

**TO: HONORABLE CITY COUNCIL**

**FROM: CITY MANAGER**

**DEPARTMENT: CITY MANAGER**

**DATE: DECEMBER 14, 2009**

**CMR: 475:09**

**REPORT TYPE: Informational**

**SUBJECT: Transmittal of Independent Police Auditor Semi-Annual Report for the Period January – June 2009**

Consistent with Council direction, the City Manager is transmitting the semi-annual report from the Independent Police Auditor for the period between January – June 2009 at the Council meeting immediately following receipt of the report. The City Manager received the report on December 9, 2009.

**ATTACHMENTS**

Attachment A: Independent Police Auditor Semi-Annual Report for the Period January – June 2009

SUBMITTED BY:

  
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JAMES KEENE  
City Manager



# POLICE AUDITOR'S INTERIM REPORT

Presented to the Honorable City Council  
City of Palo Alto  
December 9, 2009

Prepared by Michael Gennaco  
& Robert Miller

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# Palo Alto Independent Police Auditor

## Interim Report for 2009

### **I. The Third Year**

This report is the first of two reports covering the third year of the Independent Police Auditor's work with the Palo Alto Police Department. It reports on investigations initiated and complaints that have been considered since the publication of the second year Final Report and provides updated information regarding investigations that had not yet been fully resolved at the time the Final Report was released. Additionally this Report updates the work the Auditor and the Police Department have engaged in with regard to systemic issues.

This report also covers the Auditor's review of all applications of the Taser by PAPD personnel in the course of detention and arrest of suspects. This complies with the mandate of the Palo Alto City Council that the IPA expand its purview to include Taser-related incidents.

### **II. Taser Incidents**

Since the introduction of the Taser as standard equipment for all Palo Alto PD patrol officers in late 2007, Department members have applied or attempted to apply the Taser to six persons in separate incidents. We revisit the third incident and review the fourth, fifth and sixth incidents below.

This year, the Department has upgraded the documentation of Taser incidents, providing a more thorough and well structured evaluation. We believe this will enhance

the Department's ability to evaluate and improve the utility of this still relatively new tool.

#### **Taser Use of Force #3 – Incident 08-8631**

Officers, called to the scene of a man acting suspiciously near a car, observed a man alone in a parked car smoking rock cocaine from a glass pipe. They knocked on the closed windows of the car and ordered the man to get out. He locked the doors, continued to smoke the glass pipe, refused to get out, and appeared to search for something in and under the car seats. The officers broke a window and used a Taser to extract the man. We have reviewed the case materials and Taser video, but have not concluded our discussions with PAPD managers regarding this matter. Considering that, as detailed below, the Department has now had six Taser deployments since Council authorized the purchase of a Taser for every PAPD officer and in light of the recent appointment of a new Chief of Police, we believe it is appropriate to take stock of all of the incidents to determine whether the current policy and training regime is optimal. Accordingly, we will be conferring with the new Chief on Taser-related issues and will report the results of those discussions as well as our conclusions regarding the Taser use in this case in our next report.

#### **Taser Use of Force #4 – Incident 09-2309**

Officers were called to the scene of a disturbance outside a nightclub where two groups of young men were antagonizing one another. They observed that one of the men appeared to be particularly intoxicated and was taunting and threatening to fight the other group. When three officers forcibly took the man off of an external landing down a stairway to handcuff him on the ground, friends of the man yelled at the officers and approached them. One of the men in the group kept approaching the officers and yelling at them to stop arresting his friend and would not respond to the order to stay back even when one of the officers pushed him away repeatedly with his hands. Another officer, who was still struggling to place handcuffs on the first man pointed his Taser at the friend and informed him that he would fire it if the friend did not back off. Then the officer fired the Taser but missed. The friend was later arrested, but did not receive any injury

from the Taser.

We have reviewed the use of force reports and interviews, the supervisor's evaluation and the Taser videotape and have discussed this use of force with the Department. It is clear from these materials that there was a large group of belligerent and intoxicated men taunting the officers, rendering any arrest potentially difficult and dangerous. We conclude that this was an appropriate deployment of the Taser and that the attempted firing of the weapon at the suspect to stop him from interfering with the arrest complied with the Department's current Taser use policy. The fact that the Taser missed its target demonstrates the need for continued training in order to ensure officer proficiency as well as the limitations of the tool and the need for officers to be ready to deploy other force options, if necessary. That said, we acknowledge the dilemma of the officer who deployed the Taser against one suspect while still struggling to handcuff another suspect. The mere fact that the officer missed the target does not necessarily demonstrate bad judgment or insufficient training. Rather, it emphasizes the utility of tactical debriefing after such incidents and the yearly Taser training required by the Department.

#### **Taser Use of Force #5 – Incident 09-3180**

A construction worker was threatened and chased by two 16-year old juveniles of average build swinging plastic pipes. Officers were called to the scene and made contact with two juveniles walking away from the area who matched the detailed descriptions of the suspects. When a sergeant attempted to stop one of the juveniles from fleeing, he fought with the sergeant who was joined by another supervisor, who wrestled the first juvenile to the ground. The sergeant attempted to fire a Taser at the juvenile but the Taser cartridge malfunctioned. The sergeant then used the Taser in "stun-drive mode," applying the front of the Taser handle unit directly to the body of the struggling juvenile suspect for five seconds. The second juvenile suspect joined the fray and began fighting with the supervisors and an officer who came to assist. During that struggle, the sergeant also applied the Taser in stun drive mode to the body of the second juvenile suspect for four seconds. Neither application of the Taser in stun-drive mode appeared to have much effect on either of the two juveniles. A third juvenile had attempted to interfere but was

headed off by another officer. The first two juvenile suspects were handcuffed and taken to Stanford hospital and medically cleared in accordance with Department Taser use procedure.

The initial unsuccessful attempt to fire the Taser at the first juvenile suspect conformed to the PAPD Taser use policy as an appropriate attempt to subdue a violently non-compliant suspect so that he could be handcuffed. The stun-drives were likewise allowable uses of the Taser during hand-to-hand contact as a simple pain compliance device. It is important to note that the Department's current Taser policy allows for the use of the Taser on older juveniles such as the arrestees in this case and that the involved officers could not have confirmed that the two were juveniles at all until they were booked. Data indicate that the Taser was fully charged during the incident, but was not decisive during the struggle with the youths and left no signs of injury. This may be due to the clothing worn by the juveniles or the transitory nature of the contact during the struggle. This should be an occasion for tactical debriefing but does not implicate the Department's policy guidelines for these uses of the weapon.

#### **Taser Use of Force #6 – Incident 09-2926**

During a struggle with a combative drunk driving suspect, an officer applied the Taser twice to the body of the suspect in the stun-drive mode.

The Department has recently completed its use of force documentation package on this incident but the Auditor has not yet had an opportunity to review it. We will report on the incident after reviewing the documentation.

### **III. Complaints, Cases and Issues**

#### **1. Complaint of Improper Detention for 72-hour Evaluation #C 2008-019**

**Synopsis:** After having an argument with his grown son, a father called the Police Department and explained that his son had threatened to kill himself, referred to a suicide note, was behaving strangely and had stopped taking his psychotropic medication. Officers contacted the son on the sidewalk and after questioning him, interviewing the father and conferring with one another, decided to take him to a nearby hospital for a 72-

hour mental health evaluation by medical staff. A few days later, the son filed a complaint that the officers had searched, handcuffed and detained him illegally.

**Recommendation:** California law confers the authority and the obligation on police officers to make an initial decision in the field as to whether a person by reason of mental infirmity is unable to care for himself or is a danger to himself or to others, and to detain that person and refer them to a medical facility for a 72-hour evaluation. It is important to note that peace officers only make a provisional decision to detain. Medical professionals are entrusted to make the final decision regarding the involuntary commitment for 72-hours. In this case, the officers appear to have made a cautious but reasonable and compassionate decision based on the father's statements, the agitated state of the son, and the son's history of episodes of extreme mental distress, some of them resulting in prior 72-hour commitments effectuated by the Police Department. The Auditor reviewed the interviews and MAV tapes and the investigator's report. We conclude that the complaint was adequately investigated and agree with the Department's conclusion that the actions of the involved police officers were reasonable and professional. We do note, however, that the investigation into the allegations was not initiated until three months after the complainant filed a written complaint with the Police Department. We have brought this fact to the attention of the Department.

**Resolution/Corrective Action:** The complainant was notified of the results of the investigation by letter.

## **2. Complaint of Excessive Force and Discourtesy #C 2008-020**

**Synopsis:** Police Officers responded to a call from the Veteran's Administration Police requesting help with the arrest of a patient who had an outstanding warrant. At the VA hospital, officers handcuffed the patient and took him into custody. During transport to jail, the patient said he was in distress. Officers took him to Stanford Hospital. The patient filed a complaint alleging that he was punched in the side during the arrest, handled roughly, and not provided a wheelchair immediately. The patient further alleged that officers directed profanity at him and accused the patient of faking injury.

**Recommendation:** The Auditor reviewed the interviews and MAV video of this incident, the documentation of the arrest and the complaint investigation reports. The

evidence indicates that, at the time of the arrest, the Police Department had information that the suspect was a former police officer, was known to hospital staff to be “extremely uncooperative,” and had a contagious skin infection. Additionally, hospital doctors had determined that the patient could be safely released from the hospital and incarcerated. The handcuffing and arrest were accomplished abruptly with no initial warning or explanation to the patient. The circumstances known by the police at the time of the arrest support a departure from standard courtesy in light of the need to minimize the time and force in dealing with the arrestee. The excessive force allegation is unsupported by the evidence. Indeed, one of the complainant’s physicians stated that he was watching the arrest proceedings closely and saw no punches or other injurious actions by the officers. The evidence did, however, support the allegation of the use of profanity by one of the officers. The auditor concurs with the Department’s “sustained” finding of a violation of the PAPD policy against discourteous or disrespectful treatment of the public by that officer.

**Resolution/Corrective Action:** One officer received discipline for the sustained violation of the policy against discourteous or disrespectful treatment.

### 3. **DUI #IA 2009-002**

**Synopsis:** An off duty officer was arrested for driving under the influence of alcohol by another law enforcement agency after the officer was involved in a single vehicle roll-over collision. The officer was convicted of driving under the influence and sentenced by the criminal court. Following the resolution of the criminal case, the Department completed an internal affairs investigation. The Auditor has not yet reviewed the investigation file and will report on it after review. The officer was placed on desk duty during the pendency of the criminal case and the administrative investigation.

**Recommendation:** The internal affairs investigation has been completed by the Department. The Auditor has not yet been provided the file. We will report fully on this matter after reviewing the documentation.



**4. Complaint of Unnecessary Search and Discourtesy #C 2009-001**

**Synopsis:** An officer pulled a motorist over because she had a non-functioning tail light. When the motorist could not produce a driver's license, the officer discovered that the motorist's driver's license had been suspended. The officer informed the motorist that he would need to have the car towed and performed a cursory pat down search of the woman before allowing her to remove personal items from the car. The motorist later complained to the Department that the officer had been officious, discourteous and that the pat down was intrusive and unnecessary.

**Recommendation:** The complaint investigation was conducted promptly and thoroughly. The Auditor reviewed the original officer's citation, the investigator's interviews and report, the investigator's supervisor's evaluation, and the MAV videotapes in this case. We concluded that the officer maintained a professional demeanor during the incident. The pat down search, while not always employed in these circumstances, constituted a justifiable precaution to employ with a somewhat uncooperative motorist and was minimally intrusive. We note that the PAPD does not have a policy that specifies that a pat down must or should be done by an officer of the same sex.

**Resolution/Corrective Action:** The complainant was notified of the results of the investigation by letter.

**5. Complaint of Improper Detention and Discourtesy #C 2009-002**

**Synopsis:** Several officers responded to a report of a fight in progress at an intersection. The suspected instigator was no longer there, but was described as a Hispanic male wearing a white top and in the company of two other males. Shortly afterwards, officers spotted three young Hispanic males, one of whom wore a white jacket. Officers ordered the men to the ground and handcuffed them. After conferring with the victims, the officers concluded the three young men were not suspects and released them. At least some of the officers pointed their guns at the three men during the incident. Two of the three later contacted the Auditor and explained his dissatisfaction with the officers, whom he believed had been excessively aggressive in pointing guns at them and handcuffing them and had made jocular remarks about having a good story to tell once they were released. With the complainant's permission, we

forwarded these allegations on to the Department and recommended a formal complaint investigation.

**Recommendation:** The Auditor reviewed the reports and MAV videos of this incident as well as the thorough internal investigation in response to the complaint. We concluded that the officers acted reasonably in stopping the young men and handcuffing them as possible suspects of a recent nearby physical assault. We agree with the Department's "exonerated" finding regarding this action. The manner of effectuating the detention, however, raised significant questions. We agree with the Department's administrative "sustained" finding against one of the officers that drawing a weapon immediately was unreasonable and that physically engaging one of the men and taking him to the ground, then straddling the subjects and pointing a gun at their backs was an unreasonable escalation of the situation and potentially impaired officer safety. We also agree that handcuffs were used in an appropriate and reasonable manner under the circumstances. Additionally, the Department found that the remarks made by officers to the effect that the young men would have a good story to tell did not violate the discourtesy policy. We agree with the finding, but suggest to the Department that this plausible attempt to diffuse ill feeling while explaining to the young men why they had been detained and were being released was a miscalculated joke at best and had the opposite effect on the men.

As a sidebar, we found that, in the course of interviewing the complainant and his companions, Department investigators effectively fleshed out the full extent of the allegations and accepted witness allegations as viable complaints as well. That said, investigators also asked the complainants' about their preferences with regard to the level of internal investigation appropriate to the allegations. It is laudable to seek frank input from complaining parties, but this exchange can place citizens who know little about investigative protocols in an awkward position. Moreover, investigative triage decisions should arise from the character and extent of the evidence, not from the views of complainants. We have urged the Department to reframe these discussions so that complainants are told what the investigative process may entail but not asked to state a preference as to the level of the investigation.

**Resolution/Corrective Action:** One officer received discipline for sustained

violations of the Department's policies against excessive conduct and unsafe working practices. Additionally, he was also ordered to attend 40 hours of defensive tactics training and restricted from special assignments for six months. The Department is currently arranging to meet with the complainants to explain the results of the investigation. The Department has agreed to consider our recommendation as to questioning complainants about their preferred type of investigation.

**6. Complaint of Improper Arrest #C 2009-003**

**Synopsis:** A man was arrested for being drunk in public. He complained to the Auditor that he was simply taking the garbage out next to his residence. The complainant agreed to authorize us to forward his complaint on to the Police Department for an investigation.

**Recommendation:** The complaint investigation was recently completed by the Department. The Auditor has not yet been provided the file.

**7. Complaint of Off Duty Misconduct and Conflict of Interest #C 2009-004**

**Synopsis:** A tenant at an apartment complex complained that a Department supervisor worked there in a private capacity as a security officer and employed trespassing and intimidating tactics. He also objected to a possible conflict of interest with the supervisor's Departmental responsibilities.

**Recommendation:** The Department has not yet completed its investigation of this matter. We note with approval that, in order to pursue this lengthy investigation in a timely manner, the Department contracted with an experienced police investigator outside the Department. The Auditor will continue to monitor the progress of this investigation.

**8. Complaint of Off Duty Discourtesy #C 2009-005**

**Synopsis:** A citizen complained that an off duty officer bumped her and uttered harsh words after a minor boating accident. The complaint investigation was recently completed by the Department. The Auditor has not yet been provided the file.

**9. Complaint of Inadequate Service #C 2009-006**

**Synopsis:** A dispatcher received a call from a domestic violence victim, declined to send an officer and requested that the victim call back when the spouse, who had fled the scene, returned. The chief of a neighboring police department filed a complaint regarding the failure to dispatch an officer.

**Recommendation:** This case investigation has been completed, but the Auditor has not yet been provided the case file or reviewed the incident.

**10. Complaint of Inadequate Service #C No number**

**Synopsis:** A vehicle making a right turn collided with a bike rider in a crosswalk. The traffic officer who responded to the incident found the juvenile bicyclist at fault for riding on the sidewalk and in the crosswalk against traffic and issued the juvenile a citation. The father of the cyclist complained that this was an erroneous interpretation of the facts and the law and that the motorist should have been cited instead. Department supervisors and traffic specialists as well as the Chief of Police have met with the father to explain the Department's evaluation of the traffic accident. A second police agency has also reviewed the incident and made a similar evaluation.

**Recommendation:** The Department has reviewed the collision investigation but has not yet initiated a complaint investigation after being informed by a representative of the complainant that he will make no further statements. The auditor will monitor this situation.

**11. Complaint of Abuse of Process #C No number**

**Synopsis:** A citizen complained that officers have improperly assisted in the enforcement of a restraining order against her instigated by her brother.

**Recommendation:** An investigator has been assigned to this complaint, but the investigation is still pending.

#### **IV. Cases Pending from Prior Report**

##### **12. Complaint of False Statements and Omissions in Arrest Report #C-2006-010**

**Synopsis:** A civil litigant was charged with felony vandalism against the opposing party when PAPD investigators concluded that he had scratched the other party's car with a metal object after losing in civil court. The prosecution of the vandalism case has been delayed by procedural writs that continue to work their way up to higher courts of appeal. The vandalism defendant has complained to the Department that the officer who investigated the vandalism made biased statements and omitted evidence in his report.

**Recommendation:** The Auditor recommended that the department hold any investigation of the complaint until after the resolution of the criminal case. Any other course of action would be disruptive to the court proceedings. The Department agreed.

**Resolution:** At the Auditor's request, the Department has determined that the criminal case has concluded and awaits sentencing and it is now appropriate to proceed with the complaint investigation.

##### **13. Complaint of Mistaken Forfeiture of Car #C -2007-010**

**Synopsis:** A car was stolen and used in a crime. While PAPD conducted the initial arrest of the suspect, the vehicle was eventually transferred to the custody of the police department in a neighboring jurisdiction where the crime had occurred. When the owner tried to claim the car, she found that it had been sold as abandoned property in a lien sale. The complainant alleged that she was not provided sufficient notice regarding the selling of her vehicle.

**Recommendation:** PAPD conducted an investigation of this matter and the Police Chief has come to an appropriate conclusion. While both the other police agency and the complainant shared some responsibility for the failure to care for the complainant's property, the complainant was, after all, an innocent victim of the original car theft. Because PAPD bears partial responsibility for the loss, corrective action should be taken.

**Resolution/Corrective Action:** The Department agreed to the Auditor's recommendation to ask the city to contact the complainant to discuss compensation. The Department reported that the City in turn made such overtures to the vehicle owner but has received no response.

**Table of Complaint and Internal Affairs Investigations  
Reviewed by the Auditor  
February 2009 through October 2009**

Case No.	Case/Investigation Type	Allegation	Results of Investigation	Resolution
C-2008-019	Citizen Complaint	Improper detention for 72-hour evaluation	Unfounded	Complainant informed of results
C-2008-020	Citizen Complaint	Excessive force and discourtesy	Unfounded – excessive force Founded – discourtesy	Officer received discipline for discourtesy
IA-2009-002	Internal Affairs Investigation	Driving under the influence – off duty	Complete – IPA review pending	Pending
C-2009-001	Citizen Complaint	Unnecessary search and discourtesy	Unfounded	Complainant informed of results
C-2009-002	Citizen Complaint	Improper detention and discourtesy	Founded	Officer received discipline for excessive conduct and unsafe working practices. Meeting to explain results to complainants
C-2009-003	Citizen Complaint	Improper arrest	Pending IPA review	Pending
C-2009-004	Citizen Complaint	Off duty misconduct and conflict of interest	Pending investigation	Pending
C-2009-005	Citizen Complaint	Off duty discourtesy	Pending investigation	Pending
C-2009-006	Citizen Complaint	Inadequate service	Pending IPA review	Pending

None yet	Citizen Complaint	Inadequate service	Pending investigation	Pending
None yet	Citizen Complaint	Abuse of process	Pending investigation	Pending

### Cases Pending from Previous Reports

C-2006-010	Citizen Complaint	False statements and omissions in arrest report	Criminal case resolved. Administrative investigation ready to proceed.	None
C-2007-010	Citizen Complaint	Mistaken forfeiture of car	Founded	Department asked City to discuss compensation with car owner. City agreed.

#### V. Conclusion

We have noted that, so far this year, there has been some lack of organization in the Department's prompt response to citizen complaints. Some investigations have taken longer than usual and there has been some disruption in the devotion of resources to internal affairs functions. This organizational deficit has impacted on the IPA's work as well, with notice to the Auditor of new cases being provided outside the expected timetables and, as noted above, with completed cases taking longer than customary to be forwarded to the Auditor for review. Of course, for the IPA program to be optimal, real time notice of new investigations and forwarding of reports is essential. We are aware that the Department and the Personnel and Training Division in particular have experienced several unexpected disruptions this year. Two lieutenants, who performed a

large part of the Internal Affairs tasks, left in mid year due to illness and retirement. Additionally, the Department functioned without an Assistant Chief. This, in turn has placed extra burdens on the remaining command staff in the Department. We will continue to discuss these issues and work with the new Chief to bring the time lines of notice, receipt of investigative materials, and effective give and take between the Department and the IPA more in line with expectations.

That being said, we think it is important to point out, however, that the overall quality and thoroughness of individual investigations has remained high. We are also pleased that the Department continues to respond positively to criticism from community members and shows a firm commitment to self-examination at every level. With the appointment of a new Chief of Police by the City and significant turnover in the supervisor ranks of the Department, some temporary disarray is perhaps understandable. Internal Affairs investigators have also had to meet the challenge of some extremely involved investigations this year. We have discussed these issues with the Chief and received assurance that the problem of resources will be addressed in the near future. We will report on future developments.