

OIR
GROUP

**Third OIR Group Report re Monitoring of
Burbank Police Department**

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I. Introduction

Pursuant to the 2012 Independent Monitor agreement with the City of Burbank, this Report constitutes OIR Group's third audit regarding internal investigations and administrative reviews conducted by the Burbank Police Department ("BPD"). The subject matter of our monitoring efforts is Internal Affairs investigations into alleged officer misconduct, supervisory evaluations of uses of force by BPD officers, and formal assessments of vehicle pursuits. We looked at a total of 54 IA cases and citizen complaints, twenty-two force incidents, and four pursuit reviews that were completed during the rating period.

We start by noting a welcome gap in the Report's contents: although one of our audit assignments is to review all officer-involved shootings and in-custody deaths, neither has occurred in almost five years. The fact that an agency of Burbank PD's size and responsibilities has had no such incidents is remarkable. We recognize that a number of factors, including pure fortune, contribute to this situation. But for the same reason that a sudden rise in the number of officer-involved shootings would and should be looked upon with concern, the lack thereof is a phenomenon worthy of the city's attention and the Department's pride.

The investigations and outcomes that we reviewed were all completed before our evaluation began. The point of our involvement is to assess the overall legitimacy and effectiveness of BPD's internal processes – not to endorse or reject individual outcomes after the fact. We also make recommendations where relevant in an effort to encourage adjustments or enhancements to existing protocols.

This report reflects the continuing progress that BPD has made in the time we have been tracking its operations. Its systems for review are becoming well established and increasingly sophisticated, and we note several specific instances of concrete and noteworthy improvement. One example comes from the Department's increasingly exemplary Critical Incident Review Board ("CIRB"), which brings executives together to assess force cases and other significant events from a holistic perspective. Last year we urged BPD to make the meetings of the CIRB more regular and timely, and the Department has apparently embraced the recommendation. Cases are reviewed more promptly than ever before, and the resultant feedback to officers is that much more efficient and meaningful.

Similarly, we found several commendable elements in the investigative process for allegations of officer misconduct. For most cases, timeliness of completion has improved considerably, and we noted several instances in which the scope or thoroughness of investigative efforts reflected the agency's movement from a narrow and defensive philosophy of discipline to an inclusive and rigorous one.

Our overall impressions are positive in the categories of both force review and administrative discipline. Nonetheless, in both arenas we identify shortcomings in terms of individual cases and broader processes, and offer them for the Department's consideration.

The Vehicle Pursuit Review process is still relatively new to BPD; moreover, the small number of annual incidents – while welcome from a risk management perspective – understandably slows the “learning curve” for officers and supervisors to get accustomed to new expectations.¹ It was not surprising, then, to identify a handful concerns or shortcomings that deserve attention. The nature and severity of issues seemed both correctable and consistent with the challenges of transition, and the policy itself seems strong.

Finally, we cover some of the recent training initiatives that BPD leadership has shared with us – a reflection of its ongoing commitment to reinforcing its priorities and keeping line officers current with best practices and new approaches. These programs strike us as being substantively worthwhile. This is evidenced by a recent incident in which officers successfully resolved a tense situation with a schizophrenic subject whom citizens had mistakenly believed was involved in an armed robbery. The involved parties cited training they had just received in avoiding “mistake of fact shootings” as a significant factor in their tactics and decision-making.

This is obviously a gratifying result. Not insignificantly, training initiatives and new review protocols are also an indication that – rather than becoming complacent – the Department continues to evolve in positive ways.

II. Data Trends

Critical incident cumulative data show positive trends:

	2011	2012	2013	2014
Citizen Complaints	20	40	37	26
Personnel Investigations	9	11	16	13
Pitchess Motions	25	5	3	2
Use of Force	59	57	54	52

While the number of citizen complaints spiked in 2012, the past two years have seen a significant decline. The fact that personnel investigations have risen since 2011 may be indicative of BPD’s interest in ensuring greater accountability of its officers through that process. Uses of force have seen a steady decline over the past four years.

¹ BPD reported a total of 5 formal pursuits in 2014 (the first full year of the new policy and review process). This constitutes a significant reduction from the 10 in 2012 and 11 in 2013. While a number of factors contribute to these variations – some of which relate to suspect behavior and are beyond the Department’s control – the new standards and levels of scrutiny are very likely to have impacted the reduction.

Perhaps the most remarkable figure is the large drop off in Pitchess motions. Such motions are filed with the Court in a criminal case in which the defense believes that the involved officers may have been involved in misconduct that could be important for impeachment value at trial. The fact the defense attorneys seem less inclined to file these motions may be a testament to their sense that current BPD staff is less likely to have potential credibility issues.

III. Review of Internal Affairs Investigations

During this reporting period, OIR Group reviewed fifty-two internal affairs investigations and citizen complaints. What follows is a summary of our findings and recommendations based on our evaluation of the individual files.²

A. Strengths in the Process

Timeliness: In our tenure as auditors for Burbank, we have seen tremendous strides in the timely completion of internal affairs investigations by BPD. Our concerns in this regard were a focal point of our initial report, and the Department responded vigorously in addressing the problem. Now, internal investigations are completed well within acceptable norms and practices. This is a cornerstone of an effective disciplinary system, and the Department's efforts in this regard are commendable.

Perseverance in Investigations: In one investigation, the complainant requested that BPD withdraw her complaint. However, consistent with best internal investigative practices and to its credit, the Department proceeded to complete the investigation. Once a police agency is made aware of potential misconduct, it is incumbent upon that organization to complete its fact-finding and take appropriate action – regardless of whether the complainant has a subsequent change of heart about wanting to proceed. In other words, as important as the wishes or perspective of the complainant might be, the substantive issues should ultimately drive the Department's investigation. During our auditing, we saw examples of this adherence to investigative best practices.

² We were also gratified by the opportunity to have a positive influence on a complainant's pursuit of relief. As part of the audit of IA cases, we reviewed an allegation from a female that property that she had at the time of her arrest, including a car key and jewelry, was missing when she was released from Los Angeles County jail. The BPD investigation clearly revealed that the property, initially collected at the City jail, had been transferred to Los Angeles Sheriff's Department custody along with the female when she made her court appearance. However, when the female initially complained to LASD, she was referred back to Burbank for relief. During our review, we received authority from BPD to follow up on this matter with LASD, and further inquiry ensued. The result was a determination that the mistake had, in fact, been LASD's, and the complainant now has an opportunity to file a claim for compensation from the Sheriff's Department.

Pursuing Newly Discovered Allegations: In one investigation, the initial allegations made by the complainant were expanded when he claimed that one of the responding officers intentionally tripped him. To BPD's credit, and consistent with best practices, it enlarged its internal investigation accordingly.

Audio Recordings of Police Civilian Encounters Provides Contemporaneous and Helpful Evidence. BPD officers carry tape recorders on their person and BPD policy was recently modified requiring that police civilian contacts be recorded. Our audit found numerous examples where the audio recording proved invaluable in proving or disproving complaints from civilians about those contacts. Instead of an unresolvable dispute between civilian and officer about what transpired, the recordings provide an accurate and contemporaneous record of the encounter. The recordings provide an invaluable tool with which to assess the performance of BPD officers.

Examples of Internal Accountability: The review demonstrated numerous times in which BPD leadership appropriately held its members accountable for misconduct it confirmed through investigation. Examples included the following:

- A female complained about the way in which her domestic violence complaint against her husband was handled, including telephonically interviewing her in her husband's presence. After a review of the audio recordings of the interview, BPD agreed that the matter was poorly handled and addressed it accordingly with the involved investigator.
- A citizen complained about the way an officer treated him during an encounter. At one point, the officer admitted that he did not provide the citizen his badge number because the citizen was not giving information to the officer. BPD found that the officer's conduct could have been better and advised the complainant of this finding in the closing letter.
- An officer working the graveyard shift fell asleep while driving, resulting in a collision and significant damage to the police car. The officer was disciplined for the policy violation. More importantly, BPD addressed this issue systemically by briefing the graveyard shifts to be mindful of their physical needs and advising officers could take breaks if feeling fatigued.
- BPD officers responded to a burglary call, but the burglar escaped apprehension. The internally generated investigation found that responding officers did not establish a perimeter, did not cover the rear of the residence, exhibited poor radio discipline, and mistakenly did not call for either air or K-9 support. The review of the investigation was further critical of the station sergeant for not responding to the location in order to coordinate the BPD response. The officers responsible for the tactical and decision-

making deficiencies identified by the investigation, as well as the sergeant, were held accountable for these performance issues.

Using Information Learned During the Internal Investigation to Institute Systemic Improvements: As with the wide-ranging CIRB process, administrative investigations can also become a springboard to systemic reform and policy development. One case we reviewed offered a specific illustration of Burbank's good work in this area. Part of the complainant's concern about the officer's conduct had been that the officer was spitting tobacco juice when he was dealing with him. During the investigation, the officer acknowledged that he could have been chewing tobacco during the encounter. To its credit, BPD recognized that there was no Departmental policy regulating the use of chewing tobacco on duty, but acknowledged that the practice did not reflect well on agency professionalism, and modified policy accordingly so that chewing tobacco is not permitted on duty.

B. Room for Improvement in the Process

Examples of No Record of Accountability: In some cases, while BPD found that conduct by its officers could have been better, there was no documentation of follow through by the Department to reflect this assessment or turn it into meaningful action. Examples included the following:

- In one case, the Department found that the officer in question was not as calm as the Department would expect and that she engaged in comments that exacerbated a negative contact with a citizen. While the Department found that the officer's conduct did not rise to the level of misconduct (and we concur), a documented counseling to the officer seems to have been a warranted and constructive step that was not taken. Moreover, the closing letter to the complainant should have acknowledged the Department's assessment that the officer's conduct could have been better – a statement that was both true and an important gesture of candor and recognition of the complainant's perspective.
- In a courtesy complaint, part of the concern stemmed from the responding police officer telling the citizen not to call the police again for assistance. While we agree with the Department's conclusion that the comment did not rise to the level of a policy violation, and understand the officer's frustration, it would be the rare case where such a direction to the public would be appropriate. Counseling to the officer regarding this important precept could have made this encounter a learning experience.
- In one complaint, the motorist was frustrated about the amount of time it took for the officer to determine the Vehicle Code violation. A review of the audio recording of the contact indicated that there was some uncertainty by the officer about the appropriate section. It was recommended that the officer receive refresher training with regard to the

Vehicle Code. After OIR Group made inquiry about whether this recommendation was implemented, we were informed that while no documentation could be located, a lieutenant indicated that he had talked to the officer about this issue. This is, of course, encouraging, but the lack of formal documentation lends itself to loose ends and missed opportunities.

Lack of Consistent Follow-Up – Interviewing Witnesses: In our most recent audit report, we recommended that BPD ensure that efforts were made to locate and interview all identified witnesses to the incident being investigated. We were heartened to see that, in response to this recommendation, a BPD Captain returned an investigation for further work when he noted that potential witnesses to the event had not been contacted as part of the initial investigation.

However, in another case, the complainant alleged that the police were biased against him in the way they handled a traffic collision. The investigative report noted that the complainant declined to cooperate and be interviewed during the subsequent investigation. The police report further indicated, however, that there were other apparent witnesses to the traffic collision and police response, yet there was no indication in the file of an effort to locate or interview them regarding the allegations. A full investigation would have attempted to obtain information from them about the allegedly problematic police response.

Failure to Sufficiently Examine Defective Communications re Legal Status of Detainees: On at least one occasion, officers detained an individual and radioed Burbank's communications center with a request to determine whether the individual was on probation or parole. The officer was then informed that the detainee was on probation. As a result, the officers performed a probation search of the individual.³ After the search was completed, the officer received a follow-up communication from dispatch indicating that, in fact, the person was not on probation. This error about the status of the individual then formed part of his complaint.

BPD could have and should have examined this aspect of the incidents more closely. It would have been helpful to interview the communications personnel as part of the internal affairs investigation to learn why initially incorrect information was communicated back to the officer and how and when personnel learned that the information originally sent out was inaccurate.

Moreover, in cases in which there is significant doubt about whether an individual is on probation, officers and communications personnel should be careful about performing a search on the individual based on that uncertain status. Because insufficient inquiry was made about why the initial information in this case was faulty and why minutes later, communications personnel discovered the mistake, it is unclear whether this is a records issue, a training issue, or

³ Under California law, persons on probation or parole are often subject to search by law enforcement on a lesser standard of suspicion than persons who are not under such judicial supervision.

something else. Suffice to say that BPD should review this potentially systemic issue to ensure that rights of detainees are not being inadvertently violated.

Racial Profiling Investigation: Insufficient Departmental Response. In one case, BPD received a call from security of a retail store regarding a commercial burglary. After BPD responded, the security employee identified an African-American couple in the parking lot as the perpetrators of the crime. The couple was ordered by BPD officers to stop at gunpoint and it was soon learned that the security guard had misidentified the couple as involved in the crime. The male complained about how he and his companion had been treated; he believed there may have been a racial component to the stop.

At the conclusion of the investigation, the Department faulted a sergeant who had been on scene who had left after the detention for not returning to the location when it was learned that the couple were not involved in the crime. However, the Department found no violations of policy since BPD officers had relied on the security officer's assertion that the couple had taken merchandise out of the store without paying for it.

While we agree with the Department's conclusion that the officers had not been engaged in profiling, more could have and should have been done with regard to this complaint. First, there is no evidence from the investigation that anyone from the Department apologized to the couple at the scene when it was learned that they were mistakenly detained. In addition, more should have been learned about the security officer's error in identifying the couple as involved in the crime, and a supervisor from the Department should have reached out to the store's security office to reduce the likelihood of a future similar occurrence.

Though there was no evidence that BPD's actions were malicious or a function of bias, the experience was nonetheless an undeservedly negative one for the couple. In our view, BPD's exercise of authority put the burden on it to convey a greater sense of understanding to the complainant, and to take more initiative in minimizing the likelihood of similar problems in the future.

Failure to Fully Consider Complainant's "Defense". An individual complained about receiving a citation for parking in a commercial strip mall. The internal affairs investigation revealed that a business owner had informed the complainant that she could park in the lot but that the owner did not have the legal authority to grant such permission. While BPD may have been legally justified in issuing a citation, the parking control officer could have talked to the business owner who gave the complainant permission and used her discretion accordingly. Instead, the case proceeded to an internal affairs investigation that analyzed the case "legalistically" rather than with a common sense approach. While the parking control officer's performance may have been legitimate from a technical perspective, it seemed like a lost opportunity to promote the spirit of the law.

Antagonistic Inquiries Regarding Legal Status: In at least one incident, the initial encounter between the BPD officer and the civilian included the officer asking early on whether the person was on probation or parole. The question does provide useful knowledge to the officer regarding whether the individual being dealt with has a criminal history. More importantly, if an individual is on probation or parole, the officer has significantly more latitude to search for a potential weapon or other contraband.

However, asking the question at the outset of a civilian-police encounter comes at a cost. Some civilians find it offensive for police to be asking the question of them as if assuming that they must have a criminal record. For some persons of color, there is a perception that police ask the question routinely of minorities under an insulting assumption that they are more likely to have been in trouble with the law, or as a means of “putting them in their place.” It is reasonable to assume that for police to ask such a question will impact the way in which the citizen views the exchange. This is particularly true in cases that do not lead to an arrest.

A less provocative technique that could obtain the same result involves conducting a quick records check of the relevant individual.⁴ This is, of course, less convenient, and arguably extends encounters in ways that create separate issues. However, the records check could easily provide additional and useful information to the officer, such as whether the person detained has any outstanding warrants for arrest. This helps offset the disadvantages, while avoiding the need to provoke detainees through direct questioning.

There is, of course, a happy medium. We have seen and heard instances in which officers raise the same issue with finesse and politeness: “Just so you know, whenever I’m stopping somebody I just want to clarify whether they’re on probation or anything, for their safety and mine. So, do you have any record or anything I should know about?” Though no technique is guaranteed or appropriate for every situation, the effort at sensitivity can defuse matters in a useful way.

Officers often do not recognize the impact that they have on how a citizen-police encounter can be shaped by the questions they ask and how they ask them. It is incumbent upon leadership of the police agency to impress upon its members this impact through guidance provided through training, briefing, and other learning opportunities.

Willingness to Recognize Performance Flaws as Bases for Policy Violations: One internal investigation involved a complaint that the officer erred in issuing a citation to the complainant, eventually resulting in the citation being dismissed. The investigating supervisor concluded that because the officer error was based on a lack of knowledge of the law the performance failure could not be a violation of policy because a misconduct finding required

⁴ Of course, this is assuming that the records information about the person’s status is accurate. See discussion of this related issue above.

proof of intentional wrongdoing. In fact, as this audit demonstrates, an officer can be found to have violated policy when performance levels are significantly below expectations, even without a finding of misconduct or intentional wrongdoing. While the “mistake” in this case may not have risen to a violation of policy, our concern is more about the supervisor’s misconception that one need demonstrate “intentional wrongdoing” in order to find that a BPD officer violated policy.

In addition, perhaps because of the misconception held by the supervisor, the letter to the complainant failed to concede that the officer made a mistake when issuing the citation. To its credit, BPD often does acknowledge performance deficiencies among its officers. However, this and other examples offer evidence that such admissions do not always occur – even when they seemingly should.

C. Major Investigations

Among the cases we assessed were two involving serious patterns of misconduct that resulted in the termination of the subject officers – one of whom was also sent to prison on federal charges. In both instances, the Department conducted extremely thorough investigations and compiled an overwhelming amount of evidence in establishing the bases for discharge.⁵

One case revolved around an officer who cultivated an off-duty social relationship with a married couple who lived in Burbank. When the couple’s relationship deteriorated in a way that led to calls for service from BPD as well as a separation, the subject officer involved himself inappropriately in subsequent crime reports and court proceedings – while developing his own romantic relationship with the woman. This relationship eventually had a major impact on his on-duty behavior – most concretely in the form of falsely documenting patrol activity to account for time he was spending with her.

The Department initially became concerned when a supervisor noted a couple of instances in which the officer’s response to a call for service was puzzlingly delayed. Once an investigation was begun, the number of issues – and aspects of wrongful behavior – quickly multiplied. After several weeks, the officer was placed on administrative leave and never returned to active duty before his discharges.

Both cases involved experienced officers who (among many other things) repeatedly shirked their patrol responsibilities to the detriment of their fellow officers and the public. One went so far as to disable the in-car GPS system connected to his patrol vehicle’s computer system, so as to avoid detection as to his whereabouts.

⁵ The second case is still involved in legal proceedings.

Taken collectively, the cases are distressing on the one hand, because the problematic behavior in each was egregious, multi-faceted and extended in duration. It is hard not to wonder about the extent to which peers (or supervisors) were aware of at least some of the policy violations and failures of integrity and performance, while failing to intervene. On the other hand, though, the scope and rigor of the respective investigations was remarkable. The thoroughness of the Internal Affairs files reached a point of exhaustive, meticulous comprehensiveness we have rarely encountered in reviewing hundreds of such files for a range of law enforcement agencies. This reflects the commitment at the Department's highest levels to addressing the misconduct and any culture of recklessness or entitlement it might reflect.

IV. Review of Vehicle Pursuits

As we noted in our previous report, BPD adopted a comprehensive vehicle pursuit policy that we consider to be comprehensive and strong.⁶ It took effect at the start of 2013. With this report we take a second look at BPD's review of vehicle pursuits under this new policy. We were given four pursuits to review. Based on that limited universe, the policy appears to be operating relatively well, and it appears that BPD has addressed violations in an appropriate way.

There are a few areas, however, where improvements can be made. This is expected at the outset of a new approach to internal review, and adjustments based on initial experiences are an important part of building strong, enduring policies. There are understandable growing pains while everyone learns their respective roles, and what information needs to be included in radio transmissions and written reports. With a little attention to these details, BPD can enhance the benefits of the good work it has done in this area.

Communications Regarding Pursuit

First, with any new policy there is always a period of time when officers need to get accustomed to the requirements. With vehicle pursuits, those growing pains are most obvious in officers' reluctance to call something a "pursuit" and in officers forgetting to transmit in a timely manner the information required to evaluate the viability of the pursuit.

BPD Policy 314.5.3 sets forth the responsibilities of the primary, initiating unit. It states:

- (a) The primary unit shall immediately notify the Communications Center that a vehicle pursuit has been initiated. The officer shall provide the following information:
- (b) Unit identifier.
- (c) Reason for the pursuit.
- (d) Location and direction of travel.
- (e) Speed of the fleeing vehicle.

⁶ One of the strongest aspects of the new policy is that pursuits are reviewed by the Critical Incident Review Board.

- (f) Description of the fleeing vehicle and license number, if known.
- (g) Number of occupants.
- (h) The identity or description of the occupants.
- (i) Road and weather conditions.
- (j) Information concerning the use of firearms, threat of force, injuries, hostages, or other hazards.

In two of the pursuits we reviewed, the officers did not initially label their actions a pursuit. In one incident, the officer told the Communications Center that they were on a “rolling 10-29.” A sergeant was riding in the pursuing vehicle and told the officer to call it a pursuit. In another pursuit, the radio traffic reveals that the officers said they were “following” the suspect. They never stated they were in pursuit. In a third, which lasted less than a minute before it was cancelled, it is not clear whether the officer called it a pursuit. In only one of the pursuits was there a clear transmission that the officers were in pursuit.

Further, in several of the pursuits, the officers did not provide the mandated information in a timely manner, or at all. In one pursuit, it was nearly a minute before the speed, traffic conditions and occupants was provided. In another pursuit, while the reason for pursuit and direction and speed of travel were provided near the beginning, it was not until near the conclusion, minutes later, that the vehicle description, correct license plate, and existence of occupants were transmitted. There were no transmissions about road and weather conditions. In a third pursuit, the Acting Watch Commander in the Communications Center tried to prompt the requisite information, but other radio traffic from assisting units then occupied the radio and the pursuit was quickly cancelled for other reasons before the required information was provided.

BPD should make it a priority to reinforce the particulars of the “required information” policy with officers, dispatch operators, and supervisors. The information is necessary to assess whether the pursuit is consistent with BPD policy or should be cancelled. Standardizing the expectation will make it less likely that officers will attempt to stay “under the radar” while conducting a pursuit that they realize might not meet the criteria.⁷

It is an encouraging sign that in at least one pursuit, the supervisor attempted to prompt the necessary information. The issue that arose there was the overlapping uses of the radio. Because radio traffic can quickly get congested in these situations, it is all the more important for officers to provide as much of the required information immediately in the first transmission.

BPD should work on identifying means to encourage this. Other departments have adopted dashboard stickers that list the required information, or have taken zero-tolerance

⁷ This practice, which we are familiar with from other agencies, is often a function of admirable zeal. But the whole point of the pursuit policy is to balance law enforcement objectives against the inherent safety risks.

approaches cancelling all pursuits when the officer does not provide the mandated information immediately. Supervisors and operators can play their roles by prompting the officers to provide the needed information. Briefings or other training may also help to remind officers of the requirements.⁸ For BPD, another solution may work well. But a remedy should be identified so that pursuits can be properly evaluated in a timely manner.

Command and Control of Vehicle Pursuits

BPD policy gives multiple supervisors responsibility for supervising the pursuit. The Watch Commander is supposed to respond to the Communications Center and assume overall command and control. (Policy 314.4.1) If the Watch Commander is not available, responsibility defaults to the field supervisor. The field supervisor is also expected to drive Code 3 to join the pursuit, while monitoring it on the radio and in person upon arrival, assess its compliance with policy, determine the appropriate number of vehicles to have involved, coordinate with outside agencies, and perform several other functions. (Policy 314.6) Like the Watch Commander, the field supervisor has the responsibility to cancel an out-of-policy pursuit.

The supervisor in the Communications Center has the benefit of evaluating the pursuit in a calm environment, not driving Code 3, and being able to track whether the necessary information has been given to justify the pursuit. The field supervisor has the benefit of being in the field and having first-hand knowledge of traffic, pedestrian and weather conditions and how dangerous the driving is. Giving both the ability to cancel a pursuit allows BPD to take advantage of the best of both options.

We have some concerns, however, with a number of incidents where this dual supervision was lost because the supervisor in the Communications Center failed to take overall command and control of the pursuit. In some instances the highest-ranking person in the station was a sergeant, while one or more lieutenants were in the field engaged in the pursuit. Whether the field supervisor is a sergeant or a lieutenant, when the supervisor in the Communications Center defers to the field supervisor, it is placing too great a burden on the field supervisor.

In one such pursuit, there were multiple points in time where a calm evaluation of the radio transmissions might have concluded the pursuit was either out of policy, or additional information was needed to proceed. The suspect was engaged in “extraordinary and dangerous maneuvering to escape capture.” The suspect was taking corners so fast he was losing traction. He ran a red light at San Fernando Blvd. He reached speeds of 65 mph on city streets that had a speed limit of 35mph. According to BPD policy, a pursuit should be terminated if the suspect is driving more than 20 mph over the posted limit on city streets “absent an articulable need to continue the pursuit.” This need was never articulated.

⁸ BPD Policy 314.4.1 states that the Watch Commander shall terminate a pursuit if comprehensive information is not provided immediately.

The suspect then entered the 5 Freeway, turning his lights off and weaving in and out of traffic. The suspect almost collided with two semi-tractor trailers. Meanwhile, all the required information had not yet been provided by the primary unit. The sergeant who was at the station went to the Communications Center to monitor, but did not take command of the pursuit because there was a lieutenant in the field. This allowed a questionable pursuit to proceed without the transmission of the mandated information.

Similarly, in another pursuit, a sergeant at the station went to the Communications Center to monitor the pursuit, but there were two lieutenants involved in the pursuit, so the sergeant did not take any action.

To ensure the valuable dual supervision of pursuits, BPD should clarify the pursuit policy and require that the supervisor in the Communications Center, whether a sergeant or lieutenant, whether Watch Commander or simply the only supervisor in the station while the Watch Commander is in the field, is responsible for overall command and control of the pursuit. Any supervisors in the field should have a concurrent responsibility to cancel any pursuit where they hear or see anything that suggests it is no longer consistent with BPD policy. The dual supervision of pursuits is an important safeguard in the BPD policy and needs to be protected.

After raising this issue with BPD executive leadership, we note the legitimacy of the counter-argument they cite – namely that immediacy of the field supervisors’ perspective, as tempered by their roles and experience, has a value that management hesitates to forfeit by deferring too rigidly to the Watch Commander in a remote location. We respect the point. Again, though, the policy as currently constituted rightly prioritizes the Watch Commander in our view. In the examples we evaluated, the deference in the other direction was arguably a function of rank rather than a true measure of the field supervisor’s grasp of events. We encourage further assessment of the policy as applied in recent pursuit incidents.

Pursuit Critique

BPD policy requires that the field supervisor complete the post-pursuit critique. While the field supervisor will be uniquely positioned to do so based on personal knowledge, this structure could create a conflict of interest because the field supervisor also had responsibility for monitoring, controlling, and when necessary, canceling the pursuit. Any pursuit critique necessarily includes the question whether the pursuit was in or out of policy, and if out of policy, should it have been cancelled earlier by the primary officers, field supervisor, or Watch Commander. Therefore, in critiquing the pursuit, the field supervisor is, in effect, also critiquing his or her own performance in managing that pursuit.

That is difficult to do well, even with the best of intentions, and under the most ordinary of circumstances. On the other hand, if the pursuit was clearly out of policy, the incentives for an involved participant to make the necessary assessments are obviously strained. While it is true that a Watch Commander will review the pursuit as well, the facts as presented to the Watch

Commander could be affected by the presentation by the field supervisor. Moreover, any critique of a vehicle pursuit should include not just the conduct of the line officers, but also a robust examination of the supervision of that pursuit. When the field supervisor is conducting the primary critique, that examination is structurally compromised in a way that merits attention.

Department executives have told us that they understand our concerns, but believe that enough safeguards are in place to ensure an effective and appropriately thorough review. (This includes the recorded evidence, which of course stands on its own and must be reckoned with.) Nonetheless, we recommend further review of this practice in light of the potential “conflict of interest.” BPD has taken a great step forward in adopting a comprehensive vehicle pursuit policy. An effective critique is essential to ensuring the policy is understood and followed.

Pursuits of Impaired Drivers

A number of the pursuits involved suspected DUI suspects. BPD policy is clear. A pursuit of a misdemeanor impaired driver suspect can occur “[w]here there is a reasonable suspicion to believe the suspect is driving under the influence of alcohol or drugs, or is otherwise impaired, and the suspect’s driving prior to the attempted stop is so flagrantly reckless that the driving presents a clear and present danger to other users of the highway, and failure to apprehend the violator would likely pose an imminent and life threatening danger to the public.” (Policy 314.3.1)

BPD policy then provides examples of “flagrantly reckless driving,” including, “collisions with other vehicles or objects, forcing other vehicles to take evasive action to avoid collision, failure to stop at controlled intersections without slowing, or driving on the wrong side of the highway.” (Policy 314.3.1)

This is further clarified in a second section of the policy that provides, “To initiate a pursuit of a suspected impaired driver, officers must observe driving behavior that would be reasonably considered a threat to public safety prior to the initiation of the pursuit. The mere commission of a traffic violation independent of general driving behavior consistent with impaired driving is insufficient to initiate a pursuit.” (Policy 314.3.3)

“If officers initiate a pursuit for impaired driving, they must fully describe in their reports the driving behavior prior to the initiation of the pursuit as justification for the pursuit. The justification must include reasons why public safety was enhanced by the decision to pursue.” (Policy 314.3.3)

Three of the pursuits we reviewed were justified under this DUI standard. However, we were concerned that some of them met the standard only through a very generous, inclusive reading of “flagrantly reckless” to describe the relevant driving. Moreover, the reports never included the reasons why public safety was enhanced by the pursuit. Most reports described the behavior that was used as the justification for the pursuit, but those descriptions were not always

full. In one incident the detail necessary to explain why the officers believed the suspect was impaired was missing from the report. While the Watch Commander correctly noted this deficiency, he incorrectly concluded that an oral follow-up with him was sufficient.

BPD supervisors need to be reminded of these strict limitations on pursuits of impaired drivers. The report documentation requirements are one way to ensure that officers are adhering to these limitations and making the appropriate public safety decisions. These requirements need to be better enforced.⁹

V. Review of Uses of Force

For this review we examined twenty-two use of force incidents. With small and relatively minor exceptions that we discuss below, BPD continues to do a very good job in documenting and reviewing its use of force. The Department's leadership clearly recognizes the importance of force deployments that are judicious, proportionate and effective. Even before the recent heightening of national concern about law enforcement power, the Department understood that its credibility and public trust turned in part on how – and how appropriately – BPD officers used force in carrying out their duties. It reflects this understanding in through conscientious training and a rigorous review process.

The field supervisors, Watch Commanders, and Critical Incident Review Board (“CIRB”) continue to perform vigorous tactical reviews of force incidents. Even when the force is “in-policy,” the scrutiny of completed events regularly leads to insights that can improve tactics in the future. Importantly, these reviews also extend to the role supervision in a given encounter, a critical element that often is overlooked in other agencies. Moreover, the process is producing unequivocal messages to line officers about the expectations of BPD command staff in specific situations.

As we have noted previously, the Critical Incident Review Board (“CIRB”) is a process in which certain force cases are reviewed by a panel of Department experts to identify issues and develop responsive action plans. The CIRB “layer” of scrutiny helps ensure accountability, but also provides additional value in terms of constructive critiques and useful feedback. The inquiry goes beyond the bottom line question of whether the force was “in policy,” and extends into tactical and training issues in holistic ways. The addition of this process places BPD at the leading edge of best police practices in the arena of internal review of force, and latest assessment confirms our high regard for the program.

One example we noted and commend here was the emphasis on avoiding a one-on-one encounter when possible, especially one involving hands-on fighting, and instead waiting until back up is present. This is an important tactical principle that merits reinforcement: obtaining a

⁹ As noted above, we also noted a deficiency in report documentation of justifications for continuing a pursuit when speeds on city streets exceeded posted limits by more than 20 mph.

numerical advantage helps ensure safer, more effective resolutions; moreover, it can keep confrontations from resulting in force in the first place.

BPD management took pains to make sure this point was understood. Though the relevant force was found to have been in policy, the review went to the next level and showed how the physical encounter might have been avoided. It briefed these tactical issues with all shifts, not just the personnel involved in the relevant incident. Indeed, even as outside monitors we gleaned the message very clearly from the materials we saw, and can only assume that the understanding was shared by the line officers who experienced the communications directly. BPD deserves credit for speaking with a loud, clear, and consistent voice at the command level.

Finally, in past reports we have commented on the timeliness of the CIRB review of use of force incidents. Most of the cases we reviewed were heard by CIRB within 6-8 weeks after the force occurred – a marked improvement over the halting early days of the system. We commend the Department for this refinement of its process.

CIRB: Individual Case Studies

As expressed above, we found several instances of added value from the CIRB. For example, in one incident, two officers responded to a fitness center when a guest became hostile towards staff. Eventually, both officers deployed Tasers in order to bring the person into custody. Among other issues, the CIRB review opined that the two officers who initiated contact should have requested additional resources and a supervisor to assist when the individual indicated through assertions and actions that he intended to be difficult and defiant. The CIRB review further noted that once the officers began to struggle with the person, there was reluctance to use hand strikes to distract and disable the suspect and indicated that the use of OC spray would have been a viable tactical option before the Taser activation.

In another force incident, a Taser was deployed when a handcuffed adult female refused to vacate her father's premises upon his request and grabbed a table with her legs to prevent the officers from removing her. The CIRB review noted that the female had been given permission by a BPD officer to enter the residence to obtain keys and medication. While the CIRB review found the use of the Taser to be within policy, it also opined that the officers should have considered the use and application of pressure point pain compliance as a control measure before escalating to the deployment of a Taser. The review further found that the initial decision to allow the female to reenter the premises, while well-intentioned, proved to be an avoidable contributing factor to the eventual need for the officers to use force. Finally, the CIRB review noted that the lieutenant assigned to the investigation failed to interview the female at the station per BPD protocols. The resultant remedial action plan was detailed. It involved talking to the involved officers and lieutenant about its findings regarding Departmental expectations. On a broader level, two Captains also discussed the incident at the watch commander's meeting to

ensure that all lieutenants understood the Department's expectations as it related to use of force investigations and supervisory responsibilities.

Finally, in another force incident, a suspect was injured when a shotgun deployed by an officer struck the individual in the face. In addition to ordering an administrative investigation into whether the strike was intentional or accidental, the CIRB review identified a number of tactical considerations deserving of further discussion. Those considerations were rolled into an action plan of concentrated training to the K-9 unit and patrol officers to enhance their skills and ability to recognize the hazards associated with tactical search efforts.

Evidence Gathering and the Force Review Process:

The gathering of evidence for each use of force case continues to be of a very high quality. In multiple incidents, we saw documentation of canvassing for additional witnesses in neighboring homes or businesses, including notations when people were not at home at the time of the incident and could be eliminated as sources of information.

There was also documentation of efforts to identify cameras that could provide video evidence. For the most part, this documented sufficiently the existing cameras and the efforts to obtain any recordings. However, in a couple cases, the documentation stopped before all follow up was apparently completed.

In one incident, there was a report that a check cashing location had cameras that might have captured the incident, but there was no indication as to whether a subsequent effort was made to obtain any recording, or with what results. In another incident, there were cameras at a gas station, but no documentation of follow-up to obtain relevant recordings.

In a third incident, there was a report of potential recordings, and of a first round of follow-up that resulted in discovering that corporate headquarters would need to be involved in recovery of the recordings. However, there was no documentation as to whether that contact ever occurred.

It is important that BPD not only does a thorough investigation, but also documents it to protect itself from future liability.

Photos of Injuries and Lack of Observable Injuries: In the review, BPD promptly and consistently photographed any observable injuries to the subject as a result of the use of force or other occurrences preceding officer contact. As importantly, and to BPD's credit, personnel also photographed areas where the subject complained of pain, even where there was no corresponding observable injury. This thorough effort in documenting any potential injuries is consistent with best practices.

Use of Taser: No Downloads Conducted: On the other hand, one gap that we noticed pertained to the retrieving of data from Tasers after deployment. There is useful information that

can be downloaded from the devices themselves in the aftermath of an incident. Most importantly, the download provides the number of times and the duration of each individual Taser cycle. Such information can be used to learn whether the deployment was consistent with the Department's Taser use policy and training. For example, in one case, the officer reported deploying the Taser multiple times in an attempt to gain compliance from the subject, but there is no certainty about the actual number of times that the Taser was deployed. In the three Taser deployments that were reviewed, there was no evident downloading of this data by reviewing authorities. When we brought this to the attention of BPD executives, they indicated that the Taser information was probably downloaded but the information was not attached to the files.

Blue Team Use of Force Report

BPD has a computerized Blue Team Use of Force Report that has a section to report the use of force by each officer. This section utilizes an outline of the human body to indicate the force used and where it was used. It also has a table where all force is listed. These features can provide additional clarifying information about the use of force that may not be clear in the narrative. However, our review found a number of instances where the information in these diagrams conflicted with or omitted use of force information in narratives. Below are some examples:

- The Blue Team Report diagram section had an officer grabbing the right wrist, while the other narratives had the officer grabbing the left wrist. It had another involved officer grabbing the left upper arm and wrist, contrary to the other narratives, which said the officer grabbed the right wrist and shoulder.
- The Blue Team Report diagram section said the officer used force on the left forearm only. The report mentioned in the narrative portion that the officer used an arm bar, but this was not included in the specific use of force detail for that officer in the report. Further, other reports included several other points of contact for force, including that the officer grabbed the suspect's right bicep, and took her to the ground, none of which was included in the Blue Team Report for that officer.
- The Blue Team Report diagram section omitted that the officer had grabbed the subject's left shoulder, and put his knee in the subject's back. It also wrongly identified the arrestee as passively resistant, when the arrestee in fact walked away from the officers in active resistance.
- The Blue Team Report diagram section contained incomplete records of the uses of force by the two officers. For one officer it omitted that the officer had used force on the arrestees left wrist and right forearm. For the other officer it omitted contact with the right elbow and wrist of the arrestee.
- The Blue Team Report diagram section omitted the use of a take down by the officers.

The Blue Team Report sections for each officer's use of force almost uniformly omit the use of a knee on the back of the suspect to control him or her during or after handcuffing. Because pressure to the back of the suspect can result in claims of injury or difficulty breathing, it is vital to document this when it occurs, and not be accused later of "hiding it." The information is available in the narratives, but should also be in the Blue Team Reports' enumeration of force used by each officer.

In addition to these discrepancies and omissions, there was also a few times where the narrative in the Blue Team Report conflicted with the narrative in other reports. Normally the Blue Team report would track verbatim the narratives in the other reports. But, occasionally they differed in ways that appeared inconsistent. For instance in one incident the Blue Team Report stated that the suspect was tackled to keep him from running into the street, but the narrative said he was tackled while running up a hill in front of an apartment building, which was in a direction away from the street. Further clarification was needed to show how these two facts fit together.

Accurate documentation is important to ensure that those reviewing the use of force have all the necessary information. It is also important to avoid assertions that BPD is attempting to hide information about use of force. Sergeants and Watch Commanders should be tasked with ensuring the information recorded in the various reports is consistent before approving a Use of Force Report.

Role of Field Sergeants

BPD policy assigns the force inquiry for lesser uses of force to the field sergeant. However, it also states that, "Whenever possible, a supervisor who participated in or ordered the force should not conduct the force inquiry." (Policy 300.7.3) It appears, based on our review of incidents, that BPD has defined participation narrowly, to include hands-on participation in the force, and is therefore allowing involved witness supervisors to perform the force inquiry. However, every supervisor at the scene of a use of force is there for a reason – to supervise the force and intercede if needed to prevent inappropriate force from being used. Therefore, a supervisor participates, and may make decisions about force, without ever touching the subject. Any thorough review of an incident should include a review of whether the supervisor exercised their supervisory control appropriately.

In five incidents that we reviewed, a supervisor who was present for and thus supervising the use of force, was allowed to do the Use of Force Report. In some of these incidents, the Watch Commander included a statement in his review saying it was "practical and prudent" for the field sergeant to do the force report but did not provide any facts to support that conclusion. A review of reports indicates that in three of these instances another sergeant was on duty on the same watch, although they may also have become involved. CIRB raised concerns about an involved sergeant performing the Use of Force investigation for one incident.

BPD is very proactive about sending supervisors to the scene of incidents that could escalate to uses of force. This is a great practice. But it is done for a reason: to ensure appropriate command and control. That responsibility is clearly a component of the event as a whole, and should therefore comprise an element of the subsequent review. Accordingly, a potential conflict arises when an involved supervisor has the direct and primary responsibility for that review – including the gathering and documentation of relevant evidence. This tension exists at some level even in routine cases. It obviously increases when the force is more significant, and civil or even criminal liability could be at stake.

Moreover, even the most conscientious and self-critical of supervisors cannot transcend the inherent *appearance* of bias that results from this practice. The subject of the force, his or her family members, and other witnesses are unlikely to distinguish between a supervisor who laid hands on the subject and one who merely stood to the side watching. Again, this is of particular concern in situations where the force was arguably excessive.

We recognize that there is a need for field supervisors to respond to these scenes, and we do not want to discourage this. It is always better to prevent a use of force from becoming unlawful in the first place than to preserve the objectivity of “after-the-problem” evaluators. We also recognize that disqualifying witness supervisors could present a manpower issue. A first step would be to use an uninvolved supervisor when available. Ultimately, though, BPD should consider a mechanism for investigation of those uses of force where the only sergeant on-duty was also a witness to the force. It could be performed by the Lieutenant, by IAD, or by a sergeant from an adjacent watch. Maintaining the integrity of the process is too vital.

Administrative Interview of Subject of Force

BPD policy imposes rules to ensure that there is an administrative interview of the individual on whom force is used. In the audio-recordings that we reviewed, the Watch Commander performing that interview provided clear explanations to the subjects of the force that his role was to review the use of force and conduct of BPD, not to gather information about the alleged criminal activity of the subject. They did a good job of getting cooperation from the subjects, and for those subjects who were intoxicated and unable to cooperate, returning per policy for a subsequent interview.

There were a handful of incidents that raised minor concerns. In one that we reviewed, there was no documentation that a follow up interview happened for an intoxicated arrestee. And there was one incident where the watch commander, who had done an administrative interview, recommended adding a resisting arrest charge against the subject. This is an impermissible merging of administrative and criminal roles.

There was only one incident where we reviewed an interview and one of the officers who used force was apparently present for at least the beginning of the interview. BPD should be alert to ensure this does not become a regular practice or repeat itself.

Multiple incidents, however, highlighted a bigger issue relating to BPD policy that addresses the order of the administrative and criminal interviews of the arrestee and the giving of Miranda warnings. Policy 300.9 provides that the administrative interview by the Watch Commander that is focused on evaluating the use of force by BPD should precede any custodial interrogation of the arrestee. It does, however, allow for exceptions: “If the Watch Commander believes that the significance of the criminal offense outweighs the minor nature of the force used, he or she may authorize officers to Mirandize and question the suspect on the criminal charges before the Watch Commander conducts the administrative interview.” In the case of an exception, “The Watch Commander shall fully articulate the justification in the Use of Force report for review by the Critical Incident Review Board.”

However, repeatedly, and without the requisite articulated justifications in the Use of Force report, Miranda warnings were given to arrestees in the field before the Watch Commander administrative interview – which typically occurs at the hospital or at the BPD station. There were no incidents where this interfered with the administrative interview. However, it violated the policy as written. Moreover, in one incident where Miranda warnings were delayed, BPD officers in the field asked questions of the arrestee that should have been preceded by a Miranda admonition.

While we recognize the value of obtaining an interview about the use of force, and that an administrative interview does not require a Miranda warning, we are concerned that this policy is not being followed as written and that it may have an unintended consequence of officers not giving Miranda warning prior to asking questions that require it. Another incident, involving a juvenile, revealed yet another potential area of concern with this policy. Juveniles must be given Miranda warnings immediately, before any questioning, whether it is criminal or otherwise. This cannot be delayed.

We would urge BPD to review the policy. It is important for Watch Commanders interviewing the subject of the use of force to continue to explain that the interview is for the limited purpose of the force review, and to not attempt to play a dual role of administrative review and obtaining a confession from the suspect. At the same time, it is important to ensure that any policy is one BPD can implement in real world situations, and that officers are not being asked to do something that in practice opens them up to other liability. It may be that the proper balance would be to allow Miranda warnings to be given by the arresting officers promptly, but to maintain the clear dictate that Watch Commander interviews are administrative only, and shall be presented to the arrestees as such. Watch Commanders should remain uninvolved in Mirandizing subjects on whom force was used. So long as information is not extracted from an arrestee in the guise of an administrative issue is not used against him in the criminal case, BPD can still obtain information about the force for evaluating officer performance; the ideal paradigm in our view.

Watch Commander Insights

In general the Watch Commander Insights provide a thoughtful analysis of the incident and importantly often include tactical evaluations of in-policy force that result in recommendations that will improve officer and public safety while reducing injuries to both. For the most part these insights also look at appropriate facts in determining whether the force complied with BPD policy. We did note one instance where both the Watch Commander Insights and the field supervisor review mentioned facts not known to the officers at the time of the incident. While these did not materially change the outcome of the analysis, supervisors should be cautioned to ensure extraneous material is not included as it could create the mistaken impression that it was relied upon by involved officers.

There is another area that could use additional attention. When the Watch Commanders set forth the standard by which they are judging the use of force, they use the general language of Policy 300.2. However, for certain types of uses of force, such as Tasers or OC spray, there are more specific standards set forth in BPD policy. The relevant force-specific policies should also be cited as standards to ensure the use of force complies not just with the general principles, but the specific ones as well.

Past History of Subjects

Many of BPD's uses of force involve individuals with mental health issues and/or who have repeated contacts with BPD.¹⁰ When historical knowledge of special circumstances – such as instability or a propensity to fight with police – is available, it has the potential to assist officers in framing their response and minimizing risk to all involved. BPD is cognizant of the value of providing alerts when relevant records exist: we noted references in a CIRB review to the need to update a specific individual's history. But the diligence about creating these notes appears to be uneven.

With the individuals who appeared twice in our files, there were no alerts, either on their names or addresses, that they had a history of fighting police. Currently supervisors have discretion in deciding whether to add an alert. Given how valuable these alerts can be in enhancing officer safety, BPD should examine broadening their use and making it more consistent.

Insufficient Attention to Indicia of Mental or Physical Disability In Force Incidents: In one force incident, the individual told officers that he had a history of mental illness, yet there is no evidence that the officers' adjusted their strategy regarding how to deal with him.¹¹ In

¹⁰ In the relatively small sample of cases we reviewed, there were two individuals who appeared twice.

¹¹ At one point, one of the officers asked the man whether he heard voices and the other said that he was yelling and screaming like a child.

addition, this circumstance was not apparently considered during BPD's review of the use of the Taser on the person. In another incident where a Taser was deployed, BPD's review failed to expressly consider whether the knowledge that the female's assertion of a history of epilepsy should have given the officers pause in using the Taser as a force option.¹² In reviewing force cases, BPD should make the subject's mental or physical history (when known by involved personnel) a factor in its evaluation of force options as utilized. Obviously, the ultimate goal is for the line officers to do so as well.

Transport of Subject

BPD policy states, "Whenever practicable, the subject upon whom the force was used should be transported by officers other than those who used force. In the event no other officers are available to transport the subject to a medical facility or jail, the transporting officers shall notify a supervisor and document the reasons in the crime report." (Policy 300.5.2).

In multiple incidents that we reviewed, however, the policy was not followed. In some instances, the transport by force-using officers was done at the direction of the field sergeant or lieutenant, which puts the responsibility at the supervisory level. However, there was never documentation in the crime report of the reasons for needing the involved officers to transport the subject. Examples included the following:

- Even though there were multiple officers at the scene and more were requested to respond, the Lieutenant can be heard on the audio recording instructing the officer who used the force to transport the subject to the hospital for the "OK to book" evaluation.
- An officer transported an individual after being involved in handcuffing her; she ended up having a broken arm.
- An officer, who was involved in a lengthy hands-on struggle with an individual and needed assistance from a civilian while waiting for back up, was directed by his Sergeant to transport the subject. There were multiple other officers present, and no explanation was given in any report.
- An officer who performed a take down was part of the transport of the subject from the hospital to the jail.

While BPD may have manpower or resource limitations, in each of these situations there were apparently other officers available at the scene. Moreover, while the policy does expressly allow for exceptions, they must be properly documented; here that did not happen.

It is true that BPD has audio recordings that help regulate behavior and mitigate risk; a review of a subset of them showed the officers continued to engage professionally with the subject of their force during the transport. However, BPD should do more to ensure it is following its policy. Doing so protects the officer and BPD from subsequent allegations of

¹² The use of a Taser on a person with a history of epilepsy may create a higher risk of dire medical consequences.

misconduct, and lessens the potential that a potentially adversarial dynamic will lead to further issues that could have been avoided.

Accordingly, we recommend refresher training on these principles and the rationale behind them. We are encouraged to have seen the topic included by BPD management in an outline of a recently developed Use of Force training curriculum that will be presented to officers this year.

VI. BPD Executive Initiatives

In the course of evaluating these various matters and discussing related issues with BPD leadership, we became aware of several ways the Department continues to strengthen its internal review protocols. That effort, in turn, has led to meaningful training and feedback for line officers that is responsive to real situations in the field and continually evolving in light of best practices.

Among the examples we noted or learned about are the following:

- A coordination with the Los Angeles County Department of Mental Health to enhance training of officers regarding the mentally ill and approaches to dealing with them in the field. BPD has also developed a “co-response” protocol in which mental health clinicians respond to relevant calls for service in which the mental well-being of involved parties, and a need for hospitalization, might be at issue.
- A growing level of collective data-analysis by Department executives, including statistical reports in major categories such as Internal Affairs cases, biased-based policing complaints, and pursuits. This helps the Department identify trends and look for areas where focused attention might be needed or useful.
- An intensive performance audit in which data about the performance of BPD officers is collected and analyzed with regard to internal investigations, citizen complaints, force incidents, vehicle pursuits. BPD is in the process of analyzing the data from its audit and determining appropriate remedial measures to address the audit findings.
- An annual “force training” curriculum that goes out to all field personnel and includes updates on legal standards, tactical considerations, and force options. (This year, for example, the Department is encouraging officers to consider OC spray as a safe and effective alternative to the Taser or use of personal weapons that will likely reduce injuries to arrestees and officers alike.)
- Training on “diversity-centered” leadership that took place over two days and reached 110 line officers and supervisors.

- Training on “procedural justice” for Department managers – a current trend in best practices that emphasizes the fairness and accessibility of the process as a means of increasing public acceptance of and confidence in individual outcomes.
- The development and communication of a “core Department philosophy” that ranges from a commitment to diversity and integrity as pillars of the hiring process to an ongoing emphasis on strengthening the culture of the BPD and staying abreast of trends in law enforcement and public safety.
- The Chief of Police participating in a panel discussion at the annual conference of the National Association of Civilian Oversight of Law Enforcement in which progressive police practices and orientation were presented.

We commend the Department for its recognition of the value of such initiatives, and the effectiveness with which its personnel are turning them into action.

VII. Recommendations

As gleaned from individual case examples and discussed above, we offer the following recommendations to BPD for its consideration and potential adoption:

- BPD should endeavor to address and internally document its response to identified shortcomings in performance, even when they fall short of policy violations.
- BPD should continue to strive to locate and interview all available witnesses in its investigation of incidents that have led to a complaint.
- BPD should counsel its communications personnel of the importance of accurately informing field officers about whether detainees are on probation or parole, and should be more forthcoming in acknowledging mistakes to affected members of the public.
- BPD leadership should impress on its officers the potential negative impact of routinely asking individuals whether they are on probation or parole.
- BPD should acknowledge less than ideal performance among its members in its correspondence to the complainant even when that performance does not result in a violation of policy.
- BPD should look for further ways to enhance communication and clarify the rationales for its actions in complaint cases, even when no misconduct has occurred, when a misunderstanding or third-party mistake has contributed to the complainants feelings of mistreatment or unfairness.
- BPD should make sure its supervisors recognize that substandard performance, even when unintentional and lacking in malice, is an appropriate basis for discipline.

- BPD should continue its efforts to instill the principles of its new vehicle pursuit policy, especially the requirements for communicating specific information by radio so that a proper assessment can be made by authorizing supervisors.
- BPD should evaluate the extent to which the “command and control” of individual vehicle pursuits is being assumed by the proper party, as between the field supervisor and the watch commander.
- BPD should recognize the inherent conflicts when an involved field supervisor is later responsible for evaluation of a vehicle pursuit, and should ensure that proper “checks and balances” are in place to ensure the legitimacy of the process.
- BPD should be stringent in applying its standards for an authorized pursuit of a possible impaired driver, so that the balancing of risks is meaningful and consistent.
- BPD should adopt review mechanisms of use of force reports to require that the Watch Commander, when reviewing the investigation and documenting her insights, ensures that attempts to obtain potential video evidence, even if unsuccessful, have been undertaken and documented.
- BPD should enhance its investigative protocols so that whenever a Taser is deployed in the field, the deployment is downloaded , analyzed and included with the force review documents.
- BPD should take steps to review information within its new “Blue Team” force-reporting template, and ensure that apparent inaccuracies or inconsistencies are clarified or otherwise resolved.
- BPD should endeavor – in cases in which a sergeant either directs or witnesses the use of force – to have the subsequent review conducted by a supervisor who was not involved.
- BPD should review the ways in which, after a use of force, the “Mirandizing” of subjects before questioning about force issues for administrative purposes is following (or not following) relevant policy and protocols.
- BPD should make more consistent and rigorous use of its alert system regarding past history of individuals who end up having repeated encounters with the police.
- BPD should set forth and apply the specific policy standards for particular force options when relevant to the facts of a given incident under review, rather than simply relying on the broader and more generalized force requirements.
- BPD should include a consideration of known facts about a subject’s physical or mental health status when evaluating the advisability of force options in a given incident.
- BPD should be more rigorous and consistent about avoiding scenarios in which a subject is transported after an incident by an officer who was involved in the use of force.

VIII. Conclusion

Our years of monitoring the Burbank Police Department have been a time of admirable progress for the agency. The Department's executives have brought their own experience and expertise to their new roles, but their commitment to professionalism and high standards is increasingly reflected at all ranks. We see it in the growing sophistication of the BPD internal review protocols, and the steady improvements in the timeliness and thoughtfulness of investigations. The accountability is real. Just as importantly, it is occurring in a context where progressive approaches are accepted as the norm, and the search for constructive reforms is the rule instead of the exception.

We appreciate the opportunity to participate in this process through our monitoring role and these reports. And we welcome the chance to answer any of your questions or discuss our work with you in more detail.