



City of Palo Alto

City Council Staff Report

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Report Type: Information Reports

Title: Independent Police Auditor's (IPA) Report of Review of Investigations as of June 1, 2022 and Police Department Use of Force Report for January - June 2022

From: City Manager

Lead Department: City Manager

Independent Police Auditor's Report on Investigations Completed as of June 1, 2022:

Since 2006, Palo Alto has utilized an Independent Police Auditor (IPA) to conduct secondary review of certain investigations of uniformed Police Department personnel and provide related services. Since the inception of the independent police auditing program, the City has contracted with the Office of Independent Review (OIR Group), to provide these services. The following report transmits the Independent Police Auditor Report on Investigations Completed as of June 1, 2022.

Attachment A contains the IPA report for investigations completed as of June 1, 2022 and **Attachment B** contains the Complaint table.

For reference, the prior IPA report was published on February 14, 2022 as an Informational Item, see Item 11 ([starts on packet page 256](#)). The Police Department's website lists all past Independent Police Auditor Reports, [here](#). For an overview of the history of the expanded scope of the IPA work, please visit the City's Race and Equity webpage at: www.cityofpaloalto.org/raceandequity.

POLICE DEPARTMENT'S RESPONSE TO IPA RECOMMENDATIONS

On March 14, 2022, the City Council directed the Police Department to provide written responses to future IPA recommendations ([Minutes](#)). The first report of Police Department responses to the IPA report after the March City Council action was June 20, 2022 (Page 827 of PDF is report [#14472](#)).

Attachment C has the Department’s responses to the current IPA Report on Investigations Completed as of June 1, 2022.

POLICE DEPARTMENT'S USE OF FORCE REPORT FOR JANUARY 2022-JUNE 2022

In 2020, the City Council directed staff to include use of force information when transmitting the IPA reports to the City Council. This information was reported on an annual basis for the first report shared in February 2022.

Attachment D contains the Department’s Use of Force Report for January 2022 – June 2022.

PROCESS TO FILE A COMPLAINT TO THE IPA

The public can find more information about filing a complaint through the link here:
<https://www.cityofpaloalto.org/Departments/Police/Accountability/Employee-Complaint>

Complaints may also be directed to the Independent Police Auditor as follows:

Contact: Mr. Mike Gennaco Phone: (323) 412-0334 Email: Michael.gennaco@oirgroup.com	Or mail to: OIR Group 1443 E. Washington Blvd., #234 Pasadena, CA 91104
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Attachments:

- **Attachment11.a:** Attachment A: Palo Alto Report FINAL 9-10-22
- Attachment11.b: Attachment B: Palo Alto Complaint Table 9-22
- Attachment11.c: Attachment C: PAPD Response to OIR Recommendations Jan-Jun 2022
- Attachment11.d: Attachment D: PAPD Use of Force Supplemental Report Jan-Jun 2022

INDEPENDENT POLICE AUDITORS' REPORT
Review of Investigations Completed as of June 1, 2022

Presented to the Honorable City Council
City of Palo Alto
September 2022

Prepared by: Michael Gennaco and Stephen Connolly
Independent Police Auditors for
the City of Palo Alto



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Introduction

This Report constitutes OIR Group's¹ second submission to the City for the year 2022, in keeping with the City Council's recently revised framework for both our timeline and scope of work. It includes discussion of fifteen separate matters that were investigated internally by the Palo Alto Police Department in the latter part of 2021 and the first several months of this year.

Seven of the cases discussed were complaints that were initiated by members of the public across a range of allegations. (The eighth investigation was initiated internally by PAPD). The Department conducted its review, often by relying on body-worn camera recordings that provided definitive evidence about the actions of the officers. Unquestionably, the City's shift to that technology in recent years has had a significant impact on the investigation process. And because our contract provides us with total access to those materials, we are able to develop our own independent impressions with a new level of thoroughness and transparency.

The Department found that the officers had violated policy in two of the eight cases. We concurred with that assessment based on the available evidence. Importantly, though, the analysis does not end at that "bottom line question." As discussed below, several of the other cases produced moments in which PAPD found aspects of officer performance that warranted attention and response, even when formal discipline was not warranted. This is an encouraging approach to the discipline process – as a chance to utilize public feedback and the review system to enhance effectiveness in the future. Additionally, our independent scrutiny led to other insights that we hope the Department will act upon.

We also looked at one Taser deployment and six other force incidents that resulted in a hospital trip (though often for precautionary reasons only). In each instance, the force was found to be reasonable and justified, and we concurred with those assessments. As with the complaint allegations, part of our endorsement of the PAPD conclusions was a function of the rigorous review process that they have adopted. While it is not always

¹ OIR Group is a team of police practices experts based in southern California. It is led by Michael Gennaco, a former federal prosecutor and a nationally recognized expert in the field of civilian oversight of law enforcement. Since 2007, OIR Group has served as Palo Alto's Independent Police Monitor. www.oirgroup.com

flawless, it does make a concerted effort to review such incidents in holistic, thorough ways that hold officers to an appropriate standard.²

With regard to the force cases in particular, several of them involved individuals with apparent mental health concerns. This is not a new phenomenon, but it is one that is being subjected to new expectations for law enforcement and new contributions from other resources – including teams of mental health experts. That reality informs much of the discussion below. And it will continue to be a focal point, especially during a time of transition in which jurisdictions all over the country – including Palo Alto – experiment with alternative approaches.

As we mention below, the City launched its own “Psychiatric Emergency Response Team” model in November of 2021 to supplement a county-wide concept that had previously existed. Other support-based initiatives are also in the works. We look forward to future opportunities to assess how PAPD is integrating these concepts into its own operations. Our understanding from Department personnel at various rank levels is that the help is very welcome – and that PAPD officers deserve credit for the countless past incidences of successful resolution when calls for service have involved people in mental health crisis. Ideally, the experience and skill of Department members in this important arena will translate well to modified roles and new strategies.

With regard to mental health issues and the other encounters described below, our individual case summaries and analyses are accompanied by recommendations for adjustments to Department practice. These ideas arise from the specific incidents in question, but are meant to have future applicability in terms of refinements to systemic approaches or officer performance.

While we have been making such recommendations since the outset of our time in Palo Alto, and have had numerous interactions with Department leadership over the years as to their viability and implementation, the Department had not been formally accountable for responding in a public-facing way. That changed during the most recent report cycle. At the request of the City Council, the Department issued a written response to each of the recommendations in our last report, and will presumably continue to do so with the thirteen new suggestions that are discussed below. We are pleased to note that the Department agreed with each of the nineteen recommendations that emerged in the last Report, and made several responsive modifications to its policies and procedures.

² We also take this opportunity to note that we have been informed by PAPD about two “weapon point” incidents that were recently tracked and evaluated by the Department in keeping with its use of force guidelines. Review of such events – and the Department’s handling of them – is part of our scope. We recently received the relevant documentation and look forward to discussing these cases in our next Report.

Since the time of our last submission, the Chief has announced his retirement from the Department. We appreciate the approach he took to our work from the outset of his tenure in Palo Alto. He made a concerted effort to develop more regular communication with us and to instill that expectation among his subordinates. We also appreciate his receptivity to feedback and to ideas about best practices, and we note the enhancements to internal review protocols that occurred during his tenure. Accordingly, we take this opportunity to thank him and wish him well.

External Complaint Investigations

Case 1: Allegation that PAPD Failed to Properly Investigate Allegations of Elder Abuse

Factual Overview

PAPD received an allegation that a Palo Alto resident was the victim of elder abuse and that the Department had failed to conduct a proper investigation. The multitude of allegations included concerns that two individuals who had assumed caretaking duties for the victim were forcing her to sign documents without reading them to her, were not wearing protective equipment when caring for her during the pandemic and were not acting in the general best interests of the victim.

PAPD opened an investigation into the allegations. The investigation consisted of a detailed analysis of the work the PAPD detective had done on the case, including recorded evidence of interviews. The investigation noted that the alleged victim had been contacted numerous times by PAPD and had never expressed concern that the two named individuals had been taking advantage of her or forced her to sign documents. The investigation included review of a call for service initiated by the complainant in which two uniformed PAPD officers responded -- again, with no allegations by the victim of wrongdoing. The investigation also included contact with the County's Division of Adult Protective Services, who had several encounters with the alleged victim and had found no concerns regarding how she was being cared for.

Outcome and Analysis

As a result of this extensive document and file review, PAPD determined that the allegations against the detective were not substantiated.

To its credit, PAPD did note that on the call for service, the two responding officers appropriately activated their body-worn cameras when they arrived at the location, but at one point both turned them off to confer privately with each other. When the officers resumed contact with witnesses, one of the officers failed to re-activate his body-worn camera. PAPD recommended that the officer receive verbal counseling on the Department's expectation that body-worn cameras are to be activated whenever PAPD personnel are interacting with the public in an investigative capacity.

IPA Review and Analysis

IPA reviewed all body-worn camera footage and underlying reports and documents relating to this matter. IPA concurs with PAPD's finding and credits the Department for its careful review of the incident, resulting in identification of the body-worn camera "failure to re-activate" issue.

Case 2: Allegation of Inappropriate Remarks

Factual Overview

A PAPD officer responded to the emergency room of a local hospital regarding a report of an alleged sexual assault that occurred four days prior. Two victim advocates also responded to the hospital to provide support for the victim. The complainant, the senior victim advocate, alleged that during a conversation about the case the PAPD officer made an inappropriate joke and comment which she found offensive. The complainant reported the incident to her supervisor, who then filed a complaint against the officer. PAPD opened an internal investigation into the incident.

The complainant told PAPD that on the date in question she approached the officer to obtain information about the case needed for documentation. During their initial conversation, the complainant and officer joked about the fact that both were left-handed. The officer advised the complainant that he had not worked with advocates before, and she told him what their duties were. When she mentioned counseling services, he pulled her and her trainee advocate aside.

The complainant said that the officer then began expressing his grievances about their client. The officer told her that the client had three prior reports with no corroborating evidence and that she had mental health issues. The officer told the advocate that the alleged victim was wasting everyone's time with her allegations. The complainant said she then explained that the advocates' role was to support the client and not to determine the credibility of the allegations. According to the complainant, the officer continued to express his grievances and said the client was wasting law enforcement money and the time of themselves and the attending nurses.

The complainant said she eventually told the officer that it seemed as if he wanted a solution from her and that she did not have one. At that point, the officer pulled out his handcuffs and said, "well since you're useless to me, I guess I'm going to have to arrest you." The complainant said that the officer was not laughing, and his demeanor was different from when they were initially joking around about being left-handed.

The complainant said she asked the officer if he thought that was funny, and told him that it wasn't funny and "not cool". The complainant said the officer just looked at her. She said she then told the officer, "I don't know if you can tell, but I am black. You can't joke like that with me." The complainant said that the officer replied, "Oh, so you're gonna' pull the race card?" The complainant said that she told the officer, "Unfortunately, that's the reality of the world I live in" and explained to him that he cannot think that what's going on in the media is not going to affect people. The complainant added: "Yes, I am going to

pull it because it's the truth for me, it's my truth". The officer then stopped talking to her and walked away.³

The trainee advocate largely corroborated the account provided by the complainant, but believed that the officer intended no harm or disrespect. She said that the officer wanted to share his opinion about the victim, but in her view, it was not the right place or time to do so.

The officer's account of the incident was also not significantly divergent from that provided by the complainant. He said that after twenty minutes of light-hearted conversation, he lifted his handcuff case cover (unsure if he pulled the handcuffs out of the case), laughed and may have jokingly motioned with his other hand to turn around. The officer admitted that it was bad judgment to make such a joke at that particular time and place but did not intend to offend anyone. The officer said that he recalled then asking her if she was now going to play the "card". The officer said he was flabbergasted and speechless over how the conversation had turned and walked away as an effort at de-escalation.

PAPD Review

After the interview of the officer, the supervisor took time to counsel him about the need to maintain conversations at a professional level and advised that he needed to be more sensitive regarding the type of humor he presented, especially considering the current political and social climate. The officer was also told that if a misunderstanding was to occur, it would behoove him to apologize and advise that he meant no offense.

The Department's reviewer of the completed investigation concluded that the evidence did not establish any type of discourteous, disrespectful, or discriminatory treatment by the officer. The reviewer determined that the problem arose from a misreading of the situation by the officer and a failure to recognize that the conversation's tone had shifted away from the initial light banter. The reviewer further concluded that the officer did not factor in the complainant's race or perceived personal beliefs before making his ill-timed attempt at humor.

The reviewer opined that the officer should have been more aware of the setting, direction, and tenor of the interaction. The reviewer also noted that an apology by the officer would have likely prevented the situation from escalating. However, in spite of these shortcomings, the reviewer nonetheless recommended that the allegation of discourtesy result in a finding of "exonerated".

³ While the officer was equipped with a body-worn camera, he did not activate it during his visit to the hospital out of respect for the privacy concerns of the sexual assault victim, which is consistent with Departmental policy and expectations.

The Department notified the complainant of this result. The letter explained that the “exonerated” finding meant that the investigation had revealed that the alleged acts did occur but were consistent with the Department’s policy and procedures.

IPA Review and Analysis

The investigation was thorough and required commendable perseverance from the investigator to obtain the cooperation of the reporting organization and the complainant.

With regard to the disposition, as detailed above, PAPD determined that while the responding officer could have handled the call more professionally, it did not find that the acts resulted in a violation of the Department’s policy prohibiting “discourteous, disrespectful, or discriminatory treatment”. This finding rested largely on the belief that the officer had intended his comments about “arresting” the advocate to be in jest and were not intended to be discourteous, disrespectful, or discriminatory.

PAPD’s analysis, however, failed to consider the earlier derogatory remarks made by the officer about the victim nor the “race card” comment. First, it was not appropriate for the officer to be making comments about the credibility or mental health of the victim in the way he was doing and to the advocates, particularly his comments about the victim wasting everyone’s time. Officers are obligated to closely hold investigative information related to potential criminal charges, and it was not appropriate for this officer to disclose such information to those assigned to represent the interests of the victim.

More significantly, the “race card” comment was *not* intended in jest but was the officer’s apparently offended reaction to the advocate’s stated concerns about the encounter in light of her race. Instead of apologizing over an innocently intended joke, the officer chose to dismiss the woman’s perspective and thus compounded her discomfort. The totality of the officer’s conduct and comments should have been considered in determining whether the officer violated the Department’s discourtesy policy.

Moreover, PAPD failed to consider whether the remarks and conduct of the officer violated other aspects of its policy manual. PAPD’s standards of conduct also advise members that it is a violation of those rules to commit “[a]ny act ... that brings discredit to [PAPD]”. As PAPD acknowledges, the way in which the officer comported himself during this encounter was not in the best tradition of 21st Century policing. PAPD should have considered whether the officer’s behavior amounted to a violation of this policy.

The largest shortcoming in the Department’s process, however, came in the notification to the complainant. Even though the supervisor had counselled the officer on his sub-optimal performance, including his failure to apologize, the letter to the complainant does not contain any such elucidation. Instead, the letter could only leave her with the impression that PAPD had no issues with how the officer comported himself during their encounter. Even if the “bottom line” regarding policy had been that no formal violation

occurred, the letter should have informed the complainant that concerns had been identified, and that the Department had instituted a “course correction” accordingly.

Moreover, since PAPD had suggested the officer should have apologized when he realized that his comments had been received poorly, the letter could have included that apology – or better yet, a command staff member could have reached out to the complainant personally to register such a sentiment. That type of thoughtful contrition would go a long way toward restoring trust with the advocate and her colleagues – fellow public servants who will presumably continue to encounter PAPD professionally. Instead, the Department’s very limited and technical response was a lost opportunity.

RECOMMENDATION 1: PAPD should consider all potential policy violations and the context of any encounter in determining whether its members violated Departmental rules.

RECOMMENDATION 2: In preparing letters to complainants, PAPD should advise when sub-optimal conduct has been identified and, where relevant, advise that appropriate intervention occurred.

RECOMMENDATION 3: When an appropriate apology is not forthcoming from a member, command staff should apologize on behalf of the Department.

Case 3: Allegation of Inappropriate Treatment During Mental Health Call

Factual Overview

The complainant called a suicide crisis line and reported suicidal ideations. PAPD officers were dispatched to her location to evaluate her for a possible mental health hold pursuant to W&I 5150. The complainant met the criteria and was transported to a local hospital of her choice. The complainant subsequently alleged that the responding officers caused irreparable trauma and damage to her reputation and self-esteem.

Specifically, the complainant alleged the following:

- The officers manipulated her trust and forcefully removed her from her hotel room.
- Officers treated her like a criminal, humiliating her as they paraded her past her family and hotel guests in the lobby into the back of the police car.
- Officers were rude and dismissive and showed no concern in regard to the discomfort caused by the handcuffs.
- Officers refused to listen to her and had inadequate training to evaluate or handle mental health issues.
- Officers left her stranded at the hospital after she was discharged.

PAPD reviewed the body camera footage of responding officers as well as all supporting documentation in order to evaluate the allegations. It determined that responding officers considered the complainant's suicidal comments upon their arrival and talked to the hotline personnel before making the determination to involuntarily transport her for a mental health evaluation. PAPD found that responding officers were patient, professional, and empathetic and went out of their way to make sure the patient was not humiliated. It noted that prior to leaving the hotel room, the officers collected personal items desired by the complainant and placed a large coat over her arms to conceal the fact that she was handcuffed. PAPD further found that responding officers explained several times that the handcuffs were required and checked them for proper fit. PAPD found that after responding officers learned that the complainant had a treating doctor at a particular hospital, they transported her to that facility.

PAPD further found that after officers arrived at the hospital, they promptly removed the handcuffs while still in the admitting area although normal procedure is not to do so until the patient is formally admitted. PAPD noted that all officers are required to have training in regard to behavioral health evaluations and holds. Finally, PAPD found that officers informed the complainant's mother where they were going and what the process was.

Based on this review, PAPD found that the allegations made by the complainant were without merit.

IPA Review and Analysis

IPA reviewed the body worn camera footage and underlying documentation and found no violations of policy regarding the responding officer's performance. While the responding officers did yeoman's work with regard to the decision to commit the complainant for evaluation, the documents did not indicate whether there was any consideration to contact a mental health clinician to assist with this call. There were no indicia of security concerns regarding the behavior of the complainant and the addition of a clinician could have assisted in the determination to commit as well as making the commitment process as smooth as possible. If there was no mental health clinician available to assist with the call, PAPD should have documented that fact in supporting paperwork.⁴

While PAPD's internal review process is important to evaluate any performance issues by responding officers, a review by mental health clinicians of the encounter could provide some helpful feedback on best strategies to handle these calls for service. Protocols would likely need to be developed between agencies that address confidentiality and

⁴ There is escalating interest in bringing mental health clinicians on board to respond and/or assist to mental health calls. As of November 2021, Palo Alto has a PERT team (Psychiatric Emergency Response Team), the County of Santa Clara has a Mobile Crisis Response Team that is available to PAPD, and there is work underfoot to create a Trusted Response Urgent Support Team in the County. Documentation of incidents where a mental health clinician could have assisted but was not available could engender increased support and resources for these programs.

privacy concerns for both the patients, officers, and mental health clinicians. But these obstacles should not be insurmountable when the goal is simply to provide feedback for purposes of training and enhanced future performance.⁵ In a context of rapidly evolving societal understanding and expectations, the Department could benefit from the expertise that clinicians can provide in dealing with those in mental health crisis – even as “after the fact” advisors on alternative strategies to consider.

RECOMMENDATION 4: In mental health calls, PAPD should document whether a mental health clinician was contacted and if not, why not.

RECOMMENDATION 5: PAPD should develop protocols with the mental health agencies who are co-responding to mental health calls so that clinicians are able to review body-worn camera footage and provide feedback on ways to improve that response.

Case 4: Allegations of False Reporting Leading to Conviction

Factual Overview

This complaint was submitted to the Department some five years after the underlying incident (and shortly after the denial of the complainant’s “Petition for a Writ of Habeas Corpus” in conjunction with the same matter). The man cited specific aspects of the police report and Affidavit of Probable Cause that he claimed were false and/or perjurious.

The original police involvement related to a “battery in progress” call involving two adult males who had been living in different vehicles that had been parked near each other for a few days. A verbal confrontation over littering in the area had escalated into a physical confrontation that left one of the men with different injuries – including a possible stab wound in his arm – that required a trip to the hospital for treatment.

After taking voluntary statements from both involved parties, the responding officers determined that the complainant was the aggressor and took him into custody. They also conducted an evidentiary search of his van (with his consent) and collected several items. A detective was assigned to the case and eventually submitted it for filing with the District Attorney’s Office. The man was ultimately charged with assault with a deadly weapon and pled “no contest,” which was the precursor to his conviction for the incident.

In spite of his plea, the man subsequently engaged in a strenuous effort to challenge that result on a variety of grounds (including ineffective assistance of counsel). His petition was rejected by the court. Several months later, he filed his complaint by email and included a number of specific critiques of the PAPD documents that had been used against him.

PAPD Review and Outcome

The Department handled this case as a “Supervisory Inquiry Investigation.” The video from the patrol cars’ then-existing in-car camera system had been purged in keeping with regular retention standards. However, the reviewer was able to assess the complainant’s various contentions in relation to the disputed documents themselves. The reviewer concluded that the different allegations were undermined by a subjectivity that clashed with the facts and other evidence, and by a tendency to focus on semantic distinctions that did not carry larger significance, and did not comprise proof of wrongdoing on the part of the officers.

The reviewer found that the complaint was appropriate for disposition at the initial investigation phase, and the Department’s leadership concurred with the “Unfounded” determination.

IPA Review and Analysis

We reviewed the original reports as well as the voluminous paperwork that the complainant had submitted as part of his petition for relief in the courts (and which he had made available to the Department in support of his relatively brief complaint). We concurred with the Department’s finding that the disputed police reports were based on thorough, seemingly objective investigation and were supported by physical evidence.⁶

The man’s fervor in challenging his criminal conviction was impressive, but was ultimately unsuccessful.⁷ It is telling that, in his subsequent turn to the Department’s complaint process, he also cited the blameworthiness of the prosecutor and his own counsel for what he perceived to be their contributions to his unfair treatment. Even assuming his complete sincerity, the analysis that fueled his different contentions seems to have been greatly influenced by his personal stake in the matter. PAPD gave his allegations appropriate consideration, and reached a valid result in its administrative review.

⁶ The detective’s report also acknowledges the questions raised by the differing versions of the participants, as well as the presence of blood evidence in the complainant’s van – which the victim had denied entering.

⁷ He accounted for his “no contest” plea by explaining that he had seen it as his best chance for reuniting with his dog, which had been with him for several years and was euthanized during his time in custody.

Case 5: Complaint Regarding Officer Conduct during Detention and Arrest

Factual Overview

This complaint was initiated by a man who was arrested for “annoying/molesting” juvenile females by allegedly engaging in masturbatory behavior while following them. The reporting parties told police they had experienced similar behavior from the man a few days earlier.

Based on a description from the juveniles, officers detained the complainant for an extended period while questioning him about his recent actions. He acknowledged a brief encounter with the young women as they were all at a traffic light, but denied any improper behavior. However, cell phone video appeared to support the reporting parties’ contentions, and they positively identified him and expressed their wish to make a citizen’s arrest for his conduct.

The written complaint that the man eventually filed had three components, all of which were directed at the primary officer. The first related to the officer’s characterization of the cell phone video as showing him intending to gratify himself sexually; the man disputed this evidence and seemed to resent the accusation. He also alleged that the officer had been chewing tobacco and spitting during the initial phase of his detention, and that the officer had eaten a burrito while back at the station and in the presence of the complainant. He considered both of these actions to be disrespectful and a form of bullying.

PAPD Review and Outcome

The Department handled this matter as a “Supervisory Inquiry Investigation.” Although the complainant did not respond to initial attempts to contact him by phone after he submitted his brief written complaint, the handling supervisor (who was also involved in the original police response) happened to see the man a short time later while on patrol. He spoke briefly with the complainant, who essentially just reiterated the same concerns.

The body-worn camera video of the main officer and his colleagues provided a comprehensive version of the issues raised by the complainant. Accordingly, no additional interviews were done.

The reviewer determined that the officer’s interactions with the complainant regarding the cell phone video and what it portrayed were appropriate to the investigatory context, and the officer was exonerated of wrongdoing. Similarly, the reviewer found that the officer had in fact eaten in the man’s presence, but that such conduct was neither prohibited by policy nor adverse in any substantive effects on the complainant in his time in custody.

The allegation relating to chewing tobacco reached a different outcome. There, the reviewer determined that the conduct had occurred, and that it was specifically prohibited per Department policy. That violation was “sustained,” with a low-level intervention occurring as a result.

IPA Review and Analysis

We had the opportunity to review the body-worn camera recordings and documents relating to this incident. We concurred with the outcomes as to the various elements of the complaint.

The questioning about the cell phone video was certainly persistent, and the officer seemed oddly determined to prompt a confession from the man in spite of his repeated denial of wrongdoing or inappropriate intent. (The video spoke for itself on some level, and by that point the decision to arrest had been made.) That said, the officer’s line of questioning was not substantively improper, and he was not disrespectful or demeaning in pursuing the issue of sexual misconduct.

We also found the split decision regarding the “burrito” and “tobacco” aspects of the complaint to have been rightfully decided. The specific policy section barring tobacco use was clearly violated, and the “eating on duty” is a practical reality of long policing shifts that did not rise to the level of discourteous conduct. Taken together, the complaints offered a useful reminder that, for better or worse, even routine officer behavior is closely scrutinized by the public and contributes to the overall impression of the agency.

We note two additional points from our own review of the materials. First, the notification letter to the complainant omitted the outcome of the most significant of the three allegations: the disputed reference to sexually inappropriate behavior that was found to have been in policy. We have no reason to think this was anything other than an inadvertent error, but multi-part complaints should be addressed in methodical and complete fashion in the close-out letters.

Second, we noted that the supervisor who handled the investigation was on-scene for much of the detention period that preceded the arrest, and presumably observed the tobacco chewing and spitting behavior that prompted part of the complaint (and which was prevalent in the videos). While it was addressed appropriately in the investigation, it is clearly preferable for supervisors to monitor the conduct of their subordinates on their own initiative.

Case 6: Complaint Disputing Arrest of Third Party (and Associated Officer Conduct)

Factual Overview

This complainant contacted the IPA Office in the aftermath of his girlfriend's arrest on charges of domestic violence and resisting arrest. As the victim of the alleged initial crime, he thought the arrest was inappropriate for what was simply an "argument," and claimed that the officers had used excessive force in escorting her from the premises.

The complainant was amenable to being contacted by a Department representative, and ended up elaborating on his concerns in the context of a phone call: along with reiterating his original concerns, he complained that the officers had taken photos without his permission and had reported events inaccurately.

The underlying incident had been a call for service that was initiated by the facility manager at the apartment complex where the woman lived. He had heard signs of a disturbance and "people hitting each other." Responding officers contacted the complainant. He was shirtless and showed signs of physical injury.

He informed officers that she had been drinking while watching football on television, and had gotten into a conflict with neighbors over noise. This had deteriorated into a physical confrontation with the complainant. He said she had scratched him and described other attempts at injuring him that he had warded off. A witness who lived nearby also gave a statement saying that he had heard the disturbance and looked into the door of the relevant apartment; he claimed to have seen the woman punching the man several times.

The officers decided to take the woman into custody on domestic violence charges. She was uncooperative, and at one point during efforts to bring her to a patrol car she kicked backwards at one of the officers and struck him in the leg. Officers used controlling force against her at that point, but it did not result in injury.

PAPD Review and Outcome

The Department handled this as a "Supervisory Inquiry Investigation," based on the reviewer's ability to make an assessment through review of available evidence and without interviewing involved personnel. The handling supervisor framed the allegations as a "service complaint" of sorts, with the idea that "the allegations are directed at the policies and procedures of the Department and not behavior specific to the officers at the scene." Accordingly, no individual officers were named.

The complaint itself (and each of its component parts) was deemed "Unfounded." While it is true that the complainant had not wished to press charges or pursue police action as a result of the encounter, it was also true that his own statements corroborated the notion that he had been the victim of a domestic assault. In such a circumstance, under

California law the officers were required to arrest the man's girlfriend – at which point her failure to cooperate and her resistance of the police escort precipitated the limited physical force that was used against her. Accordingly, his contention that the arrest was wrongful – and that the force was therefore inherently excessive – lacked validity. Nor were there improprieties in the investigation or accuracy issues in the subsequent report.

IPA Review and Analysis

We concur with the outcome in this matter. The complainant's frustrations with the consequences of the arrest were understandable – particularly in light of his status as the victim of the crime in question and his belief that his preferences should have been more influential. Nonetheless, the body-worn camera evidence clearly supports the actions of the officers in their assessment of the situation and subsequent actions.

We do note that there was a supervisor on scene from the outset of the call, and that he ended up going "hands-on" with the woman in reaction to her kicking back at one of the escorting officers. He helped press her against the wall and gave her commands to stop resisting. This was despite the fact that the woman was already in cuffs and that two other officers were there to respond. Though the supervisor's reaction was proportionate and perhaps reflexive, it is preferable for supervisors to remain detached from direct physical contact with arrestees where possible. Here, the immediate presence of available personnel who could have handled the subject supports that idea as it applies to these circumstances.⁸

RECOMMENDATION 6: As needed, PAPD should reinforce to supervisory staff the principle that, barring exigent circumstances, supervisors should refrain from direct physical engagement with subjects, so as to maintain their ability to manage the operation as a whole.

⁸ In discussions with PAPD leadership about this case, we were told that the Department's recognizes that physical detachment by supervisors is recognized as preferable. At the same time, they cited an expectation that a supervisor will intervene to assist as needed, and referenced recent staffing challenges that have occasionally put supervisors into more of a "front line" role than is optimal. We respect these points, though our views about their applicability to this specific case may diverge.

Case 7: Complaint by Arrestee Regarding Officer Conduct in a Domestic Violence Investigation

Factual Overview

This complaint was submitted by a man approximately one week after his arrest on domestic violence charges; the victim in the case was his wife. The complainant disputed the allegations against him and blamed his wife for the conflict that had prompted the police response. The written complaint focused primarily on one of the handling officers. It claimed that the officer had taken the side of the wife without justification, had left him in the radio car for an undue period of time, and had mocked and discriminated against him because of his accent and Muslim heritage.

The case was assigned to a supervisor, who resolved it as a “Supervisory Inquiry Investigation.” An interview with the complainant had clarified some of the individual items within his written allegations, and the body-worn camera recordings and other evidence sufficed to reach a determination as to the legitimacy of those claims. All were characterized as “unfounded.”

The main issue was the man’s contention that the lead officer had “rushed to judgment” in his response to the disputed version of events. However, the body-worn camera recordings showed the objective, reasonable, and thorough efforts of the officer to assess the situation and draw conclusions from available evidence. The officer also showed due diligence in assessing the potential influence of drugs on the woman’s behavior, which the man had alleged as the source of the problem. There was no evidence of racial or religious discrimination.

Other contentions were also readily refuted. For example, the detention in the car was approximately half as long as the man had asserted, and the disputed exchange over the man’s accent seemed like honest and short-lived confusion regarding the pronunciation of a particular word. Accordingly, the reviewer determined that the complaint was “Unfounded” in both its parts and whole.

IPA Review and Analysis

The investigative memo did a creditable job of parsing out and addressing the individual concerns within the complaint. We had the opportunity to review the body-worn camera recordings and found that they tracked the reviewer’s specific findings in ways that corroborated the appropriateness of the case outcome.

As the reviewer noted, the heart of the complaint seems to have been the man’s insistence that he was innocent of physically assaulting his wife. Disputed versions of such events are, of course, commonplace. The officer who took over the investigation at

the scene, and who became the focal point of the man's subsequent allegations, seemed to navigate this reality in an experienced and objective way. The arrest led to the filing of misdemeanor charges by the District Attorney's Office, and the encounter itself appears to have been professional in a way that belies the various allegations.

Internally Generated Complaint

Case 1: Inadequate Police Response to Allegation of Elder Abuse

Factual Overview

A PAPD officer was working uniformed patrol when he was dispatched to conduct a welfare check on an unhoused woman. The reporting party was a concerned citizen that reported that an unknown person had argued with the woman and had taken her watch. When the officer arrived, the woman advised the officer that she had been physically battered by a male earlier in the day, that she had sustained injuries to her head and face, that she was 71 years old, and that she desired prosecution. The officer told the woman she should call back if or when the subject returned.

Another incident occurred later that day involving the woman, including allegations that she had been physically and sexually assaulted. A police report was generated and the case was assigned to a PAPD detective. The detective assigned to the incident researched prior calls involving the woman and discovered the earlier call; however, there was no accompanying police report. Nor had there been an apparent referral to Adult Protective Services. These discoveries raised concerns about the adequacy of the uniformed patrol officer's documentation and lack of follow up. To its credit, PAPD self-initiated an administrative investigation relating to those concerns.

PAPD Review

PAPD reviewed its policy regarding "Adult Abuse" and noted that the policy followed state law in requiring the officer to prepare a police report and make a referral to Adult Protective Services under circumstances such as those he encountered in his contact with the woman. As a result, the Department determined that a violation of policy had occurred.

PAPD also determined that, because the officer expressed remorse and accepted responsibility for his failure to comply with policy, a non-disciplinary remediation was appropriate. The reviewer further recommended that PAPD conduct briefing training on mandated reporting for adult abuse, child abuse and mandatory arrests as set out in the law and policy. We were advised by PAPD that a training bulletin and briefings were held in accordance with the recommendation.

IPA Review and Analysis

As noted above and to its credit, PAPD self-initiated an investigation into the incident when it discovered a potential violation of policy. IPA reviewed the materials in the case, including the body camera footage, and concurs with the outcome and remedial action undertaken. Moreover, and significantly, once the Department recognized a potential systemic gap in understanding among its officers relating to the law and policy expectations for elder abuse calls for service, it prepared a training bulletin and pushed that training out to its staff.

Taser Deployment

Case 1: Taser Deployment Along with Pepperball Munitions During Mental Health Crisis

Factual Overview

In the early afternoon, PAPD received a call for service from the parents of an adult male. The father reported that the son had ordered him to leave their residence and had thrown a trash can at him. The mother reported that the son had choked her and pulled her hair the previous day. Both parents reported that the son had been diagnosed as a schizophrenic. A review of call history indicated many prior PAPD responses to address the son's conduct. The officers called the Mobile Crisis Response Team ("MCRT") to the scene to assist.⁹ The son declined to communicate with any of the officers or clinicians. The on-duty PAPD supervisor elected to de-escalate the situation by leaving in the hopes that the son would calm down if they left.

In the early morning hours of the next day (about 12 hours later), the father again called PAPD and reported that the son had wakened him and forced him to leave the house. Responding officers spent over an hour trying to communicate with the son and de-escalate the situation, first from outside the house. The son made threats to harm the officers. Gaining no cooperation from the son, officers entered the house and tried to negotiate with him. As they entered the house, the senior officer (who was doing most of the negotiation as a result of being trained as a crisis negotiator) advised that they would use inert "pepper ball" rounds as the first force option. The son became verbally violent and abusive and threw a stool and spit at one of the officers, while moving up to the second floor of the residence.

Officers continued to talk with the son and persuaded him to come down the stairs by agreeing to his request that they reposition themselves. As the son moved toward the

⁹ The family reported that the MCRT had also visited the son earlier in the week but had not been able to assist.

kitchen area, two officers simultaneously deployed less than lethal weapons. One used the PepperBall launcher¹⁰ and the other a Taser. The son immediately fell to the floor and was taken into custody. Paramedics were called to examine the son, and he was transported to a local hospital for medical treatment. The son sustained five abrasions from the pepper ball projectiles: one under his left chest, one on the right side of his stomach, and three in the middle of his stomach. The son sustained a puncture wound on the left side of his back from a Taser probe. Finally, the son had two abrasions to his back, that may have been caused when he fell into the closet door as he went down.

The son was placed on a 5150 hold and left with hospital staff. The assault allegations were referred to the District Attorney's Office.

PAPD Outcome and Analysis

The PAPD reviewer assigned to assess the incident considered the assessment of the situation that had been developed by the on-scene supervisors. They had determined that the family was not safe in their own home, that the son had repeatedly used force and violence against his own family members, that the son was not communicating to help resolve the problem, that the son was suffering from a mental health disorder and that his behavior appeared to be worsening, in addition to having committed several assaults on his parents in the previous 24 hours. Accordingly, the on-scene supervisors had concluded that if the son would not come out of the house voluntarily, it would be necessary to enter the house to take him into custody.

The PAPD reviewer supported this conclusion, and found that it was ultimately necessary for the officers to use force to resolve the situation in light of the son's ongoing resistance. The PAPD noted that the officers showed restraint by not deploying the less lethal options while the son was on the second floor or the stairs, in light of the added risk of significant injuries that a fall might have caused.

The reviewer opined that it was reasonable for the officers to believe that allowing the son to walk away and into another room would have created an even more dangerous situation. At the same time, the PAPD reviewer noted that the supervisor who deployed the Taser¹¹ and the officer who deployed the PepperBall made simultaneous and independent decisions to use their weapons. The reviewer further observed that there was no discussion regarding the timing of weapon deployment. Nonetheless, the

¹⁰ The PepperBall less-lethal weapon is a launching platform that shoots hard plastic spheres that are designed to burst upon impact. One option is to have the spheres filled with a pepper irritant; in this case, inert spheres filled with talcum powder were used.

¹¹ A review of the Taser data and use caused PAPD reviewers to conclude that, while the two probes struck the son's back and clothing respectively, the Taser did not achieve full neuromuscular incapacitation, rendering its use ineffective.

reviewer concluded that the use of force to accomplish the arrest of the son was reasonable and consistent with PAPD's force policy.

IPA Review and Analysis

IPA reviewed the body-worn camera footage and reports relating to the incident and identified the following issues:

Involvement of the Mobile Crisis Response Team

As noted above, when PAPD visited the same residence some twelve hours prior, it had called the MCRT. Moreover, according to the parents, they had called MCRT earlier in the week for assistance with their son. The MCRT is a relatively new initiative sponsored by Santa Clara County; it is intended to provide mental health clinicians to assist individuals going through a mental health crisis.¹² According to the parents and PAPD reporting, the MCRT response on both occasions had proven ineffective.

When PAPD returned to the residence in the late evening hours, however, there is no indicia that responding officers again reached out to MCRT. While PAPD's investigative report referenced MCRT being part of earlier calls to the residence, there are no reports regarding the unit's involvement or observations. Nor did the incident reports provide details about whether PAPD called MCRT for assistance with the incident that led to the force, or (if applicable) why the decision was made not to call.

Since the plan is for MCRT (or PERT or TRUST) to be more involved in assisting PAPD on calls involving persons in mental health crisis, it is important to learn whether Department personnel are able to take advantage of those clinician's expertise on relevant calls. This is also another case in which PAPD could benefit from an after-action review of body-worn camera footage by a mental health clinician. Accordingly, this is another case supporting Recommendations 4 and 5 above. It is also important to develop protocols on how the clinician's role is to be documented when assisting PAPD on such calls for service. Given the new prominence of such resources and the heightened public expectations as to their utilization, it makes sense to start incorporating this element into the Department's formal record of relevant operations.

RECOMMENDATION 7: PAPD should work with the various agencies assisting the Department on mental health calls to develop protocols on how clinicians will document their participation on joint mental health calls.

¹² Although feedback has been positive when MCRT *is* involved, it should be noted that the "business hours" for the unit have been limited, and that Palo Alto's location has often been an obstacle to timely response in this county-wide program. Ideally, the City's own new initiatives will enhance the availability and involvement of such resources.

Use of Force Issues

As noted above, PAPD found that the two supervisors and other responding officers had not developed a plan on the first less lethal option to be used, considering it had PepperBall munitions, a Taser, and a SAGE less lethal platform¹³ inside the residence. And PAPD concluded that the simultaneous decision to use both the PepperBall munitions and the Taser were based on “independent” actions by the operators. However, as officers enter the house, at least one officer can be heard on the body camera footage stating that PepperBall would be the “first option”.

Thus, it appears that the responding officers did at least have a brief pre-engagement discussion about which of the three force weapons on scene were to be the “first option”. Yet, when it came time to deploy, a supervising officer decided to deploy the Taser simultaneous to the numerous PepperBall rounds that were being fired. Yet, nowhere in the PAPD reports or its analysis is there any exploration of this divergence from the initial “plan”. Nor was there any analysis of the advisability of deploying two force options simultaneously in the manner done in this incident. We recognize that circumstances change rapidly, and that officers must have flexibility to deviate (in either direction) from their initial plans in response to the conditions before them. Our point is simply that a reckoning with the change that occurred here was warranted, even if it affirmed the decision-making as it played out.¹⁴

Finally, the officer who deployed the PepperBall rounds indicated in his report that he fired nine times using the launcher, but only six rounds came out of the device due to an apparent malfunction. Yet there was no analysis by PAPD about the equipment malfunction nor any apparent further exploration of what occurred and how it could or should be addressed for future reference.

RECOMMENDATION 8: PAPD should ensure sufficient fact collection to explain any divergences from the initial tactical plan.

RECOMMENDATION 9: During use of force reviews, PAPD should research “causes” for any equipment that does not operate as intended.

¹³ The SAGE platform is another less lethal device that delivers what are known in common parlance as 37 mm “rubber bullets”.

¹⁴ In discussion with PAPD personnel familiar with the incident, we were told that these topics were in fact debriefed and addressed by the involved parties, as is routinely the case. This is encouraging. But, as we have said before, documentation that captures such efforts creates a useful record and need not involve a significant amount of extra work.

Other Uses of Force

Case One: Takedown of Subject in Mental Health Crisis

Factual Overview

A PAPD officer responded to a call for service and upon arrival observed a man in the lanes of a busy street. Upon contact, the man uttered irrational statements such as advising the officer to shoot him while making gun gestures with his hand. The man did not comply with the officer's instructions. The officer grabbed the man by his arm and pulled him to the ground. Another officer arrived shortly thereafter and both officers placed the man in handcuffs.

The officer walked the man to a nearby bench. While seated on the bench, the man started screaming and attempted to stand up. Spittle was coming out of the man's mouth as he screamed. A spit hood was placed on the man's head and a hobble on his legs. Paramedics were called to treat the man. Due to his behavior, paramedics injected the man with a sedative at the scene. The man was then transferred to an ambulance gurney and placed in the ambulance. Paramedics transported the man to a local hospital, where he was placed on a 5150 hold.

The man sustained an abrasion on his right elbow from being taken to the ground. Civilian witnesses said that the man had blood on his face prior to officers contacting him. The investigation was unable to discern how the man's facial injury had occurred. The officer sustained an abrasion to his left knee and pain to his knee and shoulder. The backup officer complained of back pain as a result of carrying the man to the gurney.

PAPD Review

PAPD determined that the officer acted properly in using force. It noted that the man was in the roadway of a busy street, his behavior was bizarre, and he posed a safety risk to himself and passing motorists. The PAPD reviewer noted that the officer first tried verbal commands, but the man was not responsive or compliant. The reviewer concluded that the man's response provided an indication to the officer that he was either unwilling or unable to control himself and follow the officer's directions.

The PAPD reviewer noted that when the officer placed his hands on the man, he dropped down to the ground into a prone position at which point the handcuffs were applied. The reviewer noted that after he was handcuffed, the on-scene officers removed the man from the road.

To the credit of PAPD, the supporting documentation prepared by the first level supervisor expressly discusses what de-escalation techniques the first officer used (low level verbal volume, instructions, non-threatening posture, slow approach, and calm commands).

IPA Analysis

IPA reviewed the incident report, the reviewing reports, and the body camera footage of the responding officers. While IPA agrees with PAPD's use of force analysis and conclusion regarding the appropriateness of the force, as set out above, a review of the incident shows that after he was handcuffed, his behavior escalated to the point where the officers applied a spit hood and hobble and had to physically carry him to the ambulance.

There is no reference to whether the MCRT was available to respond to the incident. While the initial efforts to take the man into custody unfolded in a way that precluded waiting for an MCRT response, the period of time after handcuffing (and after the dissipation of immediate public safety concerns) saw a marked deterioration that could well have benefitted from a mental health clinician's presence. While there were no indicia that PAPD officers did anything to aggravate the man or the situation, a clinician may have been able to better relate to the man and help keep the situation from deteriorating the way that it did.

If such a response were not feasible, the incident still might have provided a worthwhile opportunity to consult with MCRT. The body camera footage could have been provided for review to determine whether any other strategies could have been deployed to address the agitation displayed by the man after he had been handcuffed. Feedback from an individual skilled in dealing with those in mental health crises could have provided helpful insight to officers on how best to deal with future similar situations, and we encourage the Department to think proactively as it adapts to this important new County resource. To that end, this is yet a third incident supporting Recommendations 4 and 5 above relating to documentation of any efforts to request assistance from a mental health clinician and an after review by mental health clinicians of body worn camera footage of the incident.

Case Two: Takedown of Aggressive Subject

Factual Overview:

This use of force incident involved a team takedown and ensuing struggle to handcuff and restrain an extremely resistant subject. The subject – a twenty-nine-year-old man – received minor scrapes and abrasions in the incident and complained of pain in his wrists.¹⁵ He was brought to the hospital for evaluation for treatment and cleared for booking at the jail.

¹⁵ Four of the involved officers also suffered minor injuries in the encounter.

This encounter occurred in the mid-afternoon hours. The subject was driving a company vehicle when he pulled up alongside a PAPD supervisor who was driving a marked police car. The man made a point of aggressively berating the supervisor without apparent provocation. He soon pulled to the side of the road, and the supervisor pulled in behind him to further evaluate the situation. He stayed about 100 feet away as the man approached him and again launched into a profane verbal tirade that was an odd mixture of aggression and insistence that the police couldn't do anything to him, since he hadn't committed a crime.

The supervisor remained calm and continued efforts to communicate with the man; meanwhile, he called for backup, and several additional units responded. An odd standoff ensued, with the man continuing his verbal aggression but also making no attempt to leave or expressing a clear rationale for his antagonism.

The supervisor eventually made the decision to disengage and send the assembled officers, including himself, away from the scene. However, this effort to de-escalate was short lived – the subject got in his own vehicle and began operating it in a manner that nearly caused a police car to be struck. Another responding supervisor made an enforcement stop, and officers surrounded the man in a semi-circle after he exited his own car and stood in the roadway.

This time, the original supervisor brought out a pepper ball launcher, and a K-9 unit was also on scene to engage if necessary. After a brief period of additional (and fruitless) attempts to calm him and take him peacefully into custody, and having no reason to believe he was armed, officers made the decision to go “hands-on.” Multiple officers participated in grabbing the man, taking him to the ground as he struggled, and pulling his arms behind his back so he could be handcuffed. One officer used a knee strike to the subject's arm during this process. A hobble restraint was also placed around his legs.

Medical personnel responded, and the man was restrained on a gurney and taken to the emergency room for treatment and evaluation.¹⁶ The supervisor who first encountered the man made a brief attempt to interview him there and got very little information. He had slightly more success during a second interview back at the police station. The man was considerably calmer by then, and acknowledged that he was having a “bad day.” He appeared to be having personal problems and spoke about systemic conspiracies. At one point in the second interview, he apologized for his behavior.

The reviewer who assessed the force found it to be reasonable and proportional to the resistance being offered by the subject.

¹⁶ He was also blood tested based on suspicions that he had been driving under the influence of alcohol.

IPA Review and Analysis

We had the opportunity to review the reports and camera recordings and other available evidence, and we concur that the force was justified and consistent with Department policy. This was a strange incident, since the man's behavior was so unusually – and inexplicably – antagonistic.¹⁷ A few different aspects seemed noteworthy.

First, the efforts at de-escalation were commendable. In spite of the man's aggressive, verbally belligerent posture, the supervisor who first came into contact with him remained calm and professional in his interactions. He maintained distance, called for backup, did his best to understand what was going on, and then made the decision to disengage from the situation on behalf of himself and the other assembled officers.

After the erratic driving led to the enforcement stop, the officers were again restrained and thoughtful in their actions. A police dog and pepper ball launcher were available but not used, and the team takedown was handled in a decisive, effective manner.

Once the man was in custody and put into a seated position on the ground, a female officer spoke with him in a mild, reassuring manner that had a marked influence on his demeanor. Her eye contact, empathy, and affirmation were all very effective in lessening his agitation and hostility. Ideally, this approach would have been noted and reinforced as part of the formal review process.

With this in mind, we take this opportunity to mention the template the PAPD has adopted as its "Short Form UOF Memorandum." It has various fields for data entry and narratives that help ensure an organized, comprehensive response to evidence-gathering and evaluation. It seems to be a useful and constructive tool.

One thought for potentially enhancing it would be inclusion of space to document peripheral issues that have been identified and perhaps merit further action. These could range from minor performance improvements (addressed through counseling or training) to identified equipment issues. Another potential category could be commendations for effective work. In this case, de-escalation efforts and the female officer's communication skills were both deserving of recognition that we hope occurred.

RECOMMENDATION 10: The Department's force review template for supervisors should include space for identifying issues and learning

¹⁷ While his mental well-being was brought into question by his behavior and some of his specific statements, the rapidly unfolding nature of the event did not lend itself to the enlisting of a mental health clinician, at least not initially. However, as we say elsewhere and emphasize here, reviewers should discuss the feasibility (or not) of dispatching a clinician whenever a force incident occurs as a routine part of the force review process.

opportunities of various kinds, as a precursor to additional follow-up as warranted.

Case Three: Takedown at End of Foot Pursuit

The subject in this case was contacted by a PAPD officer for smoking marijuana in public. He chose to flee on foot, and a pursuit was initiated that lasted for several blocks. A different officer finally grabbed him, and he went to the ground, at which point a brief struggle ensued before officers got him into handcuffs.

While seated on the ground, the man became unresponsive. Officers recognized that the white powdery substance around his mouth suggested he had been ingesting drugs as he attempted to get away. They administered “Narcan” to counter the effects of a possible overdose.

Medical personnel transported the man to the hospital¹⁸, and he was treated for his drug ingestion as well as complaints regarding pain in his wrists and neck.¹⁹ He was eventually cited for applicable charges and then released at the hospital by PAPD handling officers.

PAPD Review:

The Department found the use of force to be within policy. It was relatively minor in nature and limited to grabbing, pushing, and grappling as officers apprehended the man and then worked to handcuff him.

The Department also noted that the incident involved a foot pursuit, which has its own policy for authorizing and guiding officer behavior. The pursuit was also evaluated as being within policy.

The original assessment was done by a supervisor, and then reviewed by two higher levels of command. At the highest level (though not before), a brief memo noted that the recording of the incident featured a couple of uses of profanity by the officer who first contacted the subject. Interestingly (and in a way we considered reasonable), the initial instance – in the midst of efforts to apprehend the man – was acknowledged as an acceptable “tactic.” The second, however, was deemed problematic because it seemed more a product of frustration/anger than calculation. The memo noted that verbal counseling would be arranged to address this concern.

¹⁸ This case fell within the parameters of the IPA scope of work as a consequence of the hospital transport; however, it is unlikely that his condition would have merited that level of medical attention were it not for concerns about drug intoxication.

¹⁹ One of the involved officers scraped his knee in the course of taking the subject into custody, resulting in an abrasion.

IPA Review and Analysis:

This use of force was minor and was dictated by the subject's non-compliance. We concur that it was consistent with policy. We also noted the involved officers' awareness of health concerns once they had successfully handcuffed the man, and were impressed by their actions in trying to facilitate his breathing and then administering Narcan to address his brief loss of consciousness.

Procedurally, the review process appears to have been appropriately thorough. The Department made two attempts, a few days apart, to get a statement from the man regarding his experience of the incident. His first comments were of negligible value (and quantity) because of his physical condition.²⁰ To the credit of the supervisor who was evaluating the force, he went to the County jail and requested to speak with the subject, who declined to participate.

We also appreciate command staff's engagement with the profanity concerns. This has long been a point of interest for us in reviewing PAPD incidents, and the approach that was taken here seems consistent with the recommendations we have made in the past.

Case Four: Less Lethal Weapons Used on Resistant Vandalism Suspect

Factual Overview

This incident began with a call for service regarding a man who was creating a disturbance at an outdoor shopping area during afternoon hours. Responding officers eventually located the man, who was in his early thirties, and found him to be contentious but not directly aggressive. Because he stated that he was waiting for a ride share service and intending to leave the area, officers were content to resolve the situation that way. However, no ride materialized, and in the interim the man became verbally abusive to the point where alternative strategies (such as a citizen's arrest by a retail worker) were being considered.

As the officers re-engaged with the man, he suddenly ran away. Again, they considered this a potentially satisfactory resolution and did not endeavor to chase him. Unfortunately, though, he then vandalized two vehicles by smashing their windshields with a metallic water bottle.

Multiple officers then responded, and they soon located him on the ground floor balcony outside a hotel room. He was standing on the railing – a slightly precarious posture in

²⁰ The officer's persistence in trying to get information from the man was notable and bordered on the questionable, particularly in light of the man's repeated expressions of discomfort and his disinclination to be cooperative. This seemed more pronounced as the conversation shifted from the topic of force/injuries to the man's motivation for ingesting drugs during the pursuit.

which, on at least one side, he could have fallen several feet. He was agitated and yelling that he had a gun, with his hands inside his jacket as if to simulate holding one. He alternated between threatening statements and recurring references to having an unnamed disability.

Due to the man's erratic behavior, the proximity of hotel guests, and his references to a weapon, the on-scene supervisors made the decision to effectuate an arrest plan. The first step, though, was to enlist one of the officers who was both already at the location and trained in crisis negotiation. He made several attempts to engage the man in a calm way and attempt to start a dialogue.^{21 22} These did not enlist any response.

Accordingly, the supervisors moved into the next stage of their planning. With a large number of officers available, containments were established and officers were assigned a range of responsibilities. This included two officers with different types of less-lethal munitions. The first was a pepper ball launcher, and the second was a "Sage" launcher (which fired a hard plastic round). Other officers provided cover of various kinds, including a ballistic shield.

The plan was to start with the pepper ball rounds, which were aimed at the wall nearby the man. When these did not seem to alter his behavior, the other officer fired one round with the Sage weapon. It struck the subject in the buttocks and effectuated his safe dismount from the railing. He then surrendered without further incident and was taken into custody.

Though he was transported to the hospital for routine clearance prior to booking, he refused any medical care. He was apparently uninjured. He also declined to speak with the supervisor t who attempted to interview him about the incident.

PAPD Review and Outcome

A second level supervisor evaluated this case, in part because of the involvement of several supervisors at the scene (one of whom used the pepper ball launcher). He reviewed the considerable amount of available evidence (including a surveillance camera from the hotel that provided an additional vantage point) and applied methodically to the relevant policy guidelines. In doing so, he determined that the force was reasonable and necessary.

²¹ This included references to the man's assertions of a disability; the negotiator asked if he wanted to talk about it and said they would be happy to provide assistance/a trip to the hospital.

²² Creditably, the canine handler on-scene gave effective commands to his service dog (which was ultimately not involved in the apprehension) so that the dog would remain quiet and not distract from de-escalation efforts.

The reviewer also singled out the patience and restraint that were manifested by officers at different stages of the incident.

OIR Group Review and Analysis

We concurred with the analysis that the force was justified by the circumstances and reasonable in its execution. Additionally, we thought several aspects of the PAPD response to this incident were praiseworthy.

These included the restraint of the original officers who responded to the shopping mall and the efforts of the crisis negotiator to establish a peaceful resolution to the situation. The tactical planning was thoughtful, efficient, coordinated, and well-communicated, particularly in light of the swiftness with which the whole problem was neutralized. And it was obviously a successful outcome. The force was used in a controlled manner and brought about a positive result in a minimally invasive way.

In the significant amount of video recordings that we saw regarding the incident, the overall professionalism of the officers also made an impression. Therefore, the brief instances that deviated from that standard stood out in a way that seems worth mentioning. Although it was not audible to the public – or to the subject himself – there were instances of profanity that were nonetheless recorded, and potentially discoverable in future proceedings. Most pointedly, one of the officers who ultimately used force volunteered for the assignment by saying, “I’ll fucking light him up” in a cavalier way that certainly would have played badly in the aftermath of a worse outcome. (Nor was it reflective of this officer’s overall performance in the incident, which had many attributes.)

We recognize that very few of us would enjoy being judged by the candid or offhand remarks we make to colleagues without consciousness of an outside audience. However, the era of ubiquitous recording is certainly upon law enforcement, and reminders about the importance of professionalism – and the unintended consequences of off-color remarks on duty – are accordingly as worthwhile as ever. The officer’s comment should have been identified by the reviewer; it was disappointing that it was not.

RECOMMENDATION 11: The Department should use individual instances of questionable “on camera” commentary or actions as a basis for reminding personnel of the importance of professionalism, particularly with regard to deployment of force.

Case Five: Takedown of Assaultive Subject

Factual Overview:

This use of force involved an adult female subject who was contacted by officers at a train station. A request for information that had initially been consensual – and had concluded – eventually led officers to do a warrant check on the woman when she was recognized by another officer who happened past the location of the original stop.

After the woman was re-contacted, she became anxious during the waiting period as the records were researched, making it clear to the officers that she did not want to be arrested or taken to jail. It turned out that she did in fact have two felony warrants. When it became clear that her arrest was imminent, she approached the officers aggressively in frustration and was ordered back. As one officer moved in to place her into handcuffs, the woman punched him in the head with a closed fist.²³

The three officers on scene then wrestled her to the ground and overcame her resistance to put her into handcuffs. Due to the woman's own complaint of pain in various body parts (she was also bleeding from the lip, which had initially prompted officers to summon paramedics), she was transported to the hospital and then cleared for booking.

PAPD Review and Outcome

The Department reviewers were able to assess the incident thoroughly based on officer reports and extensive body-worn camera recordings. A sergeant interviewed the subject, who was angry over the encounter and critical of the officers' actions in detaining her and using force.

The initial reviewer determined that the force was limited and was justified by the subject's assaultive and resistive behavior. Efforts to de-escalate were expressly analyzed, and the officers' controlled demeanor and efforts to maintain distance and offer reassurance during the "records check" were cited as relevant tactics that were consistent with expectations.

At the next level of review, the supervisor concurred with the above, and added a concern about one of the officer's report-writing. The lead officer had failed to document the initial phase of the encounter with the subject, when she had been with someone else and was allowed to leave before being recognized by a later-arriving officer. Though it was covered by another officer's report and evident from the body-worn camera recordings, the supervisors rightly observed that it was a relevant part of the overall incident and should have been included.²⁴ This supervisor documented the issue and addressed it with both the officer and the initial reviewer in a counseling session.

OIR Group Review and Analysis

We concurred that the force was proportionate to the circumstances and within policy. This case also illustrated a couple of the strengths of the Department's current review process.

²³ His injury did not require medical treatment.

²⁴ We also note that the third officer's supplemental report regarding his own involvement (which included participating in the force/arrest) was not included in the packet of information we received, though it is referenced at other points in the case records.

First was the express emphasis on de-escalation, which is part of the template that frames the expectations for supervisorial evaluation. The overt, consistent attention to these concepts undoubtedly helps to frame the mindset of officers as they encounter confrontational situations.

Second was the fruits of the “multi-tiered” approach that PAPD takes to reviewing force incidents. Inevitably, a second set of eyes (and one of a higher rank and presumably a different perspective) is likely to result in a more complete, rigorous assessment. Here, the issue of report-writing deficiency was caught and addressed appropriately. This meant that a more comprehensive and effective review had occurred, which is obviously to the credit of the Department and presumably to the benefit of future performance.

One thing that was *not* referenced was some of the main officer’s commentary in the moments after the arrest. He used a couple of profanities in relating to colleagues that she had “clocked him” prior to the takedown, and then casually said, “Bitch is crazy.” At the risk of belaboring this point, and while recognizing that context matters, we say again that such remarks do not reflect well on the professionalism or attitudes of the involved parties, and should be a continued point of scrutiny and attention for PAPD management.

Case Six: Multiple Officers Grappling with Subject to Overcome Resistance

Factual Overview

The Department received a report of a female subject in her 40’s whom family members said had been both suicidal and assaultive to them in response to their efforts to intervene. Officers responded to the call, spoke with family members (one of whom showed a bite mark that the subject had recently inflicted on her) and then contacted the woman inside the storage unit where she had been residing.

The subject denied being suicidal and refused to cooperate with the officers, instead telling them repeatedly to get out. They believed she was also under the influence of drugs and/or alcohol. One of the officers was trained in Crisis Negotiation and attempted different techniques in an effort to develop rapport and enlist her voluntary cooperation, but these were unavailing.

The officers decided that the woman met the criteria for a 72-hour involuntary psychiatric hold as a danger to herself and others. Accordingly, they attempted to take physical control of her, but she screamed and otherwise resisted. They were able to get her into handcuffs in less than a minute, but she continued to struggle against being placed in the back of the patrol car. Another struggle to accomplish this ensued. Eventually the two officers and a supervisor who were on-scene succeeded in pulling her into the vehicle, where she was then transported to the hospital for an assessment of any injuries.

PAPD Review and Outcome

A different supervisor than the one who had participated in the arrest ended up conducting the interview with the subject at the hospital; she was willing to speak and to sign a waiver to give the Department access to medical records from the incident. She complained of pain to her shoulder, elbow, and knee, and directed most of her frustration at the lone female officer who had been involved.

The main assessment of the force was handled by a higher-level supervisor. He reviewed the reports and the relevant body-worn camera footage and determined that the force had been controlled and within policy as a response to her resistance. He also prepared a short and separate memo documenting a “training point” for one of the officers. The supervisor noted that one of the officers had taken hold of the woman somewhat abruptly once the decision to take her into custody had been made. He directed his subordinate to speak with the officer regarding this decision-making, and the question of whether a verbal opportunity for compliance would have been more effective.

Interesting, the subordinate supervisor reported back that the conversation had been “productive,” and that the officer had explained his decision-making in a way that seemed thoughtful and justified under the circumstances. The reviewer accepted this explanation and recommended no further action, citing the importance of officer discretion and the legitimacy of the cited rationales.

OIR Group Review and Outcome

We concurred with the Department’s analysis that the amount of force was limited and necessary to overcome the woman’s resistance, which was considerable.²⁵ While her compromised condition and lack of cooperation made it likely that she would physically struggle, the call for service and accompanying investigation suggested the need for an intervention. While the input of a mental health professional could have been of assistance, the officers’ course of action was driven by the sole intention to enlist a professional evaluation of her mental well-being in the form of the involuntary commitment. As we set out in more detail in case descriptions above, we believe that the availability of a mental health clinician to respond to these events (and whether there was thought to summon such assistance) should be part of any report and review by PAPD.

We also noted and take the opportunity to commend the “critical distance” that PAPD imposed at a couple of different stages of the process, by having uninvolved personnel conduct the interview with the subject and then the formal assessment of the force deployment. Elsewhere in this Report, we speak to the value of this practice, and it is

²⁵ The woman was somewhat emotional as they sought to get her into the vehicle; per the video recordings, her behavior – and other facts – belied several of the allegations that she directed against the female officer when she was interviewed at the hospital.

encouraging to see that the Department appears to have made a conscious effort in this regard. Since this is the chronologically most recent case that we have reviewed, we are hopeful that it reflects the beginnings of a consistent standard.

While this was a significant positive, we also noted that our materials did not include medical records that would verify – or refute – some of her allegations as to significant injury she supposedly suffered from her arms being wrenched, etc. (There were photographs of the woman from the hospital, which the supervisor took during interview process.). Because she provided a voluntary waiver, this information was presumably available and would have contributed to the completeness of the package.²⁶

Conclusion

We continue to appreciate our role in the City's commitment to a more transparent, accountable police agency. We hope this Report accomplishes a few different things in service of that goal: a more rigorous process, heightened public awareness, and a forum for discussion that might further enhance the Department's responsiveness to Council and the Palo Alto community.

²⁶ This is consistent with Recommendation Eighteen in our last Report, which the Department has endorsed.

INDEPENDENT POLICE AUDITORS' REPORT:
Addendum to September 2022 Public Report re Cases

Presented to the Honorable City Council

City of Palo Alto

September 2022

Prepared by: Michael Gennaco and Stephen Connolly
Independent Police Auditors for
the City of Palo Alto



confidential draft

Case Totals: Summary and Trend Analysis

Our September 2022 Report on misconduct and force investigations is the second of the calendar year, and our second submission pursuant to an expanded scope of work with the City. In February of this year, and as part of the revised scope, we provided an addendum to our usual summary of individual cases. It was a table in response to the request for a “statistical breakdown of the number of complaints /investigations and any developing trends.”

That previous table encompassed ten matters – a small initial grouping that did not yield statistically significant patterns or suggest trends in the demographics of complainants or the nature of issues in dispute. However, as we said at the time, the concept of such collective review is a worthy one, and we looked forward to continuing the effort with additional data.

With that in mind, we have prepared the attached table to correspond with our latest report. It tracks the eight misconduct cases that were completed during this cycle.

Interestingly, the current group corresponds in some respects to the last set of ten, insofar as the dominant “trend” appears to be the lack of a noticeable pattern or prevailing feature. There were seven cases initiated by a public complaint (as opposed to being generated by PAPD leadership). This number is largely consistent with past reporting periods in terms of volume. Allegations of bias – always a topic of sensitivity and concern – were not prominent; in fact, only one case included it (peripherally) as an issue. The body-worn camera evidence dispelled the supposed bases for the man’s assertion.

In five of the seven cases, the essence of the concern was some form of disagreement over the legitimacy of an arrest. Each of these claims was rejected by the Department in the ensuing investigation, and we concurred with those results.

Going forward, we will continue to evaluate cases with an eye toward identifying issues that merit attention by PAPD’s administration. For now, we are pleased to be building a baseline of information that will provide a useful backdrop for future reports.

Complaint/Investigation	Outcome
Allegation that PAPD had failed to properly investigate/respond to allegations by complainant that a third party was the victim of elder abuse.	Exonerated
Allegation that an officer had made offensive comments to victim advocates during the response to an alleged sexual assault	Exonerated
Allegation that an officer had failed to properly document and otherwise pursue an allegation of elder abuse by an unhoused individual	Sustained
Allegation that officers had mishandled the involuntary hold of a woman with suicidal ideations.	No misconduct identified
Allegation of false reporting by subject who sought to overturn his guilty plea for battery a few years after the incident.	No misconduct identified
Allegation of officer rudeness and mistaken judgement in the context of an arrest for “annoying/molesting” juveniles.	Sustained for chewing tobacco; Exonerated for other allegations
Allegation that officers mishandled a call for service in which he was the alleged victim of domestic violence, including an improper arrest and excessive force against his partner.	Unfounded
Allegation that PAPD had wrongly focused on complainant as the suspect in a domestic dispute with his wife, and had treated him disrespectfully during his detention and arrest based on his Muslim heritage.	Unfounded



DATE: SEPTEMBER 12, 2022

TO: HONORABLE CITY COUNCIL

FROM: CHIEF ANDREW BINDER

SUBJECT: POLICE DEPARTMENT RESPONSE TO IPA RECOMMENDATIONS JAN-JUN 2022

RECOMMENDATION 1: PAPD should consider all potential policy violations and the context of any encounter in determining whether its members violated Departmental rules.

The Department agrees with this recommendation and will continue to review investigations for any policy violations.

RECOMMENDATION 2: In preparing letters to complainants, PAPD should advise when sub-optimal conduct has been identified and, where relevant, advise that appropriate intervention occurred.

The Department agrees with this recommendation and will craft written responses to complainants that are more informative.

RECOMMENDATION 3: When an appropriate apology is not forthcoming from a member, command staff should apologize on behalf of the Department.

The Department agrees that responses to complainants should include an apology for the negative interaction with our employees.

RECOMMENDATION 4: In mental health calls, PAPD should document whether a mental health clinician was contacted and if not, why not.

The Department agrees that incident documentation should include all steps taken to resolve incidents and document the involvement of mental health professionals. The Department's policy on responding to mental health calls (Policy 418.8) states that officers should consider using community health resources in the response, as appropriate for the situation.

RECOMMENDATION 5: PAPD should develop protocols with the mental health agencies who are co-responding to mental health calls so that clinicians are able to review body-worn camera footage and provide feedback on ways to improve that response.

The Department has a response protocol in place for the joint Santa Clara County Behavioral Health Services and Palo Alto Police PERT team deployment involving emergent mental health calls for service and a referral process to the PERT team for follow-up outside of the teams' working hours. Community response teams will ask for and receive law enforcement assistance if conditions are unsafe for responding civilian workers. The Department will work with the CMO to coordinate the refinement of

response protocols with other agencies. Consistent with state law and HIPPA, department policy prohibits releasing BWC footage outside of the legal process.

RECOMMENDATION 6: As needed, PAPD should reinforce to supervisory staff the principle that, barring exigent circumstances, supervisors should refrain from direct physical engagement with subjects, so as to maintain their ability to manage the operation as a whole.

The Department agrees and does reinforce these concepts during tactical training. Supervisors are expected to respond appropriately to any physical threat to themselves or others when those circumstances occur to ensure the safety of all personnel present at a field incident.

RECOMMENDATION 7: PAPD should work with the various agencies assisting the Department on mental health calls to develop protocols on how clinicians will document their participation on joint mental health calls.

The Department welcomes working with community mental health resources on policy development and will work with the CMO to coordinate the refinement of response protocols.

RECOMMENDATION 8: PAPD should ensure sufficient fact collection to explain any divergences from the initial tactical plan.

The Department agrees that fact collection should include tactical plan development, modifications, and implementation. The referenced case included similar information on the tactical response and was found to be within policy.

RECOMMENDATION 9: During use of force reviews, PAPD should research “causes” for any equipment that does not operate as intended.

The Department agrees with this recommendation. The Department, after this incident, replaced the equipment that failed during the incident.

RECOMMENDATION 10: The Department’s force review template for supervisors should include space for identifying issues and learning opportunities of various kinds, as a precursor to additional follow-up as warranted.

The Department agrees and has updated the use of force template to prompt the investigator to assess the incident response for learning opportunities.

RECOMMENDATION 11: The Department should use individual instances of questionable “on camera” commentary or actions as a basis for reminding personnel of the importance of professionalism, particularly with regard to deployment of force.

The Department’s review processes include addressing policy violations or improper behaviors that are observed as a result of the internal investigation process and agrees that those behaviors should be addressed with the involved officers.



DATE: SEPTEMBER 12, 2022

TO: HONORABLE CITY COUNCIL

FROM: CHIEF ANDREW BINDER

SUBJECT: USE OF FORCE REPORT SUPPLEMENT TO OIR REPORT DATED AUGUST 2022

This memorandum responds to the City Council’s November 2020 direction to provide use of force summary data which encompasses all use of force incidents in which a “Supervisor’s Report on Use of Force” has been completed by the Police Department as a cover memorandum to each Independent Police Auditor (IPA) report. Most commonly, a Supervisor’s Report is completed when there is a visible or apparent physical injury, the subject complains of pain, or the subject alleges they were injured. The Police Policy Manual requires that all uses of force by Police Department members “be documented promptly, completely, and accurately in an appropriate report.” Such reports are required to be reviewed by a supervisor and approved in writing. In certain circumstances, section §300.5.2 of the Police Policy Manual enumerates the circumstances where the “Supervisor’s Report on Use of Force” also requires review up to and including the Office of the Chief.

This summary covers the period of January 1, 2022, through June 30, 2022.

Summary

From January 1, 2022, through June 30, 2022, the Police Department responded to 19,351 calls for service and effected 487 arrests. During that time, officers used no more than bodily force¹ on four occasions (on four total subjects). No other uses of force occurred during the time period. The August 2022 IPA report covers eight use of force incidents due to the fact that four of those incidents happened before January 2022.

Of the four use of force incidents occurring in the first half of 2022, the Department forwarded two of them to the IPA for review and recommendations, as they met the criteria for the IPA’s expanded scope of administrative review established by the City Council in November 2020. The expanded criteria for IPA review of use of force reports include all administrative use of force reports where a baton, chemical agent, Taser, less-lethal projectile, canine, or firearm is used, and all cases where the subject’s injuries necessitate any treatment beyond minor medical treatment in the field. The IPA’s reviews of these two cases appear in the current IPA report before you.

The remaining two cases did not meet the criteria set forth by the City Council, and so the Department did not forward them to the IPA.

¹ Bodily force includes control holds, takedowns, or other uses of the body that does not involve the use of a tool.

Firearm Pointed at Person

The Independent Police Auditor’s scope of services was expanded in July 2021 to include cases when a firearm is pointed at a subject. From January 1, 2022, through June 30, 2022, officers pointed a firearm at a person on three occasions. The Department recently forwarded details on these encounters to the Independent Police Auditor, and we expect them to detail their review and recommendations in their next report.

January-June 2022 Use of Force Summary

Type of Force	Number of Cases	Auditor Review Status
Physical Strength	4	2 reviewed in current IPA Report, 2 not require review
Taser	0	
Canine	0	
Baton/Other	0	
Firearm Pointed at Person	3*	Sent to IPA August 2022

*One of these cases was also one of the two aforementioned use of force cases that did not meet the criteria set forth by City Council to send to the Independent Police Auditor from a use of force standpoint; however, the Department sent the case to the IPA since a firearm was pointed at the person.