

City of Modesto

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

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Introduction

What follows is the second public report in Modesto by OIR Group¹, which has served as the City's Independent Police Auditor ("IPA") since 2023.

Empowered by the City Council as the result of recommendations from the "Forward Together" working group, the IPA role is meant to bring a new level of transparency and accountability to the operations of the Modesto Police Department.

The IPA concept revolves around the ability, authorized in a City Ordinance, to bring outside scrutiny to internal Police Department files and records that would otherwise be confidential. These materials include completed misconduct investigations and MPD evaluations of officer uses of force, including reports, interview transcripts, and body-worn camera recordings of relevant incidents. This outside access to the inner workings of MPD is unprecedented in Modesto – and far from universal for law enforcement agencies around the state or country. And it serves a few different purposes.

The first is the window it provides into processes that are important to police legitimacy. By and large, the public recognizes that a percentage of officers will sometimes fall short of optimal performance – and may even engage in intentional abuses of their authority. This is, of course, disappointing. But that dynamic can devolve into a crisis of confidence if there is a sense that the agency itself is not committed to identifying and addressing misconduct or deficient performance in objective, rigorous ways.

¹ OIR Group is a team of consultants that has provided independent civilian oversight of law enforcement agencies for more than twenty years. Founded by Michael Gennaco, a former federal prosecutor and a nationally recognized authority in police oversight, OIR Group performs a variety of investigative, advisory, and monitoring functions in jurisdictions throughout California and in several other states. More information, including profiles of team members and copies of multiple public reports, is available at www.OIRGroup.com

Given the control that law enforcement maintains over its own review systems, the credibility of those systems is of paramount importance. The IPA's ability to review MPD's investigative materials brings outside scrutiny to the important internal processes that regulate officer performance. It also provides a vehicle for potential enhancements to those functions. This public Report, like last year's, features recommendations that are meant to provide MPD with practical, constructive ideas for adjusting protocols and developing new approaches to strengthen effectiveness. These recommendations are based on the close review of actual cases, which provide a concrete basis for issue-spotting and suggested change.

Along with providing the basis for the IPA's annual assessment, the framework of access contributes to our ability to serve as a resource for the City's other police oversight entity: the Community Police Review Board ("CPRB"). The CPRB emerged from the same deliberative process that established the IPA position, and completes the model in important ways. It is comprised of nine community residents whose mandate is to engage the public and the Police Department, review critical incidents and other trends, and make policy recommendations regarding MPD operations.

The CPRB has held monthly public meetings since June of 2023, and the IPA has attended these, presented at these, and offered its outside perspective to the topics that the Board has thoughtfully pursued. Independent access and professional familiarity with police practices are useful components of oversight, but they are not a substitute for the connections to community that come from dedicated people who live in Modesto's neighborhoods. We appreciate the opportunity to work with the CPRB, and have certainly benefitted from our interactions with its members.

Last year's Report, published in the spring of 2024, covered cases from the last six months of 2023, which corresponded to the mid-year start of operations for both the IPA and CPRB in Modesto. This version includes materials from all of 2024 – which obviously means a larger sample size of misconduct cases and force deployments. But another new element in this

year's Report is the discussion of two officer-involved shooting cases – the first to have occurred since the development of the new oversight model.

Both of the shootings resulted in the non-fatal wounding of the respective subjects, and both were subjected to scrutiny across a range of investigative processes. These included a criminal investigation (into the legality of the officers' choice to use deadly force) and an internal MPD review. This Report focuses on the latter.

The two cases were not only the first to fall within the IPA review parameters, but were also the first ones that MPD assessed pursuant to its own new "Major Incident Review Team" protocol. The Department developed this more comprehensive approach more than two years ago in recognition of the ways that deadly force cases merit the highest levels of internal attention.

As discussed below, we found the MIRT process to be robust and effective in many respects. While individual officer performance and compliance with policy are obvious focal points from an accountability perspective,² the Department has embraced the idea that the inherent importance of these events also makes them a learning opportunity – a chance to evaluate performance, training, policy, procedure, supervision, equipment, and post-incident response. Accordingly, a holistic and comprehensive review is warranted, and the two MIRT cases we evaluated have turned this principle into practice.

As for the misconduct cases and force reviews, our impressions this year build upon our initial 2023 exposure to MPD accountability systems. It is important to note here that our role is not to conduct our own investigations or make decisions regarding these matters. This authority – and responsibility – continues to rest with the Police Department itself. And in spite of the understandable skepticism this dynamic can create, there are important reasons for it.

² In both incidents, the Department found the use of deadly force by involved officers to be justified and consistent with policy. We concurred with this assessment, as we explain below.

Law enforcement agencies have resources and expertise that especially lend themselves to the effective handling of investigations into the actions of their personnel. And addressing officer performance appropriately, including through disciplinary consequences, is a component of any police organization's operational health and effectiveness.

The IPA role in Modesto, then, (as is true of almost all jurisdictions that have oversight), is not to take over MPD's review processes, but rather to assess them independently in terms of their thoroughness, fairness, and legitimacy of outcomes. Our public reporting responsibility brings transparency to this aspect of Department operations; hopefully, it also provides a counterbalance to the standard concerns about police control over their own processes. We use the specific cases completed by the Department as a foundation for understanding the systems themselves, illustrating the strengths and limitations of MPD's approach, and identifying potential improvements through our suggested reforms.

As was the case with our prior Report, we can say with confidence that the fundamentals of MPD's internal review mechanisms are sound. The Department does in fact take public complaints seriously and has a formal process for investigating them and then evaluating the evidence. This process often includes formal interviews of both named officers and potential witnesses. Understandably, though, it also relies heavily on body-worn camera recordings. These are often dispositive in and of themselves, and have greatly influenced the efficiency and conclusiveness of investigations in Modesto (as with many other jurisdictions).

The force review process is similarly well-constructed – and also takes full advantage of body-worn camera recordings as a tool for understanding the incident and evaluating the justification and effectiveness of force options used by officers. Each incident receives scrutiny at multiple rank levels, and the final assessment includes both a policy determination and a description of additional identified issues across a number of different performance categories. Potential topics range from communication skills to physical techniques to effective coordination with partners to choice of force options. And, where relevant, follow-up with involved personnel occurs and is documented.

In short, the processes seemed to be undertaken with objectivity and rigor, and they yielded appropriate and reasonable outcomes as a result. Naturally, though, our own review generated questions at times, and our role as outsiders imposed a different perspective on some of the individual case files – both in terms of the underlying officer performance and the mechanics of the Department's review systems themselves.

These observations are detailed below, and provide the grist for several recommendations we urge the Department to consider. We were gratified last year by the thoughtfulness – and commitment to concrete action – with which MPD responded to last year's twelve formal recommendations across a variety of topics. We discuss some of those proposed changes again, in the context of whether our suggestions appeared to "bear fruit" as reflected in discernible shifts in MPD practice.³ We hope that the latest offerings will receive similar consideration.

And we are optimistic that they will. In a continuation of the impressions we shared in our first Report, we can assure the public that MPD is responding to Modesto's new oversight paradigm in a professional, receptive, and constructive manner. A cornerstone of our effectiveness is unfettered access to the materials we need. The burden of providing that falls on MPD, and they have carried out that obligation fully throughout our brief tenure.

Just as importantly, though, they have made an effort to engage with and understand our perspectives, and even to draw upon our experience as a potential resource. The agency is proud of the work that its officers do, but never to the point of disregarding the possibility – or necessity – of adapting to lessons learned and new expectations.

We hope this Report will be a positive contribution to police-community relations in Modesto. Our increased familiarity with MPD, the CPRB, City staff, and the many residents here who are genuinely caring about effective

³ As we detail below, results varied. This was, in part, a matter of timing – many of the related adjustments to policy and procedure occurred in mid-summer of 2024, which was well into the audit cycle. Accordingly, "pre-recommendation" cases made up a significant percentage of the total that we reviewed.

law enforcement has certainly increased our own regard for Modesto and our interest in its ongoing success.

Methodology

The parameters of this annual audit are dictated by the City ordinance that established the Independent Police Auditor function. It calls for a review of investigations MPD completed during the calendar year⁴ and an accompanying assessment of the relevant processes. The stipulated categories, and the preset "sample sizes" for each, are as follows:

- 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.

As mentioned above, we received materials for both of the officer-involved shooting cases for which MPD administrative investigations were completed in 2024.

We worked with the Department's Internal Affairs unit to match the year's completed cases with the listed criteria for inclusion. After removing the several investigations that fell into the three "all examples" category, we established a random sampling of the remainder by picking from a list of case numbers with no other identifiers. This left us with a total of 28 cases to evaluate.

For our use of force audit, we followed a similar pattern of "blind" selection off a listing of completed cases (many of which were based on 2023 force incidents). There was one significant difference, though: we asked that the list include a brief mention of the one or more force options involved in the

⁴ The focus on completion of investigations (as opposed to date of incident) means that some of the cases in the "pool" came from 2023 events, and some 2024 events were not included.

incident, so that our survey could capture a representative range of the kinds of force that were utilized and their relative severity. (Most reported force involves "takedowns" or physical controls of resistant subjects that do not result in significant – or any – observable injury.). This process produced a total of 41 force incidents for the audit.

The Department then produced the associated case files for each of the investigations. This included police reports and other documentary materials, investigative evidence and supervisory memos, and body-worn camera recordings. A review of these otherwise confidential files and records formed the basis for the findings and recommendations that follow.

One additional note: some of the areas for potential systemic improvement that fueled specific recommendations in the first Independent Police Auditor Report recurred in this pool of cases. At first glance, this was disappointing, especially insofar as MPD had seemingly been receptive to making adjustments. But some of that phenomenon was attributable to timing rather than an intentional lack of responsiveness or follow-through. This was because several of the individual incidents reviewed for this Report preceded the issuing of that first IPA Report last spring. The below discussions identify that dynamic where it is applicable in the analysis.

Critical Incident Review: Officer-Involved Shootings

As noted above, in 2024 the Department finalized its internal review process for two deadly force cases. The first had occurred in June of 2023 – the same month that the IPA Office and the CPRB began serving in their respective roles. The second was in February of 2024. The officer-involved shooting cases bore some surface similarities: both of the subjects were wounded but survived, both were found to be armed with a gun, and both were charged criminally for their respective actions.

Across jurisdictions, the use of deadly force by a police officer initiates an investigative response that has two major components. The first focuses on the legality of the shooting: the question of whether the officer's actions met the threshold to be considered justified and lawful in light of Penal Code standards. While experienced MPD detectives conduct the majority of the evidence-gathering for these investigations⁵, the local District Attorney has responsibility⁶ for evaluating the evidence and making an independent determination as to whether a criminal prosecution is warranted.

The second review "track" is internal and administrative in nature; it is the purview of the involved law enforcement agency and addresses the related but separate question of whether an involved officer's actions were consistent with Department policy, training, and expectations. It is possible for a deadly force

⁵ It is standard for MPD to notify the District Attorney's Office in the immediate aftermath of a deadly force incident; D.A. investigators respond to the scene and shadow the subsequent process as a mechanism for ensuring its legitimacy.

⁶ One exception to this is for incidents in which the subject is "unarmed" within the meaning of a California statute that took effect in 2021. In those cases, and because of elevated concerns about the necessity of deadly force in those instances, the investigation is handled and reviewed by the Office of the State Attorney General. The goal is to impose an added level of independence to both the evidence-gathering and decision-making. Neither of the MPD shooting incidents discussed here fell into this category.

incident to be considered legally justified but in violation of one of more agency policies. If so, the involved officer could face an employment-related disciplinary consequence and/or other remedial intervention, which could include re-training, a suspension without pay, or even termination.

Ideally, and in addition to these formal questions of "bottom line" accountability for involved personnel, a law enforcement agency's administrative review process will also treat these inherently significant and impactful events as something more: an opportunity to methodically scrutinize relevant operational issues with an eye toward ongoing learning and improvement. It is here that MPD had made significant recent strides, with a centerpiece being its new "Major Incident Review Team" ("MIRT") process.

The "Major Incident Review Team": A Commitment to Holistic Review

The Department spent several months in 2022 looking at different models and designing a new protocol for its administrative review process in an effort to make it more robust and comprehensive. A key insight was the fact that the focus on involved officer legality and compliance with policy was crucially important but also limiting: it did not necessarily encompass some of the broader questions of tactics, decision-making, supervision, equipment, policy, and other potential concerns.

It was recognized that the complexity of critical incidents warranted a full-scale assessment of all aspects of the Department's response. Apart from the moment of "trigger-pull" itself, examples could include communication, officer safety, coordination with partners or supervision, radio traffic, choice of equipment, de-escalation efforts, switch to medical aid, and scene preservation. These topics could easily fall to the wayside in the past even if a potential issue were noted. Deference to the pendency of formal accountability investigations generally resulted in the passage of several months, by which point the agency had, in many ways, "moved on."

In an effort to address this gap, the Department added a new component to its review process: a formal "round table" assessment of the incident within a week or two of its occurrence. The initial evidence-gathering, including radio

traffic, photographs, and body-worn camera recordings is compiled and presented to Department executives and subject matter experts. The resulting discussion is effort to assess (and reinforce) any effective elements of the MPD actions as well as identify – in a suitably prompt fashion – any changes that seem warranted across the full range of potential issues encompassed by the incident as a whole. The exercise is overtly "forward-looking," with an emphasis on improving the Department's ability to respond to similar events that might happen in the future. And the Major Incident Review Team is entrusted with the role of putting together the initial presentation, tracking the discussion, and ensuring that any identified "action items" are addressed and documented.

We have long endorsed the benefits of such an approach in the different jurisdictions where we have had oversight responsibilities. Accordingly, we were pleased to learn that MPD had developed its new protocol – and happy to be invited to observe the first-ever MIRT presentations put on by the Department after the two recent shootings mentioned above.

We discuss the particulars of those cases, and the MPD review of them, below. But our general impressions of the MIRT concept in Modesto are favorable: the discussions were thoughtful, appropriately objective and critical, and constructive in the sense of identifying worthwhile points of remediation for the agency.

Officer-Involved Shootings: Incident Summaries

CASE # 1: 2023 Hit Shooting

This encounter started at approximately 10:00 PM when an MPD officer on patrol made contact with an adult male on a bicycle and asked him for some identifying information. The man had active arrest warrants in the system, and began pedaling away as the officer sat at his in-car computer. The officer began driving to follow and apprehend him.

Soon into the pursuit, the subject fired rounds from a handgun at the officer in two separate bursts. (Two of the rounds were later found to have struck the

patrol car.) While putting out radio traffic, the officer continued to follow and then shot at the subject three times in quick succession from approximately 15 yards away. The subject was struck, and went down in an alley.

Meanwhile, other officers arrived on scene. From a distance, they communicated with the subject, asking him specifically about his weapon – which the man claimed to have already dropped. Officers equipped themselves with a shield and formed a plan to advance on the man, who remained conscious and responsive. He had been wounded in the arm, and officers provided emergency care before medical personnel arrived and transported him to the hospital for further treatment. The weapon was found near the entrance of the alley that the man had turned into after being shot.

Investigation:

The officer opted not to provide a voluntary statement to the criminal investigators regarding his actions. Accordingly, his version of events was captured in a compelled interview that was conducted by Internal Affairs personnel and occurred three days after the incident.

Officer statements are a critical component of these investigations for a few reasons. One of these is that the individual mindset of officers in deadly force cases is perhaps the single biggest factor in determining why – and with what level of justification – deadly force was utilized. An officer's perception of the threat of death (or serious bodily injury) drives the analysis in large part.⁷ For this reason, criminal investigators in police shooting cases routinely seek to interview involved personnel. Here, though, it is important to note that officers can choose not to participate, in keeping with their Fifth Amendment rights and similar to anyone else who is the subject of a criminal review. It is common – though not universal – for officers across jurisdictions to take this approach as a matter of protocol (and apart from any consideration as to the

⁷ Pursuant to the signature Supreme Court ruling on this subject, the perception must be "objectively reasonable under the totality of the circumstances." This means that a flagrant overreaction by an officer, *even if subjectively sincere*, would not meet the standard. But it also explains why an officer's belief in the threat posed by a subject's reaching for a dark object in his own waistband area and ignoring commands could be considered a valid one, even if the item turned out to be cell phone or flashlight.

substance of their actions or decision-making). And it is apparently the standard choice of MPD personnel.⁸

When that happens, though, it is common for police agencies to then require their employees to provide an internal interview to administrative investigators. The agency has the ability to do this as a condition of employment. It effectively orders the officers to participate and to provide complete and truthful answers. At the same time, the compelled nature of this statement means that, generally speaking, it cannot then be produced for consideration by criminal prosecutors.

Here (as in the other shooting case), the involved officers only gave statements in the context of their Internal Affairs interviews. Two elements of this process were notable to us in terms of our familiarity with this type of investigation and our sense of best investigative practices.

The first was the timing. In both instances, the compelled interviews took place at least a full day after the incidents – as opposed to the "before end of shift" model we consider to be optimal. We acknowledge that there are different schools of thought in this regard,⁹ and MPD's protocol is not unique. In our view, though, the investigative "purity" of an officer's statement is best preserved by interviewing him or her as contemporaneously as possible, while

⁸ It is important to note that, in this case and the other, discussed below, the officers reviewed transcripts of their respective interviews to Internal Affairs and consented to the release of that material to MPD and the District Attorney to aid in the pending criminal investigation (which presumably also applied to the charges against the respective subjects for their actions).

⁹ The arguments in favor of delay range from the practical (in terms of the availability of a legal representative for the officer, or the time-consuming task of reviewing other evidence prior to taking officer statements in the most informed, efficient way) to the compassionate – in recognition of the impact of the experience on the involved parties. Having considered these carefully, we nonetheless remain in favor of obtaining a "pure statement" from the involved officers before they are sent home from their shift.

eliminating the chances of exposure to outside input of any kind.¹⁰ For that reason, we have encouraged agencies to prioritize interviewing involved officers – either voluntarily or through the compelled administrative process – before their completion of the workday in which deadly force occurs. We take the same position with Modesto PD.

RECOMMENDATION #1:

MPD should ensure that officers involved in a use of deadly force are interviewed before the end of the shift in which the incident occurred, either through a voluntary statement to criminal investigators or a compelled administrative statement.

Our second observation also involves the purity of the officer statement in a shooting investigation – and here we affirm the Department for a protocol that we endorse and that is not shared by all agencies. This relates to the viewing of body-worn camera recordings in relation to when the interview occurs.

In a number of jurisdictions, the officers can and do watch their own recording as preparation for the interview. Many labor associations and legal advisors have pushed for this opportunity, with the idea that officers should be entitled to refresh their impressions of a dynamic event – and out of concern that innocent inaccuracies will be utilized aggressively against them in an atmosphere that is eager to find fault with law enforcement.

We have argued against this chronology, since it is inconsistent with normal investigative practice, potentially undermining of the officer's genuine perceptions of the event, and suggestive of a "home court advantage" that lessens public trust. And, to its credit, MPD has adopted a "statement first" approach to this question, requiring its personnel to answer questions *prior to* viewing their BWC for the first time. They then provide the officer with an opportunity to review the video recording, and supplement his or her statement if they wish. We commend the Department for following this model.

¹⁰ While concerns about officers intentionally colluding or "getting their stories straight" can fuel skepticism among some members of the public, we recognize that a complicating influence can happen inadvertently as well, with exposure to media accounts or questions from family and friends.

The remainder of the investigation struck us as quite thorough and meticulous. The administrative interview of the officer lasted well over an hour and covered all aspects of the incident, with a detailed discussion of the officer's threat perception and reason for using deadly force. Detectives were also able to question the subject at the hospital, though he eventually stopped the interview by saying he wanted to speak with a lawyer.

We also noted that the expansive crime scenes were each carefully secured, searched, photographed, and documented. Surveillance recordings from multiple locations on the route were located and reviewed, as well as the various relevant body-worn and in-car camera recordings from MPD personnel.

Internal Review Process: MIRT

The MIRT presentation – MPD's first – took place within two weeks of the incident, with an IPA representative in attendance.¹¹ The review was structured thoughtfully, with an emphasis on the holistic, forward-looking items that emerged from the facts as potential lessons learned. The discussion was detailed, comprehensive, and productive. Among the identified issues were these:

- The advantages and disadvantages of officers making radio notifications at the outset of every contact in the field, and whether policy needed to be modified to require it for officer safety purposes.
- The preparation of first-level supervisors in terms of their initial responsibilities in controlling the scene after an officer-involved shooting, including dealings with and providing direction to involved personnel.

¹¹ As we have mentioned before, this is a level of access and transparency for an oversight entity that is noteworthy. It is also significant that MPD adopted a protocol with its CPRB members as well, whose first public meeting coincided with the month of this shooting case. To its credit, the Chief organized small group, confidential, online briefings (including body-worn camera recordings) for the Board members, and gave them the opportunity to ask questions about the incident. MPD repeated this practice the following year when another officer-involved shooting occurred.

- The need to ensure appropriate resources for evidence-gathering at the scene of critical incidents (including, for example, placards to mark casings or other physical evidence).
- The need for greater availability of ballistic shields to potentially speed up the process of safely contacting an injured subject and rendering medical aid.
- The concern that the articulated officer safety reasons for using ballistic shields were potentially negated when other responding officers approached the subject without such shields.

Additional Steps:

The criminal case was completed and submitted to the District Attorney's Office for further consideration. Charges were filed and ultimately resulted in a conviction for attempted murder.

The Department concluded its administrative process by convening a "Shooting Review Board" some 10 months after the incident. The Board issued formal findings that the officer's use of deadly force had been justified and consistent with policy. The Board also produced two training recommendations that overlapped in part with issues that had emerged during the initial MIRT presentation.

CASE # 2: 2024 Hit Shooting

This incident began when an MPD officer initiated a traffic stop shortly after midnight based on equipment violations on the subject vehicle. The car pulled into a parking lot and the officer began to get initial identifying information from the female driver and the male passenger.

As it happened, the name the male provided was false and therefore led to some confusion and suspicion as the officer sought to confirm it through available electronic records. A second officer arrived on-scene as backup, as the initial officer had the cooperative female driver exit the car so he could speak privately with her and try to ascertain what was happening. He learned

from her that she had not seen him for quite a while before that evening, and that he had asked to ride with her as she did some errands.

After approximately 10 minutes of questioning and checks on the patrol car computer system, the officers decided they wanted to detain the male, and both approached the open passenger door of the car and instructed him to come out. The male was uncooperative, refusing to follow commands and rummaging with his left hand in the car's interior. He suddenly produced a gun and pointed it in the officers' direction.¹²

This prompted the officers to react. Officer 1 was holding a less-lethal Taser and deployed it, and Officer 2 was holding his gun and fired 9 shots while backing away. Officer 1 found cover at his patrol car and communicated with the subject, who remained seated in the car. Officer 1 had switched to his gun at that point and fired one round in response to his perception of a continued threat. At that point, the clearly wounded subject fell out of the vehicle.

Soon other officers arrived, and a plan was made to safely approach, take the subject into custody, and render aid until emergency medical personnel arrived and were cleared to treat the man. He was transported to the hospital and successfully treated for his injuries.

Investigation:

The officers both opted not to provide voluntary statements to the criminal investigators regarding their actions. Accordingly, their respective versions of events were captured in compelled interviews that were conducted by Internal Affairs personnel and occurred the day after the incident.

As for the rest of the investigative process, we found the case files to reflect a thorough and comprehensive process of gathering evidence. Reports from all responding officers were included.

There was also a summary of a voluntary statement provided in the hospital by the subject, who acknowledged having a gun but initially denied attempting

¹² Both officers later described hearing an audible clicking noise consistent with the man's attempt to fire his weapon at them. No bullets were discharged, though.

to fire it. He claimed the officers' "overreacted." However, as the interview progressed, the investigator raised several points from the body-worn camera recording that clashed with some of the particulars as described by the subject, and he eventually became emotional and admitted to fault in prompting the officer's reaction.

Internal Review Process: MIRT

The Department convened a Major Incident Review Team presentation and discussion about the case some nine days after the incident. A number of potential training points were identified. These included:

- Tactical positioning of the officers as they engaged with the subject together at the passenger door of the vehicle.
- The importance of maintaining focus on subjects rather than becoming too engrossed in obtaining information from the various available data systems, particularly prior to the arrival of a cover officer.
- The preference for sidelining officers who have used deadly force from the immediate subsequent tasks of arresting and rendering aid, unless there are not sufficient personnel on scene.
- The responsibilities of supervisors regarding the "public safety statement"¹³ that officers provide in the immediate aftermath of a use of deadly force.
- The techniques of effective questioning by officers in their initial engagement with subjects who may not be fully cooperative in their responses.

¹³ The "public safety statement" is a narrowly tailored response to questions that could have a direct impact on ensuring that the situation is neutralized. The goal is to account for things like the approximate number and direction of rounds that were fired, and whether any subjects are outstanding, and is not meant to be otherwise substantive or analytical in terms of determining what occurred. Providing this statement is recognized as an appropriate expectation that does not violate officer rights.

Additional Steps:

As with the previous case, the completed criminal investigation was submitted to the District Attorney's office. The subject was charged with a variety of felonies based on his role in the incident; that prosecution is pending as of the time of this writing.

The Department finished its administrative review by convening a "Shooting Review" Board to assess involved officer compliance with policy. This occurred approximately seven months after the incident. The Board concluded that both officers had been justified in their perception of threat, and that their use of deadly force was in compliance with policy. The final memorandum also captured four training points that were identified in the discussion (and which largely dovetailed with the earlier results of the MIRT review).

We found the Department's process in addressing these significant incidents to be worthy of their seriousness. The investigations were thorough and the analysis was rigorous and thoughtful. We agreed with the findings as to officer accountability and the justification for their respective actions.¹⁴ And we considered the new MIRT process to be a valuable addition to MPD's overall approach.

Our one procedural suggestion is to integrate the MIRT findings – and responsive steps by the Department – into the Shooting Review Board discussion and the memorandum from Internal Affairs that closes the case. As it stands, the documentation is separate, which has the potential to create redundancy or, worse, the loss of follow-through with regard to a worthwhile

¹⁴ Our one caveat is that we would like to have seen a more overt discussion of one complicating fact from the second shooting case. This was namely that the subject appears to have dropped his firearm onto the ground some seconds prior to the last shot being fired. To us, the totality of the investigation (including the interview) established that the officer was genuinely not aware of this fact and believed that the threat was ongoing. Ideally, though the final memo would have flagged and addressed this issue with more specificity.

action item. That said, we commend MPD for its commitment to a new, demanding, and productive new level of self-scrutiny.

RECOMMENDATION #2:

MPD should work to align the work product of the MIRT process with the final evaluation of the Shooting Review Board, and should incorporate identified MIRT "action items" and their status in the final case memorandum prepared by Internal Affairs.

Complaints and Allegations of Misconduct

For this second audit cycle, we looked at 28 of the misconduct cases that were completed by MPD during 2024. All but one of these cases were initiated after complaints from members of the public, as opposed to being generated by Department management.¹⁵

Overwhelmingly, the investigations into complaint allegations resulted in formal findings that no policy violation had occurred. And, though there were rare decisions that we saw slightly differently,¹⁶ we found the outcomes to be reasonable and supported by the evidence.

But the careful review of any incident is often likely to reveal room for improvement, and several of the cases within the group of 28 that we evaluated illustrated this concept – and MPD's ability to embrace it. To its credit, when the Department proactively identified additional shortcomings

¹⁵ The one example of the Department opening a case was the result of an allegation of off-duty domestic violence involving an MPD employee that came to the attention of Department management. The accuser later recanted, though the Department did an appropriate investigation.

¹⁶ For example, one case had two partial outcomes that we questioned. The complainant had made numerous allegations in conjunction with his arrest for vandalism, most of which were unfounded. But he also complained about the undue tightness of his handcuffs, and a remark by a supervisor that he considered to be belittling. The investigation revealed that the officer had in fact not "double-locked" the handcuffs, which resulted in their tightening after being applied. This was treated internally as a violation of protocol, but the complainant's specific allegation was deemed "unfounded." Similarly, we noted that the supervisor's disputed comment was in fact said, but was ultimately disregarded for purposes of a disciplinary finding – even though a witness officer stated in his interview that the remark could have been interpreted as rude.

while conducting its review of a public complaint, it pursued these even though the complainant had not raised them (and may not even have been aware of them).

Examples of this further "issue-spotting" that prompted remediation (either through the discipline process or alternative interventions) included the following:

- Failure to activate body-worn cameras in a timely fashion.
- Failure to activate in-car recording systems during transport of arrestees.
- Failure to promptly notify a Department supervisor after being the subject of an off-duty law enforcement call for service.
- Poor report writing.
- Lapses in officer safety when dealing with multiple subjects without backup.
- Deviations from expected protocol in issuing field sobriety tests.
- Unprofessional commentary (outside the complainant's earshot) that was captured on a body-worn camera recording.

The Department also used the process as a basis for instituting systemic change where warranted – another form of constructive responsiveness that not all agencies take advantage of. In one case, for example, a family member was troubled to learn that a child abuse case involving an ex-spouse had not resulted in a prosecution. The Department reviewed the handling detective's efforts and concurred that the original evidence was inconclusive. However, given the sensitivity of the underlying incident and the value of additional layers of deliberation, it developed a new protocol for ensuring additional internal review and communication with the District Attorney's Office in future cases.

The Department also gave appropriate reconsideration to the use of spotlight equipment by officers to illuminate other vehicles as they patrolled. This practice is potentially beneficial to officer safety, and could be a means of confirming Vehicle Code violations as a precursor to an investigative stop. But the bright lights also have the potential to impair the vision of other drivers – and could be easily perceived as an instrument of harassment or profiling. After receiving multiple complaints that featured the spotlights as an element,

MPD issued a training bulletin and a written order (for its Street Gang Unit, which was regularly making use of the lights) that restricted the authorized purposes for use. We considered this an important recalibration in the ongoing process of maintaining the right balance between proactive policing and respect for individual autonomy.¹⁷

Along with the obvious importance of accountability for misconduct, a law enforcement agency's willingness to treat the complaint review process as a broader opportunity for improvement is a cornerstone of effectiveness in this arena. Accordingly, MPD's efforts in this regard are a positive sign.

Below, we take a closer look at some of the component parts to our broadly favorable impressions of the process's legitimacy.

Interactions with Complainants:

Five recommendations in our first audit Report focused on some element of the complainant's role in the process, and efforts to enhance the efficiency, objectivity, and fairness that MPD projects in this important aspect of community relations. We were pleased during this cycle to see tangible signs of progress.

Two of the changes relate to intake: the MPD website has been updated to give new prominence to the "Submit a Commendation or Complaint" option for public visitors, and the Department's lobby now features hard copy forms that are readily attainable. And the Department also follows another best practice: namely, accepting complaints via whatever method (including email or telephone) that an individual may choose. This emphasis on both accessibility and "substance over form" reflects well on MPD's approach to this category of feedback.

We also saw an encouraging continuation of a feature we saw last year, which was the concerted effort to interview complainants rather than simply relying on their original submissions. In one case, the investigator even made arrangements to speak with a person who had filed his complaint from prison.

¹⁷ We discuss this topic in further detail below.

And, when efforts to contact the complainant are not successful, the attempts are generally well-documented.

We consider this time well spent in terms of both supplementing/clarifying a written statement and reinforcing the idea that the Department is taking the matter seriously. (This is especially true when the interviewer focuses on listening rather than explaining away the complainant's concerns – no matter how well-intentioned the effort.) Our one suggestion here relates to timeliness. There were multiple instances in which the interview of the complainant occurred months after the complaint was filed. While better late than not at all, this delayed contact undermines some of the perception that the inquiry is a priority, and potentially lessens the accuracy and effectiveness of the statement itself.

RECOMMENDATION #3:

MPD should strive to conduct follow-up interviews with complainants as soon as is practicable after intake.

As for the conclusion of the process, our previous Report included a suggestion that MPD revisit the notification letters for complainants that state law requires when an investigation is complete. Like many agencies, the Department had a practice of meeting its obligations, but usually through a form letter that had minimal information and presumably did little to reflect a careful engagement with the complainant's allegations and concerns. We encouraged MPD to make an effort to personalize these communications, and provide more specifics about the investigative work that was done and the basis for the ultimate decision.

The Department accepted this recommendation in the spring of 2024. With that in mind, we looked forward to seeing the changes in this year's group of cases, but the results were slow to appear as we conducted our review. Along with the aforementioned completion of new cases before the IPA Report was published last spring, we saw the previous format of letters continue in case files from summer and fall.

It turned out that internal miscommunication had delayed implementation of the new, more personalized approach. That was ultimately rectified, and the

most recent correspondence we saw in our sampling of cases did indeed reflect a significant improvement. We are confident and pleased that it will continue.

We also noted a case in which the complainant (the father of a teenager who had been briefly detained by MPD officers and originally alleged racial profiling) contacted the Department to retract his allegations, saying he had misunderstood some of the facts from his son. The Department finished the case anyway, treating it as an opportunity to evaluate officer performance in the context of a serious potential concern.¹⁸ As we mentioned last year, the subjective (and sometimes vacillating) preferences of a complainant are best treated as relevant but not decisive in shaping the parameters of a police agency's response to concerns that have been brought to its attention.

Investigative Process:

Our cumulative takeaway from the case files themselves is that the investigators were methodical in framing allegations, developing responsive evidence, and conducting a full range of useful interviews with both witnesses and subjects. Obviously, and as we have noted in the past, body-worn camera recordings have become a foundational element of these investigations. The Department takes full advantage of this – but without using the video evidence as a justification for taking shortcuts. We also noted instances of particular thoroughness or resourcefulness, such as when the investigator tracked down recordings that were more than a decade old to evaluate a complainant's allegations of mistreatment while in MPD custody.

Accordingly, the basis for testing the allegations against known facts was generally quite strong.

Along with the strengths of MPD's investigative process, we noted that the case files themselves are often extremely lengthy – commonly running into the hundreds of pages. Thoroughness, of course, is a virtue that we are happy to espouse. But our sense was that the high page count was often more

¹⁸ The officers had, in fact, been appropriate with the young man, whose hooded sweatshirt on an extremely hot afternoon had attracted their interest for a moment and whose cooperation was clearly appreciated.

structural than substantive – and could easily have been reduced with no loss to comprehensiveness.

This was because each named officer within a given case was the subject of his or her own separate "write-up," and the segregation seemed to result more in cumbersome repetition than clarity. While distinguishing between involved individuals is obviously necessary, we think other methods of structuring the case memo and presenting the evidence could accomplish that goal in more efficient, effective ways.

RECOMMENDATION #4:

MPD should consider ways to streamline its case memos for investigations involving multiple subjects, so as to avoid the extensive repetition and allow for a more straightforward application of the evidence to the allegations generated by the complainant.

Allegations of Biased Policing:

As noted above, this is one of the "review all cases" categories within the IPA scope of work as established by the City. During this audit period, 13 cases were completed that included an allegation of bias, profiling, or discriminatory policing.

None of those allegations were sustained.¹⁹ We concurred with this finding, with a couple of qualifications.

Notably, there were very few instances in which bias was alleged in isolation; instead, it was generally a component of a complaint that had several other elements. There are a couple of ways to interpret this reality, both of which seemed applicable to greater or lesser extents across these individual cases.

¹⁹ In a relatively new addition to state law, police agencies are also required to notify the California Commission on Police Officer Standards and Training ("POST") when complaints about bias are received. This adds an additional layer of accountability to the review process.

The first is that the allegation (which can literally take the form of a checked box on the MPD complaint form) is less an animating concern than an additional means of expressing dissatisfaction over an encounter (or arrest) that was primarily bothersome for other reasons. This was reflected at times during the investigative intake interview, when the complainants seemed to "back into" the conclusion of bias as the probable explanation for their overall perception of unfairness or illegitimacy in the officer's handling of their interaction. When officers are able to articulate probable cause for enforcement action and the race-neutral rationales for their decision-making, these conclusions, without more, lose some of their persuasiveness and are ultimately considered unfounded.

But a second dynamic – which occurred in multiple cases within this year's pool – was that the allegation of bias was intertwined with claims of harassment in the context of *multiple* encounters with the police. Several of the thirteen complaint cases involved parties who were frustrated by being stopped multiple times, subjected to searches, and occasionally arrested. And several of them involved the same officers.

Again, we found the Department's assessment of these claims to be methodical (and in one instance, the investigation rightly concluded that a particular citation and impounding of a complainant's vehicle had been done in error). Moreover, many of the challenged stops at issue had indeed produced evidence of criminal behavior, and many of them were initiated without the involved officers having sufficiently observed the drivers to make a determination about race or ethnicity.

Still, we noted that a common element of several of these cases was an initial traffic stop that seemed obviously intended as a precursor to more rigorous investigation.²⁰ Some of the relevant violations included tinted windows, failure to signal before a turn, items hanging from rear view mirror, no front license plate, and moderate exceeding of the speed limit.

²⁰ On at least one occasion, officers offered different explanations to the complainant as to the basis for the traffic stop. Both were valid, but it left the clear impression that Vehicle Code concerns were secondary to another agenda.

"Pretext" stops are certainly legal, and are a longstanding technique that law enforcement uses in a strategic, proactive effort to address crime. To the extent that such encounters yield results (including evidence of serious offenses and/or illegal weapons), they continue to be both practiced and supported in many jurisdictions. But they also reflect an obvious exercise of discretion that can be difficult for people on the receiving end to disentangle from improper bias.²¹ And some agencies have overtly chosen to restrict the circumstances in which officer can initiate a traffic stop based only on an equipment violation.

As we said last year, the lack of sustained allegations for bias is very consistent with our experience across multiple police departments. This is in part because the evidence often definitively establishes the legitimacy of officer decision-making. But the other dynamic – again, not at all unique to Modesto – is that an improper mindset of an officer is notoriously difficult to establish, even in those cases where the counter evidence is less definitive.

That said, we encourage the Department to look for evidence that will make the final outcome of these cases as definitive and convincing as possible. An officer's straightforward denial is necessary but also predictable; looking for factors in the particular case that are independent of possible bias as a motivation, or that clearly show its absence (such as the response to call for service, which is obviously not driven by the officer) are relevant gestures in this direction. And an assessment of patterns of behavior can be a potentially worthwhile endeavor as well, at the individual officer level and more broadly. We hope MPD will remain open to innovative ways of taking bias allegations seriously and continuing to promote procedural legitimacy in its enforcement strategies.

²¹ In the video recording from one such stop, a young woman who was detained with her husband in the driveway of her own home (and who would go on to become a complainant) can be seen scoffing at the reference to the (unobtrusive) air freshener hanging from her window; she gestures at the other cars in the neighborhood and says how commonplace they are.

RECOMMENDATION #5:

MPD should continue to evaluate the costs and benefits of pretext stops in light of the tension between proactive policing and community trust that such stops often exemplify.

RECOMMENDATION #6:

MPD should explore the use of additional investigative strategies to evaluate allegations of bias, including the evaluation of patterns of stops and arrests by individual officers or the description of additional, non-discriminatory factors where applicable.

MPD Force Review Process

As we noted approvingly in our first Report, MPD has established a rigorous process for the supervisory review of force incidents involving its personnel. It begins at the sergeant level, but the initial investigative package is then reviewed again at least two other times, which often results in the identification of new issues and follow-up work before a case is finalized within the database.

MPD's multi-phase process gave us a significant amount of material to assess, not only in terms of the performance of officers in the field, but also the effectiveness with which the Department's management ensures that these incidents receive appropriate attention once they occur.

The major goal of MPD's process is accountability. The fundamental questions include whether the force was necessary (in light of the actions of the subject), proportional (in terms of the severity of force in relation to the level of threat or resistance posed by the subject), and consistent with Department policy and training. These focal points are addressed at multiple rank levels each time a force incident occurs.

But the best review processes go beyond these important considerations in order to address performance more broadly. They treat each incident as a potential learning opportunity – a chance to reinforce effectiveness and make adjustments with an eye toward future improvement. This "holistic" approach features issue-spotting that incorporates the entirety of the encounter: before, during, and after the specific force deployment itself.

The 41 separate force cases we looked at for this Report confirmed many of the favorable findings from our initial audit with regard to both of these components. We concurred with the Department's ultimate conclusions that

the force in these incidents was justified.²² Importantly, the officers also were largely adept at "shifting gears": once the situation was controlled, they were calm and professional in their subsequent dealings with the subject, and any necessary medical attention became a focal point. None of the force seemed punitive or retaliatory, or beyond what was needed to overcome resistance in a given situation. And nothing about the deployments in this sampling of cases, which involved subjects and officers across a range of races, ethnicities, genders, and ages, suggested that there was variance in MPD reaction that was driven by demographics as opposed to the unique circumstances of each encounter.

We also noted the multiple occasions in which the review process produced training notes or observations that showed the benefits of holistic scrutiny. These could lead to Department-wide briefings or individual interventions, such as when an officer reacted spontaneously to being spit on by wiping his hand on the subject; he was counseled about the importance of control in the face of provocation.

Importantly, the responsive steps that emerge from the review process are documented. This ensures the follow-through that is sometimes missing. Examples included the following:

- The importance of waiting for backup where feasible before engaging, as a principal of officer safety and enhanced control.
- The importance of effective and ongoing radio communication at the outset of an encounter that could lead to detention or arrest.
- The need for age-appropriate tactics and terminology when the subject is a juvenile.
- The importance of prompt activation for body-worn camera systems at the start of an encounter, and when arriving to the scene as a backup officer.
- The need for "fact-based," detailed documentation by officers of the rationale for their use of force in written reports.

²² As discussed below, we did have questions or hesitations at the edges of the analysis in some cases, but still considered the Department's "bottom line" findings to be reasonable.

- The need to ensure that the legal basis for detention or arrest prior to a force deployment is clearly documented.
- The advisability of early handcuffing during the detention of a recalcitrant subject, for safety purposes.
- The correct protocols for providing security when a subject is being transported by ambulance, but is still potentially combative.
- The need to follow safe driving principles, even when responding to an emergency call.
- The need to leave responsibility for commands and communication with one officer in a multi-partner response, so as to avoid confusing or conflicting messaging with the subject.
- Identification, review, and follow-up regarding officer use of profanity.

As for this last point, the instances of profanity were again notably rare – which corresponded to an observation that we found conspicuous and deserving of affirmation in our last audit cycle. And the fact that the few that did occur here were flagged and addressed reinforced our impression that this is a point of cultural emphasis for MPD that we support.

We have focused on this issue in a number of jurisdictions, given both the prevalence of profanity as captured on recordings and the public's continuing sense that it defies expectations of control and professionalism. Our sense is that MPD is "ahead of the curve" overall. But we nonetheless offer as a suggestion an approach we have seen from a few agencies now, and which we consider effective.

Though profanity is generally prohibited throughout law enforcement, we have found that it is often excused (or even ignored) in practice, based on a variety of rationales. Foremost among them is the idea of "tactical language" – that some uses of profanity are a function of calculation rather than emotion, and are chosen consciously and for effect as a means of getting attention or conveying seriousness.

We don't discount that concept, but in our experience it can become the unwritten exception that swallows the larger rule. Accordingly, we support a policy idea we have seen adopted recently in a few organizations. The "tactical language" exception, for dynamic situations and with the specific intention of gaining compliance, is carved out expressly and authorized, with

the requirement that the officer will acknowledge it in related written reports. We appreciate the idea of agencies taking ownership of this concept and using it as a way of further reinforcing expectations.

RECOMMENDATION #7:

MPD should consider a policy revision to delineate any authorized exceptions to its general prohibition against officer profanity.

In terms of the mechanics of the process, there is a standard template for initial documentation, and an expectation of written analysis at multiple, ascending rank levels. Body-worn camera recordings are, of course, a key component of the resulting review package, but there are other elements as well. These include photographs of any injury, police reports by involved officers, and commentary from any of the subjects who are willing to give statements once they are in custody.

This last category can be a challenging one. The perspective of a person who has experienced physical force is a key source of information about possible injury as well as accountability issues regarding necessity and justification. But the barriers to a useful statement are also obvious. One of these is the willingness of the newly arrested person to participate at all, given the inherently adversarial nature of the encounter. And objectivity can also be compromised from the other direction, as subjects in police custody could understandably feel "eager to please" in ways that undermine their willingness to criticize or dispute. Impairments due to alcohol, drugs, or a behavioral health crises are also common corollaries to these events.

That said, a concerted effort to interview the subject – and consider the implications of that person's remarks for the overall assessment – should be a priority of an agency's review process. We focused on this issue last year as we formed our initial impressions of MPD's system, and noted room for improvement.

Specifically, we found that supervisors often treated these encounters less as an opportunity for neutral fact-gathering, and more as a mechanism for confirming a conclusion of appropriateness that had seemingly already been reached. Questions often assumed wrongful behavior ("Why didn't you listen

when the officer told you to stop?" "Why did you push the officer?") or morphed into cross-examinations. And interviews often ended with some variation of, "What would you do differently next time?" as if the focus were on accountability for the subject instead of the officers.

We encouraged MPD to focus more on simply getting the subject's version of the story in as objective a manner as possible. The Department agreed with this recommendation, and even made a specific adjustment to policy that directed supervisors to ensure that their questions were intended to elicit "factual, unbiased responses." (Suggested examples included the open-ended, "Can you tell me what happened?")

The older cases in this year's audit set pre-dated this change. Accordingly, it was not especially surprising or disappointing to see additional examples of the approaches that prompted last year's concern. However, with some commendable exceptions and in spite of the new policy, the more recent cases did not necessarily reflect a sea change in the Department's emphasis on this aspect of the review. This seemed true at both the initial level of interaction with subjects (which were often not described in a report or included as part of the recorded attachments to the force package for the incident) and at the higher-level evaluations within the chain of command (where they were not commented upon, assessed, or even noted in the review documentation).

In short, this year's audit suggested that the positive policy commitment to better, more useful interviews has yet to lead to standardized, prioritized attention. We hope the Department will invest in additional efforts to enhance this aspect of its process.

RECOMMENDATION #8:

MPD should expand on its new policy requirement for effective supervisor interviews of individuals subjected to force from MPD officers by making the efficacy and content of those interviews a more routine element of the larger review.

We noticed other "mini trends" within this year's sampling collection of cases that we hope the Department will re-visit. They included the following:

Taser Use:

We looked at six different incidents in which a taser²³ was at least one of the force options utilized. The taser was ineffective in most of these instances. This can happen for several reasons, but the prevalence of this issue within a small sample size seemed noteworthy to us. And there were other instances in which officers had difficulty transitioning between the taser and their firearms as incidents continued to unfold without resolution.

Moreover, there were multiple examples of officers failing to issue a warning prior to use of the taser – in contrast with a policy requirement that they do so as long as it is feasible in the overall context of the encounter. Our analysis was that this was a mistake in the moment and not malicious in its intention. But the purpose of the warning is in accord with modern principles of de-escalation and is in part to preclude the necessity of the force itself, so skipping this step is potentially problematic. The review process noted and addressed these shortcomings in the form of debriefing with the involved officers – while stopping short of finding the overall deployment out of policy.

While we positively reinforce the supervisory issue-spotting, and recognize that the finding of a formal policy violation was not a necessary means of addressing the concern and intervening, it certainly was arguable. And, in conjunction with the difficulties in execution mentioned above, it suggested that Department-wide focus on taser deployment (focusing on the need to issue warnings when feasible) would be a worthwhile training goal in the months to come.

²³ The taser, or "conducted energy weapon" is a less lethal force option that works by sending an electrical current between two probes that make contact with the skin of the subject. In theory, the path of the current creates temporary muscular incapacitation that facilitates bringing the subject under control and into handcuffs. In practice, it is easy for this option to fail for a number of reasons -- including the accuracy of the initial probe deployment, or thick clothing that blocks the probes from reaching skin.

RECOMMENDATION #9:

MPD should work to ensure officer awareness and effectiveness regarding all elements of the Department taser policy and principles of feasible warning.

Body-Worn Camera Recordings:

The Department has long equipped its officers with Portable Video Recording Systems ("PVRs")²⁴, and a detailed policy frames the expectations for activation when engaged in enforcement activity or contact with the public. We noted multiple instances in which one or more officers was delayed in starting his or her camera in the context of an incident that resulted in a use of force. This never struck as intentional, and in fact the relevant activity was generally captured by recordings of other officers at the scene in most of the cases we reviewed. Still, though, it is sub-optimal for obvious reasons.

As with the taser issues noted above, the review process was generally good about identifying these issues and documenting the follow-up reminders and counseling sessions with involved personnel. This is better than nothing, of course, but we hope the Department is also tracking these episodes with an eye toward a firmer intervention – including potential formal discipline – for officers who have repeated instances of this performance lapse.

Another issue we noted in several cases – and which did not seem to be flagged within the steps of the review process – was officers' muting of their recorders. This is allowed under certain circumstances per policy, and the examples we saw generally began with an authorized pause. The problem came when they failed to turn the microphones back on when it was appropriate or necessary to do so.

Occasional difficulty in "unmuting" is not unique to officers, as most of us familiar with internet meeting platforms can attest. It is, however, something to be mindful of and to correct in those instances where it occurs.

²⁴ The commonly used vernacular for these devices is "body-worn cameras."

RECOMMENDATION #10:

MPD should re-emphasize its policies and expectations with regard to recording systems, and consider the discipline process as a vehicle for promoting compliance when repeated issues arise.

K9 Deployments:

Four of the cases we looked at involved the use of police dogs in an effort to address the resistance of a subject. We noted performance issues in each.

In two of the incidents, the dog failed to engage with the subject. (This was just as well in one of the cases, since the articulated cause for deployment itself – toward an uncooperative subject in a shower – was questionable.) In a third, the dog appeared to stay on the bite even after being given several commands to release by the handler. And in the fourth, the dog was biting the subject's leg area for an extended period of time as the handler and another officer struggled to get the resistant (and possibly armed) individual into handcuffs – without seemingly attending to the dog at all.²⁵

These issues were noted and addressed to varying degrees (including not at all) in the normal supervisory review process. Our understanding is that the K9 unit also does its own assessments. This makes sense given the specialized nature of its work, but we were unclear as to how and with what effectiveness our observations were identified and addressed internally.

The use of police dogs to apprehend individuals has always been controversial in some circles, and has received heightened scrutiny in California in recent years, including in the form of proposed (but thus far unsuccessful) legislation that would restrict or eliminate their authorization as a force option. We recognize and respect the counterarguments as well: that the dogs can be an effective deterrent and a significant enhancement to officer safety when it comes to searches and apprehensions.

²⁵ While it is common for police dogs to remain engaged until any resistance is neutralized, people's natural physical reactions to being bitten may actually complicate the ability to cooperate and comply.

What seems clear from either perspective is that any contemporary K9 program requires a high level of training and is worthy of significant managerial review and attention. We encourage MPD to prioritize the rigor of its efforts in this regard, and to integrate K9 deployments more consistently into its larger review process for force incidents.

RECOMMENDATION #11:

MPD should ensure that its K9 program is appropriately rigorous in evaluating performance and remediating as needed, and should integrate documentation of the K9 review process into its main force tracking system.

De-escalation Efforts:

Two of the recommendations in last year's audit report focused on MPD's approach to evaluating de-escalation strategies during encounters that end up involving physical force. De-escalation has long been a component of law enforcement tactics, but part of the public reaction to high-profile force incidents across the country has been a heightened interest in the concept. That has been accompanied by a heightened expectation that officers will make every reasonable effort to defuse or slow down potentially volatile encounters in order to avoid or limit the need for force deployments.

The umbrella term "de-escalation" could legitimately be applied to a range of actions, from efforts at rapport-building to waiting for more backup, maintaining safe cover and distance when possible, or providing clear warnings. Again, many of these steps are a standard part of officer-training and strategy in handling challenging encounters, and have been for generations. What's new is a greater emphasis on prioritizing these steps and recognizing that the legal *ability* to use force at a given moment does not always preclude waiting and seeking alternative outcomes.

Our recommendations to the Department were intended to reinforce this principle by suggesting a formal overlay of specific focus on de-escalation as part of the review process for all force incidents. We were gratified that MPD

concluded, and moved swiftly to create new components to the relevant policies.

By establishing an expectation that officers will document their efforts at de-escalating (or their reasons why such efforts were not feasible), the new policy language will ideally promote a mindset that will influence approaches in the field, give subjects every opportunity to comply, and safely resolve encounters prior to force becoming necessary. Similarly, the new addition to the supervisor's elements of evaluation makes de-escalation an overt consideration and component of an overall performance assessment.

We found the new policies to be very much a step in the right direction, and we noted an interesting evolution: the more recent cases reflected the above principles in a way that the earliest force incidents from the cycle did not. The documentation and assessment of de-escalation was featured more prominently, which is a trend that is likely to increase over time.

That said, we had the impression that the new protocols were not quite "second nature." Compliance at the officer level was inconsistent (as noted by supervisors), and references to the concepts as they applied to the facts of a given case were not routinized.

Hopefully, recent weeks and months have added to people's familiarity with new expectations, and the emphasis on de-escalation will have become routinized by the time of next year's audit cycle. For now, though, we encourage the Department to continue focusing on this issue, and ensure that both officers and supervisors alike are aligned with new expectations.

RECOMMENDATION #12:

MPD should bring additional attention to the implementation of its new policies regarding documentation and evaluation of de-escalation efforts in the context of force incidents.

Recommendations

RECOMMENDATION #1:

MPD should ensure that officers involved in a use of deadly force are interviewed before the end of the shift in which the incident occurred, either through a voluntary statement to criminal investigators or a compelled administrative statement.

RECOMMENDATION #2:

MPD should work to align the work product of the MIRT process with the final evaluation of the Shooting Review Board, and should incorporate identified MIRT "action items" and their status in the final case memorandum prepared by Internal Affairs.

RECOMMENDATION #3:

MPD should strive to conduct follow-up interviews with complainants as soon as is practicable after intake.

RECOMMENDATION #4:

MPD should consider ways to streamline its case memos for investigations involving multiple subjects, so as to avoid the extensive repetition and allow for a more straightforward application of the evidence to the allegations generated by the complainant.

RECOMMENDATION #5:

MPD should continue to evaluate the costs and benefits of pretext stops in light of the tension between proactive policing and community trust that such stops often exemplify.

RECOMMENDATION #6:

MPD should explore the use of additional investigative strategies to evaluate allegations of bias, including the evaluation of patterns of stops and arrests by individual officers or the description of additional, non-discriminatory factors where applicable.

RECOMMENDATION #7:

MPD should consider a policy revision to delineate any authorized exceptions to its general prohibition against officer profanity.

RECOMMENDATION #8:

MPD should expand on its new policy requirement for effective supervisor interviews of individuals subjected to force from MPD officers by making the efficacy and content of those interviews a more routine element of the larger review.

RECOMMENDATION #9:

MPD should work to ensure officer awareness and effectiveness regarding all elements of the Department taser policy and principles of feasible warning.

RECOMMENDATION #10:

MPD should re-emphasize its policies and expectations with regard to recording systems, and consider the discipline process as a vehicle for promoting compliance when repeated issues arise.

RECOMMENDATION #11:

MPD should ensure that its K9 program is appropriately rigorous in evaluating performance and remediating as needed, and should integrate documentation of the K9 review process into its main force tracking system.

RECOMMENDATION #12:

MPD should bring additional attention to the implementation of its new policies regarding documentation and evaluation of de-escalation efforts in the context of force incidents.