



# OIR Group Report re Monitoring of Burbank Police Department

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Michael Gennaco  
Stephen Connolly  
Teresa Magula  
OIR Group  
[www.oirgroup.com](http://www.oirgroup.com)  
323 821 0586

# I. Introduction

Pursuant to the Independent Monitor agreement with the City of Burbank, this constitutes OIR Group's 2019 Report on internal investigations and administrative reviews conducted by the Burbank Police Department ("BPD"). It follows the protocol we have established with the City and BPD to promote effective policing through external, independent review of the Department's practices and internal review systems.

To be clear, we do not conduct our own investigations into the cases and incidents we review here. Instead, this Report looks at the *Department's* official response to incidents and allegations from 2018 (as well as two 2017 matters that carried over into this audit cycle). We do this from our outside perspective as longtime monitors of police practices.<sup>1</sup>

As in past reports for Burbank, this year we have assessed a sample of completed investigation files relating to Uses of Force, complaints from the public about officer performance, and other misconduct allegations. Our assessment of those individual cases offers a window into BPD's practices – both in the field and in terms of managerial scrutiny and response. The Department also had two reported vehicle pursuits in 2018; this Report covers them, and also discusses the ongoing considerations of vehicle pursuit policy revisions to improve clarity while preserving the high standards for officer and public safety imposed by the current version. We also discuss the Department's implementation of body-worn cameras and our previously registered concerns about the policies the Department devised to guide their use.

Additionally, and for the fourth time, we also played a dual role in the Department's annual survey of employee email activity. Along with reviewing the Department's separate internal audits for its middle managers and its rank and file personnel, we conducted a direct audit of emails at the executive level (including the Chief and 5 other members of the senior command.) Those results were quite favorable, which we attribute to BPD's emphasis on the issue as well as the professionalism of its members.

Notably, the Report is *missing* sections on officer-involved shootings or in-custody deaths: the Department has had neither since 2016. It is important to note that such incidents are not always

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<sup>1</sup> Since 2001, OIR Group's members have worked with numerous jurisdictions throughout California and other parts of the United States to provide independent evaluations and make recommendations for systemic improvement. Our relationship with the City of Burbank and BPD dates back to 2011.

avoidable or within law enforcement’s full control. Nonetheless, all police agencies – and the communities they serve – have reason to be grateful when training, tactics, and circumstances combine to minimize the episodes in which deadly force occurs.

Finally, the last section of the Report highlights some of the recent positive steps that the Department has taken to support personnel, strengthen performance, and engage with the community. Many of these initiatives are forward-looking – a direction that matters just as much to agency effectiveness as the accountability and review measures we scrutinize.

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Our overall impression from this year’s audit of cases is that the Burbank Police Department continues to perform effectively in the field on behalf of the City’s residents – and that its internal review mechanisms are also characterized by a number of strengths. This is true with regard to misconduct investigations, use of force reviews, and the agency’s various (and commendable) auditing programs.

As in the past, the Internal Affairs investigations that we assessed are notably thoughtful and well-organized, and we were again struck by the meticulous, effective handling of large-scale cases involving multiple allegations, subjects, and witnesses. We discuss some of them in more detail below. One involved the Animal Shelter – a City service under BPD’s control that we had not previously encountered. That case involved significant systemic as well as performance issues, and the Department appears to have addressed these effectively. This is a key indicator of a constructive discipline process: combining individual accountability with reforms that enhance the effectiveness of future performance. And, given that none of the larger cases involved termination-level allegations, the depth and quality of investigations reflected an especially impressive commitment to due process as well as accountability.

Unfortunately, we also discuss one significant case that was undermined by process issues – specifically a failure to meet statutory deadlines for completion. The reasons behind this were complex (including the involvement of an outside independent investigator), and the timing lapse did not compromise substantive discipline (since the allegations were ultimately not substantiated). Still, coming after past problems in this area, which we documented in prior reports, this was a disappointing aspect of the audit.

With regard to use of force, the Department had 80 individual incidents during the year-long audit period.<sup>2</sup> We looked at the review packages from more than 20 of these, selected at random.

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<sup>2</sup> For the second full year, the Department also continued to track its “de minimis” incidents of force – in which very minor physical contact, not resulting in injury or complaint of pain, is acknowledged to a supervisor and documented, without initiating a full-fledged (and labor-intensive) review process. We wrote about this concept last year and consider it a sound

Two were K-9 bites, and there were also several Taser deployments, some of which raised tactical or equipment issues that we discuss below. In most instances, however, the force was minor in nature (such as takedowns and resisted handcuffing); in *every* instance the officers' actions were determined to be consistent with policy.

The Department's "perfect score" in this regard is notable in a few ways. To be sure, it reflects actual, substantive performance, and the BPD officers themselves deserve credit for exercising their authority in controlled and justified ways. But it also speaks to the extent to which the relevant standards – and the interpretation of facts in a given incident – recognize the challenges that officers face and builds latitude into the assessment of a force application's necessity and reasonableness. This is true throughout law enforcement. There are good reasons for it. And, as applied to BPD in this year's audit sample, we emphasize that we did not find basis for disagreeing with the Department's conclusions in any of these cases.

Nonetheless, in all of the agencies that we monitor, it has been our experience that most uses of force are not only justified and proper, but also worth examining from a holistic perspective – a broad lens that could include communication and demeanor, tactics and decision-making, equipment and available options, or post-incident risk management and investigation. Even when force is in policy, appropriate after-action (training, counseling, or even reinforcement of effective work) is often warranted.

For these reasons, we remain especially affirming of BPD's commitment to meaningful assessment whenever force is used. The Department's multi-step evaluation process, which we have discussed in past reports and which continues to be refined over time, is as comprehensive and worthwhile as any we have seen. Each use of force is indeed evaluated holistically and addressed constructively – and, importantly, the follow-up is documented for future reference. We see a nexus between this scrutiny and the Department's overall restraint and professionalism when it comes to force deployments, which are a highly sensitive aspect of police power.

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compromise. It recognizes the way *any* physical interaction – no matter how brief or seemingly trivial – between officers and subjects merits accountability, while also maintaining a sense of efficiency and proportion.

## II. Concerns about BPD’s Implementation of Body Worn Cameras

One significant development since the time of our last Report is the City’s commitment to new video recording technology. Body-worn cameras are the centerpiece of this change, but the new equipment will also include in-car cameras and various enhancements to audio recording.

This step is the product of considerable deliberation and planning – and some debate – both inside and outside the Department. We offered our perspective last year, during the pendency of a relevant pilot project. Our experience in other jurisdictions is that the cameras can indeed be an asset in terms of the evidentiary value of recordings – and the ways they influence the behavior of both officers and those they encounter. But it is also important to recognize relevant limitations, to say nothing of the financial commitment required for the camera system and accompanying data storage.

This can be especially true with critical incidents, when camera angles can be blocked or incomplete at the very moments when public expectation of definitive proof is at its highest. And we have also taken the position that the “best behavior” produced by accountability on both sides of the camera is not a substitute for genuine professionalism and sincere community engagement. Finally, those situations when the cameras do *not* record – either because of technical problems or officer error – can have the ironic effect of heightening suspicion and distrust.<sup>3</sup> These are all phenomena to bear in mind as the Department and the public assess the rollout of the camera program.

One place where we did give an opinion last year related to the Department’s proposed policy for regulating the new cameras. Our overall sense was that the policy was comprehensive and mostly sound. Our main concern related to the widely contested issue of whether officers would be able to review recorded evidence prior to being interviewed in officer-involved shootings, personnel investigations, civilian complaints, and other uses of force in which officer behavior is the focal point of the review.

We have taken the position that it is best practice to obtain a “pure” statement initially from officers in these situations, rather than one that is influenced (even subconsciously) by exposure to the recorded version of those events. This is for two primary reasons. One is that an officer’s

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<sup>3</sup> With this year’s group of audited cases – some of which involved body-worn camera evidence as a result of the pilot program that preceded the full adoption of the technology, we noticed technical issues with the recording process (loss of battery power, gaps in audio, cameras slipping from their mounts). The Department asserts that these issues, as identified through the pilot phase, contributed to the selection of a superior product that should minimize them.

subjective state of mind is highly significant to understanding the reasons for (and legitimacy of) his or her actions. The body camera recording can easily deviate from an officer's actual vantage point and observations. Seeing that footage will undoubtedly influence the officer's own memory and understanding of what occurred by "filling in the blanks" or otherwise altering perception of past events. As a result, the policy adopted by BPD significantly undermines the usefulness of the body camera deployment when it comes to assessing misconduct allegations, major uses of force, or otherwise evaluating the performance of its officers.<sup>4</sup>

The other relates to public confidence and investigative integrity: simply put, the chance to view evidence before testifying lets people know the parameters of evidence they must account for, and gives them a chance to tailor their stories accordingly. The idea that an officer could use this "home court advantage" to disingenuously alter his or her statement plays into the skepticism of people who doubt law enforcement's fairness or legitimacy. And it is telling that – in cases where body camera footage is relevant as evidence in a potential prosecution – the individuals *arrested* by BPD will not have a chance to review the recordings prior to interrogation. (For that matter, "statement first" is also standard investigative practice for statements from neutral witnesses.)

Deferring to the Burbank Police Officers' Association's desires on this issue also discounts a major reason that police agencies have spent resources to outfit their personnel with body-worn cameras: namely to increase trust among their communities, especially those who have a history of negative encounters with police. Allowing officers the opportunity to preview body camera footage in a way that others can suggest a sort of double standard or bias that seriously undermines the "trust" objective.<sup>5</sup>

While acknowledging these points in their communications with us, the Department's adopted policy does in fact allow the officers to view first – the (not surprisingly) preferred approach of the officers' labor association.<sup>6</sup> For many officers – and certainly not just in Burbank – discrepancies between their own recollections and the video evidence creates a vulnerability they

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<sup>4</sup> See, for example, "What Should Happen After an Officer Involved Shooting? Memory Concerns in Police Reporting Procedures", *Journal of Applied Research in Memory and Cognition* 5 (2016) 246–251, Rebecca Hofstein Grady, Brendon J. Butler, and Elizabeth F. Loftus.

<sup>5</sup> In other jurisdictions that have adopted a "preview first" policy, advocacy groups have subsequently withdrawn their support of body cameras.

<sup>6</sup> A copy of the BPD policy is attached to this Report as an Addendum.

would prefer to avoid. This is true even if investigative best practices favor the “pure statement” approach, followed by a supplemental interview if needed to address discrepancies.

The Association has shared with us other arguments in support of its approach.<sup>7</sup> One is the notion that questioning before a chance to review video is akin to treating the officers like criminal suspects, a characterization they reject. However, in our experience, the investigative process and its particulars are already respectful of officers’ distinct status in many ways, and these should not extend to a deviation from standard investigative techniques. (Consider, for example, the way that *witness* officers generally are not given the chance to review video first.)

The Association also raises concerns about prosecutorial or disciplinary decisions based in politics or emotion at the expense of fairness to officers. Setting aside the lack of local precedent for such outcomes, we respect the Association’s impulse to advocate for its members. Again, though, our hope would be that rigor and best practice in conducting these sensitive investigations would be more helpful than hurtful to law enforcement’s standing in the public square.

In addition to bringing our concerns about the current policy to the attention of the stakeholders and Burbank’s public, we will continue to monitor this issue in the context of the program’s rollout. We also intend to revisit this issue with the Department periodically with the objective of remedying this significant defect in its policy.

Going forward, we also hope the officers are appropriately diligent and proficient about *activating* their cameras when obligated by policy. Public expectations are understandably high in this regard, especially in the context of a critical incident, and lapses have the unfortunate effect of raising suspicion even more than if the cameras did not exist.

Interestingly, the Department’s adoption of new technology may not only raise the stakes of this issue but also help to mitigate it through the virtues of the equipment itself. The new body camera model and its in-car companion are designed to automatically record during certain key situations, such as activation of the vehicle’s light bar, deployment or activation of a Taser, or deployment of a handgun from its holster. The new cameras will also feature a 30-second buffer, which can be beneficial for recording the moments directly prior to a use of force.

These mechanical enhancements will help ensure that recordings occur in critical encounters. For lesser events, though, and in conjunction with the automation, we still encourage BPD’s leadership to focus on the activation issue in other ways. While allowing for a learning curve

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<sup>7</sup> We take this occasion to thank the Association for engaging with us over the course of the last few years of our work in Burbank. As evidenced here, we disagree from time to time. But we also benefit from the insights the Association shares, and we are appreciative of the constructive approach to dialogue that we have experienced in dealing with its leadership.

with the new devices, and knowing that honest mistakes sometimes happen, the Department needs to emphasize its high standards for compliance. This should include graduated accountability measures that reinforce to officers the importance of consistent, effective deployment of the new technology.<sup>8</sup>

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<sup>8</sup> Interestingly, the Department has some relevant experience in this regard: its patrol officer personnel have had *audio* recorders for several years now. We have benefitted greatly from access to these material in our understanding of individual incidents. However, as discussed below in Section III, we have also encountered situations when officers have not activated their recorders in spite of policy requirements – and at times we have found the managerial response to be tepid.

### III. BPD Emails

#### A. Overview and OIR Group Audit

In response to a high-profile incident involving the inappropriate emails of a member of BPD's command staff, OIR Group's audit responsibilities for the City expanded in 2015 to include monitoring of the Department's email communications. This marks our fourth year in that role. We are pleased to report that BPD's focus on this issue has paid dividends in terms of the adherence to policy that is reflected at all levels of the agency.

As in past years, we received access to a complete, randomly selected (by us) month of all sent and received emails from the accounts of the Chief and the other five highest-ranking members of the agency. Each person's correspondence fell within the parameters of Department and City policy for email use. There were, in most instances, a small number of commercial or promotional emails that people received amidst the torrent of daily incoming messages; in other and (fewer) cases, executives were also sending or forwarding non-work information to personal accounts (often their own). However, these were innocuous enough in content (if seemingly unrelated to Department business) and few enough in number as to constitute the sort of "*de minimis*" exception that the policy specifically allows.

We also received the results from BPD's separate internal audits performed by management personnel for a selection of both supervisors and "rank and file" employees.<sup>9</sup> With some very minor exceptions (as described below), the evaluated emails – which numbered in the thousands – showed professionalism and a recognition of Department expectations.

This is certainly a credit to the individuals whose accounts were chosen. More broadly, though, it affirms the effectiveness of BPD's attention to the subject. While the cautionary tale from 2015 may continue to have deterrence value, the reality is that email communication, like text messaging and broader computer use, is ubiquitous in society. It is easy to forget that standards apply, and that comments that are "humorous" or belittling or otherwise inappropriate for the workplace are not only a distraction but also potentially a matter of public record. BPD's audit, and the accompanying reminders and reinforcements, helps to ensure that adherence to its policies in this arena remain a priority.

#### B. BPD Internal Audit: Results

As in recent years, the Department itself performed separate audits of its personnel below the executive team: one for lieutenants/sergeants (conducted by a captain) and one for lower-ranking

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<sup>9</sup> In keeping with a recommendation from our last Report to the City, BPD invited us to choose a pair of two-week blocks from different months in an effort to lessen predictability and cover a wider portion of the year.

sworn and non-sworn employees (conducted by a sergeant). A total of 40 representative individuals were chosen at random for the reviews. There were no significant problems or policy violations identified in these groups.

This record of overall compliance is impressive, particularly over the course of the 60,000 some emails that were evaluated. To its credit, the respective audit reports offer detailed analyses of their contents. They list those specific communications that were other than routine, even when they do not rise to the level of a policy concern. Included in that category, for example, were a small number of received advertising emails and a handful of sent and received personal messages.<sup>10</sup>

Interestingly, the audit of supervisors generated a slightly higher volume of “borderline” communications. These included some exchanges among sergeants which dipped (slightly) below expected levels of professionalism, the sending or receiving of family video clips, and *received* emails that raised questions of one kind or another.<sup>11</sup> None of these was egregious or numerically noteworthy, and the Department eventually circled back to each of them individually in order to clarify the relevant expectations. Moreover, the nature of supervisors’ work responsibilities is such that they generate much more work email on average than patrol officers or other categories of employee – which means more opportunity for these minor issues to arise.

The flip side of this, though, is that supervisors are definitionally held to a higher standard. It is therefore noticeable – and disappointing – when their collective audit performance dips even remotely below the bar of the rank and file personnel. We reiterate that nothing truly problematic emerged from the audits, and that the Department should be pleased by the overall results. However, this phenomenon is an example of concerns at the supervisor level that we noted in other contexts – specifically in the arena of misconduct allegations – and that we discuss in more detail below.

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<sup>10</sup> We asked the Department to follow up regarding a *volume* issue that struck us as curious – one of the selected employees had twice as many “in box” items (approximately 2,000 for the month) as the next highest person. But the high activity level was apparently consistent with the responsibilities of the relevant individual – a civilian administrator.

<sup>11</sup> As we have noted in prior reports, employees (like anyone else) obviously have less control over what is sent to them; accordingly, with very occasional exceptions, it is those sent emails that warrant more careful scrutiny from management.

## IV. Review of Misconduct Investigations

### A. Introduction

OIR Group evaluated more than thirty misconduct cases, two of which were personnel investigations that carried over from 2017. Per our standing selection criteria, we received all cases in which a supervisor was the subject of allegations (6 this year), all cases involving racial bias complaints (6 this year), and a one-third sample (chosen at random) of the remaining files. This amounted to about half of the year's total: the Department investigated 46 complaints from members of the public (down from 53 in 2017) and had 18 internally generated cases (up from 11). This meant the overall amount of investigations was roughly the same; as for the fluctuations noted above, they are not readily explainable or inherently significant, though it will be interesting to continue tracking the trendlines over time.

About one in nine individual allegations from complainants turned out to be sustained, while the rate for the Department-initiated cases was closer to half. This difference matches our past experience with Burbank and other agencies. It reflects the way that agencies tend to open cases in response to known problems for which there is often already some corroborating evidence, whereas public allegations may turn out to be harder to prove, or even based on a misunderstanding of law or policy.

Even so, in the cases we reviewed, the Department did a commendable job of taking all complaints seriously and investigating them with objectivity and thoroughness – and even resourcefulness where necessary. Among the examples of diligent investigation, we noted the following:

- Use of GPS data to confirm a complainant's description of officers' unusual driving patterns in following him before a traffic stop, which led him to believe there was a racial component to their interest.
- In a case involving a detained person's complaint about reckless driving as she rode in the back of patrol car, investigators analyzed GPS data in an effort to evaluate speed and determine the legitimacy of the assertions.
- A detailed forensic attempt to recapture one officer's deleted audio recordings through the computer system.
- Diligence in seeking – and making thoughtful use of – surveillance footage from third-party cameras (such as from businesses) that captured part or all of a disputed encounter between the police and an unruly customer at a business.

We are also gratified to see the Department continue its practice of effective, case-specific notification letters to complainants. Though we discuss below one instance of premature (if well-intentioned) notification, our overall impression is that the Department's approach is exemplary – and a significant improvement over the terse boilerplate with which most agencies

fulfill this obligation. By personalizing the letters in terms of the allegations investigated, the specific steps that were taken, and the bases for the final outcome, the Department conveys the important message that the complaints were in fact taken seriously and pursued appropriately. Accordingly, even when the final outcome is disappointing, the complaint process serves as a vehicle for dialogue between BPD and the public it encounters.

## B. A Lapse in Timeliness

One of the cornerstones of an effective disciplinary process is the timely resolution of misconduct allegations. As a substantive matter, addressing issues promptly is consistent with maximizing the effectiveness of any remedial steps that might be necessary, and with minimizing the burden of uncertainty that is understandably discouraging to involved employees. But, beyond those principles, there is also a more technical rationale for remaining mindful of the “clock”: namely, the statutory limit that precludes California agencies from taking disciplinary action once the one-year time period has expired.

We have written in prior reports about this concept as it applies to BPD. Two years ago, our focus was on several cases that fell out of statute through inadvertent – but obviously still problematic – neglect. This episode prompted the Department to take advantage of its updated computer capabilities and to produce a quarterly status report on all open investigations. The news was much better last year, and we were happy to commend the Department on the improvement.

Unfortunately, though the quarterly report system remains in place and continues to be a useful document, a series of factors nonetheless contributed to a significant case being mishandled in terms of the relevant deadlines. As discussed below, the lapse did *not* cause sustained allegations to go without a consequence; considerable deliberation established that no policy violations had actually occurred. But the complicating factor of the missed deadline was still disappointing and worthy of attention.

### Case Background

A non-sworn employee went to a BPD command staff member and related concerns about the employee’s supervisor, alleging violations of the City’s Anti-Discrimination, Harassment, and Retaliation Policy. Within two weeks of that meeting, the City appropriately assigned an outside investigator to examine the allegations. Approximately 5 months later, the investigator submitted a report with her recommended findings. Approximately 5 ½ months after the report was submitted, BPD issued a notice indicating that the Department intended to discipline the supervisor as a result of finding a violation City policy.

Per the applicable constitutional rights, the supervisor appealed the notice internally. As a result of that appeal (and evidence and arguments contained therein), BPD determined that it could not proceed with the intended discipline because the supervisor had not been provided with required

notification by the time the statutory deadline passed. Moreover, apart from this *procedural* barrier to discipline, the City also reconsidered its *substantive* findings in light of the additional information provided by the supervisor. It ultimately determined that, even if the matter was not time-barred, there was insufficient evidence to proceed with the discipline.

Below, we discuss both components of this appellate result. We start with the substantive issues, if only to observe that the subject supervisor's additional evidence and assertions formed a seemingly legitimate basis for a change in outcome after the initial findings. Our deeper focus is on the procedural flaws that led to the lapse of the statutory period and precluded potential discipline from being administered. Given our discussion of related problems in the 2017 Report, and the obvious ways that such mistakes undermine confidence in the discipline process as a whole, it is incumbent on BPD management and its City's Discipline Committee to rectify whatever systemic flaws that occurred here.

### Analysis and Discussion

#### *a. The Substantive Allegations*

In California, sworn peace officers have an array of due process rights relating to the administrative discipline process. These include the right to present evidence and arguments in opposition to a preliminary disciplinary finding, which then obliges the agency to consider that additional information carefully, in case further investigation or a different final result is warranted.<sup>12</sup> Changes might take the form of a reduction in the amount of discipline, or even the overturning of a "sustained" finding as to the policy violation itself. For the employee to have such a forum to share relevant information and to have it be assessed objectively is entirely consistent with principles of fairness, due process, and constructive discipline.

In this case, BPD determined that evidence presented during the internal appeal process did indeed suggest a different substantive result. and reversed the initial disciplinary determination decision. We have reviewed the issues raised by the subject supervisor's legal representative. We find it reasonable for BPD to have reversed the findings of policy violations based on those evidentiary and legal arguments.<sup>13</sup>

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<sup>12</sup> It is also possible, and quite common, for the initial outcome to stand.

<sup>13</sup> That said, it can also be worthwhile from an investigative perspective for an agency to evaluate whether and how the evidence that emerges at this phase could have been established during the original fact-gathering. We are not sure whether this occurred here.

b. *The Missed Statutory Deadline*

The Department's decision to reverse the substance of the allegations was overshadowed by BPD's determination that even if there had been sufficient evidence to sustain the allegation, the investigation and subsequent proceedings were not completed on time, and therefore discipline could not be imposed. California law requires that the employer must inform a peace officer of any intent to discipline within one year of the date that a Department member authorized to initiate an investigation is "aware" of the allegations of misconduct.

In this case, BPD initially determined that it was not formally advised of the allegations of misconduct until the employee met with command staff. Yet, the evidence advanced by the supervisor's legal representative argued persuasively that prior to that meeting, other BPD command staff personnel were aware of the allegations. As a result, when the supervisor was served with the notice of discipline, that individual was able to successfully argue that BPD was aware of the allegations well longer than a year prior to the notice date and that any charges against him were thus time-barred under the California statute.

When "course of conduct"<sup>14</sup> allegations become known to a police agency, it is critical that it carefully determine the date when it had "knowledge" of the allegations. As the investigation proceeds, the investigation itself should ensure that it determine whether supervisors in the organization were aware of the allegations. If new information is received during the investigation indicating that BPD supervisors were aware of the allegations earlier in time than had been initially determined, the knowledge date should be recalculated. And then when the completed investigative report is received, the first task should be to again consider whether the evidence included in the report suggests a revised calculation of the knowledge date.

In this case, there is no evidence that any of the recommended steps set out above with regard to calculating and reconsidering the "knowledge date" was ever done. Instead, throughout the investigative and review process, the decision-makers did no recalculation and simply relied on the date that the complainant formally visited command staff as its knowledge date. And then, based on the same investigative information, the subject employee's representative persuasively argued to BPD that in fact, agency supervisors had been aware of the employee's allegations of misconduct well before that person's meeting with the command staff member.

Had BPD been attuned to the issue of accurately calculating the knowledge date, it could have completed its review process well within the one-year statutory deadline. As set out above, the investigative report was completed approximately five months after its initiation. Yet the review

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<sup>14</sup> Normally, allegations of misconduct relate to a specific incident. However, there are cases (such as this one) where the allegations cover a course of conduct that spans several days, weeks, or even months. This can complicate the "agency knowledge" analysis. It requires careful attention – and preferably an emphasis on cautious, conservative estimation of when the "clock" can be said to have started.

process after the report's submission consumed an additional 5 ½ months, causing the case to fall out of statute. Had there been an accurate calculation of the "knowledge" date upon receipt of the investigative report, the review process could have been significantly shortened so that a timely notice could be prepared.

Because the case had been assigned to an outside investigator, BPD had challenges in ensuring that the statute date was appropriately calculated. The primary City contact with the investigator during the investigative phase was not the Police Department and BPD did not receive the report directly or even at the time it was submitted. However, had BPD been attuned to the issue, it could have asked questions about whether there were any statutory issues and requested that such an inquiry be undertaken.

This case presents an opportunity for a serious "lessons learned" for BPD and the City. As noted above, written protocols should be developed to ensure an appropriate and continuing calculation of the "knowledge" date for "course of conduct" administrative investigations with the practices set out above. Even in cases in which the investigation has been appropriately "outsourced" to an independent entity, BPD and/or other City stakeholders should be vigilant in ensuring that the "knowledge date" is correctly determined and revised as additional evidence is collected during the investigative and review stage. With such protocols, it will be significantly less likely that future cases result in a situation which runs afoul of the statutory deadline.

***Recommendation 1: BPD should develop written protocols to ensure appropriate and continued calculation of the one-year statutory deadline for "course of conduct" allegations.***

#### Premature Complainant Notification

In this case, after the investigation was completed and while it was under review, the complainant employee left BPD. After the notice of intent to discipline was provided to the supervisor but prior to the beginning of the appeal process, BPD sent a letter to the complainant, explaining that it had determined that the supervisor had violated policy and that appropriate administrative action had been taken.

However, as detailed above, after BPD considered the supervisor's challenge to the discipline it found that the matter was untimely and that the substance of the allegations could not be sustained. Despite this reversal of its findings, there is no evidence that BPD provided additional information to the complainant about the actual final disposition of her complaint. Even at this late date, it would be important for BPD to do so.

More importantly, this circumstance should provide a "lessons learned," and the Department should work with its City partners to develop processes to ensure that a complainant be accurately advised about any modified disposition of any complaint.

***Recommendation 2: BPD should work with its City partners to ensure that protocols are devised so that a complainant is accurately advised of any initial disposition and any disposition modified as a result of post-disposition proceedings.***

### C. Issues Involving Supervisors

As part of regular evaluation criteria, we received all misconduct allegations involving Department supervisors (sergeants and above) as subjects. These cases are significant for a couple of reasons: for one, appropriate accountability at *all* levels is important to the legitimacy of any disciplinary process; for another, it is a substantive reality that potential misconduct by Department managers has distinct implications for operational effectiveness.

From these vantage points, the results are mixed. The good news is that the Department seems appropriately rigorous when it comes to handling complaints or concerns involving supervisors. This is easier said than done, especially when investigators are asked to pursue allegations against people of higher ranks than they themselves hold. The thorough reviews of these matters – some of which involved interviews with dozens of witnesses – reflect a willingness to confront allegations appropriately that is commendable. It should also be noted that the total number of cases in which a supervisor was involved as a subject was reduced notably from last year's 16 to this year's 6. Less encouraging is the behavior or conflicts that are giving rise to the investigations in the first place.

Some of the cases within the audit sample reflected both parts of that dynamic. For example, one of the longer, more labor-intensive reviews revolved around one supervisor's multiple allegations of mistreatment against a higher-ranking officer. There were nine separate concerns raised, and each of them was thoroughly investigated and thoughtfully assessed. Each charge was convincingly refuted. At the same time, the underlying tension between the two individuals that gave rise to the complaint was an issue of long standing, and the complainant's concerns about being taken seriously prompted him to contact city officials outside the Department. He professed that the conflicts that concerned him dated back several years – obviously a sub-optimal situation that presumably created undercurrents of its own. It is regrettable that more pro-active efforts at resolution had not occurred.

Another case, involving a supervisor's inability to establish good working relationships and making disparaging remarks about colleagues and the Department, was also carefully investigated, including a review of CAD reports, dispatch audio, and relevant incident logs and a thorough review of the supervisor's work history to substantiate a pattern of practice. Both allegations in this case were appropriately sustained. While we do not have insight into this supervisor's history beyond the contents of this specific case, the supervisor's issues, and this subsequent personnel investigation, seemingly involved broader personnel concerns between the supervisor and the Department. These included his use of time off and complaints about

assignments – wider strains that perhaps warranted attention outside the parameters of the investigative process.

Even more concerning was a case in which two officers alleged that they had been inappropriately berated by a supervisor on multiple occasions. This was a sustained case, in which the Department found that the subject supervisor had in fact used inappropriate and derogatory language in multiple instances of conflict with the relevant officers. Several aspects of the case – and particulars of the allegations, including disparaging comments about other supervisors – raised questions about the supervisor’s leadership philosophy, demeanor, and approach in the field. Again: the Department’s willingness to address the issues in the form of a rigorous review and subsequent accountability is reassuring. More broadly, though, we encourage BPD’s leadership to re-focus efforts on cultivating and reinforcing a management philosophy in which supervisors are a core asset instead of a cause for concern.

To its credit, the Department has already taken responsive action with some identified individuals. It has facilitated formal mentoring opportunities with available resources from outside the agency as a means of promoting new approaches to concerning patterns of behavior. It is our understanding that participating employees have welcomed the assistance – and benefitted from it. This reflects well on them, and offers an example of how – at their best – managerial interventions are constructive in their philosophy of accountability.

***Recommendation 3: BPD should continue to prioritize training, counseling, and accountability measures that will help promote cohesive and effective supervision throughout its management team.***

Another issue flagged in this year’s audit and relating to mid-level supervisors was process-centered: namely, the approach to initial intake interviews during the review process for both misconduct and force. We noted two cases in which the supervisor went beyond information-gathering and instead sought to mediate, investigate, explain, or otherwise resolve the relevant complaints short of a formal inquiry. (In one case, for example, the supervisor asked the complaining party whether he thought his facial tattoos might have prompted the officer’s offending questions about probation or parole status.) The supervisor’s intentions appeared to be good, and the desire to clarify sincere.<sup>15</sup> But, in this context, the line is thin that separates

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<sup>15</sup> In fact, as the Association pointed out to us, clarification and questioning can be a form of “customer service” when a complaint is actually more a function of misunderstanding. And the highlighting of initial inconsistencies can have investigative value should a case proceed through the system. We are more moved by the first point; the second still seems more like cross-examination or defensiveness that sends the wrong message at intake. And we stand by our larger notion that receptivity to complainants should be more the priority than being “right” at the time of these initial encounters.

constructive problem-solving from unwelcome advocacy – at least as far as complainant perception is concerned.

We noticed a related issue in an interview with an arrestee who had been subjected to force while being arrested on intoxication charges. Rather than focusing on simply obtaining the woman’s version of events (which is a key component of both risk management and proper force review), the interview challenged her story at different junctures and focused on her conduct rather than that of the officers. Predictably, the dynamic remained contentious and the interview was not especially productive.

The Department has reminded us that all supervisors receive approximately two to four hours of internal affairs training during POST-approved supervisory training and are encouraged to take a 24-hour internal affairs course. Supervisors also discuss investigative procedures during weekly supervisor meetings. And we commend BPD, as we have mentioned in the past, for sharing responsibility for misconduct reviews throughout its management team rather than “quarantining” it within a small cadre of internal affairs officers. Nonetheless, these particular examples are a reminder that effective intake interviews are a skill; the Department should remain vigilant about both cultivating and monitoring them.

***Recommendation 4: BPD should continue to train supervisors on the intake process for interviews of complainants and/or subjects of force, with an emphasis on the importance of objectivity and thoroughness at this phase of review.***

#### D. Issues with Recorded Evidence

Several cases featured failure to record either as a primary allegation or collateral component – and something that unfortunately undermined the conclusiveness of the underlying investigation. In one case, the complainant alleged that a detective had done a poor job of investigating his claims, and asserted that racial bias was a motivation. Importantly, two calls between the complainant and detective (which obviously would have constituted relevant evidence) that were supposed to have been recorded were not.

Another noteworthy case involved a review of multiple instances in which the same veteran officer had failed to activate his audio device during an encounter resulting in a use of force. While investigating the case, the Department found other instances in which past recordings that *had* been made by this officer, and which they sought to assess, had seemingly been deleted from the storage system. The investigation was unable to ascertain the reason for the missing files, and no wrongdoing was established. However, the review of the other force incidents (a total of six in approximately one year in which recordings had not been made) was instructive. It showed not only a pattern of behavior by the officer that was concerning, but also a tendency by the Department to respond less than robustly when these lapses occurred.

The officer's explanations varied from mechanical problems to the suddenness with which encounters escalated (thereby precluding his ability to attend to engaging the recorder). We found some of these more credible than others. (For example, one situation that the officer described as "tense, uncertain, and rapidly unfolding" involved confronting an uncooperative individual who was pushing a cart filled with recyclable cans.) Officer safety is obviously of paramount importance, and we recognize that exceptional situations can arise. At the same time, the recorders matter to accountability in ways that merit consideration – and prioritization – as well, and we are wary of exceptions swallowing rules when they are too readily cited.

Perhaps even more problematic, though, is that the Department's supervisory response was generally lacking. In three of the six cases, no reference to the issue was apparent at any of the multiple review phases for each force incident. In others, the issue was noted and "discussed," or logged as a performance matter. But only the last incident was pursued for a disciplinary consequence, and none of these lesser interventions had seemingly accomplished much in altering officer behavior.

While this case was the most glaring example, it was not alone. We noted another force case in which there were three involved officers – none of whom activated their recorders. This was handled as an informal counseling matter. However, two of the officers wrote in their reports (inaccurately) that they had in fact recorded the incident – a mistake that was perhaps a "cutting and pasting" error more than an intentional deception, but nonetheless a compounding deficiency.

In short, we reiterate a point that has never been more significant for BPD's personnel and leadership, given the advent of body-worn cameras (and attendant public expectations) to the Department: it matters to turn them on in compliance with policy. And, while it is understandable for distraction or mistake to occur in the very moments of engagement, conflict, or physical force when the cameras are most potentially useful, officers must work to develop competence in this regard – and must be held appropriately accountable by supervision.

***Recommendation 5: BPD should prioritize the training on and reinforcement of policy requirements for all recording devices, and should develop accountability measures that minimize the likelihood of repeated failures to record.***

We also take this opportunity to mention another issue with recordings that may require some adjustment in mindset and past practice. This relates to the unprofessional language that we heard in a few instances across this year's span of audited cases.

It should be noted that BPD's officers often come across as restrained, composed, and patient in their interactions with the members of the public whom they encounter in these cases. It is impressive to hear – particularly in the face of behavior that is verbally and/or physically belligerent. Still, occasional examples to the contrary do arise, and can quickly undermine confidence in officer decision-making or composure.

We are familiar with the notion that profanity can sometimes be employed knowingly and strategically – a way to establish “command presence” or to let the subject know that officers are “serious,” which in turn promotes compliance. Or so goes the theory. We do not discount it entirely or consider ourselves overly fastidious in this regard. But it does deviate from the Department’s standards, often strikes us as gratuitous or intemperate rather “strategic,” and almost universally makes a poor impression when members of the public are exposed to it – either in the moment or in the context of a later review or even court proceeding. In some of the cases that we looked at this year, we had the sense that the officer’s approach actually *elevated* tensions and contributed to force becoming necessary.

To its credit, the Department has caught these moments at times in the past, and has worked to address the issue with relevant officers through counseling and training. Now that the Department’s recording capacity is so significantly increased, we hope that its officers will be especially mindful of the power of professionalism. And we encourage the administration to make this a focal point of attention and, as needed, accountability and remediation.

***Recommendation 6: BPD should look for ways to reinforce the importance of professional language with its personnel, particularly in the context of recorded encounters, and should develop a clear set of expectations and accountability measures for those who struggle to meet expectations in this regard.***

#### D. Racial Bias

While the Department received more *allegations* of racial bias this year, this is partially a function of BPD’s conscientious approach to identifying and addressing issues when they are raised. In most of the ten cases in which complainants included concerns about profiling or discrimination based on race, these issues were collateral to another misconduct claim. Nonetheless, the Department made a careful effort to explore the allegations when they arose, and none was substantiated.

One approach used by investigators in these cases is to go beyond the circumstances of the disputed encounter to evaluate “Officer History” more broadly – and possibly identifying anomalies or potential issues that warrant further attention. (One example might be a disproportionate number of arrests and cites involving people of color, relative to the overall population.) The cumulative statistics in the cases we looked at did not reveal patterns that suggested bias, which is obviously encouraging. And we commend BPD for recognizing that bias is difficult to establish in the context of one case, and for pushing further accordingly in a sincere effort to remain vigilant against discriminatory policing.

That said, we also noticed some limitations in BPD’s approach. For example, the statistical analysis is relatively limited in terms of proportionality (as opposed to raw numbers). Moreover, currently available data apparently does not include detention stops that do not lead to arrest or citation – a category that is closely associated with race-based profiling or harassment.

We asked the Department about this, and learned that it is in the process of responding to new state and federal requirements for collecting and reporting data across a range of relevant criteria. Meeting these standards will be a significant step forward. However, it is our understanding that the necessary computer upgrades are costly, and that BPD won't *have* to comply fully until 2023. With respect to the challenges of comprehensive data collection, and the time and money commitments entailed by further review in this arena, we encourage the Department to look for efficient ways that, during the interim period, it can expand on and reinforce its own good work.

***Recommendation 7: As it moves forward with plans to meet new data collection and reporting requirements, BPD should continue exploring interim methods to assess officer compliance with expectations for non-discriminatory enforcement.***

## F. Other Major Investigations

### Case 1

Earlier this year, and based on our auditing relationship with the City, we began to receive copies of correspondence from a complainant who alleged various instances of misconduct arising from BPD's arrest of his adult son. The latter individual had collided with cars that were stopped at a traffic light, causing minor damage, and made statements to responding officers that suggested he had done so intentionally. Accordingly, he was eventually charged with felony counts in connection with the incident.

The man's father was a retired police officer who followed the proceedings closely, took exception to several aspects of the BPD response, and advocated strenuously on his son's behalf. Among other things, this advocacy took the form of a very long, very detailed complaint of misconduct that he submitted to the Department while his son's case was still pending. (One of the contributing factors to the complaint's comprehensive nature was the father's access to discovery materials – including police reports and audio recordings – that the Department had provided in conjunction with the criminal case.)

The charges were eventually dismissed after nearly a year, but the man persisted in support of legal challenges to the original arrest; he wanted his son affirmatively declared innocent by a judge, a motion that is only granted in exceptional cases. He also maintained and expanded upon his criticism of the different participants in the justice system. These included BPD, and caused him to contact the Burbank Police Commission as well as OIR Group about his concerns.

For purposes of its review, BPD Internal Affairs unit itemized and investigated the allegations of officer misconduct that were featured as "critiques" in the lengthy document that accompanied the complaint. Eleven individual employees were identified and interviewed as subjects in relation to one or more of the issues, which included the following:

- The uncertain initial handling of the incident and of the suspect, who was detained, handcuffed, questioned in the field, arrested, and brought to the BPD jail prior to receiving his *Miranda* advisement.
- The decision-making about testing, booking, and transporting the suspect in light of potential issues of incapacitation.
- The adequacy of the collision investigation, both at the scene and in light of subsequently emerging evidence over the course of the next several months.
- The professionalism of officers in their comments to and about the suspect, as captured in their audio recordings.

The Internal Affairs investigation was, on the whole, impressive in its thoroughness, thoughtfulness, and organization. We concurred with the vast majority of the initial findings, and found the Department receptive with regard to the small number of questions/challenges that we raised.

Six of the eleven accused employees were found to have violated at least one Department policy with regard to the case; they received an appropriate remedial response. Others of the allegations were deemed unfounded.<sup>16</sup> It should be noted that there is no evidence to suggest that anyone acted intentionally to subvert fairness to the arrestee or to otherwise mistreat him in the response to this incident or its aftermath. This was true of the questioning issue in particular: errors seem to have resulted from a combination of inexperience and the ambiguities created by the initial traffic accident vs. crime uncertainty.

But a performance lapse need not be intentional to be worthy of formal attention. It was important to issue the appropriate sanctions to involved employees, and for BPD to commit to relevant training that addressed identified issues in a constructive way.

This was a complex incident that resulted in an unusually lengthy and detailed complaint. Certainly, the Department's response reflects some of the core fundamentals of the discipline process. These include a serious and inclusive approach to allegations, a rigorous review, appropriate findings, and an emphasis on constructive learning opportunities for involved parties and the agency as a whole.

### Case 2

As mentioned above, one case we reviewed this year concerned the Burbank Animal Shelter, over which the Department has administrative responsibility. The originating issue involved

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<sup>16</sup> This was also the case with regard to supplemental allegations that the complainant made months later, this time with regard to the presence of an officer at a subsequent court proceeding, which the complainant considered an intentional act of intimidation. Evidence established an unrelated and legitimate basis for the officer's appearance in the courtroom on that day.

record-keeping and management in connection with certain powerful drugs administered to the shelter's animal patients. As the investigation proceeded, it became clear that practices in the area of obtaining, distributing, and tracking of drugs were disorderly at best. One problem, for example, was the apparently longstanding practice of accepting and using "leftover" drugs that were donated by members of the public, in the absence of a formal protocol for doing so. Other problematic practices (failure to keep logs, failure to provide timely examinations) also came to light.

Eventually, six of the shelter's 14 civilian employees became subjects in the investigation. (The shelter also relies on a large and dedicated cadre of volunteers.) Sustained policy violations resulted for three of the subjects relating to "inefficiency in the performance of duties."

As this was unfolding, and to its credit, the Department began to grapple with some of the underlying realities at the shelter – namely the strains created by a heavy workload, limited resources, and some systemic inefficiencies. It engaged in a substantive project to address these concerns, including formal tours of other nearby facilities to assess best practices. Our understanding is that new protocols have been established to address some of the problems that prompted the investigation.

In short, the Department appears to have done good work in this case, and used the detailed investigation as a springboard for both accountability *and* needed reform. These are positive developments for a situation that clearly was ripe for administrative attention.

## V. Review of Force Incidents

### A. Introduction

The twenty-two cases we reviewed for this year’s report reflected attributes in the BPD process that we have commended in the past: multi-phased scrutiny, insightful analysis, and a broad scope that looks at the *totality* of each encounter for elements to reinforce or amend. All involved officers are expected to provide a detailed written incident report after each use of force,<sup>17</sup> and the review process continues from there at the sergeant and lieutenant levels. Each force package also includes a “Watch Commander’s Insight” memo – a procedure that both promotes rigorous analysis and helps ensure something useful will come of it. And the Critical Incident Review Board finishes the process by convening a panel of Department executives and subject matter experts to discuss and make findings.<sup>18</sup>

Beyond the determination of whether each force application was in policy, the various phases of evaluation also produce feedback and learning opportunities; these are then conveyed to involved personnel and – as relevant – to the agency as a whole. Among the useful observations were the following

- In a complex case involving the extraction of a recalcitrant subject inside a motel room, several BPD officers responded – including two different sergeants. Both ended up physically engaged in the arrest, and the reviewing lieutenant observed that it would have been preferable for one to remain in a detached role as incident commander. (He also faulted himself for not recognizing it and addressing it as the event unfolded.)
- Officers who responded to a call that ended in a use of force were commended for their tactical decision, earlier in the response, to stop a foot pursuit and rely instead on setting a perimeter and utilizing air support to locate one of the suspects.
- Force involving punches to a suspect’s head was found to be justified – but the endorsement was accompanied by a caution that the technique is a common source of avoidable hand injury for officers.

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<sup>17</sup> We noticed one example of a report lacking a sufficiently descriptive narrative of the officer’s involvement; the officer was asked to provide a supplementary incident report. In another incident, the Critical Incident Review Board noted a written reference to the suspect’s refusal to “give up his hands” as a predicate for force being deployed – and recommended that future reports also explain *why* such a refusal is an officer-safety issue.

<sup>18</sup> We have noted in the past that the final administrative closure of these cases could sometimes lag for months after the original incident. This delay is less than optimal in terms of addressing issues and improving performance as needed. To its credit, the Department has worked on improving this: most reviews occurred within a couple of months, and sometimes even more efficiently.

- In one incident involving officers attempting to control a crowd exiting a local nightclub, the CIRB discussed the importance of crowd control, maintaining a “skirmish line” and deploying crowd control of equipment, such as helmets and batons, as needed; the CIRB determined that, in addition to debriefing all of the involved officers and holding a supervisor training, Department-wide training was necessary on the topic of crowd control/crowd management.
- A case involving the K-9 bite of a suspect who had been hiding in a vent area, the struggle to extract the suspect and get him into cuffs while working around and with the dog led to some confusion – and one officer was inadvertently bitten in the leg. (The injury was minor.). The use of force was found to be in policy, but the Board recommended that the topic of officer coordination during K-9 deployments was flagged for a Department-wide briefing.
- In multiple cases, the force – while ultimately in policy – was evaluated through the lens of available alternatives for future consideration. One incident that involved the deployment of several Tasers as officers tried to control, and subsequently handcuff, a large and intoxicated male suspect in a convenience store parking lot, came under scrutiny for the officer’s use of “tactical” language, instead of de-escalation techniques, that may have exacerbated the situation. The Board also observed that better communication and tactical coordination between responding officers may have resulted in a more controlled use of force with fewer suspect and officer injuries. Another case involving a takedown caused the Board to point out that OC spray and/or a Taser would also have been warranted and perhaps less risky than the grappling that occurred.

Attention to issues like this – and treating force incidents as a vehicle for the Department to evaluate itself and make adjustments – are hallmarks of the BPD process at its best. We know that the Department’s model requires a significant commitment of time and energy, and that it goes well beyond what other agencies are doing in this arena. Fortunately, it seems like it is deriving real value from the investment.

## B. Issues and Observations

### *CIRB Disposition Headings*

We made one technical observation that was as much a tribute to the Department’s holistic approach as it was a problem. This related to the disposition *form* that the CIRB uses when closing out cases it has reviewed, and the range of possible “Findings” that the Board chooses from in assessing the “Tactics Prior to the Incident” and “Tactics During the Incident.” We noted that the outcome “No Policy Violations” was almost invariably used, even when thoughtful and worthwhile opportunities for improvement did emerge from the panel’s discussion (and, importantly, were acted upon in subsequent discussions with involved personnel).

In some these incidents, it may have been more accurate to use the disposition “Within Policy – Remedial Training Required.” (Other choices include “Policy Violation – Remedial Training Required” and “Policy Violation – Referred to IAB.”) Another alternative – not currently available but seemingly apt for some of the outcomes reviewed – might be “No Policy Violations – Training/Counseling Opportunity Noted.”

This may seem like a literal example of a “form over substance” issue that has limited actual significance. In our view, though, refinement of the form has a useful “check-and-balance” component. The proper designation can assist with record-keeping and make it easier to confirm that the relevant post-incident interventions were issued, consistent with the CIRB’s assessment and wishes.

***Recommendation 8: The Department should update its CIRB Disposition forms to reflect the actual outcomes of its deliberations with more accuracy and precision.***

#### *“Under the Influence” Cases*

In several of the use of force cases that we reviewed (and one Internal Affairs case), an intoxicated suspect was arrested and booked for being under the influence of drugs and/or alcohol in public. Yet once in custody, the jailer erroneously documented that the suspect was not intoxicated and did not detain the suspect in a detoxification cell under observation. This practice suggests potential policy and legal issues for the Department.

Per the officers’ reports and other documentation, in these cases, the arrest charges were seemingly justified; the suspects in these cases were clearly intoxicated, as they exhibited an elevated heart rate, trouble walking/balancing, odor of alcohol, slurred speech, or were losing consciousness. Some had drug paraphernalia. Some of these suspects were taken to the hospital for medical evaluation prior to booking.

While the suspects were all medically cleared for booking by medical personnel, Department policy states that inmates whose level of intoxication presents a threat to their safety should be placed in a sobering cell; in these four cases, the inmates were not detained in the sobering cell nor were they under any observation despite their intoxicated condition. Further, in at least two of these incidents, jail personnel erroneously checked “No” to “Does the arrestee appear to be under the influence of alcohol or drugs” on the Arresting Officer Observation form.

These seemingly innocuous practices by jail personnel create a potential legal loophole for suspects: if the sole reason for arrest is being under the influence in public, as was the case in these four incidents, but jail forms note that the suspect was not intoxicated and the protocol for

intoxicated suspects was not followed, there is a disconnect between the rationale for arrest and the subsequent actions and documentary evidence in the jail.

It is possible that our observations may have been anomalies, as we also noted other cases in which jail protocol for intoxicated suspects was followed; the intoxicated suspects in these cases were kept under observation in jail in a detoxification cell (e.g., 30-minute checks) and the booking paperwork noted their intoxication. At any rate, and in light of the high frequency of these cases and the attendant liability concerns in dealing with incapacitated people, we encourage the Department to review this issue and clarify its expectations as needed.

***Recommendation 9: The Department should assess its policies and protocols for the detention of individuals who have been arrested on charges related to intoxication, and work with jail personnel to ensure understanding of and compliance with expectations.***

#### *Taser Technical Issues*

After identifying tactical concerns with the use of Tasers, the Department conducted a Department-wide Taser training in June of 2018. However, the Department continued to have technical issues related to Taser deployment even after this training.<sup>19</sup> In at least four cases, the Taser's internal clock was not accurate and had to be corrected/synced after the incident. In three cases, the data related to Taser deployment was not accurately collected.

The Department's purchase of Taser 7 should remedy the technical issues. Firstly, the new model promises to reduce "Taser drift," or the approximately 2-minute per month discrepancy in the internal clock. Secondly, the Taser 7 includes an "intelligent battery" that will collect all data upon deployment and upload it to the Department's cloud.

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<sup>19</sup> We also noted a tactical issue regarding Taser deployment: in two cases that occurred after the Department-wide training, the officers failed to issue a verbal warning of the intended use of the Taser as required by Department policy. However, the Department noted that the rapidly evolving nature of these cases precluded a verbal warning; this exception is stipulated within the policy.

## V. Review of Vehicle Pursuits

### A. Introduction

The Department continues to carefully review and monitor vehicle pursuits and to seek ways to balance public safety and the risks related to pursuits.

The Department has maintained a steady reduction in vehicle pursuits since the policy reform implemented in 2013. In 2018, the Department reported two vehicle pursuits, a marked reduction from even the previous three years.<sup>20</sup> To the extent that a continued reduction in incidents defines “success,” the 2013 policy changes are seemingly successful.

However, review of these two incidents suggests that there are still questions regarding understanding and implementation of the Department’s 2013 policy. As reported in OIR Group’s 2017 report, the Department had convened a team to review the 2013 vehicle pursuit 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. This team has seemingly stalled its efforts at policy revision, but different documents (including the analysis from one of the CIRB reports) as well as conversations with Department executives suggest that simplification, or clarification, of the policy is still desired.

The 2018 incidents and relevant concerns are detailed in the table below. The first pursuit lasted approximately 30 seconds and travelled approximately 0.6 miles per the Watch Commander’s Report; it was found to be In Policy because the officer had reasonable suspicion that the suspect, who had been involved in a traffic collision and fled, was driving under the influence due to the suspect’s erratic driving patterns. The second pursuit, which formally lasted one minute and 30 seconds and 0.6 miles, was found to be Out of Policy because the rationale to initiate the pursuit, a violation of VC5200(a) and failure to yield, did not meet the authorized reasons for initiating a pursuit.

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<sup>20</sup> In 2017, the Department reported six vehicle pursuits, one of which was out of policy.

## 2018 Vehicle Pursuits

Vehicle Pursuit	Cancelled	CIRB Finding	Remedial Training Ordered	Debriefed	From Incident to CIRB	From CIRB to Debrief
001	No	In Policy	Group Debrief	Yes	67 days	23 days
002	Yes – By involved officers	Out of Policy	Personal Debrief	Yes	74 days	104 days <sup>21</sup>

### 001:

This incident began when officers in separate cars were dispatched to the scene of a traffic collision. As the first officer neared the scene, he received updated information that one of the involved vehicles had fled, and soon spotted a damaged car that matched the description. He made a u-turn and attempted to “catch up” to the vehicle, which drove erratically before stopping in the center divider.

The officer activated his solid red light and exited his vehicle. At minute 1:18 of the recorded radio communication, he broadcast that he was setting up for a felony traffic stop and was awaiting back-up. He stood behind his driver’s side door for officer safety, but then reentered the car as the suspect began to slowly move forward approximately 15-20 feet.

The officer got back in his car, turned on his siren, and activated the entire overhead light bar. At minute 1:40 of the radio communication, he reported that the suspect was moving. The slow-moving suspect vehicle collided with another vehicle about 20 seconds later. That car pulled over, but the suspect continued to travel on the roadway. At this point, according to the officer’s

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<sup>21</sup> As noted in our last report, holding a meeting of the Critical Incident Review Board shortly after the incident continues to elude the Department. Both CIRB sessions occurred more than two months after the pursuit.

Additionally, when CIRB makes a finding, it is important to make a prompt official notice to the involved officers. In both cases, the Department reported that leaders provided nearly immediate, informal meetings with the involved officers to explain the CIRB findings. This is commendable. But, as the CIRB members themselves noted in a worksheet accompanying the file, these delays are partly attributable to consultations with the Chief and continued discussion about the policy and possible reforms. In that respect, the time lag is another symptom of the broader need for clarifications that we discuss below.

written report, he believed that the driver of the Lexus was driving under the influence of alcohol or drugs.

At minute 2:16, the officer provided an update over the radio: the suspect vehicle was still moving. Around minute 2:50, a sergeant asked the officer if the car was yielding. Informed that it was not, the sergeant responded, “you gotta start putting out some of the criteria [of a vehicle pursuit].” This caused the officer to communicate further details about direction and speed.

Around this time, a second officer joined the pursuit and the two continued to pursue the suspect with sirens activated.<sup>22</sup> Speeds increased to approximately 40-50 MPH, and several additional units were dispatched to the location.

At approximately minute four of the broadcast, an involved officer said the suspect vehicle had been stopped. Per officers’ written reports, four radio cars “boxed in” the suspect at a red light. The driver was uncooperative, resulting in a use of force.

While identifying several areas for training, the Watch Commander and CIRB determined that this pursuit was In Policy. The CIRB determined that the tactical issues found in this incident required a “group debrief,” which was held approximately one month after the CIRB review. In the debrief, all involved personnel discussed the tactical issues related to both the pursuit and resulting use of force. As related to the pursuit, the topics included radio discipline during pursuits to avoid officers speaking over each other in radio communication, the importance of tactical communications (generally, and specifically as related to the broadcast of vehicle pursuit criteria by the pursuit officer), and the need for pursuit dashboard stickers on all vehicles.

## **002:**

Two officers riding together in the early evening attempted to pull over a car with paper license plates. The car failed to yield to the officers’ emergency lights and sirens for several blocks while driving at a speed at or below the speed limit. The driver was making hand gestures at the officers, which the officers believed meant that the driver did not know where to stop. The officers continued to follow through two controlled intersections with solid red lights at a speed of approximately 10 MPH. The officers “chirped” their siren and broadcast commands over the

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<sup>22</sup> The second officer did not notify the dispatcher of her entry into the pursuit. Per policy, the secondary unit is responsible for “immediately [notifying] the dispatcher of entry into the pursuit” and broadcasting the progress of the pursuit. The role of the secondary unit could have been discussed in the CIRB and/or group debrief during discussion of tactical communication issues.

vehicle's audio system, but these were ignored, and the suspect nearly collided with another car as it continued moving.

At this point, the officers correctly determined that their original reason for initiating the pursuit did not fit BPD's criteria for a vehicle pursuit. They turned off their emergency lights and siren. The officers "trailed" the car for three additional blocks while requesting an Air Ship, which responded to the location. Once the Air Ship located the suspect vehicle, the officers made a u-turn and stopped following.

Around this time, a sergeant informed the officers over the radio that they could "trail and monitor" the car. The officers followed the Air Ship's radio communication to locate the suspect vehicle, which had entered the 101 freeway. At this point, the California Highway Patrol got involved, and ultimately went into pursuit when the suspect vehicle failed to yield.

The sergeant advised the officers that they could continue to "trail and monitor" the pursuit, which traveled on several freeways through Los Angeles and Orange Counties and lasted nearly two hours. With the original officers still engaged in this way, the suspect vehicle eventually returned to Burbank. Additional BPD units responded to the area. The car entered an alley and both occupants fled, but they were apprehended by a combination of CHP and BPD officers.

The total duration of the officers' formal pursuit, per the Pursuit Review Report, was approximately 0.6 miles and lasted 1 minute and 30 seconds. In reviewing this incident, both the Watch Commander and the CIRB determined that the pursuit was Out of Policy because the rationale for initiating the pursuit did not meet BPD's criteria.

## B. Training

While the Department has not made formal changes to the 2013 policy, it continues to train officers and dispatchers on those aspects of the policy that seem to have generated the most confusion. Specifically, training in 2018 and 2019 went beyond general reinforcement of the policy to focus on communication, the role of supervisors, and pursuit initiation. For example, OIR Group learned that the Department held a training in October of 2019 that included one day of classroom learning to review the policy in detail, and one day of simulated, slow-moving pursuits. In the simulations, officers practiced live pursuit communication (e.g., broadcasting that a pursuit had been initiated) and pursuit termination. These are constructive responses.

Further, the Department has concluded that all black/whites now have a Pursuit Dashboard Placard/Sticker, a tool meant to guide officers' decision-making through a posting of highlights from the pursuit policy. In reviewing VP2018-001, the Department learned that a Pursuit Dashboard Sticker was absent from the primary pursuit vehicle. The Department now conducts

physical inspection audits, most recently in August of 2019, to ensure that the stickers are in every vehicle.<sup>23</sup>

### C. Policy: Failure to Yield and Pursuit Initiation

While detailed training and having the Pursuit Dashboard Sticker in every vehicle are promising, review of both incidents suggested that the vehicle pursuit policy remains seemingly complicated to enact in real-time situations, and, moreover, makes *review* of these incidents complicated. Anecdotally, officers seemingly continue to be confused about how to properly initiate and communicate a pursuit. And it is telling that the CIRB evaluations of these incidents tend to be lengthy and disputed affairs – as if even the Department’s experts lack a coherent vision of the policy and its application to specific fact sets.

It is our understanding that proposed revisions are still being considered in light of some of these dynamics, and the ongoing desire by officers to have greater latitude in responding to situations as they arise in the field – particularly at the outset of an ambiguous encounter. We recognize that it is challenging to find the perfect balance point between a restrictive policy (which lessens risk by reducing the number of pursuits that occur) and an appropriately empowered field force (which enhances public safety by apprehension of dangerous drivers). A willingness to revisit and revise can be beneficial. While we hesitate to weigh in on the entirety of proposed revisions<sup>24</sup>, we can speak to two specific areas that were implicated in this year’s incidents: failure to yield and pursuit initiation.

Firstly, as detailed in the Watch Commander’s reports for each incident, both 2018 incidents involved a suspect’s failure to yield, which seemingly precipitated the pursuit. The current policy, and the law itself, do not outline tactics for responding to these “failures to yield.” In a 2018 Memorandum, a team assigned to review the policy suggested adding specific language regarding how to manage “Failure to Yield” – a change that would better guide officers in this inherently ambiguous situation. We have seen some of the proposals, which offer improvement but still leave questions in our view. Further inquiry is probably warranted – a step we encourage BPD to take.

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<sup>23</sup> As with the email audits described above, the Department has achieved impressive compliance in relatively efficient fashion: it decides to prioritize, publicizes its intentions, follows through with actual inspection, addresses deficiencies as needed, and publicizes results. This approach works well – and has broad potential applicability.

<sup>24</sup> Our understanding is that the current version of the policy is working as intended: reducing the number of pursuits and eliminating the attendant risks accordingly. From that vantage point, the idea of “fixing what isn’t broken” gives us pause. To pass muster, then, any substantive reforms should be clearly reconcilable with the strengths of the current approach.

Secondly, the review of incident 001 resulted in the question: what determines the official start of a vehicle pursuit? Per the Department, a pursuit officially begins when the lead vehicle broadcasts that s/he is in pursuit and provides the specific criteria related to the pursuit (e.g., rationale for pursuit, direction of travel, speed, etc.). But what of tactics (such as activation of light bar, following a suspect vehicle, etc.) that occur prior to this broadcast but that seemingly pertain to a pursuit's occurrence?

The Watch Commander's debrief of incident 001 reported that the pursuit lasted approximately 30 seconds and travelled approximately 0.6 miles. This calculation would be somewhat accurate if the pursuit was considered official from the time the sergeant initially directed the officer to broadcast the pursuit criteria. However, as a substantive matter, and for purposes of assessing the "spirit" of officer tactics and decision-making, it is arguably more meaningful to measure the span from when the officer first got back in his car after the failure to yield until the time that the suspect was actually stopped – significant longer in both time and distance.

The Department's newly purchased AXON technology may help with this assessment, since recording will begin automatically whenever an officer activates the vehicle's light bar. Nonetheless, it may be worth adjusting the policy so that the involved officer's substantive actions take precedence over the radio transmission of them.

***Recommendation 10: BPD should seek constructive resolution of pending questions about the policy and its proposed revisions.***

***Recommendation 11: BPD should clarify the identified ambiguities in responding to "failure to yield" scenarios.***

***Recommendation 12: BPD should connect the "initiation" of a pursuit under policy to match officers' substantive actions and decision-making, rather than the start of relevant radio broadcasts.***

## VI. Positive Department Initiatives

We conclude with a reference to some of the Department's other achievements and plans for continuous improvement. For example, the Department was gratified recently by the contribution of one of its detectives to the resolution of two decades-old homicide cases. Newly developed investigative "genetic genealogy" was the technique that proved to be a turning point, and it constituted the first successful use of a new forensic technology in Los Angeles County. The Department plans to continue using this technology in the hopes of resolving more "cold" cases – a way in which advances in science and law enforcement can help address and bring closure to past offenses.

### A. Other Advances in Technology

As discussed above, the 2019 implementation of sophisticated new body-worn and in-car camera systems represents a significant commitment by Department and the City to the latest developments in recording equipment. But the Department's commitment to collecting video footage as a source of potentially important evidence goes beyond their own officers. It recognizes how widespread and commonplace recording capacity has become throughout society. Accordingly, not only is BPD collaborating with the community to collect footage from businesses' surveillance cameras and residents' Ring cameras, but it is also facilitating the ability to do this quickly and conveniently through the same Evidence.com portal that officers use to upload their daily recordings.

The Department is also successfully utilizing new technology to facilitate other functions. In March of 2020, the Department will introduce a new, online Film Permit system to facilitate applicants ability to acquire the authorizations they need. It is also enhancing the speed and capabilities of its 9-1-1 system through a transition to a new, "Next Generation" digital model; this format will also increase collaboration with other jurisdictions.

### B. Community Engagement

The Department continues to be active in the Burbank community and to pursue enhanced outreach and relationships. In October of 2019, the Department's Community Outreach and Personnel Services Bureau (COPS) conducted its biennial community study; the online survey had an impressive response, with nearly 1000 respondents. Of respondents who had contact with the police, the majority reported positive interactions.

The study also highlighted issues of community concern (such as the transient population and traffic issues like congestion and reckless driving) that help to frame the Department's overall policing strategy. For example, to better address the transient population, which may experience mental health disorders, the Department created the Burbank Mental Health Evaluation Team (BMHET) in collaboration with the Los Angeles County Department of Mental Health. These teams, comprised of police officers and licensed mental health clinicians, respond to calls for service where mental health issues may be at play to offer services, and can also assist in case management for this population.

The Department also maintains a positive presence in the community, from engaging community members in their Community Academy, Youth Academy, and Neighborhood Watch programs and providing updates via their robust website and social media, to being active on community Boards. Department staff serve on the Burbank Family Service Agency, Burbank Boy and Girls Club, the Burbank Noon Rotary, the Burbank Police Foundation, and the San Gabriel Valley NOBLE.

### C. Internal Development

In addition to its outward-facing engagement efforts, the Department continues to make marked developments internally. The Department has developed its 2020-2022 Strategic Plan and has met new legislative and compliance requirements, such as re-certifying with CALEA, a national accreditation authority, and posting all Department policies and training syllabus online. The Department will continue to perform robust internal audits, such as the email and vehicle pursuit dashboard sticker audits that we discussed, among others.

The Department is actively engaged in recruitment, succession planning and advancement opportunities, both for sworn and civilian personnel. The Department is recruiting heavily to fill open positions after facing a hiring freeze. In 2019, the Department selected several sergeant and lieutenant ranks to attend the International Association of Chiefs of Police and the Woman's Leadership in Law Enforcement conferences, among others, to ensure that "up and coming" sworn have access to leadership opportunities. In 2020, the Department plans to create new non-sworn positions with advancement opportunities, such as a Jail Manager position and multiple Administrative Analyst positions.

Most notably, the Department is committed in newly concrete ways to the wellbeing of its officers. A recent study reported that, in 2019, officer suicides were nearly double the number of line-of-duty deaths, a reflection of the ways in which emotional and psychological strains are as

threatening to the police as more traditional job-related hazards. In 2020, the Department will respond to this reality in a few different ways.

One prominent feature is an officer Wellness Program, led by a Wellness Coordinator, to ensure that all officers receive the counseling and support that they require. Currently, the Department is using the Employee Assistance Program (EAP) to support officers who need extra counseling and coaching; the Department sends officers who experience trauma, both on and off-duty, to the EAP, as well as directing officers who the Department determines would benefit from EAP's "life coaching" and training services to the program. And the Department will continue to support its veteran personnel through the VALOR program, and has received a grant to send participants to the VALOR training in Miami in 2020.