issues that had contributed to a collision between BPD vehicles responding to a call.) This is a familiar phenomenon. While the handling of outside allegations of misconduct and the response to feedback from citizens are critical measures of an agency’s credibility and good faith, the reality is that good supervisors must be both vigilant and willing to engage when it comes to employee problems – even if the public is unaware or not directly affected. Additionally, the proper handling of workplace disputes has important implications for morale and risk management.

We saw an appropriate regard for these issues in the cases we reviewed:

- In one case, an employee alleged retaliation (in the form of a changed work schedule and assignment) for his cooperation with a “hostile work environment” case against the sergeant who made the switch. The case was unfounded after a thorough investigation that recognized and addressed the perceptions and established the counter-explanations for the move.
- In a case involving a comment made by one officer about another, and having potentially racial overtones, the investigation was initiated by a supervisor who had overheard the comment and decided to take action. The subsequent investigation revealed some awkward dynamics; first, the officer about whom the comment was made denied being offended or ever indicating that he had been – in contradiction with the supervisor’s memo that initiated the case. Second, some of the witness officers testified that they “did not recall” the comment, a response that is difficult to refute but that does not inspire confidence. It may have been worth “testing” that response with follow-up questions in some instances.

We believe that the outcomes of these cases were legitimate, and that the investigations themselves reflect BPD management’s sensitivity to the relevant

workplace concerns. We also recommend a continued focus on pro-active training and consistent, rigorous investigation of possible problems.

C. Timeliness of Investigations

In our previous report, we emphasized the value of a timely investigative process. We noted one case that had gone beyond the statutory limit for completion, and other instances in which delays in evidence gathering or interviews had compromised the effectiveness of the investigation. Additionally, fairness to the involved office – in terms of either a swift exoneration or a timely corrective action – militates in favor of a prompt completion.

In the eight cases from this review period, we see an improvement in this regard. One case (involving an allegation of improper driving) did take eleven months to complete, but the others were considerably more efficient. One investigation – into a complaint that an officer had misled the complainant about fees from a vehicle citation – was resolved in approximately a month. More typical was a four to six month range, with one other case completed within 90 days.

While speed should never come at the expense of thoroughness or effectiveness, faster is generally better for a variety of reasons – including the public’s perception that these matters are a priority. The Department’s apparently heightened emphasis on timely resolution is commendable.

D. Failure to Include Disposition of Charges in Investigative File

We saw examples of investigative files in which there was no apparent research into the underlying charges directly relevant to the matters complained of. For example, in one case, the complainant alleged that the officer had no legal basis for stopping him. According to the complainant, he challenged the traffic citation in court and the prosecutor had dismissed the case against him. Despite the account provided by the complainant, the investigator conducted no apparent follow up to learn if the account of the court proceedings provided by the complainant was accurate. If the matter had been dismissed, that fact might be relevant to the internal affairs investigation and should have been further determined by the investigator.

E. Outreach to Complainants

Last year, we praised the level of individualized explanation and detail that went into the Department’s notification letters to citizen complainants regarding case outcomes. BPD’s approach goes beyond the obligatory (often boilerplate) response of other agencies, and we saw further examples within these cases.

- A complainant whose version of a conversation differed from that of the involved officer was informed that an audio recording existed and formed the basis for the exoneration.

- A complainant who resented a lengthy detention was informed about the database search that had reasonably extended the officers' inquiry, based on a possible pending warrant that was documented in the case file.
- A complainant who alleged racial profiling after being stopped on foot received a letter that explained the heightened vigilance of officers because of a string of auto burglaries at the time of the incident.

We also found indicia of regard for "customer service" in other aspects of the process. As noted above, the audio recording from the detention of one complainant included an attempt by officers to defuse the citizen's unhappiness and perceptions of discrimination. (One officer even apologized for having offended the complainant, emphasizing that it was not their intent.) In another case, a sergeant conducting an interview with a complainant took pains to explain about some of the legal strategies afforded to officers – and why they use them. While such efforts are not always successful, they show a respect for the complainant's concerns that is worth emphasizing.

Unfortunately, there can be a fine line between productive dialogue and an inappropriate defensiveness or bias. We noted instances in which the interviewer of a complainant seemingly "went too far," though the intentions were arguably good:

- In one case, the investigator told the complainant that he knows the two officers to be "morally sound" people, intimating that it is unlikely that they practiced any bias-based policing as alleged.
- In another review of a complaint about an improper stop, an internal investigator said to the complainant during the interview that if it "makes you feel better, [the officer who stopped you] has an impeccable ethical record."

As accurate as these observations might be, this approach is injurious to the investigative process. It gives the impression that the inquiry will lack objectivity, and that the "home court advantage" of the officers' reputations somehow diminishes the legitimacy (or viability) of any complaint against them. Both comments have no place in an evidence-based internal investigative program.

V. Vehicle Pursuit Reviews

As mentioned above, this was our first opportunity to assess examples of BPD's "Vehicle Pursuit Review." We evaluated three cases, and they reflect a process that is thorough and wide-ranging. It follows much the same format as the force review process – beginning with sergeant-level fact gathering and evaluation, and continuing through the Watch Commander ranks and then the Critical Incident Review Board.

The handling field sergeant is responsible for listening to the audiotapes of the broadcast and interviewing involved officers. (The recordings are a critical means of

assessing underlying facts and decision-making, since detailed communication between the involved officers and their supervisors is expected as a pursuit initiates and unfolds.) The sergeant includes the following additional information in the review package: reason for the initiation of the pursuit, speed of the pursuit, duration, distance, number of vehicles involved in the pursuit, explanation of the termination of the pursuit.

After gathering all the facts/evidence, the field sergeant will draft a summary of the incident. That report/summary is then forwarded for Watch Commander review and recommendations, before making its way to the CIRB. That panel is also likely to listen to the recordings as part of its review – a further indication of the importance BPD attaches to these incidents.

As the below summaries indicate, the Department gleans much useful information from the scrutiny that pursuits receive. We support the effort that goes into the reviews, and offer minor suggestions for improving their thoroughness in the future.

Case No. 1:

This pursuit originated as an attempt to stop a motorcyclist whom the originating officer believed to be under the influence. The pursuit eventually reached the freeway, at which point another officer estimated the speed of the accelerating motorcycle to be well over 100 MPH. The involved officers appeared to exercise sound judgment in evaluating the likelihood of success against the danger involved in pursuing the motorcycle at such high speeds. The original officer terminated his own attempt shortly after getting on to the freeway, and the handling sergeant shut down other responding units shortly thereafter. Though the motorcyclist was not taken into custody, there were no collisions, injuries, or property damage.

The initial critique, performed by a BPD Watch Commander, covered all aspects of the event and included multiple recommendations. The incident reflected well on the actions and decision-making of the involved officers, and also showed an admirable balancing of the impulse to enforce the law and “win” in these situations versus the dangers inherent to high-speed vehicle pursuits. In fact, the Watch Commander suggested that the Department consider limiting the pursuit of motorcycles to incidents involving crimes related to serious bodily injury and/or persons involved in violent felony crimes, because of the special capabilities and vulnerabilities that motorcycles possess relative to regular vehicles.

We also noted documentation of counseling after a pilot (providing air support for the pursuit) was overheard referring to the motorcycle as a “rice rocket.” We concur that this expression did not rise to the level of a policy violation, but also respect the Department for making note of the potential racial insensitivity that the term reflects.

Finally, there was mention of an officer from another agency briefly entering the pursuit to back the original Burbank officer. For the sake of thoroughness, it may have

been beneficial to obtain a brief statement from that officer about his/her observations and involvement.

Case No. 2:

An officer noted a car in the middle of the street in early morning hours under suspicious circumstances, and believed its presence might be connected to several recent vehicle burglaries. The suspect driver reacted unpredictably to the officer's initial efforts at contacting him, and eventually attempted to flee the area. The officer put out a radio request for assistance and went into pursuit, where he was joined by a second Burbank officer. Shortly thereafter, the suspect pulled into a parking lot and surrendered. There were no injuries, collisions or property damaged as a result of this pursuit.

The critique focused on the predication for the pursuit – a “burglary” allegation that was ambiguous to the extent that it involved a vehicle, and thus may not have constituted the sort of “serious or violent felony” to which BPD policy limits its authorization for pursuits. While the issue was identified, it is not clear whether follow-up clarification or training bulletins have emerged. We would encourage BPD to take this additional step as a way of ensuring that identified issues do not “fall through the cracks.”

Similarly, the unusual tactics of the officer at the time of his initial engagement (including driving in reverse at different points in an effort to create distance for himself) merited further analysis and discussion than they seem to have received.

Case No. 3:

Two officers on routine patrol observed some erratic driving and attempted to stop the vehicle. The driver did not yield, and instead compounded his violations by going through a stop sign and a red light. This led the officers to believe the suspect was under the influence, and they initiated a pursuit. After about a minute of driving, the suspect abandoned his car in a neighborhood and attempted to flee. He was pulled down off a gate by the officers, who struggled to get him into custody but eventually did so. The suspect's vehicle continued rolling after he got out, and eventually came to rest

This case raised questions relating to the use of force, the review process for that force, and the suspect's related injuries. As for the pursuit analysis, the communications during the pursuit were not complete or effective; the officers said they were trying to provide appropriate radio updates but were “stepped on” by other transmissions. This left questions as to whether the conditions of an “in-policy” pursuit were being met along the way. Second, the basis for the pursuit was the alleged recklessness of the driver, whom the officers suspected of DUI. Still, a lack of information about the specifics of the driver's dangerous conduct made it unclear that the pursuit met the threshold requirements – an issue that was worthy of further development in the officers' reports as well as the pursuit review.

VI. Recommendations

1. BPD should ensure that investigators assigned to conduct internal investigations not pre-determine outcomes based on officer reputation and not convey such evidence of pre-determination to complainants.
2. BPD should consider developing a protocol whereby when a citizen alleges that the police encounter was initiated because of race, ethnicity, or any other discriminatory reason, involved officers should call a supervisor to the scene.
3. BPD should review investigations to ensure that they have been appropriately categorized and that the nature of the allegations is clear.
4. When reviewing internal investigations, BPD investigators should be attuned not only to identifying potential misconduct but also to identifying and providing feedback for exemplary conduct so that such can be reinforced.
5. BPD should more closely enforce its expectation that officers record citizen/officer encounters and hold officers accountable who do not meet that expectation.
6. BPD should develop protocols to ensure that investigators do not rely solely on recordings of a citizen/police encounter to gain the officers' version of the incident.
7. In cases in which there is a related arrest, BPD's internal investigation should look into the criminal disposition of the arrest and the reasons for that disposition. The administrative file should include information about the final disposition of any charges filed against the suspect stemming from a use of force incident.
8. When reviewing force incidents, reviewers should consider whether the incident could have been resolved without any use of force and develop and export such strategies to its officers.
9. BPD should consider presenting additional training on how to deal with the mentally ill.
10. BPD should consider presenting additional training on issues surrounding allegations of bias-based policing.
11. Investigators should make a concerted effort to interview all potential witnesses as part of the administrative review of use of force incidents.
12. In addition to an assessment of the use of force incident, a Watch Commanders review should include an assessment of the quality of the investigation. The

Watch Commander should ensure that the investigation/use of force review is thorough. In instances where there are identified shortcomings, the Watch Commander should instruct the handling investigator to conduct the appropriate follow up.

13. The prior history of officers is an essential aspect of a comprehensive force review and should be included consistently in the investigation/force review package.

14. Interviews of suspects/witnesses should be thorough and attempt to elicit information about how and when a suspect sustained an injury. Investigators should include medical evidence that relates to assertions made regarding potential sources of an injury.

15. The Department should draft a policy addressing the inherent dangers of reaching into a vehicle. The policy should also address how officers can maintain tactical advantage when dealing with a suspect who refuses to exit a vehicle and advise them that they will be held accountable for actions that fall below the Department's expectations.

16. The Watch Commander review of an incident should be comprehensive, and an assessment of each separate use of force should be conducted and memorialized in the review.

17. As with its force review process, the CIRB should ensure and document the appropriate follow-through for training or policy recommendations that may emerge from its Vehicle Pursuit reviews.

VII. Conclusion

The cases from this review period reinforce and build upon our favorable impressions from last year. The Department continues to solidify its approaches to robust internal review. The new policies discussed above reflect an ongoing commitment to aligning BPD with best practices. They enhance accountability and risk management. By doing so, they also contribute to more effective performance in the field and better service to the people of Burbank.