



# CITY OF PALO ALTO OFFICE OF THE CITY CLERK

October 30, 2017

The Honorable City Council  
Palo Alto, California

## Independent Police Auditor's Report 2016 Part Two

Attached you will find the Independent Police Auditor's Report 2016 Part Two.

We are also including the links to the Santa Clara County District Attorney's Office Press Release and full report of the fatal shooting of William Raff on December 25, 2015.

Press Release:

<https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2016/RAFF-OIS.aspx>

Full Report:

<https://www.sccgov.org/sites/da/newsroom/newsreleases/Documents/OIS%20-W.%20Raff.pdf>

### ATTACHMENTS:

- Attachment A: Independent Police Auditor's Report 2016 Part Two (PDF)

Department Head: Beth Minor, City Clerk





**INDEPENDENT POLICE AUDITOR'S SECOND  
REPORT - 2016**

**Presented to the Honorable City Council  
City of Palo Alto**

**September 2017**

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## I. Introduction

This report addresses materials received by the Independent Police Auditor (“IPA”) for review from the second half of 2016. It covers investigations by the Palo Alto Police Department (“PAPD”) that fall within the scope of our auditing responsibilities and that were completed prior to December 31. As it happens, there are only two: a Taser deployment and an officer-involved shooting.

The Taser case involved one officer’s prolonged struggle to control a physically resistant DUI suspect who had gotten out of his car and was attempting to walk away after a lengthy and uncooperative interaction. We agree with the Department’s findings about the justification for the use of the Taser (and other force options), and also commend the review for noting – and acting upon – a couple of tactical issues that merited remediation.

The other incident covered in this Report occurred in December of 2015 and resulted in the death of an adult male who engaged officers while holding a knife. It was the first shooting case involving the PAPD in more than a decade.

In keeping with established protocol, the legality of the shooting was first investigated by PAPD and evaluated by the Santa Clara County District Attorney’s Office.<sup>1</sup> The District Attorney released his findings in May of 2016, having determined that the officers’ use of deadly force was justified in response to the perceived threat posed by the decedent. At that point, the Department moved to complete its administrative review process, which had begun on the night of the shooting but which deferred to the criminal investigation before being finalized.

Obviously, the shooting was a significant event for the Department and the community. The administrative investigation reflects a recognition of this fact in constructive ways. As we discuss below, the Department’s review goes beyond the important but narrow questions of legality and pursues broader insights and lessons about the incident – on its own terms and as a potential guide for the future. We offer additional ideas along these lines while commending PAPD for the efforts it has already made.

We also note that there were no misconduct investigations for us to evaluate during this period. Though some of this is a matter of timing, it’s also the simple result of a decrease in new allegations for 2016. Our understanding is that four cases were initiated near the end of the year and will be completed soon, an activity level that comes closer to matching the averages we’ve experienced in our 10 years as independent monitors in Palo Alto. And we also hesitate to

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<sup>1</sup> Per Santa Clara County officer-involved shooting protocols, representatives from the District Attorney also responded to the shooting scene and played an active role monitoring the investigation.

ascribe too much significance to the number of investigations alone, since many variables apart from “amount of misconduct” can affect this total. Nonetheless, the outcome is unusual and noteworthy, and it’s a trend line we will continue to monitor.

Finally, we also wish to congratulate Chief Dennis Burns and Acting Assistant Chief Bob Beacom on their recent retirements. We had multiple dealings with both men, and in many ways they served as the “front line” liaisons for PAPD in providing us with information, updates, and feedback about our monitoring efforts. We didn’t agree with them on every point. We did, however, come to value the candid and constructive dialogue that we developed with them over time. From our vantage point, they provided effective leadership to the Department and honorable service to the residents of Palo Alto. We will miss working with them.<sup>2</sup>

## **II. Officer-Involved Shooting Review**

An officer involved-shooting investigation and review was closed during this review period. The shooting was the first time since 2002 that PAPD officers were involved in a deadly force incident. The Christmas Day 2015 incident began when an individual with a history of mental illness called 911 from a transitional housing facility caring for residents suffering from mental illness and/or substance abuse. The caller told dispatch there was a person at the home who was violent and intended to harm others.

Officers were dispatched to the location while dispatchers called the home and talked to a social worker, who informed them that there was no person staying at the facility with the name identified by the caller. The worker further informed dispatch who the caller was and that he was “sick and psychotic” but not dangerous. The worker told communications that it was probably okay if the officers did not respond to the call. The dispatcher informed the worker that officers were already at the location and would probably want to talk with him. Other than the fact that no one “by that name” lived at the residence, the responding officers were not provided this additional information in the tight window of their response time.

According to the video record<sup>3</sup> of the incident, the three involved officers were out of their patrol cars when a man was observed screaming with a silver object in his hand. At least one of the officers immediately identified the object as a knife.<sup>4</sup> Officers called for backup and retreated to the area where they had parked their patrol cars, and one officer requested that a less

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<sup>2</sup> Encouragingly, the interim Chief and his leadership team have already taken steps to continue a transparent and constructive dialogue going forward, including inviting us to present at a recent sergeant and lieutenant’s training.

<sup>3</sup> As noted in further detail below, the video evidence was voluminous, and was compiled from multiple police car cameras.

<sup>4</sup> The object in fact was a table knife which the man had apparently procured from the residential treatment facility.

lethal munition be brought to the location. Officers commanded the individual to drop the knife but the man ran to the middle of the street, bounced from foot to foot and continued to scream. Within approximately 20 seconds of the officers first spotting him, the man raised the hand in which he was holding the knife and charged them. Two officers fired at the man while the third officer deployed a Taser. The man was struck with four bullets. Officers provided first aid and the man was transported by paramedics to the hospital, where he later died.

Per Santa Clara County officer-involved shooting protocols, the investigation was presented to the District Attorney, who determined that the officers' use of deadly force was justified. Similarly, during its administrative review PAPD determined that the use of deadly force was consistent with the Constitutional standard regarding use of deadly force, and that the officers' tactics were reasonable.

*Investigative Issues:*

During the investigation, the involved officers agreed to provide voluntary statements to both the criminal and administrative investigators. The willingness of the officers to provide voluntary statements to both sets of investigators is remarkable; in reviewing hundreds of officer-involved shootings from different agencies over the years, we cannot recall a time when officers were willing to provide voluntary statements in the administrative context.<sup>5</sup>

Moreover, consistent with Santa Clara County's officer-involved shooting protocols, the involved officers were not shown video of the information until they provided their statements to investigators.<sup>6</sup>

Less effectively, there was a two and a half day delay before the officers were interviewed. Several factors contributed to this, including the lateness of the hour when the shooting occurred, the length of time that the officers and investigators had been on duty, and the interest in giving investigators another day to review preliminary evidence and the video recordings. A couple of these factors merit further attention.

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<sup>5</sup> Routinely, officers require their agencies to compel this testimony, to protect it from being used against them outside of the criminal arena.

<sup>6</sup> We agree with PAPD that ordinarily, such as when video captures an arrest, officers should be reviewing that video while preparing their reports in support of that arrest. However, as we have commented in previous reports, in Palo Alto when it is the officers' conduct which is under review, such as an internal affairs investigation or use of force incident, officers should not be provided the opportunity to review video of the incident before a "pure" statement is obtained from them, whether it be an interview or written report. We use this opportunity to again urge the Department to adopt the video review protocols used County-wide for officer-involved shootings for their own internal investigations.

One complication was the length of time required to download and review the large amount of recorded material. Apparently, the in-car videos were left running for hours after the incident, to no useful purpose. This unnecessarily increased the workload on the back end, and could have led to an inadvertent “over-taping” of important material.<sup>7</sup>

Investigators identified this issue and have recognized that, once a critical incident has stabilized, a field supervisor should at some point order that the relevant camera systems be turned off. Moreover, we have been informed that, to the Department’s credit, this issue was identified and discussed during a quarterly training meeting. However, because this is so important a “lesson learned” and PAPD will have future sergeants who were not privy to the one-time training, a more formal directive should be devised to ensure that current and future supervisors remain cognizant of the need to perform this function.

***Recommendation: PAPD should modify its in-car video policy to instruct field supervisors to order deactivation of any running in-car video once a critical incident is static.***

Apart from adjustments that could prevent this “technological” obstacle in the future, we also take the broader position that agencies should emphasize timely statements from involved officers. We acknowledge that debate exists on this topic under the premise that rest and some distance from the event actually will enhance recall. These must be balanced against delay’s potential to obscure memory, particularly given the likelihood of exposure to outside information. And, in favoring sooner over later, we also cite the standard preference for immediacy that characterizes investigative practice in most contexts and our experience that many officers involved in such incidents would prefer to provide their account as soon as practicable.

***Recommendation: PAPD should strive to obtain investigative statements from involved officers on the date of an incident.***

Once the interviews of the involved officers occurred, they were fairly comprehensive and detailed. However, with regard to at least one on-scene officer, a critical line of questioning involved the use of leading questions:

Q: When this subject is running towards you with the knife at his side are you scared for your safety?

A: Absolutely.

Q: Were you scared for your partner’s safety?

A: Yes.

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<sup>7</sup> Fortunately, the “over-taping” that occurred did not involve critical information.

The state of mind of on-scene officers and their perception of threat is the critical question in evaluating the justification of any use of deadly force. A question that effectively includes its own answer, and only requires agreement from the subject, has the potential to undermine the appearance of objectivity and the legitimacy of the response. This is particularly sensitive in the arena of officers investigating their colleagues over the use of deadly force, where the potential for public skepticism about investigative integrity is already high.

***Recommendation: PAPD should emphasize with its detectives the need to avoid the use of leading questions when questioning officers regarding the use of force, especially as it relates to their mindset and reasons for acting.***

Additionally, there was at least one critical subject area that was not directly pursued by investigators with the involved officers. One of the employees at the residential facility reported that while the officers were on-scene and prior to the shooting, he told the officers that the object that was in the hand of the man was a butter knife. One of the in-car videos confirmed that the witness did say the words “butter knife” just prior to the use of deadly force. While the involved officers were asked generally whether they heard anyone else yelling at them, this specific witness statement was not specifically pursued.

Even if officers had specifically heard the employee’s comment, it would not necessarily have changed their decision-making or perception of threat, especially considering the aggressive move of the subject seconds thereafter.<sup>8</sup> Nonetheless, we view the comment captured on tape as significant enough to warrant thorough scrutiny.

***Recommendation: PAPD supervision should review interviews of involved officers in critical incidents for completeness and, if necessary, schedule follow-up interviews to ensure a complete account of the incident is obtained.***

Apart from the issues discussed above, the criminal investigation was thorough and well-organized – features that were especially impressive given the long gap since the Department’s last officer-involved shooting case.

We were, however, struck by the way in which the lead detective opined in her report about the appropriateness of the officers’ actions: “It appears that [the involved officers] used a reasonable amount of force to stop [the subject] from causing great bodily injury or death to one of the officers.” Criminal investigations of officer-involved shootings are intended to be evidence-gathering exercises. The application of the law to those facts is a responsibility that should be left to the sole province of the District Attorney. In this case, those important bright lines were blurred by including the investigator’s own conclusion as part of the documentation. Our understanding from PAPD is that this was done at the specific request of the Deputy District

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<sup>8</sup> We discuss this point in further detail below.



Attorney assigned to the case. We have subsequently had conversations with the Supervisory Deputy District Attorneys responsible for overseeing the DA Office's review of officer-involved shootings who has informed us that it is the Office's preference that the investigative police agency not opine about the appropriateness of the shooting.

***Recommendation: PAPD should develop written protocols that remind investigators to focus solely on fact-gathering when conducting criminal officer-involved shooting investigations.***

Meanwhile, the PAPD investigator responsible for the subsequent administrative investigation monitored the detective interviews in real time and was afforded the opportunity to ask follow-up questions after the criminal investigators finished. However, the relevant investigator determined that he did not have any additional questions of the involved officers – including further potential inquiry about the “butter knife” characterization by the percipient witness.

We noted other tactical issues that further administrative questions, beyond the scope of the initial criminal interview, might have effectively amplified. Those included more detailed exploration as to whether the presence of less lethal munitions on scene may have been helpful, especially if they were in the cabin of a patrol car,<sup>9</sup> and additional information about one officer's deployment of his Taser at almost the precise time that deadly force was used. An administrative interview can also address collateral but important issues such as the decision by one officer to drive himself away from the scene rather than being escorted. A subsequent administrative interview with the involved officers could also have included sharing relevant parts of the recordings with them, to see whether it refreshed the officers' recollection regarding certain aspects of the incident.

An initial interview, designed specifically to address the split-second decision to use deadly force, will rarely be sufficient to fully explore tactical issues or other on-scene actions and decision-making by the officers and supervisors. This kind of thoroughness and wide-ranging evaluation cannot reasonably be accomplished at the time of the first interview session. For obvious reasons, the initial focus will lie on the most central questions.

This is why best practices call for a second and later interview. Making a follow-up administrative interview a standard expectation not only insures comprehensive fact-gathering, but does so in a way that promotes rigorous and constructive self-scrutiny, even when officers

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<sup>9</sup> Administrative interviews can not only obtain a more detailed understanding into the involved officers' decision-making, they can also gain additional insight from the involved officers about what equipment might have been helpful if it had been available.

have performed well.<sup>10</sup> We have been informed that a conscious decision was made not to conduct a second interview, in the interest of the officers' health and well-being and a belief that all pertinent facts to the shooting had been obtained. Though we certainly respect the issue of officer wellness, we also have dealt with agencies who work carefully to push past the inherent stress of the situation in the interest of the additional information to be gleaned. Moreover, if a "second interview protocol" were to become the norm, officer expectations – and perhaps attendant stress levels – would adjust accordingly.<sup>11</sup>

***Recommendation: PAPD should devise investigative protocols requiring a subsequent administrative interview of officers in deadly force incidents.***

*PAPD's Administrative Review of the Incident*

As with the criminal investigation, PAPD's internal review of the incident had several noteworthy strengths. We detail these below. And we reiterate that the length of time since its last shooting – and the subsequent inexperience of most if not all the active participants in the process – made the Department's accomplishments all the more impressive. To the extent we offer suggestions for improvement, many of these stem from gaps that could have been filled with a follow-up interview of participants.

The investigator responsible for PAPD's administrative review produced a detailed assessment of the information collected and evaluated the involved officers' actions. The review set out in detail relevant observations derived from the in-car video footage, the involved officer statements, witness statements, Taser data, radio communications, and other physical evidence.

The administrative review concluded that even if a less-lethal option had been on scene, it could not have been retrieved from a vehicle and deployed within the mere seconds that transpired before the subject charged the officers. The review further concluded that the officers purposely coordinated the deployment of those force options that were readily available (firearms and Taser) to provide more flexibility to respond to the threat. The review determined that the officers had no meaningful opportunity to assess the subject's mental faculties, or employ conflict resolution or de-escalation techniques.

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<sup>10</sup> To its credit, the administrative investigation was not simply a repackaging of the criminal investigation. One key area that the administrative investigation addressed involved conducting interviews of PAPD personnel responsible for taking the initial call, engaging in further communications with a staff member at the scene, and dispatching information to responding officers.

<sup>11</sup> PAPD notes that in the region in and around Santa Clara County, it is common practice for the administrative report to rely on the criminal interview for the administrative report. We urge PAPD to move away from that "common practice" and adopt the practice that other California police agencies use for the reasons we articulate.

The review noted that the officers repeatedly gave clear verbal commands to the subject to disarm, but that the subject did not respond in any intelligible way. The review further observed that the officers did not close the distance or force a confrontation with the subject but instead asked for backup and maintained distance.

We appreciate the detailed assessment of the officers' on-scene decision-making and agree that the decisions to ask for backup, request a less-lethal munition, provide verbal commands, and maintain distance were appropriate tactics. We also agree that the very compressed time frame between arrival on scene and the sprint by the subject toward the officers forestalled the use of other tactics such as mental health assessment, conflict resolution, and de-escalation.

However, in our view, the Department seemed to reach some of these conclusions without a clear foundation in the evidence – particularly in the form of supporting statements from the involved officers. For example, the officers were not asked about the extent to which having a SAGE munition<sup>12</sup> at the ready inside of their patrol car would have led them to choose it as they exited their vehicles at the scene. The officers were also not asked how the knowledge that a SAGE was on scene might have shaped a strategy wherein two officers provided cover while the third obtained it as a supplemental option. We also are left with questions as to how much affirmative coordination and planning occurred between the three officers, given the lack of apparent articulation among them regarding a tactical plan.

A similarly thoughtful and in-depth analysis characterized the discussion of the Taser's role in the incident. The review found that the Taser deployment was not effective in stopping the subject and that it would have been extremely difficult to effectively deploy the Taser and neutralize the threat under the circumstances presented. The review particularly noted the fact that Taser probes deploy at off-set angles, that the laser sight is of little use when targeting a fast-moving subject, and that even when both Taser probes connect only that musculature that falls between the probes is disrupted. Accordingly, the review opined that the extent to which the subject would be debilitated is unpredictable. The review concluded that by the time the subject entered the maximum range of the Taser, he was moving at a near sprint and that it was questionable whether even a successful application of the Taser would have neutralized the threat in time to avoid the necessity of deadly force.

This analysis is impressively comprehensive and seemingly legitimate in its conclusions. Again though, the lack of further questioning of the deploying officer limited the inquiry in our view. We also note that the review did not remark on the fact that the Taser was deployed after shots were already fired, albeit momentarily so. Both these questions speak to potential performance and training issues that an administrative review should encompass.

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<sup>12</sup> A SAGE munition is a less lethal device that can be used to effectively disable a person who is presenting a threat to officers. SAGE refers to the company that makes the less lethal weapon.

Additionally, as noted above, the absence of a specific question about whether the officers heard a staff member's mentioning of a "butter knife" had several implications for threat assessment.<sup>13</sup> It's important to reiterate that the officers may have not heard the statement, and, even if they had, may still have reasonably believed that the knife in question presented a deadly threat as brandished by the aggressive subject. Again, though, because these facts were not developed during the investigative stage, the effectiveness of the tactical review is impeded.

Additional collateral but significant issues were not addressed during PAPD's review of the incident. As mentioned above, the administrative investigator interviewed the two PAPD employees responsible for dispatching communications on the date of the incident. However, there is no tactical analysis or critique with regard to the way information from the residential facility was obtained and transmitted to the responding officers. For example, the dispatcher who took the call dispatched the call as a "5150"<sup>14</sup> as opposed to a "Criminal Threats" call. Moreover, there is no discussion about whether in retrospect it may have been more advisable to keep the initial caller on the phone until his story could be further researched and verified. While the additional information collected during the administrative interviews of the communications personnel was admirable, the analysis does not then evaluate this additional fact gathering in assessing the way information was collected and transmitted in this incident.

The investigative reports further indicated that one involved officer drove himself back to the station. PAPD investigative protocols are that involved officers in deadly force incidents are to be separated and transported away from the scene. Ambiguity about whether this officer – who used his Taser and was a witness but did not use deadly force – fell within the protocol was understandable. However, this type of issue is something that an after-action review can and should address.

Similarly, the investigation indicated that an officer who arrived at the scene moments after the shooting had placed himself as "arrived" on his mobile data computer even though, in fact, he was still several blocks away. It was reported that it was common practice for officers to indicate on their computers that they are at a location even though they are not physically there, presumably in the interest of speeding up their ability to act once they do arrive. In our view, though, the practice is just as likely to create confusion regarding efforts to coordinate any

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<sup>13</sup> For example, all three of the involved officers said in their interviews that the ballistic body armor they were wearing was not designed to stop an edged weapon – which re-introduces the issues of what they understood the subject to be brandishing.

<sup>14</sup> "5150" is a short hand reference to individuals who may be going through a mental health crisis.

response,<sup>15</sup> and we note that the report did not indicate that other responding officers took similar action.

***Recommendation: PAPD should critically review the practice of officers placing themselves on “arrived” status prior to them actually arriving.***

The investigative report indicated that at least two parked cars and a door were struck by bullets fired by the officers. While there is no follow up in the after-action reports about whether the City compensated the property owners regarding the damage suffered as a result of the shots fired, we were informed by PAPD that the Department worked with the City Attorney’s Office to “pre-load” the claims process and pay for the property damage. We commend PAPD and the City Attorney’s Office for recognizing the importance of proactively reaching out to non-involved property owners. Our only point here is to recommend inclusion of relevant documentation in the interest of completeness.

***Recommendation: PAPD should ensure that it documents in its after-action report its actions to compensate property owners for any loss suffered as a result of police action.***

More positively, the review also noted that after the subject fell to the ground and was no longer a threat, all the involved officers immediately transitioned to providing emergency medical aid and summoned emergency medical assistance. In fact, officers can be heard to tell the subject: “Come on buddy, stay with me.” This is noteworthy in a positive way. The transition from confrontation to rescue is, in our experience, a difficult one for many officers to make; in this case, the responding officers performed admirably.

Finally, we encourage the Department to maximize the value of the good work it undertakes in a critical incident response such as this. While follow-up on a less formal level perhaps occurred, there is no indication that either the involved officers or the wider Department were presented any debriefing after the tactical review. For example, sharing the review’s insightful analysis regarding the Taser deployment would have benefitted both the officer involved and the Department. Moreover, while we have been told that a remedial debrief of involved dispatch personnel did occur in conjunction with this case, it is not documented within the materials we reviewed. Focusing the after action report solely on the performance of the involved officers fails to acknowledge the advantages of a holistic review where the entire incident is considered, critiqued, and documented. The time, energy, and expertise spent on issue-spotting and analysis are all things that the Department should seek to maximize in terms of feedback and guidance for the future. We encourage PAPD to consider ways to further and formalize the sharing of “lessons learned” after critical incidents such as this.

***Recommendation: PAPD should devise feedback mechanisms whereby involved officers and Department members are debriefed on lessons learned from the investigation and tactical***

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<sup>15</sup> This practice could also inaccurately portray the Department’s actual response times.

***review. Such mechanisms should include written documentation indicating that such debriefings occurred.***

*PAPD's Systemic Review*<sup>16</sup>

To his credit, the now-retired Chief ordered an overall systemic review of tactics and training after the shooting. The resultant process – which current Department command staff shaped and implemented – produced several findings and recommendations designed to improve officer and Department responses on a going forward basis. For the Department to engage in this type of systemic review is emblematic of progressive policing practices.

In the past, we have taken PAPD to task for too narrow a focus on force incidents, where the only written determination is whether the use of force was within policy. Issues such as tactical decision-making, supervision, equipment, and documentation have not been identified, or at least there has not been a written record to document interests and responses.

With that mind, we commend the Department for the initiative and the positive reforms that emerged from it (which we discuss below). We hope that the impulse that provided the catalyst for robust systemic review in this case translates to similarly constructive approaches to future incidents.

Among the key findings was the recognition that a category of specialized training needed to be re-emphasized. PAPD was the first agency in Santa Clara County to commit to training all officers in Crisis Intervention Training (CIT), and the first agency to voluntarily participate in the scenario-based training administered by the County's Office of Mental Health. However, as a result of low staffing levels and a reduction in CIT training, only 80% of the current officers had CIT training – and none of the officers involved in the shooting had been through it.<sup>17</sup> This gap caused PAPD to redouble their training regimen so that all officers had again been CIT trained when the memorandum closing this case was prepared. In addition, the memorandum reported a commitment to provide updated training to all its officers by the County's Office of Mental Health which has since been completed. Obviously, this is an exemplary response by the Department.

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<sup>16</sup> The review took pains to remark that in no way should the systemic recommendations be construed as a poor or critical reflection on the performance of the involved officers. This inclination toward sensitivity comes from an understandable place, particularly in light of all the years that had passed since the Department's last fatal shooting and the potential impact on involved personnel. Nonetheless, we have found that rigorous internal assessment – even of individual officer performance – is a hallmark of effective agencies, and is not inconsistent with a proper regard for officers' well-being.

<sup>17</sup> This unfortunate circumstance may have been attributable in part to the fact that the incident occurred on Christmas Day; less senior officers are usually assigned to work on holidays. This reality emphasizes the need for all PAPD patrol officers to be trained in critical components.

The systemic review also found that the Department lacked staffing and resources to provide CIT training to its dispatchers. We appreciate that PAPD recognized that dispatchers are critical components to a successful resolution in dealing with people in crisis; they are usually the first personnel in communication with such individuals. The ways in which dispatchers relate to the caller, obtain requisite information, and forward that information to responding officers is often critical in increasing the likelihood of a good outcome. Accordingly, it is imperative that dispatchers are provided CIT training geared to their important role. We have been recently informed that the Department continues to retain an interest in providing this training but because supervision in the dispatch unit is in a state of transition and there are some dispatch vacancies, that this training has not yet occurred. Ideally, dispatchers should train with PAPD officers in scenarios designed to approximate real life challenges. We urge PAPD to move forward promptly with this important training initiative that could serve as a model for Santa Clara County.

Another issue identified by the systemic review was an interest in providing additional scenario-based training to PAPD officers. Accordingly, a Firearm Training System was obtained by the Department which has the capability to simulate 500 scenarios. The firearms, defensive tactics, and tactical communication instructors in the Department have integrated their training to focus on tactical and force options such as de-escalation, repositioning, less lethal munitions and seeking backup. Additionally, critical incident response topics and training have been rolled out to PAPD sergeants and lieutenants at their quarterly meetings.

The delivery of a four-hour block of de-escalation training, already in the works, was expedited because of this officer-involved shooting. We have been informed that the Department has determined to provide ICAT (Intervention, Communication and Tactics) Training developed by the Police Education Resource Foundation (PERF), a progressive organization of police professionals. Trainers were identified by the Department and they have already attended the ICAT course. A one-hour introductory block of the training has already been provided to PAPD officers and the trainers are currently working on the training curriculum. We urge the Department to continue apace on this important training initiative.

The comprehensive review of the incident also resulted in some recommendations regarding equipment upgrades intended to increase the “tool kit” of each patrol officer. The investigation had revealed that none of the initial responding officers had any less-lethal munitions in their cars. In fact, as noted above, one of the officers radioed for a less-lethal munition when he arrived on scene, but it did not arrive in time. The investigation further indicated that only one of the three responding officers was qualified to deploy less-lethal munitions.

As a result of this information, the commitment was made to place a SAGE less lethal munition in every patrol vehicle. In addition, instead of having the less lethal weapon stored in the trunk of the vehicle, the recommendation was to have each mounted inside the patrol car, so

that they could be more readily accessible to officers. Finally, all PAPD officers were to be trained and qualified on the SAGE less lethal munition.

To date, all officers have completed the SAGE training and enough SAGE munitions have been purchased to outfit every vehicle. Because PAPD is currently transitioning its fleet to another model of patrol car, as new cars are acquired, mounts are installed so that the SAGE munition can be placed inside the vehicles. For those that are not yet mounted internally, the SAGE weapons are stored in the patrol trunk to ensure that all officers have access. PAPD anticipates that by year's end, one-half of its fleet will be equipped with the SAGE mounts.

The systemic review also recommended that an individualized first aid kit be provided to every PAPD officer and that each officer be provided updated first aid training. We have been informed that the requisite training has been provided and individualized kits have been issued. We have further been informed that officers have been required to bring their first aid kits to recent training.

The PAPD review found that its Peer Support Team was deployed within the first hour after the shooting and was instrumental in providing care and support for employees throughout the investigation. The review noted that the Team's involvement in the incident gave it the ability to self-assess their response and add additional resources. The review reported that the Team had identified an on-call psychologist who met with each of the officers and that the Team held a diffusing for the variety of involved personnel within days of the shooting. The review further reported that the Team has expanded, recently adding several new sworn and professional staff members and expressly commented on the important role served by the Department's Police Chaplain. The Department's recognition of this program's value, and related expansion of it, are both positive outgrowths of the review process.

Finally, the systemic review recommended that PAPD respond to President Obama's 21st Century Policing Task Force Report. That Report issued a number of recommendations suggesting every police agency should consider adopting consistent with progressive policing principles. It was admirable that PAPD took the time to consider to what degree the Department was operating consistent with the Task Force recommendations. In furtherance of that tradition, it would be helpful for PAPD to publish its report so that the public could be provided insight about this self-assessment.

***Recommendation: PAPD should publish its self-assessment regarding the degree to which the 21st Century Task Force recommendations have been inculcated into the Department.***

In closing our assessment of this unique undertaking by PAPD, we note that, in the District Attorney's Office closing letter, it opined that the decedent "was intent on dying at the hands of police officers" and "committed suicide by attacking the officers, who shot him in self-



defense”.<sup>18</sup> However, regardless of the decedent’s imputed intent, it is incumbent upon police officers and their agencies to continuously pursue means of learning from incidents and taking steps to preserve life to the extent possible. The systemic review of this event completed by PAPD is one example of how, through introspection, examination, and learning the Department has better prepared itself to face similar future challenges.

#### *PAPD’s Document Retention Policy*

As part of PAPD’s investigative protocols, involved officers are advised in writing that the investigative materials would be retained for six years. 832.5 (b) of the California Penal Code requires that all complaint investigations be retained for at least five years:

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years.

However, the current collective bargaining agreement between the City of Palo Alto and the Palo Alto Police Officer’s Association states:

Records of disciplinary actions, including references in a performance evaluation, shall be removed from a personnel file upon written request by the employee after a period of three years, or sooner mutually agreed by Management and the employee so long as the disciplinary action did not involve a violation of state and federal harassment and discrimination laws.

While the competing language arguably conflicts with the state law provision, the two provisions could be harmonized by PAPD removing disciplinary actions from the personnel file of the officer but retaining the records in another location. We note that elsewhere in the agreement, there is a provision allowing for “sealing” of disciplinary records, subject to state law requirements.

That being said, but for the collective bargaining agreement struck between the City and the Officers’ Association, there is no legal bar to retaining such materials for longer periods of time. In fact, several law enforcement agencies in the State retain internal investigative materials permanently. A retention period longer than five years has significant benefits; most importantly, the ability to have available the complete history of an employee’s prior investigations of misconduct rather than having such material destroyed after five years. Progressive policing has recognized the value in retaining the entire history of an officer’s performance for purposes of progressive discipline and mentoring. Finally, the Department may have a Constitutional obligation under Brady v. Maryland to provide such information to a Court for judicial review in criminal cases which cannot be met if older records are routinely destroyed.

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<sup>18</sup> The Medical Examiner of Santa Clara County found the cause of death to be multiple gunshot wounds and the manner of death not to be “suicide” but a “homicide”.

***Recommendation: PAPD and the City of Palo Alto should consider changing the retention requirement for disciplinary records when the current collective bargaining agreement expires at the end of 2018, so that such records can be preserved while each officer remains a PAPD employee.***

### **III. Taser Case**

#### *Factual Overview:*

This incident began on a weekday evening with a 911 call about a possibly intoxicated driver. Identifying information about the vehicle went out over the radio, and an officer happened to be on patrol in the area. He located the car and initiated a traffic stop, which ended up in the parking area of a bank. Upon making contact with the driver, the sergeant quickly determined that he was exhibiting signs of intoxication. He accordingly decided to call for backup and detain the driver, who quickly became uncooperative.

There were multiple struggles in the next few minutes. To prevent the suspect from leaving, the officer had to reach into the car to take the keys from the ignition, and tried unsuccessfully to pull the man from his car in response to the man's concerning movements and failure to comply with directions.

Ultimately, the man emerged from the car and walked in the officer's direction. This was in spite of repeated commands and warnings about the potential use of the Taser, which the officer had taken from its holster. The officer perceived a threat of assault and used the Taser, which was partially effective but seemed also to incite the man. He tried to pull the probes from his body and continued advancing. The officer then tackled the man, and a lengthy wrestling-style struggle on the ground commenced. The officer used commands, punches, and then a carotid hold in an effort to overcome the driver's resistance. Finally, he was able to get him into handcuffs – just as backup officers arrived to provide assistance.

The driver was treated by paramedics at the scene and transported to the hospital, where he was treated for the Taser punctures and several abrasions but was eventually cleared for booking. He was later convicted of criminal charges relating both to drunk driving and his resistance.

#### *Outcome and Analysis:*

Based on its investigation, PAPD determined that the officer was justified and within policy in using the various force options he deployed in this incident – including the Taser. We agree with the Department's conclusion.

The Department was able to base its findings on a variety of evidentiary sources. One of these was the officer's in-car recording system, which captured audio and video of the incident

from the moment he located the suspect's car and initiated the traffic stop.<sup>19</sup> Additionally, the Department identified and interviewed four civilian eyewitnesses as well as the subject. The officer himself gave a detailed verbal statement to the officer who prepared the formal arrest report. With the exception of the subject's version, which conflicted with others in terms of sequencing and certain other particulars (but did acknowledge his resistance<sup>20</sup>), the evidence was largely consistent in establishing what had occurred.

In keeping with established protocol, PAPD provided us with the recorded evidence for our own review. It is clear from the first moments of the encounter that the suspect was bothered by the traffic stop and unwilling to cooperate with the officer's instructions. When he realized that the officer intended to conduct a DUI investigation, his agitation level increased, and he even made an effort to start the car and leave.

This moment escalated the situation, and caused the officer first to forcibly remove the keys<sup>21</sup> and then to begin physically grappling with the suspect in an effort to remove him from the car. When that didn't work, he removed his Taser from the holster and issued a warning to the subject, but this also failed to elicit his cooperation.

After another moment in which the officer tried different tactics, the subject eventually turned his body on the seat and put his legs out of the open door and onto the ground. Again, he responded defiantly to multiple commands, and finally stood up and stepped toward the officer. At that point, the officer activated the Taser.

The probes struck but did not incapacitate the man, who instead became more aggravated and aggressive. A second Taser deployment ensued, followed by the officer wrestling the subject to the ground in the face of significant resistance. The next moments are only partially observable from the camera angle. They feature several punches by the officer, repeated commands and a struggle to secure the arm of the pinned but uncooperative subject. Meanwhile, the man continued to vocalize his hostility and refusal to comply. At one point, the officer tried

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<sup>19</sup> As it happened, some of the physical struggle after the initial Taser contact occurred off-camera as the suspect (who was out of the car by then) continued moving toward the sergeant. The audio continued to capture what was happening throughout the encounter.

<sup>20</sup> The subject consented to an interview about the force that a PAPD lieutenant conducted at the hospital. He cited the "aggressive" initial demeanor of the officer and the initial physical contact with him while he was still in the driver's seat as the basis for his own defensive mindset. He said he reacted like any "normal person" in defending himself, out of concern that the officer intended to harm him.

<sup>21</sup> The maneuver was decisive and effective in this case. It is, however, inherently dangerous because of the vulnerability involved in leaning into the vehicle. We have seen it precipitate serious safety risks and even deadly force on several occasions in other jurisdictions. We hope the Department encourages thoughtfulness and care when it comes to this technique.

a carotid control hold, and that appeared to give him the final advantage that he needed to handcuff the suspect.<sup>22</sup>

Clearly, the subject in this case reached the threshold of physical resistance required for use of the Taser under PAPD policy. The other force that was utilized – given the subject’s ability to pull out the probes and continue to actively resist – was similarly reasonable and justified. This included the grappling, punches, and ultimately the carotid hold.

As a tactical matter, the officer did several things well. His initial demeanor with the subject was low-key and non-confrontational, and he did a fine job of putting out timely and useful radio communications as events unfolded – even in the midst of a challenging effort to subdue and handcuff a large, resistant individual. Because the backup units were unusually slow to respond due to the time of day and other external circumstances, the officer’s perseverance and relative poise were all the more impressive.

Nonetheless, in conducting its review, the Department identified several tactical issues that “merited further consideration and training.” These ranged from the initial radio broadcast of a “DUI investigation” within earshot of the subject (and to which he visibly reacted), to a couple of moments in which the officer’s positioning in relation to the car and driver were not optimal. (Essentially, because he was closer than he needed to be, he was more vulnerable to the subject’s reaching for him or his weapon.) While none of these issues were egregious, we found each to be worthwhile, and we commend the exercise.

Just as importantly, the Department followed through on these issues in the form of a documented memo and a counseling session with the involved officer. We have had prior experiences of wondering whether some of the peripheral issues we noted in a given case were even identified by management. Though we’ve been told they often were, the approach of formally “showing your work” that PAPD took in this case makes our job easier and presumably helps reinforce the underlying messages.

We did raise a separate question that the original supervisor’s memo did not cover: namely, the repeated instances of profanity on the part of the officer that occurred during the encounter. This is a topic we have broached before, not out of prudishness or a desire to nitpick, but because it is a matter of Department policy, and because we know that such language can reflect poorly in the eyes of people who expect a high standard of professionalism and control from the police.

Here, we note the explanation that we got from Department management, which was that the heated nature of the struggle and the likely inaudibility of the comments to bystanders made

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<sup>22</sup> This force option was effective here. However, recent high-profile cases across the country have reinforced safety concerns about the unique danger associated with the carotid hold, and offered a reminder that such incidents merit especially careful review.

the words negligible in this instance. We acknowledge that not all profanity is equally problematic, but reiterate our point that it matters, and should at least be noted in the Department's analysis of what occurred.

***Recommendation: In cases involving allegations or recorded evidence of profanity on the part of PAPD officers, the Department should at least make a formal showing of acknowledgement and evaluation of the relevant language in the context of policy and sound practice.***