

City of Modesto

Independent Police Auditor's First
Report re: Modesto Police
Department

March 2024

OIR
GROUP

Michael Gennaco
Stephen Connolly



OIR Group
6510 Spring Street, #613
Long Beach, CA 90815

OIRGroup.com

Table of Contents

<i>INTRODUCTION</i>	<i>3</i>
<i>METHODOLOGY</i>	<i>8</i>
<i>COMPLAINTS AND ALLEGATIONS OF MISCONDUCT</i>	<i>10</i>
<i>MPD FORCE REVIEW PROCESS</i>	<i>21</i>
<i>CONCLUSION</i>	<i>29</i>

Introduction

Like many other jurisdictions around the United States, the City of Modesto committed in recent years to strengthening community involvement in the work of its Police Department. Modesto's "Forward Together" initiative, which began in 2021, established a working group of residents and public officials that focused in part on turning new reform expectations into reality.

Over the course of several months, the Forward Together members formed subcommittees and held a number of meetings to discuss reform ideas across a number of key topics relating to law enforcement and public safety. These included "Policies and Practices" and "Alternate Response Models." A third committee addressed "Accountability," with an eye toward establishing a new form of police oversight for the City.

The final Forward Together recommendations were presented to the City Council in 2022, and led to the Council's adoption of the "hybrid" model of oversight that the working group had endorsed. As the name suggests, this approach blends two components. The first is a board comprised of nine community residents with a formal mandate to engage the public and the Police Department, review critical incidents and other trends, and make policy recommendations regarding MPD operations. The City Community Police Review Board ("CPRB") was formed in the spring of 2023 and held its first public meeting in June.

The second component of the model is the addition of an Independent Police Auditor ("IPA") – an outside expert in law enforcement practices that, pursuant to the terms of a new City ordinance, serves as a resource to the CPRB and has several delineated duties in monitoring MPD's operations.

As the first IPA for Modesto, the City Council selected OIR Group. We are a private team that operates out of southern California and has more than twenty years of experience in the independent oversight of law enforcement agencies.¹ By bringing an outside perspective and a deep familiarity with best practices, OIR Group works to strengthen the effectiveness of law enforcement agencies' own systems for internal review.

Under the new ordinance adopted by the City, the IPA has authority to review internal MPD investigation files and records regarding uses of physical force, allegations of officer misconduct, and critical incidents (including officer-involved shootings and in-custody deaths). This includes full access to otherwise confidential Department materials, including body-worn camera recordings, official reports, and other investigative materials. Each case is assessed with an eye toward the thoroughness, fairness, objectivity, and overall legitimacy of the investigation and its outcomes.

The audit process established by the City has some fundamental goals. One is to increase the Department's accountability to the public by adding a new level of scrutiny to the processes by which it investigates complaints and evaluates officer compliance with law, policy, and training. It is important to note that the IPA role is not in itself investigative: the primary responsibility for evaluating and addressing officer conduct continues to rest with the

¹ Led by Michael Gennaco, a former federal prosecutor and a nationally recognized expert in the civilian oversight of policing, OIR Group has provided a range of services for jurisdictions throughout California and in several other states. It specializes in the independent review of police operations, and provides public reports in an effort to promote transparency, accountability, and reform. OIR Group has had a longstanding role in Anaheim, and that city's model of oversight was cited by the Forward Together panel as a useful template for Modesto's approach. More information about OIR Group's team members and experience can be found at www.oirgroup.com.

Department's leadership. But the newly established independent review of MPD's efforts in this regard provides a meaningful mechanism for ensuring that the Department's own investigations have legitimacy.

Along those lines, a second goal of the audit process is the potential enhancement of MPD's internal investigative and review systems. Instead of providing a case-by-case "thumbs up" or "thumbs down" regarding specific outcomes, the audit uses the individual case examples to identify any strengths and limitations that emerge during the assessment, and to make recommendations in an effort to refine the future effectiveness of those systems.

Another of the IPA's roles under the ordinance is the issuing of public reports about its findings and recommendations. This speaks to a third goal of the IPA position: an increase in community awareness about police processes that have traditionally been insular and confidential in spite of their inherent significance and the concerns that they often engender. Ideally, the IPA's audit reports will enhance public understanding about MPD and provide the CPRB with useful building blocks for its own work.

This is the first of those reports. At the request of the City Manager's Office, the IPA undertook an initial "six-month" audit across the categories listed above. Below are sections that describe our impressions of the first MPD investigations we have reviewed, all of which were completed between July 1 and December 31 of 2023.

Before delving into the particulars of those evaluations, we take this opportunity to comment more generally on our initial interactions with the Police Department. We recognize that the arrival of a new form of outside scrutiny is not inherently a welcome development; in our experience, we've dealt with occasional approaches from law enforcement that are more grudging and defensive than cooperative and responsive. We are pleased to report that, from the outset of our tenure with the City, the Department has not only met but gone well beyond the "letter of the law" requirements that are framed by the ordinance. We have had unstinting access to necessary materials, and been proactively notified of significant issues on multiple occasions.

As the Chief said in our introductory meeting, the Department does not anticipate always being in full agreement with our perspective. But he offered a willingness to engage with that perspective and remain open to observations and recommendations that could potentially improve MPD's operations. He and his leadership team have remained communicative and collaborative in the ensuing months.

The Department's adjustment to our involvement began within days of our contract period's inception, when we received notification of an officer-involved shooting that occurred in June. That case involved an exchange of gunfire with a subject who received non-fatal injuries before being taken into custody. Within several days of the incident, we were invited to attend the first presentation under the Department's new "Major Incident Review Team" protocol.

Separate from the independent criminal investigation into the legality of the officer's actions, this internal, administrative process is meant to evaluate critical events in a comprehensive, holistic way. The intent is to ensure that these significant incidents are treated not only as occasions for individual accountability, but also as learning opportunities across a range of categories relating to policy and procedure.

We were impressed with the thoroughness of the presentation, and with the thoughtfulness of the discussion that followed. And we appreciated the chance to ask questions and provide MPD with additional focal points for the ensuing investigation. Because that investigation has not been finalized,² additional details about it will not be featured in this first report. But we do think the Department's commitment to such a robust process is itself noteworthy.

As for the complaint and force review cases that we do discuss below, there were effective elements in the Department's investigations across both categories. Certainly, as in many jurisdictions, the existence of body-worn camera recordings is a major aid to the challenging task of verifying or determining or evaluating what occurred in a given encounter. Our ability to

² That includes the District Attorney's review, which was still pending at the time of this writing.

assess those materials ourselves was an important element in the findings and conclusions that follow.

This initial sampling did produce the basis for several recommendations, such as enhancing interactions with complainants at different stages of the process, and strengthening the objectivity and thoroughness of interviews with in-custody subjects after a use of force. But our overall sense was that the processes themselves are undertaken in earnest and pursued with objectivity and appropriate rigor. This reflects a level of commitment to self-evaluation and improvement that should be encouraging to the community.

We have appreciated the opportunity to serve in Modesto, and we extend our thanks to the City staff, Department members, and Community Police Review Board volunteers for their assistance as we have become familiar with the City. We hope this report helps meet Modesto's objectives for greater transparency and meaningful oversight of its law enforcement agency.

Methodology

The audit process in Modesto is framed by the scope of work established by the City in creating the Independent Police Auditor position. It calls for an annual review. However, because our work in Modesto began in June of 2023, the City requested a first report that would cover the second half of the calendar year and provide an initial assessment of the relevant processes.

Per the IPA contract, the audit encompasses a review of completed investigations within the following categories:

- All uses of deadly force or in-custody deaths;
- All bias-based policing complaints;
- All administrative investigations in which the subject employee holds the rank of sergeant or higher;
- A random selection of 1/3 of all administrative investigations;
- A random selection of 1/3 of all citizens complaints; and
- A random selection of 1/4 of all use of force reviews.

During the last six months of 2023, there were no completed cases in the categories of deadly force or in-custody deaths.³

For the misconduct cases, we worked with MPD representatives in early January to get a list of the investigations that were completed between July 1 and December 31. They identified all of the Internal Affairs matters that included an allegation of bias or involved a supervisor as a subject.⁴ Of the remaining cases, we chose a sampling based on case number alone.

For our use of force audit, MPD provided a listing of case numbers for the approximately 80 incident reviews that were completed during the second half of the year. The only information that was provided was the force option that was utilized by the involved officers. We attempted to encompass a

³ As mentioned above, Modesto had one officer-involved shooting in 2023, but the investigation is still open.

⁴ Below, in the section on complaint and misconduct cases, we discuss the rationale for giving special attention to cases involving those elements.

representative range of cases in terms of the type of force that was deployed; otherwise, the selection of a 1/4 sampling was randomized.

After we submitted our choices to MPD, the investigative files were collected and sent to us for review. The materials included investigative reports and memos as well as documentation from the underlying incidents, and, significantly, body-worn camera recordings that were related to the case.

In short, we had the access to confidential materials that was needed to perform a thorough and objective assessment of MPD's processes. While the sample size was limited by the six-month scope of the audit,⁵ it did provide a useful basis for understanding the features of MPD's current internal review systems.

⁵ In the future, the report will align with the calendar and incorporate a full year's worth of cases.

Complaints and Allegations of Misconduct

MPD completed a total of 22 misconduct investigations during the audit period. Of those, 21 were initiated by complaints from members of the public, and one was internally generated by the Department's leadership. We reviewed 13 of these investigations after applying the parameters stipulated within our scope of work.

As mentioned above, two criteria lead to automatic inclusion in the pool of our selections: any case in which a supervisor is named, and any case involving an allegation of bias.

Cases relating to supervisors are particularly important for a couple of reasons. First is that the influence of an agency's leadership, both within and outside the Department itself, makes supervisors' accountability a priority when conduct is called into question. And second is the concern that is sometimes expressed among line level members of an organization that the "favored" status of supervisors undermines the rigor of administrative inquiries that involve them as subjects.

As for investigations involving assertions of bias, these are recognized as inherently significant. Concerns about possible discriminatory treatment are fundamental to tensions between law enforcement and the public – and particularly the members of historically marginalized groups. Few things undermine public confidence more than a sense that enforcement decisions are influenced by bias based on people's identities and not their actions. Looked at individually and collectively, these complaints potentially offer insight into the fairness with which officers engage with the public, as well as the effectiveness with which agencies seek to address these concerns when they arise.

Six of the 22 cases from this period included an allegation of bias against an involved MPD officer. None were found to have been supported by the evidence.

We concurred with these determinations, based on the available evidence in each case. This is not unusual in our experience: on the contrary (and to the ongoing frustration of many critics of the police), such charges very rarely result in a sustained finding. One explanation, of course, is that the assertions of bias are wrong – no matter how sincere the perception that prompted them. But the extremely low number of proven allegations is also because, in the absence of overt statements or flagrantly disparate treatment, it is difficult to establish improper, subjective motivation in the context of an individual encounter.

Still, it is important for law enforcement to investigate each case with its own objectivity and thoroughness, and to look for possible patterns or circumstantial supports when challenges about bias are raised. For the six cases we looked at, we found that MPD's investigative efforts were suited appropriately to the nature of the specific allegations.

In one case, for example, the complainant (a Black woman who had been involved in a physical fight with an employee at a business she was patronizing) alleged that the officer's police report had wrongly failed to document a racial slur that she claimed had been used by the other person. But review of the body-worn camera recordings showed that she had not actually communicated this aspect of the encounter when questioned at the scene.

In other cases, the bias claims were asserted in the context of a broader frustration with the police handling of an incident. Complainants were interviewed in an effort to gain further insight into their perceptions and, if possible, connect the allegations to specific elements of officer conduct. Efforts to provide this support varied in their persuasiveness, but ultimately none of the claims were substantiated.

It was also interesting to note that the claims of bias were various: even within the audit period's small group of examples, sexuality and multiple races and ethnicities were separately cited as being the alleged reasons for discriminatory treatment. No meaningful trend lines emerged from the group as a whole. However, we intend to use this first sampling as a baseline for comparison in future audits.

Effectiveness of Investigations

Of the 13 cases we evaluated overall, two resulted in sustained findings against the subject employee. One of these cases was initiated by the Department itself and concerned a dishonesty issue involving a civilian member of the agency who was applying to become a sworn MPD officer. During the polygraph examination that was part of his background process, he provided answers to questions about his personal conduct that clashed with elements of the written "Personal History Statement" that he had previously submitted as part of the application process. The combination of unbecoming conduct and failure to be truthful led to the Department's decision to separate him from the agency.

The other sustained case was submitted by a female arrestee, who alleged that a female MPD officer had searched her illegally and in a sexually assaultive fashion, and had deliberately deactivated her body-worn camera during some of the alleged misconduct. A detailed investigation verified that elements of the officer's search had violated MPD policy, and found that she had improperly de-activated her camera recording at different stages of the detention. This latter violation contributed to a finding that the sexual assault allegation was "not sustained" – which meant that there was a lack of evidence to definitely prove or disprove it.

The officer received a low-level consequence along with a detailed program for additional training regarding tactics and investigative searches. We support the latter intervention wholeheartedly; it is consistent with the notion that the process should aim to improve future performance in constructive ways.⁶ However, the more formal disposition that was imposed seemed somewhat lenient to us, especially in light of the officer's past history of similar issues in complying with body-worn camera requirements.

We recognize that, except in termination cases, the sanctions that an officer receives are aimed at correcting behavior rather than punishing. But the severity of a consequence is certainly part of what goes to the messaging that

⁶ We were also impressed that the different training components were documented and included in the case file.

an agency seeks to accomplish. We encourage MPD to consider whether a firmer approach could be advantageous in achieving the goals of the process.

RECOMMENDATION 1:

MPD should re-evaluate its current approach to consequences for violations of policy, particularly when a past history of similar performance issues is relevant.

For the most part, we found the investigations themselves to be appropriately objective and diligent, and the accompanying memos provided detailed summaries and thoughtful, persuasive analysis of the evidence. Completed cases go through multiple levels of internal review and seem to receive careful consideration. Investigators are generally meticulous about framing allegations based on the complainant's concerns; these are then addressed in organized, methodical ways.

We saw several instances of notable investigative effort, including the following:

- In a case for which the lack of body-worn camera recordings contributed to disputed facts, the investigator went to the scene in an effort to locate private surveillance cameras that could contain relevant evidence.
- For a case involving alleged traffic violations by an MPD sergeant, the investigator synced multiple camera angles in an effort to track the relevant vehicle's movements in relation to traffic signals and pedestrian activity, and then interviewed the sergeant when that evidence proved to be inconclusive.
- When a complainant claimed the officer lacked probable cause for arresting him on charges of terrorist threats, the investigator conducted a thorough analysis of the relevant legal standards as they applied to the facts known by the officer.
- The Department conducted a thorough review of an allegation that a civilian manager had mishandled a dispute over ownership and custody of a dog, even though the named employee had already retired from the agency.

- In a case involving a driver's allegations that an officer had unfairly and improperly detained him in the aftermath of a traffic collision, the investigator supplemented extensive body-worn camera recordings with interviews of three civilians who had been at the scene.
- Months after the fact, an investigator worked diligently to identify and locate a third-party witness to a traffic accident that was investigated by several MPD officers and became the subject of a complaint as to appropriate thoroughness.

Timeliness of completion is also a feature we consider to be important for several reasons. State law provides police agencies with a full year to complete investigations without forfeiting the right to impose discipline, but long delays have the potential to undermine the effectiveness of investigations and the value of interventions. The sampling of cases that we looked at were generally effective in this regard. Investigations were completed in two to six months on average, without compromising appropriate levels of thoroughness and rigor.

Part of this efficiency is undoubtedly a function of technology. Like many agencies, MPD makes effective use of the body-worn camera recordings that provide dispositive evidence in many cases. Several of the complaints we looked at were resolved without requiring interviews with the named employees, and we were satisfied that these were not necessary for the Department to reach conclusions.

Less favorably, we noted a couple of examples in which we felt MPD could have pushed harder to address or encompass identified issues. In a couple of instances, the complainant took exception to some aspect of the Department employee's demeanor as an added element of an underlying grievance. We could see some support for these contentions in the body-worn camera recordings – not to the point of an actual policy violation, but perhaps warranting some level of informal follow-up by MPD management.

And in another case, a supervisor noted a seeming discrepancy between the officer's report and his initial comments to a person whom he had stopped for a vehicle code violation. This was not pursued during the formal complaint investigation. Though it did not have a bearing on the ultimate legality of the officer's actions, it certainly could have contributed to confusion on the part of the motorist, and was seemingly worth raising with the officer himself.

RECOMMENDATION 2:

MPD should evaluate and address low-level issues of discourtesy or poor communication, even when they do not rise to the level of a formal policy violation.

Lastly, we noted an investigative technique that we had not seen before as part of an agency's discipline process: the use of a written questionnaire to get information from different officers involved in a complaint case. The Department explained to us that is a rarely used procedure that seeks to fill specific factual gaps in an investigation that do not necessarily warrant a formal interview. While the efficiency of it is appealing, and it constitutes a sort of "middle ground" that is presumably better than nothing, it is in our view significantly less effective than a traditional interview. We support the idea of investing the time and effort necessary to conduct actual interviews with involved personnel whenever their input is needed to address missing information.

RECOMMENDATION 3:

MPD should dispense with its "questionnaire" protocol in favor of formal interviews with officers whose testimony is needed to address evidentiary gaps in complaint cases.

Interactions with Complainants

The core functions of a public complaint process are ultimately related to accountability. Complaints bring performance concerns and potential misconduct to the attention of police management, thereby initiating investigation and review as a precursor to appropriate remediation. And even cases that do not result in sustained formal allegations can be learning opportunities – a source of feedback that helps identify training needs or policy modifications.

But along with these operational benefits, an effective complaint process also exists for the sake of the complainants themselves. It offers them a vehicle to share a problem or grievance and expect that it will somehow be rectified. By making a complaint, they are putting their trust in the legitimacy of the police agency's ability and willingness to meet this expectation.

Accordingly, an additional metric of success is the extent to which the complainant's experience is a positive one. Some of this inevitably turns on "bottom line" outcomes. However, assuming that participants in the process are themselves reasonable and acting in good faith, other factors can certainly contribute to an overall sense that the process has been objective, fair, and worthwhile. And this, on a case-by-case basis, can help to build public confidence.

One of the initial components of this trust-building is accessibility. To its credit, MPD takes complaints in a variety of ways. The sampling we reviewed reflected this range. Some complainants came to the police station in person, some sent emails, and several used the "official" online form and submitted it electronically or by traditional mail.

While these examples show both MPD's receptivity and several participants' ability to obtain and use the form, we see room for slight improvement in facilitating the public's access to the process. For example, finding the MPD website's link to the complaint form requires some user persistence and

navigation.⁷ And, unlike many police stations that we have visited over the years, the MPD lobby does not offer readily available copies of the form (or any form). Though a staff member behind a counter can respond to requests, it behooves the Department to reduce even minor barriers to a process that can be inherently daunting to some members of the public.

RECOMMENDATION 4:

MPD should help promote the accessibility of its complaint process through more prominent online options and readily available forms.

As for "intake" interviews with complainants, we offer a couple of observations based on the limited number of cases we have looked at. With limited exceptions, it is best practice to attempt a personal interview as part of each investigation. This is true even when a written submission is fairly detailed in identifying the relevant incident and expressing concerns: an interview literally provides the best opportunity to convey to the complainant a sense of having been heard and understood.

Accordingly, it is beneficial that MPD seems committed to accomplishing this step. Interviews occurred in most of the cases we looked at, and in others the Department documented its efforts to locate or follow up with a complainant who was not accessible. We did, however, note a few elements of MPD's approach that merit reconsideration.

Interview in Lobby: In one of the cases we reviewed, the complainants were a couple who alleged that officers were inappropriately following them and monitoring their activities without justification. They came to the station lobby, and a supervisor spoke with them about their concerns for several minutes – in the lobby area and within earshot of what seemed to be an unrelated third party. Though the interview itself was fine, the circumstances were obviously not ideal.

⁷ More promisingly, the Community Police Review Board site does have an obvious link on its home page. And we were also pleased to note that the MPD website features a Spanish-language version of the form.

RECOMMENDATION 5:

MPD should consider new options for intake interviews of complainants who come to the Department to complain in person.

Explanations: We saw a few instances in which the interviewer did a significant amount of explaining police procedure as it related to the concerns that the complainant was presenting. Our sense is that the intentions were benign, and the impulse to clarify apparent misunderstandings and provide useful context is understandable as a way to "fix" the problem in an efficient way – on behalf of the complainant as much as the Department. But there is a fine line between sharing information appropriately and appearing defensive or dismissive of the complainant's issues. While recognizing that not every situation is the same and that flexibility has its place, we encourage MPD to emphasize to interviewers that the intake stage is ideally about "hearing the person out" in as neutral and receptive a manner as possible.

RECOMMENDATION 6:

MPD should ensure that intake interviews should prioritize listening and understanding the complainant's perspective, while keeping explanations or justifications to a minimum.

Complainant-driven Approaches: Another technique that MPD seems to favor in certain circumstances is to ask the complainant what he or she would "like to see happen" as a result of any review process. On the one hand, this focus on "customer satisfaction" makes sense, and is consistent with a recognition that responsiveness to members of the public is a core objective of the process as a whole. But it can become a shortcut to an objectively appropriate review.

Our understanding is that a complainant who insists on a formal investigation will always get one (even if the complaint seems frivolous or unreasonable on its face). However, the process may in fact end at intake if a supervisor manages to assuage the complainant's concerns, or if the person says something along the

lines of, "I don't want to get anybody in trouble; maybe if you could just talk to the officer."

While acknowledging the important role of discretion and common sense in police management, and that the issues in cases that are resolved informally are generally minor in nature, we are hesitant to let individual preferences play too significant a role in an agency's handling of the feedback it receives – in either direction.⁸ In the same way that a groundless complaint should not receive undue attention just because of the complainant's passion or insistence, a performance issue that merits attention and appropriate corrective action should get it – even if the person who identified the issue in the first place is seemingly mollified.

RECOMMENDATION 7:

MPD should balance a complainant's personal wishes about process with its own obligation to objectively document and address allegations of possible misconduct.

Finally, state law requires police agencies to provide complainants with notification as to outcomes at the end of the investigative process. This obligation is in slight tension with the privacy rights to which officers are entitled (also as a function of state law). There is information that must be shared (about the agency's ultimate finding) but also information that cannot be (such as the specific nature of the disciplinary consequence received if any, or detailed information about the investigation itself).

Traditionally, law enforcement agencies have handled this by erring on the side of concision: short letters that "check the box" of required information but often rely on boilerplate language and make little effort to personalize or provide real insight into the process. We encourage a more communicative approach.

⁸ One analogy that shapes our perspective is the role of the victim in the criminal justice system in which the desires of the victim are considered but not determinative of whether to pursue the matter.

MPD's version is better than many. It begins with specific information about the dates of the complaint and the underlying incident, and summarizes the complainant's asserted concerns. This is important as a way of acknowledging that the complainant has been heard and understood in an individualized manner.

The next element that the Department includes, though, is less effective. The language we saw on multiple letters reads as follows: *"The investigation of your complaint may have included one or more of the following: reviewing testimony, reports, associated documents, video, and pertinent evidence."* This strikes us as a step in the right direction that stumbles a bit in the execution.

We very much support an agency's inclination to "show its work" and give insight into a process that is necessarily confidential to a large extent. The most direct counterbalance to skepticism about the sincerity of law enforcement's willingness to hold its own people accountable is to show that the result was the product of a legitimate investigative process. Unfortunately, MPD's boilerplate language sends a mixed message in this regard. It seems to acknowledge the concept while generalizing in a way that is not particularly reassuring.

While it is certainly more time-consuming to add individualized details and explain the process including whether, in fact, body worn camera footage, other evidence, and witnesses were interviewed (while deferring to officer privacy rights at the same time), we think the effort is worthwhile – and potentially the difference in a complainant's ultimate takeaways about the process. Nor is the volume of cases that MPD is processing so large as to make this extra thoughtfulness impracticable.

RECOMMENDATION 8:

MPD should review its notification letters in order to enhance the personalized nature of the discussion and give additional insight into the bases for the decisions in each case.

MPD Force Review Process

For obvious reasons, officer-involved shootings and in-custody death cases generate significant amounts of public concern, and significant amounts of investigative scrutiny. Recent legislation has ensured that these events are also subject to greater transparency than ever before. This is true both initially (with the required release of any related video recordings) and at the conclusion of the process – when investigative files and records from criminal and administrative reviews that were formerly confidential are now subject to release. And it reflects a recognition that these incidents are an exercise of police power for which accountability is uniquely important.

Our scope of work with the City of Modesto certainly acknowledges the special attention that such cases deserve. As we discuss above, two deadly force incidents have occurred since we began our assignment as Independent Police Auditor, and we have had the chance to actively monitor the first stages of the Department's administrative response. This includes attendance at two detailed briefings conducted under MPD's new "Major Incident Review" protocol – the agency's preliminary evaluation of the incident with the goal of identifying potential issues across several different categories.

But while the final reports on those matters will not emerge for several months, the IPA audit relationship also incorporates an assessment of MPD's "standard" force review process – the supervisory assessment that occurs in the aftermath of all reportable physical force used by officers in the context of their enforcement activity.

These more common force deployments are definitionally less severe. In fact, they frequently are limited to a brief takedown and struggle to overcome resistance, and often do not cause even minor injury to the subject. At the same time, though, strict standards exist regarding the justification for any physical contact. And an effective police agency is one that ensures its officers are trained in those standards and accountable for adhering to them.

MPD policy dictates the protocol that should ensue after a use of force, beginning with immediate notification to supervisors by officers who use force.

From there, a sergeant is expected to respond to the scene and has several responsibilities. These included ensuring that medical treatment is provided as needed, that evidence (such as photographs of injury) is gathered, and that an interview with the subject is obtained if possible.

From there, the handling supervisor reviews the reports completed by involved personnel to document their actions, and compares this information to the available body-worn camera recordings. The supervisor makes a determination as to whether the force was justified and consistent with Department policy, and then forwards the completed package up the chain of command. There, the full case is reviewed at two additional rank levels. Those responses are also documented, and often lead to additional insights and responsive action items before the case is finalized.

Additionally, the Department makes use of its database to track collective activity on the part of its personnel. An alert is generated when an individual officer reaches a pre-set threshold for individual force incidents within the stipulated time period; this in turn prompts a secondary evaluation of these events. The goal is not to "re-litigate" events that have already been subject to accountability. Instead, the secondary review looks for possible patterns of behavior or trends across the grouping of incidents that could or should be addressed to enhance future performance. We consider this type of pro-active evaluation to be very worthwhile.

We looked at 20 force incident reviews that were completed in the second half of 2023, which included cases involving several different force options. All were found to be in-policy, and these individual outcomes were reasonable in our view. With some points of hesitation, we also found commendable elements to the process as a whole in terms of its objectivity and rigor. We discuss below both the strengths and limitations that we observed in this initial audit.

"Holistic" Review

One hallmark of an effective force review process is a willingness to go beyond the basic (if obviously important) questions of whether the force was justified, reasonable, necessary, and consistent with policy. The "bottom line" assessment certainly matters for accountability – and should lead to further investigation and potential consequences if concerns arise. But force incidents are also a vehicle for looking at performance more broadly and with an eye toward future improvement. This could be true at the individual officer level or with regard to interventions that apply to the whole agency.

The reality is that some events are extremely straightforward: the force incident is brief in duration, minor in severity and impact, and easy to validate in terms of officer decision-making. As often as not, though, scrutiny of these encounters yields insights that are deserving of some level of follow-up. Several different factors could be relevant, including communication (between officers and with the subject), tactics, equipment, choice of force option, de-escalation strategies, training needs, and the role of supervision.

We were encouraged by the evidence of a robust and holistic approach to incident assessment that was reflected in a number of the individual cases we looked at. Just as importantly, identified issues led to action items that were intended to address the concerns that supervisors at one or more levels of the review process had flagged. Examples included the following:

- A female arrestee slipped out of her handcuffs and became resistive, requiring a physical struggle to re-establish control. The reviewing supervisor noted the deficiencies in the involved trainee officer's handcuffing technique – and in the failure to acknowledge the mistake in his report. The sergeant also identified shortcomings in the search of the woman after arrest. Lastly, he met with all involved officers to debrief these points.
- An officer noted a woman walking near a highway in violation of the vehicle code; she was not cooperative in his efforts to communicate with her, and he ended up needing to take her to the ground in order to effectuate his detention. The supervisor found the force to be in policy – but spoke with the officer about initial decision-making, and whether it

had been necessary to engage in enforcement action rather than just ensuring her safety.

- During an investigation into illegal camping on private property, two officers struggled to take control of a non-compliant subject, who eventually broke away from them and fled the scene. The supervisor noted multiple instances in which the officers' tactics and lack of effective teamwork had undermined their response. He held a debrief with both.
- Officers responding to a domestic violence incident located the male subject and approached to take him into custody. He took a swing at one officer before being tased and taken to the ground by others. The handling supervisor noted the lack of attempts at de-escalation, the failure of officers to make a plan with each other, and shortcomings in following effective Taser protocol.
- In a car stop involving three subjects that eventually resulted in one of them attempting to flee and being tased, the supervisor identified numerous tactical and officer safety concerns relating to the detention and handling of multiple individuals.
- Officers worked together to pin and take control of a resistive trespassing suspect with minimal force. In conducting his analysis, the supervisor observed a period of time when the handcuffed suspect was facedown – a potential respiratory danger. This was addressed with involved personnel. The supervisor also noted a profanity that he overheard on a recording from the scene, and counseled the involved officers about professionalism.

With that profanity intervention as a prompt, we take this opportunity to note that we were favorably impressed on the whole with the demeanor and professionalism of MPD officers in the context of these force incidents. In one particularly positive case, involving an individual who was taken into custody on a mental health hold and then abruptly ran from the police, the responding officers were extremely compassionate in their dealings with the man throughout the encounter.

Overall, the use of profanity was rare (and directly addressed in the one case where it was most prominent). On the contrary, there were notable levels of control in the verbal communication with subjects – even during and immediately after physical struggles. This has not been our experience

universally in our work with law enforcement agencies. Whatever MPD has been doing to promote the effective communication styles of its officers, it should continue on that commendable path.

RECOMMENDATION 9:

MPD should continue to prioritize, promote, and reinforce the professionalism and effective communication styles of its officers, particularly in the context of force encounters.

In the course of our audit, we also noted the value of the multiple levels of scrutiny that force incidents receive. One notable case involved a lengthy standoff with a non-compliant subject who had been smashing storefront windows with a hammer. When he repeatedly refused to comply with commands and eventually attempted to walk away from the gathering of officers, they deployed different less-lethal force options in an effort to subdue him.

In spite of the complexity of the incident, the handling supervisor originally endorsed the officer's actions with no training issues identified. This somewhat superficial analysis was sent back by a higher-ranking manager for further consideration. To his credit, the supervisor's "second pass" produced worthwhile insights that led to action items.

While the above examples showed the benefits of rigorous review and the ability of the Department's supervisors to fulfill that potential, there were also instances where we thought more attention would have been beneficial. In one case involving a K9 bite, for example, there were deficiencies in the dog's responsiveness to commands; if this was identified and addressed at all, it was not documented. In another case involving the use of a bean bag, Taser, and physical controls, there seemed to be room for more coordination and communication among the several responding officers as to a gameplan for containing and engaging the subject, but this was not explored.

We point these out not to nitpick – or to encourage MPD to do the same when incidents really don't require significant remediation. Instead, it is with the idea that (as with any organization), the agency should strive to achieve

consistency at the standard established by its most thoughtful, thorough work in this arena.

That said, our broader sense of limitations in the current process relates to a couple of topics: de-escalation efforts and interviews of involved subjects in the aftermath of a force incident.

De-escalation: This is an umbrella term that refers to a range of strategies and tactics that are intended to lessen the likelihood or severity of physical force occurring in a given encounter. Waiting for backup officers to arrive, establishing a verbal rapport with the subject, utilizing cover and distance to "slow down" officer decision-making and reaction – each of these is a tool that can potentially defuse tension and promote safe subject compliance.

Recent years have brought heightened national scrutiny to law enforcement in general, and force encounters in particular. Though many policing experts insist that the *concept* has been well-established in law enforcement for decades, public awareness of the *term* is relatively new – and corresponds to more rigorous expectations that force will be limited to circumstances in which it is necessary as well as justified.

In conducting our audit, we did see several references to de-escalation in the memos and reports that we evaluated. Addressing it did not, however, appear to be a standard expectation in officer reporting or supervisory evaluation. Instead, it was occasionally mentioned in passing – and ignored in those cases where it was not applicable. In the database that tracks the documented review process, references to de-escalation were sometimes limited to a brief notation that an officer trained in "crisis-intervention tactics" ("CIT") was on-scene, even if there was no apparent relevance to what substantively transpired.

MPD policy (300.3.2) cites de-escalation as something officers "should" seek to utilize when practicable. This approach recognizes that the need to use force sometimes arises abruptly, and that officer or public safety does not always lend itself to choices other than direct action. However, while recognizing that de-escalation cannot always occur – and while emphasizing that we did not consider it to be inappropriately disregarded by the involved

officers in these cases – we think there is value to imposing a more consistent and structured focus on it.

Specifically, we advocate for procedures that require officers to specifically address the role of de-escalation in writing their reports after a force incident, if only to explain why it was not used under the circumstances. Similarly, the review process should overtly and consistently focus on de-escalation efforts as an element of the overall handling of the incident and potential precursor to force being used.

This is less a dramatic overhaul of current MPD practice than a refinement – a way of ensuring that de-escalation is prioritized and reinforced in ways that will ideally further promote officer's awareness of it in the field.

RECOMMENDATION 10:

MPD should require officers who use force to incorporate a discussion of de-escalation efforts into their description of the incident, even if it is to note the reasons for its lack of applicability to the circumstances.

RECOMMENDATION 11:

MPD should make the overt, documented consideration of de-escalation a standardized element in its regular force review process.

Interviews with Subjects: One feature of an effective force review process is an interview with the individual upon whom force was used. The purpose is to get that person's perspective as an element of officer accountability (matching that statement to officer versions and evidence such as video recordings) custodial care (ensuring awareness of the nature and extent of injury), and risk management (potential claims as to officer misconduct and liability).

While some subjects are disinclined to cooperate, or are incapacitated by substance abuse or mental health issues, the effort to accomplish the interview is standard practice, and the outcomes should be recorded and documented by the relevant supervisor. We saw this as an arena for improvement by the Department.

Most pointedly, some of the supervisors took a conclusory approach that seemed to start with the notion that the force was necessary. We noted questions such as, "Why'd you run from the cops?" at the outset of the interview, or "When he told you [that] you were under arrest, why didn't you just comply?" However accurate the underlying premise, this inherently creates a non-neutral framing that shapes the overall interaction for the worse. And on multiple occasions near the end of the questioning, the supervisor asked something along the lines of "What you would do differently next time?" – as if the interview was geared toward providing a learning opportunity for the subject rather than objectively gathering evidence.

Even the better interviews had a perfunctory quality that seemed to be more about box-checking than investigation. In short, we encourage MPD leadership to re-visit the way these interviews are conducted with an eye toward enhancing their effectiveness.

RECOMMENDATION 12:

MPD should focus managerial attention on the goals and techniques of effective subject interviews by supervisors in the aftermath of a use of force incident.

Conclusion

Our initial experiences in Modesto have been positive on several fronts. We have been impressed with the energy and dedication of the Community Police Review Board's nine members – volunteer residents of the City who have engaged thoughtfully with their new role and who seem genuinely committed to constructively strengthening Police Department accountability and effectiveness. We've been grateful for the assistance of City officials in facilitating our work and providing structural support for the CPRB as it navigates its first year. And we've been appreciative of the ways that the Police Department has accepted our involvement, ensured our access to information, and given fair consideration to our perspective.

This first independent audit report is another step in a process that the City began in earnest some time ago: an effort to provide the public with a greater level of insight into and influence over law enforcement operations in their community. We look forward to further discussions regarding the topics identified in these pages.