TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: POLICE

DATE: NOVEMBER 2, 2009 CMR:415:09

REPORT TYPE: CONSENT

SUBJECT: **Acceptance of Transmittal of Police Auditor's Final Report For 2008**

RECOMMENDATIONS

Staff is transmitting the attached the final report for 2008 provided by the Police Auditor for Council acceptance.

DISCUSSION

On September 10, 2007, the City Council voted to extend the agreement with Michael J. Gennaco and Robert Miller of the OIR Group to serve as the City's Police Auditor. A requirement of the contract is for the Auditors to provide two reports per year summarizing their findings and reporting on each investigation and disposition. Attached is the second report for 2008 (April–December 2008).

RESOURCE IMPACT

Between April and December 2008, $12,930 has been expended.

POLICY IMPLICATIONS

This report is consistent with City policies.

ATTACHMENTS

2008 Police Auditor Final Report

PREPARED BY: Dennis Burns, Police Chief

DEPARTMENT HEAD:

DENNIS BURNS
Police Chief

CITY MANAGER APPROVAL:

JAMES KEENE
City Manager

POLICE AUDITOR'S FINAL REPORT

Presented to the Honorable City Council
City of Palo Alto
April 13, 2009

Prepared by Michael Gennaco
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Palo Alto Independent Police Auditor
Final Report for 2008

I. The Second Year

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

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

II. Taser Incidents

Since the introduction of the Taser as standard equipment for all Palo Alto PD patrol officers in late 2007, Department members have applied the Taser in the field to three persons in separate incidents. We reviewed the first incident in our previous report. We review the second and third incidents below.

To date we find the documentation of Taser incidents by the Department to be thorough. Additionally, the Taser-cam video and, where practical, the MAV video have proven to be invaluable aids to the Auditor's monitoring of these incidents.

Taser Use of Force #2 – Incident 08-1777

Responding to a resident's complaint, three officers went to check on a parked van in which someone appeared to be living. The occupant of the van would not open a door or window to talk to the officers so one of the officers pretended to call for a tow truck. This ruse worked and the man in the van came out for a few seconds then ran back into the van. He did not shut the door however and continued to converse with the officers. During this conversation he showed signs of erratic behavior and possible intravenous drug use. The officers ordered him out of the van and attempted to handcuff him to determine if he was under the influence. The man struggled when an officer grabbed his arms to handcuff him and twisted away from the officer. At this point, the officer stepped back, drew his Taser and shot it at the man. At least one of the two Taser barbs missed the man entirely. Consequently, the Taser had no effect on the man except to enrage him. He charged toward the officers swinging his arms in a windmill fashion and kicking. He struck one of the officers in the face with a fist. The brief struggle with the three officers ended when one of them used a second Taser in drive stun mode twice against the suspect's torso. The suspect said that he would give up and submitted to handcuffing. The suspect and the officers sustained minor cuts and scrapes.

The documentation of the incident was thorough. The Taser-cam video, MAV videos and audio tapes were personally reviewed by the IPA and comported with the account of the incident documented in the written reports. This Taser application appeared to comply with Department policy. As a result of this incident, the District Attorney filed a felony count of resisting arrest against the van occupant. At the ensuing preliminary hearing, the judge ruled that the ruse that caused the suspect to come out of his van was an improper violation of the suspect's rights and dismissed the case. The IPA has reviewed the Court transcript and is satisfied that the ruling did not relate to the officer's use of the Taser or the assertion that the Taser video evidence had been tampered with. The ruling does, however present a challenge to PAPD officers facing similar calls for service in the future. Accordingly, we recommend that, in order to avoid the risk of an ambiguous legal interpretation in the future, officers avoid using ruses in this type of situation until they have investigated the matter sufficiently to determine

whether there is a basis for concluding that a crime has occurred. We recommend that PAPD brief its officers on this approach to avoid similar unfavorable court rulings.

Arrestee's Complaint. During the pendency of the criminal case, the man from the van complained that the PAPD officers had used the Taser on him in violation of the PAPD policy on Taser use and that the video evidence from the case had been tampered with. The auditor viewed these as significant issues independent of the criminal case and evaluated them in light of all of the evidence relating to the arrest. At this juncture, we continue to conclude that the use of the Taser by both officers complied with the Department's Taser policy. Each time a Taser was used, whether in projectile mode or drive stun mode, the suspect appeared to meet or surpass the "active resistance" threshold. The complainant's concern about videotape tampering concerned "gaps" present in the Taser video tapes. We consulted independent experts as well as Department experts and their conclusion is not that the Taser tapes had been tampered with but that the "gaps" in the tape were consistent with the activation and deactivation of the Taser during normal use or while switching modes. Furthermore, there was little relevant information lost, as other continuous videotape retrieved from the in-car video recordings recorded the same actions.

Finally, after reviewing the tapes, we pointed out that one of the officers needlessly used foul language toward the suspect. The Chief of Police agreed with this observation and directed the officer's supervisors to counsel him regarding the discourtesy issue.

We are aware that there is potential civil litigation regarding this event brought by the man who was Tasered. We will follow that litigation to learn whether additional information produced during that litigation should cause us to revisit our conclusions regarding this incident.

Taser Use of Force #3 – Incident 08-8631

Officers, called to the scene of a man acting suspiciously near a car, observed a man alone in a parked car smoking rock cocaine from a glass pipe. They knocked on the closed windows of the car and ordered the man to get out. He locked the doors, continued to smoke the glass pipe, refused to get out, and appeared to search for

something in and under the car seats. The officers broke a window and used a Taser to extract the man. We have reviewed the case materials and Taser video, but have not concluded our discussions with PAPD managers regarding this matter. Accordingly, we will report our conclusions regarding the Taser use in this case in our next report.

III. Complaints, Cases and Issues

1. Complaint of Improper Request for Identification #C 2007-011

Synopsis: An officer pulled a motorist over for a traffic violation. During the stop, after requesting the usual documentation from the driver, the officer asked the driver's passenger for identification. The passenger later complained to the Department that this was an unlawful intrusion into his privacy and was unsupported by the law.

Recommendation: Current case law indicates that so long as there is a legitimate basis to stop the motorist in the first place, peace officers may briefly detain passengers as well and request their identification. It was also clear from the investigation, that the complainant felt harassed by Palo Alto police officers who he felt stopped him frequently because of his clothing and appearance. We commend the Department for going beyond the narrow legal question presented here and reaching out to the complainant to try to address his other concerns.

Resolution/Corrective Action: The internal affairs unit commander followed up with the complainant to explain the legal basis for the ID check as well as to ask about the complainant's perception of harassment. The complainant stated that he understood to some degree why his physical appearance could attract police attention.

2. Complaint of Harassment #C 2007-015

Synopsis: A woman complained that an officer issued her and her husband four separate parking or traffic violation tickets during a five month period and was interfering with their missionary work. The complainant failed to show up for an appointment with the investigating supervisor who subsequently tried to reach her on several occasions without success.

Recommendation: The Auditor agrees with the decision to suspend the complaint investigation.

Resolution/Corrective Action: The complainant was notified of the case status by letter.

3. Sexual Harassment #IA 2008-003

Synopsis: Two days prior to his retirement, an employee surprised a female officer by kissing her on the lips. He did the same thing to another female officer that day while grabbing her head and forcing the physical contact. He made remarks to the effect that he was beyond discipline because of his impending retirement. During the course of the internal affairs investigation, a previous incident of sexually offensive remarks directed at a third female officer was unearthed and investigated.

Recommendation: The Auditor agreed with the Department's founded conclusion based on the evidence. The Department's disciplinary options were limited due to the subsequent retirement of the subject employee. Nevertheless, the Department acted as forcefully and quickly as it could. The subject was put on administrative leave at the outset of the investigation, which was completed swiftly. This was especially important given the subordinate rank of the victims and sent an unequivocal message to all members of the Department.

Resolution/Corrective Action: The Department sustained findings on a variety of sexual harassment-related administrative charges. As a result of the incidents, the Chief also decided to exercise her discretion to deny the subject a permit to carry a concealed weapon subsequent to his retirement.

4. Complaint of Discourtesy, Harassment and Prohibited Use of E-mail #IA 2008-004

Synopsis: An officer discovered that someone had accessed his Department e-mail account and sent a message out to various members of the Department that purported to be from the officer revealing highly personal information. A supervisor came forward and admitted that he had played the prank.

Recommendation: The e-mailing stunt appeared to be a poor attempt at humor without serious malicious intent. Nevertheless, the supervisor displayed a profound lack of leadership and violated a host of PAPD policies, from discourtesy to making misleading statements to improperly accessing the e-mail of another to violating the anti-harassment policy. Most important of all, the supervisor used language that could easily have sent a message of discrimination and disrespect throughout the Department. For these reasons, the Auditor was pleased to see the Department take this violation seriously and do a quick and effective investigation. The Auditor agreed with the Department's findings and the discipline imposed.

Resolution/Corrective Action: All policy violations were sustained resulting in a suspension imposed on the subject supervisor.

5. Complaint of Inadequate Service and Discourtesy #C 2008-005

Synopsis: A resident requested service because a large commercial truck was unloading next door and blocking his vehicle. The dispatcher misunderstood the location which caused a brief delay in the police response. The resident felt he had been treated rudely by the dispatcher and was unhappy with the PAPD declining to put tighter controls on commercial vehicle loading in the area.

Recommendation: The Auditor reviewed the tape of the dispatch conversation and concluded that the Department's effort to follow up on the complaint was adequate and that the dispatcher was not discourteous under the circumstances. We recommended that Department supervisors implement a quality control program of random monitoring of desk response to citizen complaints. The Department is considering this recommendation.

Resolution/Corrective Action: A supervisor followed up with the complainant and offered to refer the matter to traffic services but the complainant hung up during the conversation.

6. Complaint of Discourtesy and Threatening Improper Action #C 2008-006

Synopsis: A cat was struck by a motorist. A woman driving nearby saw the accident and pulled over, as did the motorist. An officer saw the two cars pulled over and

stopped to offer assistance. The woman pointed out the severely injured cat. The officer confirmed that animal control was on the way and suggested to the woman that she might prefer to leave. Shortly after that, the officer observed that the cat appeared to be dead. He assured the woman that animal control was on the way and left the scene. The woman believed that the officer's unemotional demeanor and his suggestion that she might want to leave meant that he intended to execute the cat with his gun. She later complained to PAPD.

Recommendation: The Auditor agreed with the investigating supervisor's conclusion that the complainant misunderstood the officer's words and intentions. Shooting the cat under these circumstances would have been an unnecessary and bizarre departure from logic and Department policy guidelines. The Auditor also agreed that cautioning the officer about taking time to explain his actions to community members in the field is a positive precautionary measure.

Resolution/Corrective Action: The complainant was informed of the Department's findings. The officer was reminded to explain his actions and intentions more plainly in the field to community members.

7. Complaint of Improper Arrest #C 2008-008

Synopsis: Two officers initiated a vehicle stop on a vehicle with no front license plate. The vehicle contained one adult passenger. The other three occupants were juveniles. The odors of alcohol and marijuana were evident to the officers. The adult was very drunk by his own admission. The juvenile driver showed some signs of possible alcohol impairment. As the officers attempted to get the driver to exit the vehicle in order to determine whether he was under the influence of alcohol, the adult passenger loudly told the driver not to cooperate and insulted and threatened the officers. When the driver refused to exit the vehicle, the officers pulled the adult passenger out of his seat, handcuffed him and arrested him for being drunk in public and delaying and interfering with an investigation. The adult later filed a complaint with PAPD that the use of force was excessive and the arrest unjustified.

Recommendation: The Auditor reviewed the investigation reports and the MAV video and concluded that the arrest and use of force in pulling the adult passenger out of

the car was within the PAPD use of force policy and that there was a good basis for the administrative finding of unfounded on the complaint. We recommended that the responding officers be briefed about the tactical disadvantages and officer safety issues that are present when officers reach into vehicles to extract individuals.

Resolution/Corrective Action: The results of the Department's investigation were conveyed to the complainant by letter.

8. **Complaint of Inadequate Service #C 2008-010**

Synopsis: Two purses were stolen from a family group inside a restaurant late on a weekend night. One of the victims called PAPD to report the theft and was asked to file a report using the Department's automated on-line or telephone reporting systems. The caller asked that the Department send an officer. The dispatcher alerted an officer in the area who was then flagged down by the victims. The officer spoke to the victims for fifteen minutes and, since there was no suspect information, encouraged them to file a report on-line or at the Police Department desk on a weekday. The officer later indicated that he had not taken a report because he was monitoring the large late night crowd outside the restaurant.

The investigation of the complaint unearthed a relatively recent department-wide memo acknowledging that some members of the community were dissatisfied when told to file a report using the automated system. It strongly suggested that officers who have already gone to a location or been flagged down should go ahead and take a report in person. The memo acknowledged that busy situations in the field could make this impractical. Nevertheless, the Department investigation concluded that the officer in this case had complied with Department policy.

Recommendation: The Auditor agreed that the officer's actions complied with the letter of PAPD policy but concluded that, had the officer taken a brief report of the theft, he would have served the spirit of Department policy much better.

Resolution/Corrective Action: The auditor recommended that the Department reissue the 2007 memo to the Department as a training bulletin clarifying this aspect of customer service and that the officer's unit commander specifically brief him on the contents of the memo. The Department has accepted these recommendations.

9. **Complaint of Improper Arrest #C 2008-011**

Synopsis: An officer stopped a motorist for erratic driving in the early morning following New Year's Eve. After smelling the odor of alcohol, the officer administered a full battery of field sobriety tests. The officer also did a preliminary test of the motorist's blood alcohol level with a portable device which showed a reading of a few hundredths below the presumptive impairment limit. The motorist also stated that he had taken a prescription medication which made him drowsy. He was taken to the station and booked for driving under the influence. The District Attorney decided not to file charges in this case. Six months later, the motorist wrote a letter of complaint to PAPD asserting that there had been inadequate probable cause to arrest him and that he was denied the opportunity to give a breath sample instead of a blood sample. The blood sample showed an alcohol level below the presumptive legal limit.

Recommendation: The Auditor agreed with the Department's conclusion that the officer had not exceeded his authority in arresting the suspect and arranging for a blood sample to be taken in view of the admission regarding prescription medication. It is a best practice in DUI investigations for the investigating officer to evaluate the suspect based on the totality of the circumstances rather than rely on any single indicator. The driving pattern, the performance on the field sobriety tests, the admissions about prescription medication and the preliminary blood alcohol test collectively provided probable cause to believe that the suspect's driving was impaired. Blood alcohol level is not the only basis for making a probable cause determination of impairment. It can also be appropriately based on all of the other indicators observed and tested by the officer who appeared to follow the Department's elaborate DUI protocol to the letter.

Resolution/Corrective Action: The investigation of this complaint was thorough and revealed no apparent issues regarding the Department's DUI investigation methodology.

10. **Complaint of Inadequate Service #C 2008-013**

Synopsis: PAPD Detectives investigating a series of daytime burglaries spotted two burglary suspects moving household goods from a home into their vehicle. As the

suspects drove off, the detectives called in marked patrol cars to detain the suspect vehicle. Police vehicles pursued the suspects briefly but then desisted when the pursuit became more hazardous than Department policy allows for non-violent felony suspects. The homeowner, who came home as the burglars were fleeing, complained to the PAPD that she felt that the officers should have tried harder to catch the burglars and pursued them longer. About 35 minutes later the suspect vehicle crashed and rolled over for unknown reasons, but the suspects fled when the Fire Department arrived. The suspects were later apprehended, convicted and tied to a series of burglaries.

Recommendation: The Auditor concluded that PAPD personnel had performed their duty in making an earnest effort to apprehend the burglars, but had called off the pursuit in order to comply with Department policy. Upon review of the policy, the Auditor also believes that it strikes an appropriate balance between the importance of apprehending criminal suspects at the earliest possible opportunity and the need to minimize the danger to the community posed by car chases. The policy is in keeping with the best practices of progressive police agencies and state law regarding vehicle pursuits of non-violent felons.

Resolution/Corrective Action: A Department Captain offered to meet with the homeowner to explain the pursuit policy and the competing factors that underlie it but the complainant did not desire this.

11. Complaint of Improper Arrest #C 2008-014

Synopsis: Officers responded to a 911 call reporting a loud physical fight between a man and a woman. When they arrived at the residence the woman fled the scene and the man remained. He explained that the woman was his girlfriend and that they lived together at the residence. They had argued about recent social plans and she had tried to leave the apartment. The man had blocked her egress and pushed her to prevent her from leaving the apartment. She retaliated by scratching him with her nails and made her escape. After the fight, she had no visible marks and he had a small scratch on his chest. The man provided the officers with the woman's cell phone number and they found her and took her statement which was consistent with these facts. Based on the statements of both parties, the officers arrested the man for misdemeanor domestic

battery. The woman filed a complaint that day contending that the police had had no basis to arrest her boyfriend. The case was ultimately rejected for filing by the District Attorney.

During the course of the Internal Affairs investigation, the supervisor investigating the complaint explained to the complainant that the arrest of her boyfriend was for a domestic battery rather than the more serious charge of willful injury of spouse, which can be filed as a felony or a misdemeanor. When the complainant read the penal code section, she indicated that she no longer wished to pursue the Internal Affairs complaint of an improper arrest. The complaint investigation was nevertheless completed, resulting in a finding of unfounded

Recommendation: The Auditor concurred with the Department's conclusion that this was an appropriate arrest of the boyfriend and that the complaint should be unfounded. Furthermore, the arrest was in keeping with the policy of a county-wide protocol that emphasizes concern for the safety of the domestic violence victim and prevention of further violence between the involved parties. We also reviewed the audio tape of the interview with the complainant and observed that the Internal Affairs investigator's patience, demeanor and knowledge while interviewing the complainant was exemplary. We also found the Department's decision to complete the complaint investigation, despite the apparent change of heart by the complainant to be the appropriate decision. That said, we have recommended to the Internal Affairs unit that, in future instances when a complainant decides, during the course of a formal investigation, to withdraw the complaint based on information provided by the investigator, that sincere desire to withdraw should be confirmed by the head of IA in a follow up contact. This will avoid even the appearance of subtle coercion or advocacy by IA investigators, whose primary mission is fact gathering.

Resolution/Corrective Action: We agree with the Department's finding. The Department has accepted our recommendation to have the Internal Affairs unit commander follow up with the complainant when he or she expresses a desire to withdraw the complainant.

12. Complaint of Improper and Discourteous Search of Person #C 2008-018

Synopsis: An officer pulled a vehicle over for expired registration. The officer discovered that, among the four occupants of the vehicle, the driver had an outstanding felony drug warrant, passenger A had current drug charges pending, and passenger B was on probation for a drug conviction and was subject to search as a condition of her probation. The officer searched the vehicle and found rock cocaine and two cocaine pipes. In the course of the search, another passenger told an officer that passenger B was hiding drugs on her person. Thereafter, a male officer conducted a field search of passenger B outside her clothing and in the presence of another officer. He did not find any contraband. He called a female officer to the scene to conduct a more thorough field search. The female officer did not find any contraband either. Passenger B was arrested and charged with possession of drug paraphernalia. Passenger B complained to the Department that it was inappropriate for a male officer to search her in this way. She did not object to the basis for the search, simply the method.

Recommendation: The investigation of the complaint was commenced immediately and the investigator interviewed all of the relevant witnesses, including a brief telephone interview of the complainant, but the investigator was unable to persuade the complainant to respond for a follow up interview despite repeated appointments and phone calls. The investigator also reviewed the MAV video and audio tapes, but the searches occurred outside the video frame. Based on the initial complaint, there were no disputed facts as to the method of the search. The central question was whether a male officer should have conducted the initial search of the female passenger's person. PAPD policy and training allows a male officer to field search a female suspect outside her clothing with the officer's fingers held together to minimize intrusion. The policy recommends that when a search is conducted by an officer of the opposite sex, another witness officer should be present. The evidence indicated that the officer complied with these guidelines. The Auditor agreed that the allegation of exceeding lawful police powers was unfounded. The Auditor further understands that, while it is generally preferable to use a female officer in this circumstance, such is not always practical. Such searches can easily cause offense or misunderstanding, however, and it is important to document them as well as all other searches scrupulously. We recommend that the Department remind field officers that they will be expected to optimize the

documentation of field searches by utilizing the MAV system when the opportunity presents itself.

Resolution/Corrective Action: PAPD has sent a response letter to the Complainant. The Department has agreed to the Auditor's training recommendation.

13. Complaint of Discourteous Treatment #C 2008-022

Synopsis: An officer initiated a vehicle stop on a vehicle because the registration was expired. He questioned the driver and found that his license was suspended. There were also problems with the registration of the vehicle. The officer counseled the family members in the vehicle to clear up the documentation and required that the man's wife, who had a valid license, though not in her possession, take the wheel for the rest of the trip. The officer did not issue a citation.

Three men standing across the street had just left a municipal meeting on the topic of racially biased policing. They noticed the officer conducting a traffic stop, though they had not seen the initial stop. They stopped to observe the officers actions and talked about racial profiling. After completing the traffic investigation, the officer saw the men and shined his spotlight on them for two to four seconds before turning the light off. He recognized one of the men, waved and drove off. The men contacted PAPD immediately and a supervisor came out to interview them. They complained that the officer had been intentionally rude and had "assaulted" them with the spotlight. They also believed that the traffic stop might have been an example of racial profiling.

Recommendation: The Auditor reviewed the interviews and MAV video of this incident and determined that the officer was extremely courteous and professional towards the motorist that he pulled over, as well as the occupants of the vehicle. A review of this video evidence also does not indicate any apparent concern on behalf of the vehicle occupants regarding the actions of the police officer. In fact, as noted above, the officer could well have cited and/or arrested the driver of the vehicle for driving with a suspended license and the lack of a valid registration but instead used his discretion to resolve the issue without any formal action.

As for the officer's behavior toward the bystanders across the street, there is little dispute over the facts. The complainants interpreted the officer's brief use of the

spotlight by the officer as rude and provocative. The officer indicated that he used his spotlight on the occupants for officer safety reasons in order to learn more about the identity and intent of the onlookers, a common police practice.

Based on all of the information, in particular the video evidence, there is no basis whatsoever to establish improper actions by the officer and no basis for the allegation that the stop consisted of racial profiling. Accordingly, the Auditor agreed with the Department's finding of exonerated for these allegations. This finding signifies that the alleged action did take place but that it did not violate Department policy.

Resolution/Corrective Action: The Department has sent a response letter to the complainants.

IV. Cases Pending from Interim Report

14. Complaint of Mistaken Forfeiture of Car #C -2007-010

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

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

Resolution/Corrective Action: The Police Chief has agreed to ask the city to contact the complainant to discuss compensation.

15. Complaint of Excessive Force and Unprofessional Conduct #C 2008-009

Synopsis: PAPD officers assisted a police agency from another city in executing an arrest warrant and a search warrant at a house in Palo Alto. They arrested a suspect staying as a guest in the house. He was wanted for a murder and an attempted murder with a handgun which had occurred two days prior. PAPD officers were aware that the gun was still outstanding and the suspect might be armed. Members of the family that lived in the house complained that they were treated roughly and discourteously by PAPD officers, that two of them were pushed to the ground, that they were forced to lie on their front yard in handcuffs for an excessive period of time, that guns were pointed and profanities shouted at them, that the officers wore no name tags and would not identify themselves, and that they were kept out of their home and confined on their porch or front yard for an excessive period of time.

Recommendation: While not the originating agency of the search or arrest warrants, PAPD played a significant role in their execution. The Auditor recommended that the Department review the incident for possible discourtesy, excessive force, excessive detention and failure to identify oneself in violation of PAPD policies. The Department agreed to investigate this matter, met with the family to confirm the complaint, interviewed family members and other witnesses as well as involved officers. The Department determined that the complaints of excessive force and prolonged detention were unfounded. The Department found that it could not determine whether or not complainants had been treated in a discourteous or disrespectful manner, so that complaint was deemed "unsustained." The Department did sustain an allegation of unreasonable conduct relating to an officer slicing through an outdoor canvas tarp in the course of the search. The Department did not address the complaint that officers refused to identify themselves.

The Auditor reviewed the case file, including photographic and video evidence. The Auditor asked for additional comparative analysis of the MAV videotapes and the computerized radio traffic to determine the accuracy of the MAV time clocks. PAPD technical staff were able to provide this.

The search and arrest arose from a criminal case of the most serious and urgent nature. Forceful language and fast, even abrupt action to secure the location and clear the individuals was justifiable under these circumstances. The evidence did not support the

claim that the force used was excessive under the circumstances. The Auditor conferred with Internal Affairs during the course of the investigation of these complaints and emphasized the significance of the excessive detention complaint. While a search warrant pursuant to a murder investigation is a high risk activity, the interests of members of the public who are not targets of the investigation must be respected as much as possible. Being handcuffed face down on your front lawn during daylight hours in the presence of your neighbors is a highly intrusive and potentially humiliating experience. The Auditor was aware that PAPD was not responsible for choosing the time of day for the execution of the warrant nor did they plan to encounter family members on the front porch and lawn. That is simply where the family was when the search warrant team arrived. Nevertheless, the Auditor was troubled by the complainant's contention that they were detained for over an hour while handcuffed and lying prone on the lawn. The radio traffic and video evidence however makes it clear that the household members were detained on the front lawn for less than fifteen minutes. This period, does not appear to be excessive under the circumstances. The Auditor did however conclude that the Department had failed to address the complainants' contention that the officers at the scene had failed to provide their names to the householders during the incident. We recommend that the Department review its procedures for providing identification to community members during large police operations. We also recommended that plans for future operations of this nature include an officer assigned to videotape the crucial stages of the event. The Department has agreed to do this.

Resolution/Corrective Action: The Department sent the complainants a letter with the results of the investigation. Department executives also met with the family to explain the department's reasoning. The Department has replaced the damaged tarp. The Auditor commends the Department for meeting face-to-face with the family members after completion of the investigation. Even before the conclusion of this internal investigation, Department executives instituted procedural reforms arising from this incident. Department training staff was given the following instruction for upcoming training:

> "[R]einforce the importance of providing clear, explicit commands that anyone can follow during an arrest situation. There is no room

for offensive language in our profession....arrest commands should not include vulgarities."

Upcoming training will also include instruction to insure that the MAV system or other video devices are used to accurately record incidents wherever practicable. Additionally, the Acting Police Chief has also laid out a written plan focused on better serving the needs of household members for information and assistance following incidents that may have "significantly impacted the residents of the house or the neighborhood." The plan instructs watch commanders where appropriate to send an uninvolved supervisor to the scene to:

"Provide the citizens with as much information about the legal authority and procedures that we followed that allowed our agency to take the actions that they took, (taking into account the public's right to know, the integrity of the investigation and the defendant's right to privacy)."

"Assist the citizens wherever possible, including how to file a claim should we have damaged any property in our operation."

"Ensure that all uses of force or claims of injury were documented and investigated."

"Assist the citizen by accepting any citizen complaint."

"Provide the citizen with contact information...to increase their understanding of the incident."

"Assist the family in obtaining a copy of the police report should they seek it and it is feasible to release it."

"Assess whether a community meeting might be appropriate to explain police actions or neighborhood safety."

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

Synopsis: A civil litigant was charged with felony vandalism against the opposing party when PAPD investigators concluded that he had scratched the other party's car with a metal object after losing in civil court. The prosecution of the vandalism case has been delayed by procedural writs that continue to work their way up

to higher courts of appeal. The vandalism defendant has complained to the Department that the officer who investigated the vandalism made biased statements and omitted evidence in his report.

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

Resolution: The Department is monitoring the status of the criminal case and has prepared to commence the complaint investigation as soon as the criminal case is resolved.

***Erratum**: In the IPA Interim Report for 2007/2008, the IPA described a citizen's complaint concerning the adequacy of police action during a police standby while a female spouse removed some clothes and property from the house that she and her husband shared. The IPA report synopsis indicated that the wife had requested the police standby for this process. This was an error. In fact, the husband had requested the police standby. We apologize for the mischaracterization of the standby request. This factual error, however, would have no substantive impact on our conclusions or recommendation.*

Table of Complaint and Internal Affairs Investigations Reviewed by the Auditor April 2008 through January 2009

Case No.	Case/Investigation Type	Allegation	Results of Investigation	Resolution
C-2007-011	Citizen Complaint	Improper request for identification	Unfounded	Results and legal basis explained to complainant
C-2007-015	Citizen Complaint	Harassment	Investigation suspended	Complainant informed of status

IA-2008-003	Internal Affairs Investigation	Sexual Harassment	Founded	Officer retired
IA-2008-004	Internal Affairs Investigation	Discourtesy, Harassment	Founded	Suspension
C-2008-005	Citizen Complaint	Inadequate service and discourtesy	Unfounded	Offer to refer matter to traffic services rejected
C-2008-006	Citizen Complaint	Threatening improper action	Unfounded	Complainant informed of results; officer cautioned
C-2008-008	Citizen Complaint	Improper arrest	Unfounded	Complainant informed of results
C-2008-010	Citizen Complaint	Inadequate service	Unfounded	Training bulletin and briefing
C-2008-011	Citizen Complaint	Improper arrest for DUI	Unfounded	Complainant informed of results
C-2008-013	Citizen Complaint	Inadequate attempt to apprehend burglars	Unfounded	Department captain offered to meet with complainant to explain pursuit policy. Complainant informed of results.
C-2008-014	Citizen Complaint	Improper domestic violence arrest	Unfounded	Department policy explained to complainant; procedural change for complaint investigations
C-2008-	Citizen Complaint	Discourteous	Unfounded	Complainant

018		search of person of opposite sex		informed of results; department will train on utilization of MAV system
C-2008-022	Citizen Complaint	Discourteous treatment with spot light; possible racial profiling	Unfounded	Complainants informed of results

Cases Pending from Previous Reports

C-2007-010	Citizen Complaint	Mistaken forfeiture of car	Founded	Complainant to be contacted re compensation
C-2008-009	Citizen Complaint	Excessive force, excessive detention and unprofessional conduct	Unfounded for excessive force & detention; Unsustained for discourtesy; Founded for inappropriate destruction of property	Complainant met with complainants to discuss results; Procedure changes and training
C-2006-010	Citizen Complaint	False statements and omissions in arrest report	Investigation pending resolution of criminal case	None

V. Conclusion

The Palo Alto Police Department has undergone a significant transition over the past year, including the recent retirement of the Chief of Police. We take this opportunity to note that Chief Johnson always worked with the Auditor in a spirit of mutual respect. Civilian oversight with full access is still an unsettling novelty for many law enforcement executives, but Chief Johnson accepted the IPA with an attitude of progress and always provided us with the access, dialogue, and receptivity that we required to fulfill our mandate from the City. We have continued to build off of that initial relationship with Department leaders during this current transitional phase.