



# 2018 OIR Group Report re Monitoring of Burbank Police Department

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# I. Introduction

Pursuant to the Independent Monitor agreement with the City of Burbank, this constitutes OIR Group's 2018 Report on internal investigations and administrative reviews conducted by the Burbank Police Department ("BPD"). It centers primarily on incidents and allegations that occurred in 2017 and for which the Department's assessments have been finalized. As in the past, our role is to consider individual cases – and the Department's handling of them – as a means of evaluating the overall rigor and effectiveness of BPD's own processes.

Consistent with the scope of our monitoring functions for the City, we do not conduct our own investigations, or regularly opine about specific outcomes. Instead, we utilize the actual case files as the best means of understanding the Department's approach, gauging its overall effectiveness, and making specific recommendations for systemic improvements where applicable.

For this version of our Report, the sampling of completed investigations that we reviewed was comprised of the following:

- One officer-involved fatality (the 2016 death of a subject in an encounter with officers that included the use of a Taser)
- Two different force cases involving a juvenile subject
- 19 uses of force from 2017
- 29 misconduct investigations (23 of which originated as complaints from the public)
- All six vehicle pursuits reported by BPD officers in 2017.

Our scrutiny revealed a number of positives. The Department continues to refine its own processes in impressive ways; this not only ensures the thoroughness of individual reviews but instills in supervisors an expectation of rigor that has increasingly and demonstrably taken hold in the last few years.

The Report also discusses other BPD initiatives that reflect a commitment to continuous improvement through rigorous internal review. These efforts include internal audits across a range of performance areas and an "early intervention" risk assessment based on aggregate computer data. Such efforts go beyond what most agencies are willing and able to undertake. Our sense is that they provide real value in terms of both substantive results and influential messaging to the Department's employees.

Another component of this Report's preparation involved continuing in our role – begun in 2016 – as an outside auditor of BPD compliance with the City's "electronic communications" policies. This has two components: a review of the Department's own internal audit of both line-level and supervisory employees below the rank of captain, and our own substantive audit of a month's worth of email transmission in the accounts of the six members of BPD's command staff (Chief, Deputy Chief, three captains, and senior civilian administrator). We discuss our findings below – and are pleased to report that identified issues were few in number and minor in nature.

Meanwhile, the Department has maintained a commitment to outside review as a vehicle for improvement. One impressive component of this is BPD's voluntary relationship with the Commission on Accreditation for Law Enforcement Agencies ("CALEA"). CALEA is a prestigious national credentialing agency, created and run by police executives, that has devised formal standards to promote best practices in policing. BPD turned to it several years ago during a period of reform. The Department received its initial "accreditation" in 2014 and was justifiably pleased to be reaccredited at the end of 2017.

The Department's focus on the CALEA process is consistent with our own experience in dealing with various command staff members and supervisors in recent years. BPD engages in a number of self-initiated review processes that are time-consuming and demanding – often in the pursuit of subtle improvements that enhance agency effectiveness in quiet but significant ways. We discuss below the Department's unusually robust audit process, for example, and have been continually impressed by the rigor and sophistication of its force reviews – a practice it continues to adjust, even as its current version is as thorough and thoughtful as any we have seen.

From our own perspective, we can also attest to BPD's constructive approach to the independent oversight we provide annually at the City's request. Most local jurisdictions do not have anything that approximates this type of formal scrutiny of their law enforcement agencies' internal processes. Accordingly, BPD could be forgiven for begrudging the review and the demands that it imposes, both during and after our yearly evaluation. But whatever they may think privately, their outward response has been exemplary from the beginning. The Department cooperates fully with all requests for information, shares issues candidly, and approaches our questions and critiques with seemingly genuine receptivity.

BPD's willingness to thoughtfully consider each of our recommendations for systemic improvement over the years also reflects an encouraging mindset in a couple of ways. It shows not only a refreshing lack of resistance or defensiveness when it comes to outside viewpoints, but also a real commitment to serving as a model agency in the region.

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In May of 2018, BPD took another praiseworthy step in the direction of transparency, accountability, and true community engagement by posting its policies in their entirety on the agency's public website. Many law enforcement agencies, both historically and to this day, have refrained from sharing policies in this fashion. This makes BPD's commitment to doing so all the more significant.

Burbank's policies and procedures regulate the ways in which BPD personnel do their jobs. They should and do reflect the priorities and expectations of Department management. And they evolve with the times, as specific experiences and legal shifts and technological advances provide the grist for shifts in approach. By keeping the public apprised of its standards, the Department makes itself accountable for them. Just as importantly, it offers a vehicle for feedback from, and greater ownership by, the people it serves.

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### Body-Worn Camera Pilot

The drafting of this Report coincides with the Department's launch of a body-worn camera ("BWC") pilot project. Eleven officers are being equipped with cutting edge camera technology, as supplemented by a new in-car-video system that is also being evaluated. The program will give the Department and the City an opportunity to work on the mechanical issues, and assess the feasibility and desirability of a full-scale, Department-wide investment in the future.

The question of whether to equip police agencies with BWC's has been a topic of much discussion throughout the country, as technological capabilities have dovetailed with an environment of heightened scrutiny and accountability for law enforcement. At OIR Group, we have worked with multiple agencies that have them, and several more that have considered them. There are worthy arguments on both sides of the debate about their implementation. We have refrained from taking a definitive position as to the "bottom line" question of whether the cameras' value outweighs their costs and limitations; too much depends on the needs and resources and challenges that different jurisdictions face. What we can and do say, however, is that communities that do adopt the cameras should do so with clear expectations, public buy-in, and comprehensive policy.

It is our sense that BPD and the City have prepared thoughtfully in reaching this stage of the current trial. We had the chance to review and offer feedback as the Department put together a draft policy to guide the pilot project. Overall, we found that the policy is very comprehensive and provides helpful guidance to officers and supervisors. However, one provision that concerned us gives officers the ability to preview available body camera footage if they agree to give a voluntary statement to criminal investigators. The apparent goal of this provision is to entice officers to provide voluntary statements during the criminal investigation of critical incidents such as officer-involved shootings.

One concern is that this "condition" may end up making any voluntary statement involuntary because of the coercive effect of the condition, thus defeating the objective of the policy. More problematically, any agreement by the officer to provide a voluntary statement is not enforceable; the officer could preview the video and then decide not to give a statement.

Because of the potential pitfalls of this clause, we recommended that the Department keep firm on not allowing the officer to view the video until he/she provides a preliminary statement, then allowing them to see the video and supplement their original statement at the end of the interview. This process allows a pure statement of the officer's observations, actions, and state of mind without it being consciously or unconsciously impacted by exposure to external stimuli such as a video recording of the incident. At the same time, reviewers of officers' accounts must recognize that their pure statements may deviate from what the camera shows for legitimate reasons such as differing vantages and focus points, visual acuity, and the like.<sup>1</sup>

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<sup>1</sup>We also raised a concern about the release of video footage following a critical incident. As detailed below, the issue we identified will likely be mooted by an impending state law requirement that will mandate such release.

We will be watching the progress of the pilot project, and the City's subsequent deliberations, with interest as the months unfold.

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### Early Intervention Audit

BPD continues to show a commitment to internal review that extends to pro-active analysis of officer conduct. This was the second year in which it took advantage of its "IA Pro" software system to aggregate – and then audit – entries by individual officers across a series of risk-associated behaviors such as uses of force, complaints, and traffic accidents. It identified seven officers with the highest cumulative totals; these ranged from 9 to 15 incidents apiece.

From there, a supervisor pulled the records associated with each incident and conducted a secondary review to look for possible trends and/or reasons for the Department to intervene with additional monitoring, counseling, or training. That sergeant then summarized findings and prepared a memo with recommendations for potential further action.

This constitutes BPD's version of an "early warning system" of the sort that larger agencies began to popularize, starting in the 1990's. The point was less about accountability (since, presumably, the underlying incidents had already been subject to initial supervisory assessment and response) and more about recognizing possible risk factors that merited agency intervention – for the sake of the employee as well as other considerations. Larger agencies (including the Los Angeles County Sheriff's Department) were the "early adopters" of the concept – in part out of necessity: their sheer size made it more likely that a struggling officer could avoid managerial attention for months or years. Now smaller departments like BPD are recognizing that a simplified version of the program has potential benefits.

If patterns of behavior are detected, then management has options to intervene as needed in any one of a variety of ways. On the other hand, if closer review shows that the individual events within a statistical "spike" are not indicative of trends or potential problems, then the due diligence has at least given the Department and the employee a confident basis for moving forward.

The supervisor's "secondary review" this year did not reveal significant issues or concerns. For example, the officer with the most individual uses of force was determined to have acted professionally, proportionally, and in-policy across the board. He was often accompanied by or in support of other officers during the encounters. Moreover, more than half of the incidents were "takedowns" only – one of the lowest levels of physical contact with a subject – and none involved significant force applications.

The supervisor did note a high incidence of unnecessary profanity and aggressive language on the part of one of the seven officers. This resulted in a non-disciplinary counseling session – just the type of informal but ideally influential "extra attention" that could help an active, highly regarded officer increase his professionalism and effective communication with the public.

We commend the Department for taking the initiative to use its software capability in this proactive way. The program devised by BPD seems to have the right motivation and the proper scale and dedication of resources. The effort involved – approximately 100 hours of dedicated supervisor time and subsequent follow-up – is significant. But we consider the pro-active analysis to be time well-spent.

#### City Support of Police Department's Progressive Initiatives

We recognize that the reforms and progress identified in this and past reports are not accomplished by the Police Department alone, they require the support and resource commitment by the larger City family. For example, when the Police Department recognized that its response to persons in mental health crises could be improved by partnering with mental health clinicians, it proposed such a relationship. With the support of the City Manager and Council, the proposal was approved almost immediately and quickly implemented. As the relationship's success has been demonstrated, Council has endorsed enlargement of the program. The support of such progressive policing is indicative of City leadership that recognizes that police need to respond to today's challenges with new tools and constructs.

Another example of the attentiveness of the City to transparency is the continued support of our audits and public reports. No other similarly sized City in Los Angeles County provides such oversight on an annual basis. Moreover, the high level of engagement during our yearly presentations to Council is proof of a continued level of interest in how its Police Department is doing on critical metrics important to Burbank's communities.

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#### New California Laws re Police Records

The Department body-worn camera pilot program and other gestures toward increased accountability and transparency arrive at a time when state law is also experiencing notable changes. Since 2014, state legislators have responded to increased public engagement – and frustration – in the aftermath of certain critical incidents in California and across the country. They have proposed several laws relating to transparency and independence for misconduct investigations and officer-involved shooting cases, and have tried to introduce more stringent standards for the use of deadly force by officers. In late September of this year, two of those bills became law.

One of these laws relates to the release of video and other recorded evidence in the aftermath of certain critical incidents including in-custody deaths and officer-involved shootings. While respecting the potential need for confidentiality because of investigative integrity, the new law's "default" is for the requiring of release within 45 days of the event's occurrence.<sup>2</sup> It takes effect in July.

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<sup>2</sup>The law was informed by a new policy that was already implemented by the Los Angeles Police Department in 2018 – and which has already led to the dissemination of previously confidential materials.

The other law, which began to apply on January 1, 2019, provides a significantly heightened level of transparency and public access into internal investigations relating to both deadly force incidents, in-custody deaths and some categories of serious misconduct. It is meant to enhance accountability by alerting the public and other participants in the justice system about conduct issues that may bear on the credibility, integrity, or performance history of individual officers. And it removes some of the secrecy that has shrouded critical incidents such as officer-involved shootings – an approach that has fostered skepticism and challenge even when the outcomes themselves have been supported by the (confidential) evidence.

For Burbank, the practical mechanics of disclosure and the cultural shifts that attach to any significant change will require a period of adjustment at all rank levels. There are issues of statutory interpretation that have already produced legal challenges throughout the state – many of them relating to the “retroactivity” of records that are in an agency’s possession but that pertain to investigations that were closed prior to the start of this year – a less transparent era. Either way, the arduous process of compilation, redaction, review, and production has already begun to pose resource challenges for jurisdictions of all sizes.

At the same time, an agency like BPD that has worked diligently to achieve thorough and meaningful review may come to welcome the additional scrutiny. After all, the confidentiality provisions that the new laws change are ones that precluded agencies from sharing details about *all* their investigations –not only the ones that have perhaps warranted skepticism or critique, but also the highly effective ones that would defuse legitimate criticism and shed positive light on its processes. BPD’s commitment to effective self-evaluation, which has continued to evolve in recent years, should prove reassuring to the public as access increases over time.

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Finally, we note in the spirit of continuous improvement that, as with all law enforcement agencies, “perfection” across all encounters remained elusive in the specific materials we assessed this year. We mean this not only in terms of officer performance in the field (which, we should note, impresses us on the whole as being quite professional and often commendable) but also in the quality of the review mechanisms. There were individual instances in which we questioned the Department’s approach or decision-making, for example, and occasional instances where issue-spotting was narrower than it might have been.

The Department’s review of the 2016 fatality involving the Taser was a significant instance in which we thought that more robust scrutiny was warranted. As we have said in the past, the relatively small number of officer-involved deaths (including none in 2017 or as of this year at the time of this Report) means that the protocols for and rigor of administrative are less routine and well-established than in other jurisdictions. This is, in a sense, a “good problem to have.” Still, the importance of these events when they do occur means that our expectations are high; moreover, the totality of the files we evaluated this year include numerous examples of meticulous work that produced thoughtful, constructive analysis and results. We know, in other words, that BPD is more than capable. Accordingly, we especially encourage the Department to consider the relevant recommendations in our discussion of that single critical incident.





## II. Officer-Involved Fatality

### A. Incident Overview

On the date of the incident, officers responded to a call from a woman who said that her ex-husband's father had driven by her residence and threatened her. After talking with her about the circumstances, the primary officer determined that he lacked sufficient cause to arrest the man for threats due to the arguably ambiguous nature of the comments. He advised the complainant to consider obtaining a restraining order and the officers agreed to visit the former father-in-law about his actions.

The officers arrived at the man's residence and engaged in a conversation with him about his visit to the woman's house and the comments he made. According to the officers, the man appeared to be intoxicated, slurring his speech. The conversation grew heated, with the man opening his door, exiting his home, and ordering the officers off his property. The primary officer told the man to get back inside and to stop going to his ex-daughter-in-law's home.

Another man, who later was identified as the subject's brother, showed up from another entrance in the house and told the officer that they had said their piece and should leave. The second officer was focused on the brother when he felt the first man grab his forearm. The primary officer told the ex-father-in-law to release his grip from his partner and then physically pulled him off. The man then tried to grab the primary officer, but the officer pulled away and pushed the man in the chest; this caused him to fall backwards, hit his head on the security door and crash into the front screen door.

The man got up, advanced toward the primary officer with clenched fists and told him that he was going to get shot. The primary officer unholstered his Taser, turned it on, pointed the locator dot on the man's chest and commanded him to "stop" and "get on the ground," but the man continued forward. The primary officer activated his Taser and the man bent forward at the waist, fell head first to the ground, and then rolled onto his back.

On seeing this, the other man said that they had shot his brother and that he was going to get a gun. The brother went into the house and was observed by one officer holding a gun. The officer instructed the brother not to come out of the house with a gun. Focused now on the threat from the armed man inside the house, the officers retreated into positions of cover and requested emergency backup as well as a rescue ambulance for the downed man.

As other officers arrived, two women (the infirm elderly mother of the men and her care giver) emerged from the house. The BPD officers used a ballistic shield and escorted them away from the residence.<sup>3</sup> Meanwhile, the original subject remained on the ground unresponsive.

Believing that the man needed medical attention, an on-scene sergeant formed a rescue team. They used the ballistic shield again and approached the downed man. The team dragged the man

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<sup>3</sup> The mother was literally carried away to safety by an officer.

over 200 feet to a position of safety. BPD officers began emergency medical aid and were soon replaced by paramedics, but the ex-father-in-law could not be revived and was pronounced deceased at the location.<sup>4</sup>

Meanwhile, the brother remained in the house and was again observed with a gun. Eventually, however, a BPD crisis negotiator talked with him, and he agreed to come out of the house after approximately 45 minutes.<sup>5</sup> He was then detained without further incident.

### B. Investigative Findings

Pursuant to established protocols, the Department notified the District Attorney's Office regarding the officer-involved death and initiated a criminal investigation. The officers' use of force was evaluated for its adherence to legal standards regarding justification; the completed file was then presented to the District Attorney's Office for review.

BPD conducted a thorough on-scene investigation into the incident. To its credit, it engaged in an extensive witness canvass. Investigators also engaged in a thorough search for video and located surveillance footage that captured important aspects of the incident. Once investigators learned that the Taser darts had been removed by paramedics, they even traveled to the Fire Department to retrieve that evidence.

The officer who used the Taser declined to provide a voluntary statement but to the Department's credit, it obtained a compelled interview within hours of the incident.<sup>6</sup> The investigation also relied heavily on the audio recording made by the primary involved officer.

The Medical Examiner found the cause of death to be attributed to the combined effects of heart disease and electrical conduction device use. The Medical Examiner informed BPD that the heart disease was a pre-existing condition that by itself would not have been fatal. The Medical Examiner also reported that while alcohol was found in the decedent's system, the presence of alcohol was not a contributor to the death. While the Medical Examiner found an injury to the

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<sup>4</sup> When an individual is pronounced deceased, they remain at the scene for hours until the Coroner's Office is called to remove the body. Commendably, BPD used body screens during this long wait to shield the decedent from public purview.

<sup>5</sup> There were several commendable aspects to BPD's response during this part of the operation. For example, firearms records relating to the residence were accessed and provided to the negotiator to confirm the likelihood of guns within the location. Additionally, when the brother was later interviewed, he complimented the way the negotiator had dealt with him.

<sup>6</sup> The importance of contemporary interviews was questioned as a result of initial research that suggested a de-stressing "wait time" assisted in memory retrieval. However, recent research has contradicted those early findings: "[M]emory is likely to decay over any delay from a waiting period, with little support for the claim that a long de-stressing period will improve accuracy compared to an immediate report." See "What Should Happen After an Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures", Grady, Butler and Loftus, *Journal of Applied Research in Memory and Cognition* 5 (2016) 246-251.

forehead consistent with a fall, he opined that it was not sufficiently significant to be fatal trauma. The Medical Examiner further noted extensive scrapes and contusions to the back, legs, and buttocks of the man consistent with being dragged along a road-like surface.

The District Attorney concluded that the primary officer used reasonable force and closed its case.

The Department conducted an administrative review and found all force used by the involved officer to be within policy.

### C. Issues for Consideration

#### *Extended Taser Deployment*

A review of the Taser download showed that the officer activated the weapon twice, once for five seconds and once for twenty-three seconds. BPD policy states that officers should only apply the Taser for a standard five-second cycle. The policy is based on medical studies, such as the National Institute of Health research, that have shown that extended deployment of the Taser significantly increases the risk of serious injury or death.

In reviewing this case, the Department noted that it was transitioning to a new model of Taser. According to a memorandum prepared by BPD, the new model has a programmed 5-second shutoff after activation, regardless of whether the user's finger continues to press down on the trigger. The memorandum represented that all Department personnel had transitioned to the newer model and training was provided to all personnel. The memorandum concluded that the built-in limitations on the newer model most likely would have avoided the extended Taser activation that occurred in this use of force.

We appreciate the equipment upgrade that BPD has invested in, and we hope that it will avoid replication of the extended Taser deployment that occurred in this case. However, in order to ensure that the new weapon is working as designed, BPD should continue to audit its Taser use. As part of that audit, supervisors reviewing force incidents should be specifically instructed to be on the lookout for any Taser deployment that goes beyond the standard five-second cycle and to immediately refer such incidents to the CIRB coordinator for further review.

While the equipment fix will hopefully obviate future cases of extended Taser deployment, BPD uncharacteristically did not conduct a robust factual examination of the decision-making by the officer that resulted in the twenty-three second activation.

Instead, in its closing memorandum the Department found the Taser use to be in policy without any documented analysis. While the involved officer was asked questions about why he deployed the Taser, he was not specifically interviewed about the reasons for the extended deployment and the Department's review process did not specifically address it in evaluating the involved officer's performance.<sup>7</sup> The Department could well have concluded that the stress of

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<sup>7</sup> Another aspect of the initial fact-gathering insufficiently explored was the second officer's concerning statement that he did not witness the Taser deployment, even though one of the

the situation presented caused the officer to remain with his finger on the Taser trigger an extended period, but without asking the officer to explain his state of mind, the Department is left to speculate about why the extended deployment occurred. It was incumbent upon BPD to address this specific issue in both the investigative and review stage of this significant force incident.

***Recommendation # 1: BPD should specifically instruct supervisors reviewing Taser uses of force, to focus on the length and number of deployments and any extended deployment beyond five seconds or with more than two separate applications should be referred to the CIRB team for immediate review.***

***Recommendation # 2: When BPD reviews Taser uses of force, it should focus on the specific restrictions for deployment of the weapon and ensure that sufficient fact-gathering during the investigative phase is achieved to address such issues, and that the analysis addresses those restrictions.***

#### *Initial Encounter with Subject*

As noted above, at the request of the complainant, the officers agreed to visit her former father-in-law to advise him to stop bothering her. In reviewing the verbal exchange that was captured by the officers' audio recorder, the CIRB committee concluded that the officer that initially talked with the ex-father in law maintained a calm and measured response to a subject who was verbally aggressive, abusive, and irrational. The review board found approvingly that the officer had not been not baited into unreasonable discourse with a subject – who ultimately escalated the situation and precipitated the force by grabbing the partner officer.

We acknowledge that the encounter between an apparently intoxicated man and the primary officer was made difficult from its inception by the man's hostile response. However, we nonetheless identified aspects of the officers' communications that were less than ideal, and perhaps merited constructive remedial action.

It is important to remember that the officers' stated intent had been merely to communicate to the man that he should not continue to visit his former daughter-in-law's home. They were able to do this repeatedly. In fact, the primary officer expressed his intent to end the encounter by stating, "She doesn't want you talking to her anymore. Okay? Good night. That's it."

However, when the man then asked a question of the officer about whether he was having sex with the complainant, the officer engaged with the question and then ordered the man inside. The encounter deteriorated from there. First, the man questioned the officer's order by noting

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activations was for 23 seconds. Without further explication, it would be surprising such an extended sparking of the Taser would not have been noticed by the partner officer; when Tasers are deployed, they emit an unmistakable sound. Assuming that the officer at least heard the extended activation, the second officer was not asked whether he was aware that it was longer than the usual five second activation period, whether the sparking sound drew his attention to the extended deployment, and whether he thought to advise his partner to release the trigger on the Taser.

(correctly) that he was on his own property and did not need to move. Eventually, the brother inserted himself into the exchange and told the responding officers: “Guys. You said your piece, now leave.”

At this point, the primary officer responded negatively to being told what to do, and incorrectly stated that the officers were investigating a crime. This confrontational approach, while certainly not justifying the man’s subsequent physical contact with the officer, also did nothing to de-escalate a negative dynamic. On the contrary, the man’s belligerence and apparent intoxication (which at times even gave an irrational quality to some of his statements) militated against expecting much from the encounter. Refraining from engagement, and treating the brother’s comments as a “suggestion” rather than a provocation to chafe at, would seemingly have been the better course. Accordingly, while we recognize that officers were required to deal with a difficult individual, we disagree with BPD’s conclusion that the officer was not “baited into unreasonable discourse.” If the officers had disengaged earlier, the force incident could have potentially been avoided altogether.

Recognition of the “in the moment” dynamics of the encounter has its place, of course, and the officers’ shortcomings in this regard were not egregious. We understand that this was a quickly developing and fluid situation and of course our review is with the benefit of 20/20 hindsight. Burbank’s review process is intended to develop remedial and teachable moments for all involved, the officers on scene, as well as the review panel’s after actions. Addressing this issue directly and constructively would have been more consistent with the Department’s usual high standards for thorough review.

***Recommendation # 3: BPD should closely examine each encounter preceding a use of force and determine whether there were times during the conversation where disengagement may have been the preferred option.***

The BPD review board did find that the two initial officers should have requested additional units once the brother began to intervene and referenced retrieving a firearm. This critique was discussed with one of the initial responding officers at the conclusion of the review meeting and the officer was receptive to the constructive criticism.<sup>8</sup>

#### *Rescue of the Downed Individual*

As summarized above, once the Taser was deployed on the subject, he fell to the ground, which caused the brother to believe that the officers had used deadly force on his brother. The brother then stated that he intended to retrieve a gun and ran back into the house. The officers observed the man from within the residence holding a gun as they retreated to positions of cover. Soon thereafter, the two women emerged and were taken to positions of safety.

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<sup>8</sup> BPD’s closing memorandum did not include an indication that the second officer involved in the initial encounter was similarly counseled. However, we were informed by the Department that by the time the internal review of this incident completed, this individual had left the state for another agency.

Eventually, the on-scene sergeant observed the continued non-responsiveness of the downed man and believed he needed medical attention. Paramedics were called and staged nearby. Using a ballistic shield and forming a rescue team, the sergeant and another officer approached the man, each grabbed an arm and dragged him away from the entryway area of the residence. As noted above, the dragging distance was measured as over 200 feet. And, per the Medical Examiner's report, the man received numerous contusions and abrasions to his back area as a result of being dragged for such a distance over a hard surface.

Certainly, the presence of the brother with a gun inside the residence presented tactical complications and safety issues for providing timely medical aid to responding BPD officers. And the on-scene sergeant's decision to use tools such as the ballistic shield to move both the women and the man to safe places was commendable.<sup>9</sup> However, certain details about the execution of the rescue plans were worthy of further discussion and analysis.

#### 1. The Way the Man Was Moved from the Scene.

As noted above, the downed man was literally dragged over a 200-foot path away from the entryway area of the residence. He was shirtless and wearing only shorts, leaving his body largely unprotected from the resulting injuries. This raised questions from our perspective that the review materials did not seem to encompass, including the following:

- Did the rescue team discuss or consider how the man would be moved away from the location before approaching him?
- Could the rescue team have been increased in size so that additional officers could have also grabbed the man's legs and carried him away as opposed to dragging him?
- Was there some point in the dragging path sufficiently safe so that officers could have transitioned from dragging the man to carrying him?

Addressing these issues relating to the rescue of the man would conceivably have led to productive discussion, with potential value for future challenges. BPD may well have concluded that a less injurious technique was not practicable due to the resources and safety considerations that existed. Clearly, this event was fluid, dynamic, and high risk where there was not an abundance of time at the scene for deliberation. However, by not apparently discussing the issue with the advantage of hindsight and reflection, BPD forewent the opportunity of either ratifying the way this operation had been handled or offering suggestions for consideration on a forward going basis.

***Recommendation # 4: When examining critical incidents, BPD should review the specific tactics of any rescue or first aid operation with an eye toward self-examination and improvement.***

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<sup>9</sup> BPD's review board also had high praise for the initial officers' composure and tactical communication skills when requesting additional resources to respond, coordination of resources, and rescue efforts during an armed and volatile situation. We agree. For example, the initial officers advised responding units not to park in front of the house to avoid officers unwittingly placing themselves in harm's way.

## 2. Tactical Involvement of Sergeant

Upon arrival, the on-scene sergeant skillfully assessed the situation, redeployed officers to positions of greater safety, called for the armored vehicle, requested a crisis negotiator, ordered responding officers to don ballistic helmets, ensured less lethal options were available on scene, and requested an airship from a neighboring jurisdiction for assistance in surveillance. In light of all this, the sergeant should be credited for his overall management of the scene.

However, when he coordinated the rescue team for the downed man, he designated himself as one of the resources to be physically involved in removing the man to a position of safety. Police tactical science teaches that whenever possible, supervisors should not be involved in tactical operations but should serve as the incident commander directing officers to various tasks. If a supervisor goes “hands on,” his own involvement limits his ability to effectively direct the operation as a whole.

In this case, there appear to have been sufficient officer resources where the on-scene sergeant could have remained in his role as incident commander. The sergeant could have huddled his rescue team as a plan was developed and overseen the operation as it was executed. Sergeants need to be continually reminded that their on-scene role as incident commander should foreclose any tactical responsibility for themselves unless absolutely necessary.

***Recommendation # 5: BPD should inform its first-level supervisors of their primary role as incident commanders and the importance of delegating tactical operations to officers when resources allow.***

### III. BPD Emails

#### A. Introduction

This Report marks the third time in which OIR Group has included email issues in its evaluation of the Department. Once again, our involvement is two-fold: a direct audit of official command-level email accounts (featuring one month’s worth of all sent and received items from the Department’s top six executives) and an evaluation of the Department’s own review of a random sampling of accounts from other employees.

#### B. BPD Internal Audit: Results

The Department audit had two “divisions”: one for a selection of lieutenants/sergeants and one for lower-ranking sworn and non-sworn employees. (This was in recognition of dynamics relating to rank: a captain conducted the smaller audit at the supervisor level, while a sergeant was designated to handle the broader pool of employees.)

At the supervisor level, the accounts of eight sergeants and three lieutenants were collected and reviewed for materials generated during a one-month period earlier this year. This encompassed more than 11,000 emails – the vast majority of which had been “received” rather than “sent.”<sup>10</sup> The same ratio attached to the roughly 14,000 emails that were gathered for the (different) month-long audit period that pertained to the non-sworn/non-supervisor pool of 29 employees who were chosen at random (approximately 15% of all eligible personnel).

The results from both reviews were very similar – and largely encouraging. Most importantly, *none* of the emails in either grouping were deemed “prohibited” for offensive or otherwise inappropriate content under the terms set forth by City and Department policy for electronic communications.<sup>11</sup>

The audit was also impressive in its identification of lesser issues: emails that deviated even modestly from standard office communications. One sergeant’s emails included login and transactional information for personal accounts—these were inadvisable not so much for their number but for the sake of that person’s own “cyber-security.”<sup>12</sup> These included the use of “emojis” or text-message style acronyms, the receipt of advertising materials on work accounts,

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<sup>10</sup> Both categories are, of course, potentially relevant, though the active participation required for “sending” obviously creates a higher degree of culpability when problematic content is discovered.

<sup>11</sup> “Sending derogatory, defamatory, obscene, disrespectful, vulgar, sexually suggestive or harassing or any other inappropriate messages on the email system is prohibited and may result in discipline.”

<sup>12</sup> The sergeant was counseled by a lieutenant as one of the documented follow-up measures from the audit.



and a very small number of personal messages sent or received.<sup>13</sup> There were a handful of instances in which banter between employees bordered on the unprofessional in their use of mild profanity or teasing. Even these relatively inoffensive exchanges were flagged and evaluated – a measure of the meticulous nature of the screening.

As part of the after-action phase of the audit, the Department notified each individual employee who had been selected about the outcome. It also issued a Department Bulletin that reinforced the audit’s occurrence and reminded employees about key concepts relating to both policy and email security.

This last piece matters. It’s an efficient way to reinforce relevant standards and to remind people of the potential pitfalls of electronic communications. And in an era where people’s “comfort level” with the medium might lend itself toward slippage in the tone or content of exchanges, it makes sense to expend the effort to spread this message across the Department.<sup>14</sup>

#### B. OIR Group Audit of Executive Team

For a third year, the City’s information technology group produced downloaded copies of all sent and received messages from one month in the first half of 2018, so as to ensure the inclusion and accountability of these six individuals (the Chief, Deputy Chief, three Captains, and the senior civilian manager). Each person had over a thousand entries for the month – a function of their respective ranks, the administrative nature of their responsibilities, and their involvement in so many phases of Department and City operations.

Results were quite similar to the prior year – which was itself very favorable. As with the Department’s internal audit for lower ranks, our review found no entries that constituted a violation of policy. The overwhelming (and oft-repeated) majority of the content related appropriately and directly to work matters. As with the lower ranks, there were occasional “received” emails that were commercial in nature, a very small number of clearly personal (but benign) communications with friends or family members, and a tiny fraction that were political and/or humorous in their orientation – but again well inside the margins of inoffensive content.

In short, the audit results illustrate that the Department’s commitment to ensuring the appropriate use of City email systems has paid dividends. No policy violations have emerged from either of

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<sup>13</sup> Pursuant to a 2016 policy change, the “de minimis” use of Burbank email accounts for benign personal messages was deemed permissible—an acknowledgment of the ways we commonly use technology and the negligible effect on work productivity that is implicated.

<sup>14</sup> Along these same lines, we take a moment here to note another audit conducted by the Department this summer, which related to whether patrol vehicles were properly equipped with the stickers that concisely list the protocols for in-policy vehicle pursuits. Many were not, and the Department addressed it and intends to follow up. There was nothing malicious about the lapse – it was more a function of the original sticker’s lack of durability. Without affirmatively checking, though, the Department would not have known, and would instead have operated under the assumption that all cars were properly equipped and that the policy was being reinforced.

the last two audits, and minor deviations from the norm are evaluated and addressed with proportional due diligence. The results speak well for the employees and for the benefits of the managerial attention to the issue.

With this in mind, we hesitate to “fix” something that is clearly not broken. However, we also note that the current audit system is, by its nature, limited in scope. As with any inspection system, it’s also something that employees could potentially become accustomed to and learn to work around. Once the Department releases its findings for the year, the deterrent factor presumably diminishes – at least in the short run.

Accordingly, and with reiterated respect for the Department’s good work in this area, we suggest that management explore an alternative methodology for future audits in this arena. Rather than focusing once a year on a large monolithic sampling, they could spread the same investment of time and attention over a couple of shorter ranges, perhaps with different employees for each installment. Similarly, the date range for the executive level could be broken up into smaller and more diffuse segments, so as to cover different ground with the same effort. It would be interesting to compare the results to the successes of the past two years.

***Recommendation # 6: BPD should consider alternatives to the current “one-month block” sampling model (e.g., a bi-annual and shorter window) that would potentially reach more participants without increasing workload.***

***Recommendation # 7: The City should consider providing OIR Group with smaller samples from different months as a way of freshening the audit process for senior BPD management.***

## IV. Review of Misconduct Investigations

OIR Group evaluated a total of 29 Internal Affairs cases for this year's report – a grouping that amounted to roughly half of the BPD total number of misconduct investigations for the year. Per our standing selection criteria, we received all cases in which a supervisor was the subject of allegations (16 this year), all cases involving racial bias complaints (3 this year), and a one-third sample (chosen at random) of the remaining files.

The Department's discipline process continues to be effective in many respects. We found the process to be consistently legitimate and the results to be reasonable. Even where we might differ in places (some examples of which we discuss in more detail below), these variances are more about approach than about the fundamental integrity of BPD's accountability efforts.

As for the quality of investigations, the consistently meticulous organization of case files reflects a commitment to thoroughness and clarity in responding to allegations. The evidence-gathering tends to be notably comprehensive and often shows resourcefulness and initiative, as in these examples:

- In a complaint case about the appropriateness of officer actions in arresting a juvenile for reckless driving (the charges were eventually dropped as a result of a clerical error by a court officer), the investigator pulled weather documentation to address (and refute) claims that wet road conditions and not intentional conduct had caused the suspect vehicle to spin out.
- When a complainant alleged that a small amount of money he had possessed at the time of arrest was missing when he was released, the Department reviewed evidence from the booking process that itemized the change to show how his recollection was flawed.
- When a man complained about being hassled by a BPD officer for walking in the street – stating in part that there was no sidewalk available – the investigator drove to the location and confirmed the complainant's account.
- In a case alleging in part that the officers had been overzealous in impounding a car with expired registration, given that the car was rarely if ever used, the investigator was able to recover numerous stills from city traffic cameras that identified the car being driven routinely during the relevant period.

Unlike recent years, there were no termination cases in the collection we reviewed. What were perhaps the most serious two cases of the year led to different outcomes: in one, a Department executive was cleared of multiple allegations from subordinates regarding his management style and fairness in treating them. (This case was handled by an independent third-party investigator to help protect against conflicts of interest or rank-related influence.) In the other, there were several sustained allegations relating to misuse of work time by an officer whose assignment afforded considerable discretion; video evidence and interviews established convincingly that this was being abused for personal errands. The result was a significant suspension and an important clarification of expectations.

Overall, most of the cases did not lead to sustained findings of policy violations and the allegations were relatively less serious on their face. Even the “excessive force” investigations involved contact that not only was deemed legitimate but was inherently minor in nature and had not led to injury.

As part of its commitment to transparency, BPD provides a year-end statistical summary regarding the number of misconduct cases, the nature of the allegations, and the outcomes. The most recent totals differ from those of the previous year in ways that seem noteworthy. The number of investigations increased from 48 to 63, even though the number of internally-generated cases dipped slightly. This means that the 27% increase was entirely attributable to a greater number of citizen complaints.

We hesitate to ascribe particular significance to this. As in the past, most of the cases did *not* establish policy violations by the named officers – outcomes that our review confirmed as being supported by the evidence after appropriately rigorous investigation. Therefore, it is not as if the statistics suggest a deterioration in behavior. Nor is it a bad sign that individuals are willing to engage with the process; we have seen other jurisdictions where low intake numbers seem to be more about lack of access or perceptions of legitimacy than about satisfaction. By and large, BPD is thoughtful and thorough in dealing with complainants, and its notification letters – in which the Department goes beyond bare bones requirements and boilerplate language to offer specific details to complainants about the investigation – remain quite good. Moreover, the total “sample size” remains small enough that a noticeable *percentage* increase still only means an average bump of one additional case every three or four weeks.

Still, as we commend the Department for its publication of the year-end totals, including the specific categories of conduct that prompted the complaints, we encourage it to evaluate trend lines on a going-forward basis to see if pro-active interventions are warranted.<sup>15</sup> And we note one increase that we believe warrants the Department’s scrutiny – and perhaps reconsideration.

#### “Exonerated” as Disposition

One trend we noticed anecdotally during the review process was confirmed when we referenced the BPD year-end complaint summaries. This was an increase in the use of “Exonerated” as a disposition for allegations. For citizen complaints that had reached a final outcome by the end of the year (some of which featured multiple separate charges), 23 out of 93 allegations were Exonerated (25%), as opposed to 9 out of 58 the year before (16%).

Per the Department, “Exonerated” is a term for charges that are resolved with a showing that “*the alleged act occurred but that the act was justified, lawful, or proper.*” This is fairly standard language, and it differentiates from other cases – also not resulting in discipline – for which the evidence is unclear (and therefore a fair basis for imposing discipline does not exist) or in which the evidence definitively shows that the alleged act didn’t happen in the first place. In

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<sup>15</sup> For example, one partial explanation for this increase might be the recent attrition in tenured officers and the need among younger officers to gain experience in effective communication.

our view, a range of situations fall within the *technical* definition of “Exonerated” – but some are better suited for it than others in terms of reflecting the goals of the discipline process

We did see cases for which the label fit very straightforwardly. For example, a man complained about being approached and told to sit up when he was lying on a bench in the lobby of headquarters. He did not appreciate being contacted in this fashion. While there is no dispute over what happened, the request was proper one – particularly in light of the crowded nature of the lobby at the time and the assurances that were given to the man that he could stay as long as he was not occupying the whole bench like that. Here, “Exonerated” captures the spirit of the Department’s findings. There is no aspect of the subject officer’s behavior that is factually contested or at odds with BPD policy, preferences, or training.

In other instances, though, while we concurred with the Department’s finding of no formal policy violation, there were aspects of officer performance that were at least disputed or otherwise questionable. Examples included:

- A woman complained about the demeanor of an officer whom she found to be angry, disrespectful, and quick to judge in responding to a call about her dog having bitten a third party. She spoke of the officer “yelling” and talking over her. To some extent, the audio recording supports her contentions – particularly in contrast with the approach of the other officer on scene. Nonetheless, the discourtesy allegation was “Exonerated.”
- A young woman alleged that an officer had used “excessive force” in pulling her from the doorway of her home at the outset of a planned search for her probationer brother. After initial confusion/denials over what had occurred, the Department ultimately determined that an officer had indeed “guided” her from the doorway, but that the initially unreported contact was consistent with training and safety for such contexts, and that therefore the excessive force claim was “Exonerated.”<sup>16</sup>
- A supervisor took cell phone photos of on-scene officers to send to a criminal suspect in a potential extortion case. Though the intent was to establish police presence and deter further harassment of the victim, one of the officers did not wish to be included and expressed his concerns about the tactic. The incident later became a subject of investigation for “discourteous or disrespectful treatment of a member of the Department.” Though it was an unorthodox tactic and a source of clear and understandable friction, the finding was “Exonerated.”<sup>17</sup>

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<sup>16</sup> While apparently minimal in nature, the physical contact arguably fell within the parameters of the new “De Minimis” force protocol described below, but it was not characterized that way.

<sup>17</sup> Of particular note in this case is that the initial reporting supervisor believed that the conduct of the supervisor constituted misconduct deserving of formal discipline. While BPD concluded that the concerns could be addressed short of discipline by a counseling session with the relevant supervisor, the articulated concerns about the conduct belie an eventual “exoneration” finding.

- Two officers expressed concern about the propriety of a third officer’s use of force during an arrest they handled together. Their contention was that the officer had been overly aggressive in assisting with their call, and that he had put hands on the subject in a way they considered to be unnecessary. A careful review found that there was evidence (including third party witness testimony) to support the officer’s actions. While commending the other officers for coming forward with their perspectives,<sup>18</sup> the Department deemed the allegation to be “Exonerated.”

Given the evidence, complainants’ respective concerns, and overall circumstances in these incidents, a less definitive disposition seems appropriate. We might have advocated, for example for “Not Sustained” with regard to at least some of these allegations. That is the established outcome for “*when the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.*”

This may seem like mere semantics, with no impact on the bottom line question of whether an actionable policy violation occurred. But it can matter to officers – decisive proof that no wrongdoing occurred is a vindication that they understandably prefer to the less conclusive “Not Sustained.” And, importantly in our view, it can reflect the Department’s attitude toward the conduct and the officer’s behavior in subtle but significant ways. The value of the discipline process is multi-faceted. Two of these facets are the messaging that officers receive about performance and the informal opportunities for improvement that cases offer, even when formal discipline is not warranted.

We would accordingly encourage a less inclusive approach to “Exonerated” as a finding. In our view, it should be reserved for the relatively rare cases in which undisputed facts relate to officer conduct that is clearly appropriate and supported by Department leadership. Much depends on how the allegations or potential policy violations are framed by Internal Affairs, and how it treats those cases in which the conduct at issue may not rise to the level of a formal violation but still falls short of optimal performance.

***Recommendation # 8: The Department should limit its use of the “Exonerated” finding for those allegations in which factual evidence is not in dispute, the allegation as made does not constitute a violation of policy, and BPD management has no concerns about aspects of the officer’s handling of the interaction.***

Our other key topics and observations included the following:

*Timeliness*

One of the recurring themes of prior reports has been an emphasis on the timely completion of investigations. The most fundamental reason for agencies to “keep their eye on the clock” is to ensure that the option to respond with discipline in the event of a sustained allegation is not forfeited by the statute of limitations. But the year-long period established under California

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<sup>18</sup> This seemed notable – and praiseworthy – to us as well.

law<sup>19</sup> is an outer edge in more ways than one. Ideally, discipline will occur as swiftly as is practicable under the demands of a thorough investigation, so as to better to address performance issues in the most meaningful ways.

In our last Report, we discussed a lapse in attention by a command staff member that had caused multiple cases to fall out of eligibility for discipline. Though the inquiry into the problem revealed that the breakdown had not been an intentional effort to shield involved personnel from possible accountability, and though the allegations at issue were not grave in nature, it still raised obvious disappointment and concern. In response, the Department instituted a “quarterly tracking system” that utilizes the agency’s relatively new software and monitors the status of all pending cases for timeliness. We continue to receive these reports on a regular basis as an additional layer of monitoring.<sup>20</sup>

As for the cases we did see, there were several examples of swift and efficient resolution – including notification back to the complainant<sup>21</sup> – within 3 to 6 months of the initiation of the investigation. Longer time spans occurred as well, but there tended to be explanations that reflected legitimate reasons for the delay. (For example, difficulty in contacting or arranging schedules with complainants for the purpose of follow-up interviews was cited as a factor in more than one file.)

While we have made similar recommendations in the past, and noted the Department’s willing acknowledgement and solid overall performance, we reiterate the importance of remaining focused on this important aspect of effectiveness.

***Recommendation # 9: The Department should remain vigilant with regard to the timely completion of cases by regularly attending to all aspects of the relevant chronology. These include an emphasis on identifying and relying upon the earliest possible “start date” when calculating the statutory period for potential discipline.***

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<sup>19</sup> It is a provision within the Peace Officer Bill of Rights, Government Code Sections 3300 et seq.

<sup>20</sup> Though the chart and the standardized emphasis on updates has surely helped, there was one case that was referred to an outside investigation that, as result of unique circumstances, ended up being in violation of the one-year statute of limitations. Because the resolution of the case happened only recently, it did not meet the criteria for distribution to us as part of our annual audit. Accordingly, at the time of this writing, we are not in a position to opine about the particulars of the outcome or the factors that created this situation.

<sup>21</sup> The topic of “notification letters” is one we have covered in the past – and in recent years it has been to praise the Department for the thoughtfulness and detail that it includes in its communications with the public. This is a positive example that not all agencies have followed. But we are gratified to note that this year’s cases continued the pattern of clear and careful explanations. The letters usually reflect both the distinctive nature of the complainant’s concern and the Department’s responsive effort and are commendable.

### Level of Discipline

Except in cases of serious misconduct, where we have seen the Department move decisively and appropriately in seeking to discharge officers for egregious violations of law and/or policy, our sense has been that BPD's practice is to be lenient in its meting out of consequences. It routinely resolves even "sustained" allegations with a "comment card" or "letter of expectations"; in fact, of the five cases we reviewed that included sustained misconduct allegations, only one involved suspension time for involved personnel.<sup>22</sup>

This is not inherently problematic. Except in the rare discharge cases that arise, the goal of administrative discipline is *correcting* behavior as opposed to punishing it. Conceivably, the low-level interventions that occurred in these cases were adequate to communicate the need for change and to create a record for purposes of accountability. And we acknowledge that none of the sustained offenses in this year's sample were egregious or malicious in nature.

Nonetheless, we view actual suspensions – even if they are held partly or completely in abeyance<sup>23</sup> – to also have their place in terms of sending messages, setting standards, and providing a basis for future progressive discipline if needed. We encourage the Department to review its current approach to less significant offenses, including an audit of consequences over the last few years, to determine whether they are meeting the needs of discipline process as a whole.

***Recommendation # 10: The Department should review its recent records of discipline for sustained allegations of misconduct to ensure consistency and sufficiency in its consequences.***

### Holistic Response

We have long advocated an approach to administrative investigations that sees them as opportunities as well as obligations. While determining whether policy violations occurred and addressing the relevant accountability issues, progressive agencies also look for broader opportunities to reinforce strengths and promote improvements. This "holistic" assessment of the encounters that lead to complaints can lead to reforms in training, equipment, policy and procedure, or individual officer performance.

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<sup>22</sup> Other resolutions included a "written reprimand" for an officer's failure to properly document and pursue a shooting allegation at the time it was originally reported, "expectations" memos for three civilians whose technical errors had delayed a stolen car investigation and prompted a complaint from the victim, and a "comment card" for an officer whose failure to document seized evidence created complications in a criminal investigation.

<sup>23</sup> "In abeyance" refers to suspension time that the employee does not have to serve – and therefore suffer a financial loss – unless there is a future act of comparable misconduct. However, the discipline remains on the books as a record of the Department's position and a basis for increasing subsequent consequences if necessary.



In our last Report, we complimented BPD's willingness to view the complaint process in this constructive way. We saw additional examples in this year's cases. For instance, after one complaint in which an involved officer had not engaged his PUMA recorder – but had not been required to per the policy as written – the handling supervisor sent out a memo and raised the issue of whether the policy should be amended to cover comparable scenarios in the future.<sup>24</sup>

Another investigation was initiated because the aggrieved person had actually filed a legal complaint for monetary damages against the city after his own arrest, which had included a Taser deployment. The Department took the initiative to conduct a review as if it had been a standard complaint, and conducted an investigation that supported the involved officers' actions. We commend this pro-active effort by the Department. In our work with different agencies, we have consistently spoken of the claims process as an often-untapped source of productive feedback for law enforcement: a “complaint with a price tag attached.”

Interaction between the jurisdiction's litigation handlers and the law enforcement personnel can have a positive influence on Department operations *and* risk management. Too often, though, issues of bureaucracy or assertions of “turf” interfere with good communication and collaboration in this arena. Burbank's relatively progressive approach in this regard serves the City well.

***Recommendation # 11: Burbank should continue to routinely evaluate claims against the Department through the prism of administrative review, and should conduct additional investigation into potential misconduct or other performance issues as needed.***

#### *Reserve Officers and the Discipline Process*

One of the cases we reviewed this year involved an allegation of off-duty misconduct by a reserve officer, which is the first we can recall in our years of monitoring the Department. Many law enforcement agencies utilize reserves – people who have gone through extensive training and serve as a kind of adjunct staff for their local police. Many of them have full certification to serve as peace officers. They volunteer their efforts, generally on a part-time basis, and can be a very valuable asset.

Unfortunately, in some agencies they have also been a source of liability or other concerns. A small percentage of reserves try to exploit their affiliation with law enforcement to secure special treatment or professional advantage. And the task of ensuring that these part-time volunteers remain up to date with mandatory training requirements has proven to be a challenge in some jurisdictions.

We have no reason to believe that such problems are a present-day reality in Burbank. Our understanding is that the roster of reserves is small, and only a few of them are active on a

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<sup>24</sup> The supervisor's recommendation to amend the policy was accepted in principle but the recrafting of the policy has yet to occur. In order for the Department to actually benefit from these systemic recommendations, it should develop timely action plans for implementation of those that are deemed worthwhile. We urge the Department to complete the loop here and modify the relevant policy.

regular basis when it comes to patrol functions. Nonetheless, the misconduct case we reviewed caught our attention for another reason: namely, the unique way that administrative discipline applies in cases involving these officers.

Here the allegation concerned an off-duty prank in which the reserve sent a threatening letter and baby powder to a friend – who understandably mistook it for a potential hazardous materials package and called his local police department (not Burbank). This prompted a fairly large-scale investigative response before the truth was uncovered. A criminal review ensued for the reserve officer's actions, though the District Attorney ultimately rejected the case.

To his credit, the reserve did everything in his power to accept responsibility from the outset of the incident. He was extremely apologetic and forthcoming at every turn, and even offered to defray the costs of the police response.

The BPD internal investigation was very straightforward. There were no factual uncertainties, and the misguided joke clearly constituted violations of one or more Department policies. The only question, then, had to do with the consequence, which is where the unique dynamics of the reserve-agency relationship came into play.

In part because they are volunteers, they are differently situated from regular employees in terms of the legal rights and protections. They serve at the pleasure of the Department, and BPD can end the relationship at any time and for any reason. Accordingly, when potential policy violations arise, the Department has considerable power but limited options. The reserves' lack of a regular salary means that they can only receive a written reprimand or termination in the aftermath of a founded case.

Here the Department settled for a sternly worded "expectations letter" as the disposition for the case. We found this to be a reasonable outcome, in spite of the error of judgment and the ensuing ramifications. The officer's long years of dedicated and effective service, along with his unequivocal and remorseful acknowledgement of the mistake, constituted legitimate bases for preserving his relationship with BPD.

At the same time, the case offered a reminder that the reserve bureau of any agency merits attention. We have seen instances in which a reluctance to deal firmly with benevolent volunteers leaves no real assurance that performance problems were being addressed, and in which the reserves' status as supporters of the department gets in the way of accountability. Ideally, BPD recognizes the common pitfalls of these relationships, and is taking steps to ensure that its reserve personnel are up to date with requirements and fully accountable on those rare occasions when misconduct issues arise.

***Recommendation # 12: BPD should regularly evaluate/audit the qualifications and eligibility status of its reserve officers.***

***Recommendation # 13: BPD should ensure that misconduct allegations are addressed with appropriate rigor and concern for risk management in dealing with these "at will" members of the agency.***

### Racial Profiling Allegations

Because of the obvious significance of these complaints, our protocol with the City of Burbank has included the review of each allegation for the past several years. This audit period showed a decrease in the prominence of this issue. It only emerged in three cases, and in each instance the racial component was not only unsupported by the available evidence but also seemed peripheral to the complainant's own main concerns.

The case in which profiling claims figured most directly involved a person who was apparently living in his van. The property manager of the parking lot where he had been staying called police for assistance with an eviction, and the individual complained that his status as a person of color had caused the police to single him out from others behaving similarly – a form of selective enforcement he considered discriminatory.<sup>25</sup> BPD's response was methodical in addressing the claims. Notably, the investigator's analysis included the application of the U.S. Department of Justice "Racial Profiling Factors" to the facts of the case. We had not seen this specific test before, and it offered an interesting basis for the Department to establish that the involved officers had not been acting in a biased or discriminatory way.

As we have discussed in past reports, these cases are inherently sensitive for both the complainants and the accused officers. Moreover, they are hard to conclusively prove one way or the other, since so much depends on the mindset and motivations of the officers involved.<sup>26</sup> This investigation stood out for both its thoroughness and the persuasive effect of the standardized analysis. We encourage the Department to use it as a model for future allegations.

***Recommendation # 14: BPD should standardize its own recent good work and look for ways to apply an objective and multi-part test (such as the one created by the federal Department of Justice) to the facts in cases involving racial profiling/biased policing allegations.***

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<sup>25</sup> Significantly rebutting the complainant's claim was the fact that it was the property manager – not the police department – who had "selected" him for enforcement.

<sup>26</sup> A typical scenario, for example, is a traffic stop involving a racial minority. While the officer may have an *objectively* valid and legal justification for the stop (such as speeding, or a broken tail light), the concern is that the *subjective* rationale for stopping one speeder instead of another relates to race.

## V. Review of Force Incidents

### A. Overview

BPD continues to do an exemplary job with its standard force review process. As we have discussed in past reports – which themselves track the impressive evolution in recent years of BPD’s efforts – the Department’s approach has many structural strengths. These revolve around a multi-layered review protocol that standardizes evidence-gathering and promotes thorough, holistic scrutiny.

While sergeants have initial responsibility for accumulating the relevant materials (including interviews with the subjects of force), and conducting an initial analysis, a lieutenant also has responsibility for ensuring that the proper steps were taken – and for adding his or her own insights as needed. All force cases then go to a final stage: the “Critical Incident Review Board” assessment. This takes place at a meeting that includes high-ranking command staff, training personnel, and representatives of the rank and file officers. Having reviewed the case materials in advance, they discuss their own impressions and make findings about policy compliance and other potential action items.

The results of this stringent system of checks tend to be thorough, persuasive, and constructive. It is one thing to say that *none* of the agency’s 65 documented uses of force in 2017 was out of policy – as was the situation in Burbank.<sup>27</sup> It is another to corroborate this with detailed investigation protocols that accumulate and assess available evidence in conscientious and thoughtful ways – which the Department also largely accomplished. And, in a further indication of merit, BPD’s process also resulted in numerous examples of training opportunities and identification of operational issues that prompted follow-up – even when the force itself was found to be appropriate.

#### Identification of Collateral Issues:

Among the noteworthy examples of effective holistic review was one involving a low-level use of force – some minor grappling and briefly resisted handcuffing of a slight-statured juvenile – that nonetheless had some interesting features. Supervisors ended up critiquing the handcuffing technique (in the front, less than optimal from an officer safety perspective, and unaccompanied by a proper search) and the inability to establish firm control of the subject amid a crowd of hostile teenagers that was also in the area. It resulted in documented counseling of both involved officers.

Similarly, a simple takedown of a briefly resistant subject nonetheless prompted a fruitful review. The involved officer’s tactics (particularly with regard to the importance of waiting for backup before engaging) and failure to activate his recording device were both subjects for documented feedback. And the Department’s investigative rigor was seen here in its

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<sup>27</sup> It should also be noted that the Department’s force incidents last year were, for the most part, minor in nature. There were no shootings, nor did any other force deployment result in serious injury (such as broken bones) that required hospitalization.

identification and acquisition of third-party surveillance video that captured part of the encounter.

In another case involving a Taser deployment on a man who was behaving erratically in public, the subject ended up having drugs in his possession and was, by his own admission, a “daily” crystal methamphetamine user. The force was found to be in policy. However, the handling lieutenant added a thoughtful memo about the importance of conducting a standard “drug evaluation” – which looks for specific physical symptoms as indicia of intoxication – as a basis for explaining/corroborating the problematic behavior that preceded the force.

The Department had one K-9 bite case this year (which occurred in the context of a “mutual aid” callout to assist a neighboring agency in its apprehension of a murder suspect). Though the force was found to be in policy, the incident prompted a thoughtful and detailed review about the various tactical options that were – or should have been – considered. There were strengths and limitations to each of the different choices, and the level of discussion was impressive. In short, BPD clearly recognized the inherent seriousness and risk associated with dog bite cases in law enforcement, and gave the matter rigorous attention in spite of the successful outcome.

#### Assessment of Post-Incident Activity:

The Department is also conscientious about adhering to the after-incident protocols it has established over the years – at times after recommendations from OIR Group. One such protocol is designed to separate arrested subjects from the officers who have been involved in force with them. This is a common-sense risk management measure that helps defuse possible tensions and minimize the likelihood of additional allegations. In one case, for this year’s selections, a sergeant neglected to utilize “fresh” officers for the transport of the subject. Although this deviation from protocol did not lead to a problem in the incident, it nonetheless prompted a “comment card” in which a supervisor formally corrected the sergeant while reinforcing the importance of the concept.

Another supervisor received documented counseling after mistakenly seeking to interview a subject *after* the person had invoked his Miranda rights in an earlier exchange with officers. Again, this did not cause repercussions in the case, and was in some ways an understandable error by a relatively inexperienced supervisor. But the Department’s attention to detail and follow-through help ensure that future instances do not occur.

“Care and custody” issues emerged in the case of a subject who had injured himself through repeated head-butting. The CIRB panel noted that some of the episodes had occurred after his arrival at the jail, and identified the premature removal of the subject’s safety helmet (which had been applied in the field) merited further administrative attention.

#### Reinforcement of Effective Performance:

One aspect of incident review that is sometimes under-utilized, even by conscientious agencies, is the formal acknowledgement and affirmation of things that have gone well. This is powerful tool of a different kind, and can be just as effective as useful feedback to involved personnel and the agency as a whole. Here, we saw a few different examples of the Department taking the time

to identify and compliment the effective tactics and overall performance of officers in the context of force incidents.

In one case, a team of officers (accompanied by a supervisor) had worked collaboratively to divide responsibility and to safely neutralize a subject who was both resistant and confrontational. The CIRB panel praised the officers for their teamwork and repeated efforts to warn or otherwise deter the subject before the Taser was deployed.<sup>28</sup>

In another case, we were impressed when listening to the audio recording with the significant level of calm and patience that a handling officer showed in his dealings with a highly agitated subject who had prompted a “man down” call from the public. (The man was eventually hospitalized in a psychiatric hold). It was interesting to see this affirmed by the CIRB panel, which formally complimented the officer for his handling of a difficult encounter.

#### Areas for Improvement:

As strong as the review packages seemed to be as a group (and with the noteworthy exceptions relating to the Taser death case that we discuss above), it is important to note that flaws in execution still occur. In one of the cases we evaluated, for example, the subject made overt reference to a lack of respect from an involved officer as a factor in the deterioration of their encounter – which had resulted in a physical struggle on the asphalt of a parking lot. In reviewing the audio recordings, we found that perspective to have some legitimacy: one of the two responding officers was noticeably impatient and dismissive in ways that included profanity and seemed to escalate the tensions. This issue was not identified or addressed by the supervisors who reviewed the incident.

While noting that the force itself was both minor and in policy, we mention this lapse for a couple of reasons. The first is a reminder that shortcomings can arise even in systems that are unusually comprehensive; it pays not to rest on laurels or to assume the best. The second is that subject statements in the aftermath of a use of force – particularly those that contain allegations or criticisms – merit diligent investigatory attention. This is sometimes easier said than done, particularly if the subject is belligerent, intoxicated, or otherwise unreliable. But addressing concerns raised by a subject is generally an effort worth undertaking.

The second issue is another we have raised in the past: the timeliness of completion. While some packages were finalized within a couple of months of the original incident, others experienced long delays (sometimes exceeding 6 months) in making their way through the process.

We do not wish to belabor the point. For one thing, we have addressed it repeatedly in the past, and the Department has just as repeatedly acknowledged the value of resolutions and feedback

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<sup>28</sup> This incident was one of the first involving the Department’s new model of Taser. It features the new capability to “arc” the device manually as a means of audio/visual warning to subjects, and was utilized correctly (if not successfully) during the encounter.

that are as prompt as is practicable.<sup>29</sup> For another, we recognize that the Department is nimble enough to move swiftly and responsively in the event that the initial assessment of an incident raises exigent concerns. Nonetheless, we consider the annual “encouragement” to be worth the effort, given the increased benefits of a timely process and the ease with which priorities can shift in a busy agency.

***Recommendation # 15: BPD should remain vigilant about maintaining its own high standards for the force review process, particularly with regard to effectively addressing allegations of misconduct by subjects against involved officers.***

***Recommendation # 16: BPD should continue to prioritize the timely resolution of force cases in the interest of providing officers with the most useful possible critiques.***

B. “De Minimis Force” Protocol

Conscientious agencies face a challenge when it comes to defining what should constitute “reportable” force. While everyone agrees that taking a resistant subject to the ground (to say nothing of more serious deployments like Taser use) needs to be acknowledged and explained, more minor contacts (such as the momentary grabbing of a detainee who has started to leave and then changed his mind) can be ambiguous.

This is true in terms of defining or categorizing the contacts and determining the optimal level documentation and supervisory review. A higher bar for reporting creates the risk that officers will not have to be accountable for “putting hands” on subjects in ways that constitute a noteworthy (if minimal) imposition on physical boundaries. On the other hand, a broadly inclusive approach to full reporting means that a disproportionate amount of officer and supervisor time could end up being devoted to matters of low significance.

After considerable deliberation (including consultation with OIR Group), BPD addressed this tension by revising its force policy. It added the new category of “De Minimis” force, which it defined as “*physical interaction meant to separate, guide, and/or control that does not cause injury. These very brief and inconsequential encounters require notification to a supervisor, documentation in police reports and on the Watch Commander Log.*”

As the language suggests, the new approach is intended to combine the values of accountability and proportionality/efficiency. It frames the type of commonplace and low impact encounters that occasionally accompany detentions. And it provides specific guidance that requires acknowledgment by responsible officers and a written record of what occurred and why. Absent collateral concerns that might arise during a supervisory review of the reports, no further action is needed.

During the transition process, we were concerned that the new category might constitute such a tempting exception to the normal rigor of the review process that officers (and supervisors)

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<sup>29</sup> In fact, we noted that a couple of this year’s CIRB memos included language that was expressly directed at OIR Group, acknowledging the time lag and citing “turnover and staffing” issues as factors in the delay.

might be inclined to stretch the boundaries of interpretation in the direction of over-inclusiveness. This is not, however, what seems to have happened when the new standard became applicable of 2017. On the contrary, while the total number of “regular” force incidents (and attendant reviews) remained about the same for the calendar year, the “De Minimis” category encompassed 102 physical encounters that in the past may not have been documented at all. In other words, instead of a shortcut to avoid more laborious review, it seems to have been treated as an opportunity to account for a new level of quick and minor encounters in a sensible way.

To its credit, the Department audited the 102 listed incidents and reviewed them for compliance with the goals of the new policy. Specifically, the audit was meant to ensure that officers and supervisors were utilizing the protocol for the correct range of cases, and that they were providing the correct level of documentation. Several minor discrepancies were identified and addressed.

Moreover, based on the descriptions and further analysis of the supervisor performing the audit, the Department slightly expanded the eligible contacts to include the kind of pain compliance techniques that officers are trained to use. (A wrist lock is one example.) Provided that the pain is of a “temporary transient”<sup>30</sup> nature, and does not result in injury to the subject, such techniques are now classified as “De Minimis.”

On the whole, we consider this protocol a positive development in the Department’s internal review measures. At the same time, we note with interest – and some reservation – the expansion that brought pain compliance measures into the fold of lesser scrutiny. (It applied to six incidents from the 2017 audit.) It is as far as we would like to see the “De Minimis” label extended. We also hope the Department will maintain the diligent quality control process it applied in the first year of the new protocol to ensure that the spirit behind it matches the actual utilization by officers in reporting their activities.

***Recommendation # 17: The Department should continue to regularly assess the use of the De Minimis force protocol to ensure that it is not over-used, particularly with the broadening of the definition to include pain compliance measures.***

### C. Review of Incidents Involving a Juvenile Subject

#### Case One

During this auditing period, we reviewed two uses of force that occurred some three years apart, both involving the same juvenile. The latter incident raised some questions as a result of concerns raised by the juvenile’s mother. In the initial incident, three BPD officers were dispatched to a battery report. When the officers arrived, they encountered two individuals who were interfering with the fire department’s efforts to treat the victim of the alleged battery. Officers were advised that one of the individuals was a 13-year-old grandson of the victim, and that he had a history of mental illness and autism. The other individual was an adult son of the

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<sup>30</sup> The Department’s force policy has been updated to reflect this language.



victim. Both subjects were detained, and the adult son was handcuffed for interfering with the medical treatment being provided.

While officers were continuing their investigation, the 13-year-old subject suddenly charged one of the officers and kicked him on the shin. This caused the officers to place the juvenile in handcuffs. At some point, the juvenile stood up and ran away from the officers. Two officers chased the juvenile and were able to tackle him to the ground. The officers indicated their concern that had the juvenile not been stopped it appeared that he was about to run into traffic.

During the force review, the watch commander identified multiple training issues. The review found that the trainee assigned to monitor the juvenile had not done so with sufficient diligence and control, thereby placing the officers, members of the public, and the detainee himself at risk. As a result of this observation, the watch commander conducted an immediate training and counseling session with the trainee and his field training supervisor. To his credit, during the trainee's counseling session, he recognized his misstep and accepted full responsibility. To BPD's credit, it also used the counseling session as an opportunity to identify training priorities that were not included in the trainee's initial academy recruit training and devised a training plan to quickly develop and instill the relevant skill sets.

The issues identified by the watch commander were documented with a comment card, and the incident was memorialized in the trainee's daily observation report. The CIRB review concurred with the issues and recommendations identified by the watch commander.

In our own assessment of the case file, we were impressed with the thorough and dispassionate interview of the juvenile that the Department conducted. BPD also appropriately interviewed the firefighter witnesses as part of its force investigation. BPD also made effective use of its Mental Evaluation Team<sup>31</sup> to locate temporary placement for the juvenile.

Two specific aspects of BPD policy were noteworthy here. First, the Department has specific policies regarding the use of handcuffs. Under the policy, officers are instructed that in deciding whether to use any restraint, officers should carefully balance officer safety concerns with other factors – including the age of the person being detained. Moreover, BPD's use of force policy stipulates that officers should not use force against handcuffed subjects “unless reasonable under the circumstances to stop an assault, escape, or as reasonable to fulfill other legitimate law enforcement objectives.”

In this incident, the battery of the officer appeared to validate the use of handcuffs on the 13-year-old. The force that subsequently occurred in tackling him after he ran was also justified by the obvious safety and escape concerns. Still, it would have been helpful if had BPD expressly noted the policies, as well as the applicability of the exceptions under the specific facts of the incident. Doing so shows the Department's own due diligence and reinforces the policies in useful ways.

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<sup>31</sup> This program, which utilizes specially-trained and designated mental health professionals to collaborate with officers in addressing relevant calls for service, is a progressive and beneficial one that we have discussed admiringly in past reports.

***Recommendation # 18: When force is used on a handcuffed person, BPD should expressly acknowledge in its force analysis the specific limitations in its policy for using force in that situation and whether sufficient circumstances existed under that policy to support the officers' actions.***

#### *Case Two*

On the date of the incident, a BPD patrol officer noted that the front passenger was in a vehicle and not wearing his seatbelt. He asked the juvenile passenger why he was not wearing his seatbelt and was told by the passenger he had forgotten to put it on. The driver, who was the passenger's mother, told the officer that she had not noticed that her son was not secure because she was in a hurry. The officer explained that she needed to ensure that all passengers in her vehicle were properly restrained.

During this exchange, the passenger became verbally argumentative with the officer. The officer asked for the mother's identification, which she provided. As the officer was writing down information, the juvenile passenger challenged the officer to a fight. As evident from officer recordings, his comments deteriorated from there; nonetheless, the officer focused his communication on the mother. This further agitated the juvenile.

The officer returned the driver's license to the mother and asked the juvenile to put on his seatbelt, which he refused to do until the officer backed away from the car. The officer backed away and the juvenile then secured his seatbelt.

The mother said she was going to contact the Chief of Police about the encounter, and the officer provided his identification. The juvenile then again challenged the officer to a fight and began to open his door, striking the officer in the knees. The officer held the door shut to prevent the juvenile from exiting and assaulting him.

During this time, the mother tried to physically restrain the juvenile, who was now screaming and kicking at the car door. The mother, juvenile, and the juvenile's sister who was seated in the back seat all screamed at the officer to leave as they believed his presence was causing the juvenile to become violent. The officer repositioned to the passenger side of his vehicle to create distance.

The officer called for backup while the juvenile exited the car, said he was going to fight the officer, and moved toward him with clenched fists. The mother and sister yelled at the juvenile to stop to no avail. The officer used OC spray on the advancing minor, but the OC spray had no apparent effect. The juvenile continued forward and struck the officer in the head and face area. The officer then deployed his Taser, which effectively stopped the assault, and the juvenile was successfully handcuffed.

BPD found the use of force to be appropriate and identified no training issues. We agree. The investigation was thorough. During the investigator's interview, the juvenile expressed remorse for his conduct and expressed an interest in apologizing to the officer. A review of the audio recording showed the officer to be controlled and professional during the incident, as in his

tactical repositioning in an attempt at de-escalation. The officer appropriately received a commendation for his “commendable restraint” in addressing a challenging situation.

In this incident we have no issues with BPD’s investigation and analysis. The Department instructs officers to generally avoid using Tasers on juveniles and to give warnings before deployment when practicable. In this case, unlike the 2013 incident, the analysis recognized these limitations and explained how the special factual circumstances warranted the Taser option in spite of the officer’s concerted efforts to defuse the situation and avoid its ultimate use.

## V. Review of Vehicle Pursuits

### A. Introduction

Burbank Police Department has concluded what many law enforcement agencies have found in recent years – pursuing suspect vehicles is a high-risk activity that often puts the public, officers and the subject at risk. Such pursuits may return very little in terms of public safety for the investment in resources and the potential liability. Moreover, there are alternatives to conventional police chases that produce less potential for harm.

For these reasons, the Department had implemented a major revision of its vehicle pursuit policy in 2013 and has closely monitored and documented all vehicle pursuits ever since. In 2017, the Deputy Chief assigned two captains and a representative from the Burbank Police Officers’ Association to conduct a review of the policy with an eye toward possible simplification of the guidelines. This review was an outgrowth of Critical Incident Review Board (CIRB) meetings, which revealed that policy violations tended to occur at the initiation of vehicle pursuits, especially regarding whether the driving behavior of suspected intoxicated drivers justified a pursuit. As discussed below, the policy revision review has not resulted in policy changes, but the Department continues to look for solutions to the problem.

BPD has also asked OIR Group to evaluate vehicle pursuit documentation and comment upon adherence to Department policies, the quality of pursuit investigations, and overarching trends in vehicle pursuits. We observed in our last report that a majority of vehicle pursuits by Burbank officers are still in violation of policy and that “most of these violations are centered on one topic – suspicion of an insufficient level of crime to justify a vehicle pursuit.”

#### **2017 Vehicle Pursuits**

Vehicle Pursuit	Cancelled	CIRB Finding	Remedial Training Ordered	Debriefed	From Incident to CIRB	From CIRB to feedback
001	No	In policy	No	Yes	109 days	7 days
002	Yes – by supervisor	In policy	No	Yes	83 days	7 days
003	No	In policy	Yes	Yes	127 days	34 days
004	No	In policy	No	Yes	91 days	15 days
005	Yes – by supervisor	Out of policy	Yes	Yes	68 days	65 days
006	No	In policy	No	Yes	38 days	50 days

The table above compares summary data for 2017 and reflects some of our other persistent concerns about vehicle pursuits. There were six vehicle pursuits by BPD officers in 2017, coincidentally the same number as the 2016 pursuits and very close to the totals for 2014 and 2015. Vehicle pursuit totals fell to the current levels after the 2013 policy reforms. Clearly, the

2013 policy has resulted in a steady pattern of reduced pursuits but not consistent adherence to the guidelines. Those require, in part, that a driver be suspected of a serious or violent felony or exhibit impaired reckless driving that poses a clear and present danger to the public before a vehicle pursuit can be initiated.

Only one of the six vehicle pursuits in 2017 involved a clear violation of policy. This contrasts with the 50% or higher rate of policy violation over the last three years and justifies some optimism that BPD is making good headway in training officers to make field decisions regarding pursuits in accordance with Department policy. However, two of the other pursuits of 2017 resulted in split decisions from the voting members of CIRB. These ties had to be broken by the Chief of Police, who made the decision on both occasions to find the pursuits in policy. These split decisions both turned on the familiar issue of justification for initiating the pursuit, and more specifically on whether the evidence of impaired and dangerous driving was adequate.

#### B. Policy and Training

CIRB members have taken a deep dive into this thorny question spurred by a growing concern: how can Department leaders expect patrol officers to exhibit a clear and consistent interpretation policy when they cannot always agree among themselves? Following the CIRB meeting in September 2017, which engendered an “extended and robust commentary by the CIRB members regarding the Department’s pursuit policy...specific to impaired drivers,” the Deputy Chief directed two captains and two detectives from CIRB to meet and work on a clearer more easily interpreted policy. It is our understanding that the recommendations of this team have been submitted to the Chief for consideration.

The existing policy is precise and well-articulated but perhaps overly complex. One watch commander, discussing a recent pursuit with the entire patrol shift found that “a significant number” of officers misunderstood BPD rules on when they are in pursuit or have terminated a pursuit. The policy clarification initiative has paused, but Department leaders have shifted their current focus to improving training techniques to achieve better decision-making in the field and greater compliance with vehicle pursuit policy. This is responsive to the recommendations by the lieutenant who performed the Administrative Review requested by CIRB discussed below as well as the aspirations of other leaders in the Department to make emergency driving training more realistic.

We are hopeful that the Department can quickly marshal the resources and creativity to implement an improved training regime that addresses the policy compliance problems that its supervisors and experts have so clearly identified.

#### C. An Influential Incident

BPD has an elaborate process for evaluating vehicle pursuits, and it appears to be frank and flexible enough to identify important issues. It starts with a field supervisor’s “pursuit review” of the facts and circumstances of the incident, including a review of the incident reports and

checking any dispatch or other recordings or videos to see if officer reports and statements are consistent with this evidence. Then the watch commander, usually a lieutenant, reviews the sergeant's report and the underlying documents and identifies any policy violations, training issues or equipment needs revealed by the incident. Ideally, even before completing his evaluation, the watch commander debriefs the officers on the involved shift about the incident. The CIRB then meets to make a determination regarding policy violations and to refer the involved officers for debriefing, training, internal affairs investigation or an administrative review.<sup>32</sup>

It is clear that finding the right balance between effective apprehension of subjects who flee in cars and the harm-reduction objectives of thoughtful, modern policing is on the minds of BPD managers. Late in 2017, after the CIRB concluded that one officer had been in violation of Department policy when he initiated a high-speed pursuit on the basis of a suspected store theft and then failed to respond to the watch commander's instructions to cease the pursuit, the CIRB members referred the incident for an "Administrative Review." This represents the optional ultimate phase of the internal investigations and evaluations and goes beyond the incident to consider Department-wide concerns such as policy and training.<sup>33</sup>

The review lieutenant's resulting March 2018 report to the Deputy Chief concluded that the current guidelines for initiating a vehicle pursuit are clear and unambiguous but recommended that future emergency vehicle operator course (EVOC) training include a scenario-based component as part of the program to include ongoing assessment throughout the pursuit of circumstances, communications and decision-making. The review also encompassed dispatch and air support, and produced a number of other insights and potential action items.

It suggested, for example, that personnel in both units should participate in the scenario-based training and that air support officers should cross train with equivalent personnel from neighboring police agencies with whom they must often rotate during pursuits because of fuel or equipment shortages. The review also proffers LAPD policies as an example of a clear description of "tracking mode": a procedure whereby a patrol officer alerts air support to a fleeing subject, then follows the subject out of sight and at a great distance with the assistance of the air unit so as to "encourage" the subject to slow down.<sup>34</sup> When the subject reaches a destination or stops for other reasons, air support can alert available personnel to make the arrest. The review suggested BPD has used tracking mode and air support to good effect but does not have a "codified protocol in place" to ensure that all personnel are clear on the procedures and can immediately activate them in the field when appropriate. These recommendations are among

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<sup>32</sup> An administrative review is a broad ranging policy review that may consider implications that the incident has for the department as a whole.

<sup>33</sup> Alternatively, if the CIRB found apparent violations sufficiently troubling, it could refer the involved officer for an Internal Affairs investigation which could result in discipline.

<sup>34</sup> Nov. 15, 2017 "Vehicle Pursuits Harm-reduction Strategies," Notice to all department personnel from LAPD Chief of Police.

the strategies that the Department continues to look at as part of its larger search for an improved training strategy addressing vehicle pursuits.

#### D. Feedback to Patrol Officers

Scheduling a meeting of the Critical Incident Review Board shortly after the incident continues to elude the Department. The majority of CIRB sessions occurred more than two months after the pursuit.

Additionally, when CIRB makes a finding, whether positive or negative, it is important to make a prompt official notice to the involved officers. Department leaders often take the time to arrange a meeting with officers to explain the CIRB findings and sometimes deliver remedial training on the spot. This is obviously a positive approach. However, after a promising start with one-week turnarounds between the CIRB meeting and the notification to the involved officers from the first two vehicle pursuits of the year, the notifications for the remaining pursuits were several weeks after the CIRB. The problem of post-CIRB delays is partly due to appropriate consultation with the Chief of Police. We urge the Department speed the post-CIRB consultation up or seek other means to faster turnaround on notification to involved officers in our last report.

In stark contrast to this delay in feedback to involved officers, roll call debriefings, usually of the entire patrol shift, often took place at the next roll call the day after the incident. These provided a constructive opportunity for the watch commander to explain his or her observations of the pursuit while still fresh in the minds of those involved and to address any of a host of performance issues such as broadcasting necessary information, evaluating dangerous driving, use of air units and tracking mode, when to activate lights and siren, contact with the subject at termination, when to call for backup, and supervisors' responsibilities.

BPD's standard practice has been to assign the initial Pursuit Review to the field sergeant involved in supervising the pursuit. We cautioned in our last report that this could undermine the sergeant's objectivity about the pursuit and recommended that the Department strive to assign the review to another sergeant. The Department agreed in principle and, in several of the 2017 pursuits, chose uninvolved or less involved sergeants to perform this task – a gratifying adaptation that we are pleased to note.

***Recommendation # 19: BPD should implement an upgraded and more realistic pursuit training program.***

***Recommendation # 20: BPD should track evidence of the success or failure of the new pursuit training program and, based on that data, set a date certain for deciding if the pursuit policy needs revision.***

***Recommendation # 21: BPD should continue its efforts to assign the initial pursuit review/critique to a sergeant who was not involved with the incident.***

