

City of Vacaville

Independent Audit of Vacaville Police
Department: Culture, Operations,
and Administrative Review Systems

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OIR

GROUP

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Introduction

2020 was a pivotal year in the history of American policing. The aftermath of George Floyd's murder in Minneapolis – which occurred against a backdrop of political polarization and worldwide unease over the COVID-19 pandemic – led to demonstrations across the country that were focused on concerns over law enforcement. And even after the initial intensity of the protests had abated, calls for reform continued at the national, state, and local levels.

While the societal focus on policing issues was strikingly widespread, different jurisdictions experienced the phenomenon in varied ways. Vacaville, California, a city of 100,000 residents, was braced for its own version of the demonstrations and clashes that dominated the national news in early June of that year. But the initial protest activity was relatively limited in scope – and included a significant amount of “counter-protest” in the form of public support for the Vacaville Police Department (“VVPD”). Moreover, the Department was committed to avoiding the collateral problems of vandalism and looting that had marred the movement in other cities. With some isolated exceptions, its intelligence-gathering and pro-active enforcement efforts kept those issues to a minimum as well.

As the months passed, though, Vacaville's “turn” in the spotlight of the police reform movement endured. The City responded to persistent concerns about police violence and justice system inequities by hosting a “Virtual Town Hall” in July that featured the then-Chief of Police and lasted for some four hours. Many of those who participated in and/or watched the event sensed a disconnect between the Chief's confident tone and the perceptions (and experiences) of those who raised questions or challenged assertions. Rather than assuaging concerns, the event reinforced many people's frustrations and unease.

And the demonstrations lingered as well. An activist group organized a regular Sunday gathering that persisted for many weeks and kept a focus on law enforcement practices.

The tone was often hostile – a dynamic that reached its apex on a Sunday in January of 2021 when VVPD headquarters and City Hall were vandalized.

In short, attention on policing issues continued at the forefront of civic life in Vacaville. Moreover, this phenomenon coincided with a major structural shift in City government. A change to District, rather than City-wide, elections brought new voices and new perspectives to a Council body that had traditionally and for the most part defaulted to support for VVPD. A heightened willingness to ask questions and test assumptions emerged as new members took their places – at a time when VVPD was already adjusting to a climate of increased challenge from the community and a larger skepticism about police legitimacy.

Additional incidents involving the Department also surfaced, further contributing to a narrative of an agency that was losing a measure of community trust. In late December of 2020, the video of a VVPD officer punching his service dog drew international attention, with thousands of angry calls pouring into the communications center. More negative publicity followed in the spring in the form of a controversial use of force. A VVPD officer encountered – and ended up repeatedly punching – a seventeen-year-old male during a call for service about an alleged assault. The young man’s autism diagnosis prompted widespread allegations of a misguided approach by the officer, and ultimately led to a lawsuit and settlement.

By summer of 2021, the Chief had retired – as had one of the agency’s two captains. As the City undertook its search for a new Chief, the Department did its best to move forward – but understandably found it challenging to do so in light of the leadership gap and in the absence of clear direction for the future.

This was the background from which this audit project emerged, starting even before the installation of a permanent Chief. City Administration presented a scope of work and engaged with OIR Group¹, a team of police practices experts based in southern

¹ OIR Group has been engaged in the independent oversight of law enforcement since 2001. Led by Michael Gennaco, a former federal prosecutor and nationally recognized leader in the field of police oversight, OIR Group has worked in a variety of jurisdictions throughout California and in several other states. It specializes in the outside monitoring of police internal review systems, with an eye toward both accountability and potential reform. Examples of its many public reports are available at www.oirgroup.com

California, to perform the audit. Per Council's request, after our initial visits with City stakeholders, we recommended an expanded scope which was subsequently approved. This Report is the product of our work since September of 2021.

We found much to admire in our assessment of the Department. The agency does many things well and – not coincidentally – takes obvious pride in doing so. Indeed, the dedication of its personnel is a striking feature that manifests itself to outsiders quite quickly. On multiple occasions, Department members brought our attention to the fact that a significant percentage of VVPD personnel are residents of the City – and often grew up here. The intended significance is clear (and justified): at a time when the police are often perceived as distinct from – or even at odds with – the communities they work in, VVPD members are attuned to and invested in Vacaville in fundamental, beneficial ways.

This dynamic is surely relevant to the high level of “customer service” to which the agency seems to be committed. Every resident call is taken seriously, every criminal violation is addressed, and a philosophy of “doing the little things” to maintain quality of life and public safety seems to be pervasive. It is not surprising, then, that the Department enjoys a large measure of public appreciation for its efforts, and seemingly did so even during recent periods of strain.

Our further sense is that VVPD has the talent and experience to excel in those areas that it prioritizes. Two examples that come to mind quickly from our review are its training program and its SWAT team. In terms of annual training for its personnel, VVPD goes well beyond state minimum requirements, and we were impressed with the thoughtfulness, depth, and variety of the presentations we observed or learned about. And the SWAT team is an obvious focal point for Department operations – the expertise of its leadership, the sophisticated equipment it has at its disposal, and the high standards to which it holds its tactical operations are as impressive as they are distinctive for an agency of VVPD's size.

Naturally, though, the full picture of the agency is more nuanced than its finest qualities. In fact, we are interested to note that the strengths of the Department are themselves factors in some of the limitations that we noted, and which we discuss in more detail below. The clearest example of this phenomenon is a seeming reluctance to complicate a perception of excellence by acknowledging – and properly addressing – some of the shortcomings in officer performance that do inevitably arise.

Detailed investigations into officer misconduct have largely been reserved for serious issues, and disciplinary consequences are not always as rigorous as they might be. And, while the Department has a sound *structure* for reviewing force incidents, we found room for improvement in the substantive depth of the actual reviews that we sampled. Perhaps as a consequence (or further reflection) of this narrow approach, it is exceptionally rare for an officer's use of force to be characterized as out of policy or worthy of other non-disciplinary interventions – or even referred for a more thorough investigation.

More than one knowledgeable Department member suggested that this dynamic was a function of a “high morale” culture that emphasizes affirmation over accountability. And a corollary of that is an inclination to protect officers from public scrutiny in an era of increased transparency – and increased antagonism. Accordingly, many lower-level issues or concerns are dealt with informally – if at all.

We don't disregard the importance of high morale, particularly given our familiarity with agencies that lack it, and our limited impression is that officers generally are proud of the agency and glad to be part of it. Fostering this at the managerial level surely pays dividends. Ideally, though, it doesn't come at a cost to other kinds of value – including rigorous self-scrutiny and a willingness to acknowledge issues as a step toward remediating them for the sake of future performance.

A similar paradox is summed up by the frequent – and sometimes ironic – references that we heard to “the Vacaville Way.” On the one hand, the term is meant as a badge of honor that describes a dedicated, highly effective workforce. On the other, it is a mild jab at a perceived insularity and resistance to change.

Whatever difficulties the Department experienced in adjusting to the “post-George Floyd” era, its members came by them honestly: they genuinely found it jarring when circumstances dislodged them from their usual levels of community trust and esteem. At the same time, we have encountered several members of the agency, including the Chief himself, who recognize that some changes or enhancements or reform may well be warranted, and welcome the audit as an opportunity to galvanize that process.

One of the key areas in which we make recommendations for a more robust process is the review of uses of force – including critical incidents such as officer-involved shootings. When we requested materials relating to the most recent administrative review of a Vacaville deadly force case, we were struck by the limited number of documents we received, and by the limited scope of those documents in terms of

apparent analysis and investigatory work. Our understanding is that the approach is a conscious one. It is driven in large part by a reluctance to create an elaborate “paper trail” in a new statutory environment that affords law enforcement significantly fewer confidentiality protections for investigative materials. We urge the Department to reconsider this, and we discuss models that are currently working well in other agencies.

We also encourage the Department to revamp its approach to addressing allegations of officer misconduct. Some of our recommendations are structural: the single lieutenant who serves in the “Professional Standards and Training Division” is asked to do many important things (as well as some demanding but less important ones). More staffing and other support would help. But a broader philosophical shift toward “normalizing” complaint investigations and low-level disciplinary interventions also seems warranted.

We have also noted, and discuss below, the considerable room for growth that VVPD has in its acceptance of new expectations for transparency. New state laws have increased public access to files and records and information that were formerly shielded from scrutiny. We encourage responding to the spirit as well as the letter of those laws.

It is important to recognize that the landscape within VVPD – and the City – is different than when our project began. Perhaps most notably, the selection of the new Chief and the official promotion of two new Captains has given much needed definition to the executive ranks. And, like other departments throughout the state, VVPD is both another year removed from the summer of 2020 and another year advanced in dealing with the significant new expectations that state legislators have imposed in the name of reform. The City has also made strides in its efforts to promote diversity and inclusion, and it sponsored a policing forum in June of 2022 that showcased an engaged community and a responsive Police Department. These are positive shifts.

With all of the above in mind, we mean the Report that follows to be two things: an independent confirmation that VVPD is an effective police agency with several strengths, and a constructive contribution to efforts at enhancing certain key practices. And we are optimistic that the various recommendations we make below will be received in that light, and with beneficial results.

Methodology

The scope of work for this project emerged in two phases. The first was framed by the contract and covered several different aspects of Department operations. Then, after the initial months of the audit process including a site visit that included one on one meetings with City and community stakeholders, additional categories for review were proposed by OIR Group and approved by the City Council during a meeting in May of 2022.

The audit was designed to assess the “policies, procedures, and practices” of VVPD. The major topics it encompassed included several of the Department’s key internal review systems, with an eye toward evaluating the rigor and effectiveness with which VVPD investigates and addresses uses of force, allegations of misconduct, critical incidents (such as officer-involved shootings), and risk management. Supplemental topics included body-worn camera use, encounters with the City’s unhoused population, recruitment, officer wellness, and the Department’s K-9 program.

To learn about these many facets of VVPD’s work, the audit itself took a multi-faceted approach. Central to these efforts were different in-person visits to Vacaville in September and November of 2021 as well as May and June of 2022. These visits provided us with an opportunity to conduct in-depth interviews with the entire command staff (as well as with the longtime Vacaville resident who served as Interim Chief when our project began). We also met with training staff members, civilian personnel from the Police & Fire Dispatch center, and supervisors with responsibility for some of the Department’s specialized units (including the homelessness response team, recruiting, and SWAT).

At the invitation of the Department, we attended an off-site training event that combined several different “live action” scenarios and gave officers the chance to participate in small groups. It was a useful window into a training program to which VVPD clearly dedicates considerable talent and resources. And we appreciated the chance to ride with a patrol officer for several hours during a weeknight shift – which amounted to both a guided tour of the City’s neighborhoods and an opportunity to hear the insights of a veteran member of the agency.

Our in-person visits also incorporated individual meetings with stakeholders from different parts of City government, including the City Manager’s Office, the City Attorney’s Office, Human Resources, and members of City Council. Each of these conversations helped us gain a better understanding of the dynamics between VVPD and other officials as they have evolved in recent years.

We also supplemented our physical meetings with a handful of virtual ones that provided us with additional background. This included a School Resource Officer, a member of the Dispatch staff, and the civilian director of the Department’s “Family Investigative Response and Service Team” (“FIRST,”) an innovative program that assists Vacaville families by offering wrap-around services in coordination with enforcement actions in the aftermath of a crime. We discussed the K-9 program with a supervisor who also had extensive experience as a handler. And we also spoke with two outside investigators who had been hired recently to handle separate administrative cases involving serious allegations of misconduct. Their unique perspective on the Department’s internal workings – and responses to any performance concerns – was illuminating.

One of the highlights of our time in the City was the Community Policing Forum held in June 2022 at Wood High School (with an additional opportunity for remote participation by Zoom). The Chief and a lieutenant from VVPD joined a diverse panel of speakers for a presentation and listening session. Attendees brought a range of questions and ideas to the event. It was a cornerstone of the City’s commitment to engaging the public in new ways, and the participation reflected a mix of both regard for traditional public safety priorities and an interest in a more responsive, receptive VVPD.

Along with our direct interactions with stakeholders from within and outside the Department, we also had the opportunity to speak or correspond with Vacaville residents who were aware of the audit and wished to share their views. And we appreciated the opportunity to speak with a young man whose encounter with VVPD became a forum for the Department’s assessment of its handling of subjects with autism and other special circumstances.

Another key component of our audit was a review of selected documentary evidence across a range of Department operations. Among the items we reviewed – and which VVPD provided with full cooperation – were the following:

- The Department policy manual
- Data regarding calls for service
- All case records (police reports) from a randomly selected day of patrol operations
- Training records of various kinds
- A group of randomly selected employee performance evaluations
- Administrative review materials regarding an officer-involved shooting incident from 2021
- A sampling of “After-Action” reports prepared by the SWAT personnel in the aftermath of deployments
- Statistical data on Uses of Force
- Copies of the VVPD review “packages” from several recent force deployments, including officer reports and body-worn camera recordings; and
- A sampling of recent internal investigations into allegations of officer misconduct.

We appreciate the responsiveness, thoughtfulness, and insights of the many people we encountered during this project. In particular, we’re grateful for the full cooperation we received from the sworn and civilian personnel at VVPD, whose assistance was integral to our work.

A Distinctive and Evolving Culture

VVPD has approximately 100 sworn officers, which is larger than many local agencies but small enough to have a recognizable sense of shared cultural identity. This is particularly true in light of the strong personal connections to Vacaville that both sworn and civilian staff seem to share. Numerous employees of the agency reside in the City, or were raised there, or both. They think of Vacaville as a close-knit community that values law enforcement. And this phenomenon is enhanced by a large number of military personnel and members of surrounding police departments who choose to live there and value the reputation for safety and security that the City enjoys.

VVPD members with whom we spoke captured the resulting dynamic in different ways, but with very much a shared consensus. In large part because of their personal experience of the City, they describe the Department and its people as being “committed,” or “highly invested,” or having “skin in the game” – a somewhat intangible reality that nonetheless shapes concrete operational philosophy. Even in their off-duty time, officers are inevitably monitoring neighborhood conditions in ways that inform their understanding and help make them more aware of the City’s issues and safety needs.

That commitment manifests itself in other ways as well. We heard repeated examples of officers and civilian personnel whose dedication to the Department and the City helped fuel the effectiveness of distinctive special programs and initiatives. We discuss some of these – such as the “Community Response Unit” that addressed homelessness and quality of life issues, and the “Puzzle Project” that invites families who have a member with special needs to voluntarily provide background information that would better equip officers for responding to that address – in more detail below.

The Department as a whole is determined to provide quality service, to take every crime seriously, and to be as responsive as possible to every member of the public who calls to report a concern. Their patrol officers have maintained a high standard of engagement at a time when other jurisdictions have pulled back due to resource limitations and a perceived need to prioritize. The agency has a reputation for tenacity in its enforcement strategy, and takes pride in doing “the little things” energetically and well.

Much of this is commendable and translates into effective service for the people of Vacaville. Interestingly, across the wide range of individuals we encountered in this project (both within and outside of VVPD), the specific criticisms that did emerge were almost always accompanied by a baseline disclaimer that emphasized the fundamental effectiveness of the Department. A few experienced members of VVPD who had begun their careers with other agencies were notably effusive in their regard for their current employer, with the intended point of comparison being clear.

And our sense is that much of the public is appreciative. Among other efforts at community outreach in recent months, the City publicized our audit project and invited people to contact us and share their perspectives. The volume of response was moderate, particularly in comparison to other jurisdictions with which we have worked during the post-George Floyd era of scrutiny. While a couple of individuals shared negative personal experiences with VVPD, and others questioned the Department's effectiveness in one or more specific categories of interest, much of the feedback was positive, supportive, and/or dismissive of critiques as unwarranted. As "unscientific" as our experience may have been, it offers at least one reflection point as to the high regard VVPD enjoys among many residents.

But, in our view, it remains important to remember that the protest movement of 2020 did not arise out of a vacuum, or without any relevance to dynamics in the City. Demographically, both the City and VVPD's sworn officer ranks are predominantly white, with respective majorities in the 60 to 70 percent range.^{2,3} And, as is the case in many jurisdictions, Black subjects figure prominently in arrests and uses of force, particularly in relation to their percentage of the local population.⁴ Nationwide, the reasons for this discouraging and pervasive reality are both highly complex and vigorously disputed, and we wish to be clear in saying we do not have reason to believe that VVPD has a consciously biased approach to its work. But we also consider it a fair,

² The agency currently has 4 Black officers in its roster of 110 sworn members. We are aware of the Department's efforts to engage in targeted recruiting in the Black community, and of the challenges that law enforcement is experiencing nationally in attracting Black applicants.

³ The agency has 13 women officers, which translates to more than 16%; this is slightly better than the national average. And the agency's 22 Hispanic officers (20 percent of the sworn ranks) also contribute to VVPD's diversity. These numbers reflect a creditable commitment to engaging groups that have not been historically prominent in policing.

⁴ New record-keeping requirements under California legislation will soon give VVPD increased data for evaluating stops and arrests by demography.

important, and ongoing source of concern that merits continued scrutiny by all affected police agencies.

With this in mind, we spoke with Department members who were conscious of an “us vs. them” mentality that existed, and that had enforcement implications with a racial undercurrent.⁵ This dynamic was exacerbated during the protests, when the focus was on racial injustice and many of the most persistent critical voices were Black. To the extent that VVPD reacted with defensiveness or resentment, the pitfall became a tendency to dismiss not only the protestors, but also the underlying concerns the movement sought to highlight.

Clearly, Vacaville and VVPD were not alone in finding the backlash of the protest movement to be challenging and even disorienting. The opportunity for marginalized groups to have their concerns centered, and the polarizing energy (and occasional violence and vandalism) with which many people seized the moment, brought new perspectives into prominence in ways that sometimes lent themselves to retrenchment as much as enlightenment.⁶

As one close observer who works for the Department later explained to us, there were two extreme perspectives that gradually emerged: On the one hand, “Your organization is all corrupt and needs to be taken down,” and on the other, “We’re a great agency and these unwarranted attacks are offensive.” It was not a paradigm that lent itself to productive dialogue.⁷

Meanwhile, for Vacaville as well as other California jurisdictions, this movement coincided with fundamental changes to the political infrastructure in the City. The shift to individual District representation created a window for the elevation of distinctive neighborhoods that may have been subsumed in the past by more established factions

⁵ We heard a few different references to the Department’s social media platforms, and past instances in which an informal survey of postings featured Black individuals prominently among arrestees. However unintentional the cumulative impression, this type of “representation” was unsettling to some observers, and VVPD has changed its approach to arrest-related postings.

⁶ A common reaction to the protest movement was to assert that much of its leadership and many of its regular participants did not even reside in Vacaville – with the idea that their motivation and credibility was therefore questionable.

⁷ It should also be noted that VVPD’s leadership expressed frustration to us that their attempts to meet with some members of the local protest movement were rebuffed.

– and a largely pro-police orientation. New members of the City Council, with new ideas and a willingness to raise questions about policing, added to the sense of transition that the Department found difficult – or even alienating – at first.

Encouragingly, the passage of time has seen the atmosphere of controversy dissipate considerably – while some of the ideas and reconsiderations it prompted have endured in beneficial ways. The Department’s commitment to adaptation and heightened responsiveness has had different manifestations, and the new Chief has repeatedly emphasized his interest in expanding opportunities for the agency to listen to a range of voices and facilitate new forms of input as it moves forward.

One positive innovation was the development of a “District Commander” program, which tracks the City’s new emphasis on district-based representation by assigning a specific lieutenant as the designated point person for that area’s leadership and residents to engage with the police in sharing ideas, concerns, and other feedback. VVPD hopes to expand the program by creating assigned slots for individual district officers to serve as liaisons and “local experts” who can bring community policing concepts to meet the needs of the various neighborhoods.

The City government has also shown its commitments through a multi-faceted initiative that is focused on principles of equity, diversity, and inclusion. Some of these specific programs relate to VVPD in particular, and have included a couple of “Community Policing Forums.” These facilitated conversations brought together Department representatives, community stakeholders, and interested members of the public for a combination of presented material about VVPD programs and listening sessions where residents could share their insights and questions.

We had the opportunity to attend the first of these sessions, in June of 2022, and were favorably impressed with both the attendance and the dialogue that emerged over the course of the evening. Many of the attendees were supportive of the Department, and those who brought challenges did so in a spirit of constructive engagement. The Department then supplemented the program by posting responses to a number of the specific questions that emerged during the evening and in related communications.

In all, it seemed like a highly beneficial step in establishing a new footing for public interaction on the part of VVPD – with a significant new focus on listening and learning as opposed to rebutting “wrong” critiques or providing defensive explanations. We hope

the momentum toward ensuring regular opportunities for public participation will continue, and we offer related recommendations below.

A different and quite commendable recent VVPD initiative was the adoption of its “Bias by Proxy” policies. This concept refers to the situation in which a member of the public contacts law enforcement to take action in response to a particular person or group whose presence they consider “suspicious” or otherwise problematic on the sole basis of their race, ethnicity, or other features of their identity – as opposed to any objectively unlawful behavior. Whether intentional or unwitting, this bias-based request for police intervention has long been a source of tension between law enforcement and communities of color, and can lead to corrosive interactions that undermine trust. The notion of “bias by proxy,” which implicates the larger public in some of the dynamics that strain police relations with some groups, has been discussed for several years. But concrete steps to address it have been slower to develop. To its considerable credit, VVPD has been an early adopter of a policy that tackles the notion head on. Its relatively new “bias by proxy” guideline, which is directed at communications center staff, provides direction on identifying and responding to this situation when it emerges:

402.8 Bias by Proxy Call Handling

Call takers should screen and triage calls to identify possible bias by proxy. When a caller reports a suspicious person, but they are unable to articulate a behavior or activity that is suspicious, the Incident Type should be, 10-59 [*Security Check*]. The specific statements that lead the call-taker to feel the call may involve bias should be included in “quotes” to alert the officer of the possible bias and allow the officer additional situational awareness prior to responding. When officers respond to the area, it is recommended that they assess the person’s behavior from a distance. If nothing suspicious is observed, the officer would simply clear the call.

Our understanding is that there has been a small number of individual incidents that triggered this protocol in the months since the policy was adopted.⁸ Though the impact

⁸ Interestingly, the communications center staff has also reported anecdotally that they have experienced a reduction in the number of calls for service for which the protocol might be applicable – in what they attribute to a heightened sensitivity or awareness on the part of the public in light of recent societal shifts.

may not yet have been great from a statistical perspective, we consider this sort of focused effort to disrupt problematic dynamics to be admirable.

More broadly, we hope the Department will stay focused on its recent commitments to new forms of communication and relationship-building. Though the months of tension and antagonism that began in 2020 have given way to a more “normalized” climate of police-community relations in Vacaville, VVPD will ideally continue to prioritize the types of outreach and innovation that have marked this more recent stretch of its history.

RECOMMENDATION # 1: VVPD should remain engaged in the project of enlisting and facilitating community outreach as a core function of its operations, with a special emphasis on previously underrepresented or marginalized groups within the City.

RECOMMENDATION # 2: VVPD should work to build on its “District Commanders” model by assigning specific officers as Department liaisons to individual neighborhoods and groups.

A different policy update that came to our attention during the audit is reflective of another shift in mindset that we consider a positive one. It relates to the authorization of vehicle pursuits – a law enforcement activity that is highly correlated to risk for obvious reasons.

VVPD’s policy manual is derived from its subscription to Lexipol, a nationally prominent company that provides agencies with a foundation of recommended components that it has endorsed as compliant with state laws and current legal standards. From there, each agency has the opportunity to tailor the Lexipol language to further guide its own personnel in keeping with its own priorities. This means that, even among Lexipol’s large group of clients, there can be notable differences in specific operational approaches.

One category about which there is considerable variance from department to department relates to vehicle pursuits. Simply put, there are different thresholds for initiating and maintaining a pursuit that are each acceptable from a purely legal perspective – but that reflect significantly different conclusions about the balance between inherent risks and aggressive enforcement strategy.

Until recently, VVPD’s policy left much to the discretion of individual officers: it authorized the initiation of a pursuit whenever an officer had the reasonable belief that a suspect who was ignoring signals to stop him was doing so to “evade arrest or detention by fleeing in a vehicle.” Although the policy offered a number of factors for officers to evaluate in deciding whether to start or continue a pursuit, these were considerations only. Our understanding is that officers commonly exercised that latitude in the direction of engaging – an outgrowth of the culture that encourages officers to treat all criminal activity with both diligence and assertiveness.⁹

Beginning last year, though, new voices in the agency’s leadership began to question the calculus that would sometimes turn shoplifting cases into pursuits that created obvious safety risks. As one supervisor put it in a conversation with us, the Department started to question the philosophy that looked at results more than process, or “endorsed” a questionable, dangerous pursuit because the suspect had been apprehended and no harmful consequences had ensued – even though it was easy to envision how things might have turned out poorly.

After much deliberation, the Department revised its policy at the outset of 2022 in favor of a more restrictive paradigm. The new standard reads as follows:

315.2.1 WHEN TO INITIATE A PURSUIT Officers are authorized to initiate a pursuit when the officer reasonably believes a subject:

1. Has committed or will imminently commit a violent felony; or
2. Is suspected of a crime that involves significant injury or violence; or significant threat of injury or violence; or
3. Is suspected of being under the influence of any alcoholic beverage or substance(s) that impairs their ability to safely operate a motor vehicle and poses a significant risk to public safety.

⁹ More than one of the individual force incidents we reviewed, and which we discuss below, also featured high speed pursuits as a component part.

Unless a greater hazard would result, a pursuit should not be initiated if the suspect(s) can be identified to the point where later apprehension can be accomplished.

We consider this new approach to be a sound one. It better calibrates the tension between risk and reward by requiring a more significant level of criminal activity to justify initiation. And it is to the Department's credit that it made this adjustment pro-actively, rather than waiting for a tragic outcome to bring change belatedly.

Our understanding is that the switch was far from universally popular among patrol officers. But the adaptation to new approaches continues, nonetheless. And, importantly, the last part of new policy language quoted above – which focuses on the ability to apprehend identified suspects at a later time (and under safer conditions) – shows that VVPD remains committed to a rigorous but smarter enforcement model. We heard anecdotal evidence that the strategy is paying dividends in terms of “follow-up” arrests that occur through persistence over speed. Accomplishing the same goals in more thoughtful, risk-conscious ways strikes us as a positive trend.

Departmental Attributes

As we mention above, the Vacaville Police Department has a deservedly strong reputation as an effective agency with dedicated personnel, to the point where even the critical observations people shared with us were usually couched within a recognition that the foundation is quite solid. Our direct experience of the Department confirmed much of this opinion in concrete ways. Here we discuss some of the individual aspects of VVPD operations we found to be distinctive and worthy of special comment.

Training

An apparent point of emphasis for VVPD is its training program, which we found impressive in several ways. Our first direct experience of the Department was when we were invited to attend a day-long off-site training at a large warehouse facility. The site allowed VVPD the space to develop several different learning areas through which small groups of officers could rotate under the eye of instructors and supervisors. This included different “live action” scenarios to test officers’ techniques in responding to a high-risk traffic stop, a building search, emergency medical aid, and a welfare check on a suicidal subject. Two of VVPD’s defensive tactics experts worked with officers on wrestling mats to practice regaining the advantage in a physical struggle. And Department members (including several civilians) served as volunteer role players.

Our understanding is that VVPD divides its personnel into two groups and sends half through the 10-hour training day on each of two consecutive Wednesdays. The format is repeated twice a year. On the day we observed, we noted the range and quality of the content, which reflected a considerable amount of thoughtful planning. Just as striking, though, was the focus of the participating officers. The program was interactive and included debriefs of the different exercises the officers conducted, and the overall atmosphere seemed collegial and earnest throughout the day.

As an introduction to VVPD, it happened to be an appropriate one – the agency’s commitment to rigorous training for its personnel seems to be a cornerstone, and our initial perspective was corroborated as we learned more throughout the year. VVPD’s

goal is to provide 90 hours of training for its officers each year, a standard that greatly exceeds the minimum requirements of POST, the organization that regulates California law enforcement.

Much of the credit seemingly goes to the training staff, which is led by a civilian whose organizational skills are well-suited to the challenges of planning, scheduling, and tracking the annual training of all employees. An experienced corporal who is a gun range instructor and holds other certifications assists in choosing and developing material from a sworn officer perspective. Compliance with mandatory requirements is maintained on an ongoing and detailed basis. And the development of content is mapped out well in advance of the actual execution, and generally ensures that each month offers one or more blocks.

Beyond the requisite firearms qualifications and the “perishable skills training” that revolves around aptitude with different force options, the 2021 curriculum included topics such as the following:

- LGBTQ+ community awareness;
- Officer wellness;
- Human trafficking;
- Senior/Disability crime victims, and
- Mobile Field Force (including response to civil disobedience).

We were also told of situations in which individual Department members either generated or helped to inspire innovative training blocks based on their own personal experiences and interests. A patrol officer with an autistic child, for example, helped to coordinate an awareness training on that condition and its different implications on engagement with law enforcement. And officers with martial arts expertise have helped move the Department in the direction of a new model of physical tactics based on the “Gracie Survival” school of self-defense.¹⁰

In addition to the formal training that it coordinates and sponsors, VVPD also features a well-organized program of “briefing training.” This refers to the short presentations that

¹⁰ The Gracie techniques were recently certified for instruction by POST. We were interested to note how often, and with such enthusiasm, we heard about the program from different officers. Without taking a position on the substance of the new approach, we consider the officers’ energy and engagement levels to be attributes.

officers receive on a regular basis during the meetings with supervisors that precede every patrol shift. It is a chance to provide legal updates or other bulletins for officer information, and VVPD appears to often use the time to discuss a recent critical incident from another law enforcement agency. These episodes can be effective “real world” learning opportunities. And while the notion of productive use of briefing time is not new, or unique to VVPD, we did take note of the diligence with which these sessions are documented and centrally tracked – down to the taking of individual officer attendance.

The Department’s prioritization of its training program – and the extent to which it is seemingly embraced throughout the agency – reflect well on it. We hope that the culture that emphasizes it, and that supports the talented people who drive it forward, will continue into the organization’s future. VVPD’s ability to respond to the ever-evolving landscape of contemporary law enforcement is certainly strengthened by its current program.

Community Response Unit

In recent years, one of the signature challenges for communities throughout California and the country has been the expansion of the homeless population. Addressing the needs of those individuals – who are often plagued with mental health and/or substance abuse problems – is an inherent challenge that implicates resource issues and, for various reasons, has implications for public safety.

A VVPD then-sergeant took initiative in 2016 to put together a small, centralized group of officers whose mandate would be to engage with the homeless of Vacaville in a direct, sustained, and multi-faceted way. Along with encouraging and facilitating access to support services, the “Community Response Unit” exercised its discretion in making arrests for criminal activity. Its officers took the time to get to know the stories, personalities, and difficulties of the people who comprised the City’s homeless. They tried different approaches – including legal accountability – that were tailored to the circumstances of the people they encountered.

We spoke with a few different “veterans” of the CRU – which had been temporarily disbanded during the pendency of our audit project. (This was a function of staffing challenges within VVPD and the need to return the officers to a regular patrol assignment – a topic we cover in more detail below.). Although their individual

experiences naturally varied, they shared a sense that the work had been both difficult and extremely rewarding. Each had examples of positive impacts that they were able to have by virtue of persistent efforts and the latitude to build relationships.

It is clear that the formula for “solving” homelessness remains elusive. But, to the extent that homelessness issues overlap with criminal activity and have impacts on quality of life throughout the community, law enforcement will continue to have a role.¹¹ A focused team that develops local expertise and provides continuity in addressing the underlying issues strikes us as being an asset to the City for multiple reasons. It also has considerable potential to provide regular officers with extra time and energy to handle other concerns. We hope the City and the Department will focus on ways to ensure that this model is sufficiently resourced to resume its work.

RECOMMENDATION # 3: VVPD should prioritize the staffing of the Community Resource Unit as it continues to explore constructive ways of addressing homelessness concerns in the City.

SWAT

Like many organizations within and outside of law enforcement, a police agency’s distinguished features are a reflection of its organizational investments – both financially and culturally. And the Department clearly seems to prioritize its Special Weapons and Tactics Team (“SWAT”). For an agency of its size, VVPD has a particularly robust, well-equipped SWAT unit.¹² And its recent callouts have been noteworthy for their effectiveness in resolving volatile and potentially dangerous situations – without a resort to deadly force.

¹¹Consistent with the national focus on reimagining public safety, there is room for discussion in the City regarding alternative models for addressing issues involving the unhoused, even relating to public safety concerns. However, unless and until an alternative model is developed to respond more holistically to public safety issues involving the homeless, a specialized police-derived unit is better attuned to address those issues than a regular patrol officer.

¹² Participation in the unit is a collateral assignment which generates significant interest among the sworn staff, in spite of the additional commitments it imposes. That said, staffing issues have placed strains on team availability for the SWAT unit as well.

We looked at the confidential “After Action” reports that the unit compiled in the aftermath of five recent incidents. These included a high-risk arrest warrant service that devolved into a barricaded subject case, the apprehension of an armed double murder suspect after an hours-long standoff, and a mutual aid response in support of a nearby city’s barricaded subject encounter. Each encounter ended in the successful apprehension of the subject without the use of deadly force.

From our perspective, two features stood out from our assessment of these reports. One was the range of equipment options that were available to – and utilized by – the unit in effectuating the safe resolution of these incidents. Much of it was “state of the art,” and Team members were resourceful and creative in using the devices when opportunities presented themselves.¹³

The other was the comprehensive thoughtfulness of the reports themselves. These documents ran for several pages apiece. They recounted the incidents in considerable detail, described the various steps taken by SWAT and the rationale behind them, and featured a remarkable “Takeaways” section. This last feature consisted of analysis relating to every aspect of the operation. It reinforced effective performance and – importantly – highlighted missteps, setbacks, challenges, or deficiencies with an eye toward learning and moving forward.

We found the thoroughness of these reports to be impressive. And we also found much to commend in the sophistication and candor with which the “Takeaways” had been prepared. It seems to us to be a model that other agencies would benefit from emulating.

¹³ Many of the relevant items constitute “military equipment” under the new state statute AB 481, which imposes new obligations on law enforcement agencies to gain formal approval from elected officials in order to possess or purchase materials that fall within the statute’s definition. The new law also includes a transparency requirement that obligates agencies to provide a publicly available inventory of military equipment possessed by the entity and an annual report as to the specific circumstances under which relevant equipment was used. VVPD recently made its required public presentation, and its requests for authorization of its existing equipment were approved by City Council.

As we discuss below, we also think VVPD would benefit from applying the rigor of the SWAT “After Action Report” model to other areas of its operations.¹⁴ Our understanding is that the SWAT unit commits to such a complete written work product in part because of its position that it is a confidential document – exempt from public disclosure by virtue of its being a record of “security procedures.” While VVPD’s wariness about transparency is a topic we explore elsewhere in this Report (while expressing concerns about its implications for robust and effective internal review), the SWAT self-assessment process is a worthy approach that sets an impressive standard.

The “FIRST” Program and Other Social Outreach

Along with (and related to) its obvious core functions, VVPD is the umbrella agency for a significant program that builds off the many interactions between law enforcement and people in need of social services of various kinds. Dating back to 1996, the concept of FIRST (which stands for “Family Investigative Response Service Team”) originated as a way of assisting crime victims whose cases were being handled by the Department. Investigators would make referrals of families or individual parties who could seemingly benefit from services or supports. A social worker employed by the City took on a leadership role in building the program and ensuring that its civilian staff would be represented by a management-level director.

The concept has grown over time and gone through different iterations. Currently, FIRST encompasses a variety of programs – including its original mandate of crime victim and family assistance in cases involving issues such as child or elder abuse, domestic violence, and sexual assault.¹⁵ Its staff includes mental health coordinators and family support workers. FIRST’s mandate also includes the “Family Resource Center,” which is grant funded and helps provide direct assistance to needy Vacaville families.

¹⁴ We discuss these – particularly with regard to critical incidents and other uses of force – below.

¹⁵ Per the program’s director, approximately one-third of the victim families that the Department identifies choose to participate in one or more of the supports being offered.

VVPD's "Youth Services" Section also combines trained civilian service providers and behavioral health experts with sworn officers in providing outreach at public schools within the city. Four School Resource Officers (provided to the school district by VVPD) serve as liaisons who stay apprised of the needs within their respective campus populations.¹⁶ Educational opportunities, anger management and drug awareness programs, and family assistance are all functions of this unit. And Youth Services also coordinates a Diversion program that helps first-time juvenile offenders avoid engagement with the formal legal system by providing a "Restorative Justice" alternative to criminal charges.

The Department's outreach to young people also extends to its sponsorship of the PAL (Police Activities League) programs, which connect officers and other agency personnel with the City's children and teens in a variety of positive contexts. A combination of regular meetings and special events (such as the annual "Shop with a Cop" day that gives selected children a chance to purchase gifts for family members) helps to develop relationships – and provides services for many young residents who benefit from the interventions. The dedication of civilian staff, in conjunction with officers' voluntary participation, is a beneficial influence on some 200 children and families each year.

Each of these initiatives strikes us as being innovative, worthwhile, and worthy of a detailed further exploration that is beyond our scope. But we do take this opportunity to commend the Department and the City for its support of these programs and its recognition of the ways that effective law enforcement is part of an integrated, multi-disciplinary response to the needs of its community members.

¹⁶ We note with interest that the "School Resource Officer" concept in Vacaville does not seem to have encountered the backlash it has in other jurisdictions, when notions of the "school to prison pipeline" led activists to question the value of police officers in the campus setting. In our experience, and at their best, qualified SRO's who understand their role – and some of the pitfalls of "over policing" in a population of young people – can be a significant asset to school safety and a positive influence in the lives of individual students. The one VVPD SRO whom we met and spoke with seemed to be exemplary in the thoughtful, student-centered philosophy he espoused.

Puzzle Project

As noted above, one of VVPD's recent high-profile controversies involved the arrest of a seventeen-year-old autistic individual, in which the responding officer's initial contact with the young man soon quickly escalated and resulted in a use of force when the teenager (the subject in an assault of another teenager) got up from a seated position and began to move away. There was concern that the subject's mental health status was a factor in his resistance and demeanor, and that the officer's actions (including punches to the face area) constituted an excessive and inapposite response to the needs of the situation.

A subsequent administrative investigation found the officer's actions to be consistent with Department policy, but it resulted in litigative exposure that led to a significant settlement.¹⁷ And the incident highlighted an increasingly common source of concern: namely, the frustrating combination of a limited police "toolkit" with a person experiencing a mental health crisis or behavioral impairment. More and more jurisdictions are looking for new ways to navigate this dynamic, including the further integration of mental health experts into the response model for certain calls for service.¹⁸

In the course of learning about the above case, we heard about one of the settlement terms earlier this year that helped resolve the lawsuit filed by the autistic teenager's family. It called for \$30,000 to be earmarked in support of the "Puzzle Project," a program that encourages families to register with the Department in providing information about a family member's special needs. It was developed by a VVPD officer whose own experiences as a parent have shaped his understanding of autism and other behavioral conditions, and is intended as one vehicle to bridge the gaps of understanding that sometimes undermine police encounters in the field.

¹⁷ We had the opportunity to review the investigation file for that case, which was handled by a qualified third-party contractor on behalf of the Department.

¹⁸ Solano County recently introduced its own "Mobile Crisis Response Team" concept, but it has faced challenges in sustainability from a resources perspective.

As the registration form states, “The goal is to strengthen communication between first responders and individuals that have a disability that impacts their interactions with emergency services.” Participation is voluntary. Shared information is entered into a database that would notify dispatchers and provide potentially useful details to officers responding to a call for service at or from the registrant’s address.¹⁹

Although far from a cure-all for a complex problem, we admire the initiative, common sense, and focus on critical issues that this concept exemplifies. And the ongoing financial support that emerged as part of the settlement seems to us to be a constructive byproduct of a challenging incident for the City.

¹⁹ One of the issues emanating from the review of the force incident was the degree of knowledge available to the responding officer about the subject’s autism.

Departmental Challenges

In this section we explore two issues that repeatedly (and in different forms and contexts) rose to the surface during our audit as concerns that VVPD needs to address. We highlight them here in isolation. But each has implications for other topic areas that we discuss in later sections of this Report, and each is worthy of the Department and City's further attention and resource allocation.

Recruiting, Hiring, and Staffing

By far, the biggest concern that VVPD personnel shared with us was a serious staffing shortage in relation to both sworn and civilian employees. Our understanding is that the Department is currently "running short" by approximately 20 officers in relation to its budgeted maximum. This constitutes a significant gap in available personnel, and the reasons for it are multi-faceted. Meanwhile, the civilian ranks of the agency (particularly in the communications center) are similarly short-handed.

This is a dynamic that many other California law enforcement are experiencing, and is one of the more influential outgrowths of the challenges that the profession has experienced since 2020. To put it simply, many officers who were eligible to retire found themselves doing so at an earlier age than they may have originally planned, and the pipeline of new officers was not commensurate with the departures. On the contrary, many of the agencies we have examined (including VVPD) have reported a drastic decline in the number of new applicants to the profession.

Against this backdrop, and for many of the same reasons, recruiting new officers has been more difficult than at any time in recent memory. This is especially true with regard to officers of color. We do not have easy solutions for this, particularly in light of the widespread nature of the problems and the importance for law enforcement agencies of maintaining high standards with regard to applicant qualifications.

What we can say is VVPD seems appropriately committed to innovative approaches and persistent effort.²⁰ We were also impressed by the female lieutenant who (among a number of other assignments) has spearheaded VVPD's recruiting efforts for the last few years. In a recent discussion with her, it was clear that the attributes of female officers and the importance of attracting a diverse pool of candidates were focal points of her approach.

We urge the City and the Department to continue pursuing creative solutions in attracting qualified people. And, in addition to this obvious priority, VVPD and the City should look for other ways to assist with workload issues by adding civilian support staff and investigating in technologies that could facilitate time-consuming administrative tasks – including some of the responses to new transparency requirements that we discuss below.

RECOMMENDATION # 4: VVPD and the City should continue to prioritize an ongoing commitment to recruiting and hiring, and should explore ways of addressing current shortfalls in the ranks of sworn officers by redistributing or facilitating applicable tasks through investments in civilian staff and technology.

Transparency

It would be difficult to overstate the sea change that California law enforcement agencies have experienced in recent years with regard to new expectations and requirements with regard to transparency. There are many reasons for these shifts, including a much higher level of public engagement, a growing societal disinclination to give law enforcement the “benefit of the doubt” in the wake of numerous controversial incidents, and the reality that – through a huge expansion in video evidence of every kind – there is a concrete demand for specific types of information-sharing that would not have existed a generation ago. In California, those factors have combined with

²⁰ We were interested to learn of a practice in which Department representatives attend the regular physical testing sessions that are offered for law enforcement applicants as part of the hiring process; the idea is to engage with these individuals in an environment where they are inevitably challenged and experiencing at least moderate stress – an easy shorthand for their likely ability to handle the academy and do well with the agency.

political momentum to produce significant new legislation that imposes new levels of access to previously confidential information. This includes department policy manuals, which agencies were required to post publicly as of January 1, 2020.

Relevant new laws include SB 1421 and AB 748, both of which took effect in 2019. SB 1421 allows for public access to investigation files, findings, and administrative disciplinary proceedings in cases involving deadly force, serious bodily injury as a consequence of force, and limited categories of misconduct – including false statements.²¹ And AB 748 obliges police agencies to release video evidence of deadly force incidents (and other encounters resulting in serious injury) within 45 days of occurrence.²²

Together, the two laws constituted a fundamental re-orientation. Agencies were not only confronted with the exposure of information and records (including of past events) that had long been confidential, but also with a significant workload in meeting the demands while making sure that applicable privacy rights remained protected. It required a dedication of significant resources, and a careful consideration of the philosophy toward transparency that each department chose to take.

We understood the difficulty that many agencies had in dealing with the practical realities and the dramatic shift in the control over sensitive records that they once enjoyed. But in our view, the adaptive strategy that made the most sense was to “lean in,” not only to the new requirements but to the animating spirit behind them. Beyond compliance with the new statutes (which is in itself a logistically demanding commitment), a number of departments throughout California have recognized that the public wants and expects even more information. And many of them have taken the initiative to provide it in the form of increased sharing – such as summary reports as to uses of force and misconduct investigations.

In going beyond the requirements in these ways, law enforcement seeks to move away from a defensive, insular posture in favor of a willingness to engage and inform. It is an approach we endorse for several reasons – not the least of which is our belief that an

²¹ The range of disciplinary violations that are now potentially subject to public access was further expanded in a 2021 bill.

²² There are exceptions to this when investigative effectiveness is at issue, but the extensions of time are limited and must be authorized.

increased commitment to transparency and communication with the public will benefit the agency itself by heightening public confidence and understanding.

For the Vacaville Police Department (and to be fair, many others), the transition to this paradigm has apparently been a more halting one. We were surprised by the extremely limited contents of the “Transparency Portal” on the Department website with regard to cases eligible for 1421 disclosure. The most recent entries were from cases that originated in 2020. And much of the “disclosure” for that and earlier years was limited to explanations as to why pending proceedings shielded the materials from release.²³

As for video released pursuant to AB 748, none appears to be on the Department’s website. Although an Internet news article about a 2020 shooting included a video clip that had been provided by VVPD in response to a formal request, the Department’s approach appears to be narrowly tailored toward compliance with each individual who goes through the process.

This restrictive, “letter of the law” mindset is in opposition to the approach that other agencies have taken – and that we endorse. Essentially, these organizations begin by assuming (with good reason) that a formal request for eligible material is going to be made. They choose to be pro-active in response by sharing with the community as a whole in the form of a public release – often providing contextual materials or narrative to accompany the required documents or video evidence. In this way, they are not only showing a responsiveness to the clear will of the public but also providing themselves an opportunity to educate and engage in an arena of obvious importance. While the Department has apparently met its technical obligations in responding to the requests that do come in pursuant to these (and other) categories, they have not established protocols to heighten transparency in an automatic and affirmative way.

Our understanding is that VVPD’s reasons for being slow to embrace that philosophy – and those concrete actions – are multi-faceted. We have been advised that some of the reasons relate to uncertainty as to the compatibility with the new county-wide investigation protocol for deadly force incidents, but a department truly interested in

²³ Without questioning the basis for these assertions, we note that the records do not seem to have been updated. This seems at least in part to be a function of the Department’s lacking a coherent and overarching approach to its sharing of information, beyond responsiveness to specific requests.

transparency could figure a way to navigate this complexity.²⁴ And we explore others of them below as they relate to specific aspects of the Department's internal operations and review processes.

But we also acknowledge some of the difficulties arising from the resource-intensive nature of proper adherence to the new demands. Simply put, it is time-consuming and often painstaking to review the materials at issue, redact anything that would clash with privacy rights or third-party protections, and then produce the responsive records or videos. This is a workload – and budgetary – reality that proponents of greater transparency have sometimes failed to consider. In the absence of targeted assistance, the strain on agencies takes the form of delay, or diminished ability to meet other priorities, or both. We hope the Department and City will work together in acknowledging this issue and pursuing attainable options for alleviating it.

RECOMMENDATION # 5: VVPD should shift away from a reactive, defensive approach to meeting its obligations under recent state laws that impose new transparency requirements, and should instead pursue a model that takes initiative to release applicable information in a timely, instructive way.

RECOMMENDATION # 6: VVPD and the City should ensure that the Department has the resources to handle Public Records Act requests in a timely and effective fashion.

RECOMMENDATION # 7: VVPD should voluntarily expand on its existing Transparency Portal to go beyond current compliance practices and proactively provide the public with a greater range of information, particularly with regard to its uses of force and misconduct investigations.

²⁴ We discuss the new Solano County Task Force model in the following section of the Report.

Critical Incident Review: Deadly Force

Deadly force incidents involving the Vacaville Police Department are not common events. As of this writing, VVPD's most recent officer-involved shooting took place in January of 2021; the one before that was in April of 2020. But whenever they do occur, they obviously implicate the highest level of scrutiny in terms of both individual officer accountability and broader opportunities for systemic assessment and potential reform. Here, we look at the process as it currently stands in Vacaville, and make recommendations for enhancing the administrative review process in fundamental ways.

Criminal Investigation

When California law enforcement officers are involved in a use of deadly force that results in subject injury or death, that event becomes the focus of a formal criminal investigation to ensure that the officers' actions were legally justified. Section 835a of the California Penal Code – the current version of which became operative in 2020 – establishes the relevant standards. Under the new standard, the threshold for use of deadly force requires there to be an imminent threat of death or severe bodily injury. While the legal question continues to be whether officer actions were “objectively reasonable under a totality of the circumstances,” the recent amendments to the law reflect the legislature's interest in reducing these incidents. The changes include new language that requires the deadly force to be “necessary,” new emphasis on de-escalation techniques, a proportionality requirement, and a new inclusion of officer tactics *prior* to the moment of deadly force as a component of the “totality of circumstances” to be evaluated.

Different jurisdictions handle the requisite deadly force investigation according to a range of approaches. In Solano County, the law enforcement agencies updated their agreement with the District Attorney's Office to establish a joint Investigative Protocol. Per that agreement, which was updated in November of 2020, the County's four largest agencies (which includes VVPD) contribute to a pool of experienced investigators who handle the case under the supervision of the District Attorney's investigative staff. This group is called the Solano County Major Crimes Task Force.

The goal is to ensure both an adequacy of resources and a measure of structural independence.²⁵ Per the Memorandum of Understanding that guides the protocol, a Task Force member whose own agency is the subject of a given investigation is excluded from certain aspects of the case, including interviews with the involved officers.

When the investigation is complete, it is submitted to the District Attorney's Office for a determination as to whether the shooting was lawful and justified within the meaning of Penal Code Section 835a. This process can take several months. (It was approximately eight months for VVPD's most recent case; the three involved officers were found to have been justified in their use of deadly force.)

The protocol is thoughtful and detailed, and our understanding is that it is working well. We do take special note of a couple of its provisions.

The first is #6 in the "Investigative Protocols" section of the agreement's "Operation Plan." It reads as follows:

"If consistent with departmental policy, the actor/involved officer(s) will have the opportunity to review audio/video recordings prior to giving a statement. This includes reviewing their body worn cameras, patrol in car camera, and reasonably available recordings that depict the actor/involved officer's field of vision at the time of the incident. The actor/involved officer(s) may also review any visual or audio material they saw or heard prior to the incident." [Italics added.]

In recent years, the increase of video evidence – and particularly body-worn camera recordings – as a factor in critical incident investigations has led to debate about whether officers' first chance to review such evidence should come before or after their initial statements to investigators. The arguments on each side can be summarized as follows.

²⁵ There are other California jurisdictions in which detectives from the involved officer's agency take on the lead responsibility for handling the criminal investigation. Though the role of the local District Attorney's Office during both the investigative and review phases provides a "check and balance" of sorts, the inherent dynamics of "police investigating themselves" has at times been a source of public skepticism.

The “view first” approach puts a premium on the consistency of the officer’s statement with external video evidence by offering him or her the chance to refresh recollection in the most direct possible way. It also has a defensive quality: proponents believe that any discrepancies between a recording and an officer’s version of events – no matter how minor or understandable – will be seized upon as indicia of dishonesty and create unwarranted vulnerabilities in the officer’s position.

“Statement first” supporters point to investigative best practices. The goal is for that statement to be “pure,” in the sense of being uncorrupted by outside influence or by external recordings that do not reflect what the officer was actually observing (due to vantage point, lighting conditions and/or officer focus. In the officer-involved shooting context, this approach not only has the potential to increase public confidence in investigative integrity, but is also likely to produce a more reliable accounting of the officer’s state of mind – a crucial element in the legal analysis regarding justification. Moreover, this approach appropriately acknowledges that what the video depicts is likely to differ from officer perception due to vantage, perspective, lighting and other factors.

The new Solano County agreement addresses this by allowing for officers to “view first,” but only if such an approach is authorized by the specific agency whose officers were involved in any given case. This gives considerable deference to each agency in shaping investigations that involve their personnel, even in the context of the Task Force model.

As for VVPD’s relevant policy, it allows officers to have pre-interview access to any recording that “depicts the involved officer or the perspective of the involved officer.”²⁶ We encourage the Department to reconsider this position.

Our reasons for doing so are consistent with the “statement first” arguments listed above. In our view, such an approach is consistent with the standard investigative practice for every other kind of case, and it neutralizes public concerns that officers will tailor their testimony – even unintentionally – in reaction to the video rather than as a function of their own pure recollections. Nor is this practice meant to be antagonistic to officers. As mentioned above, officer perception of threat is the animating principle behind a justified use of deadly force. The introduction of any outside influence has the

²⁶ The policy also allows for redaction when a relevant video also features significant content outside of those parameters.

potential to compromise the purity of that recollection and the resulting statement – which is just as likely to work to the disadvantage of the officer.

We recognize the idea that sincere mistakes of fact or recall can lead to discrepancies that complicate an officer’s position. At the same time, though, the reality of imperfect eyewitness perception – and the many benign explanations for it – is becoming better understood. The practice we espouse is one that takes an initial statement based solely on the officer’s personal recollection of the event, and *then* affords the officer the opportunity to review video and make any additional comments or corrections if necessary. In our view, this is sound practice that is also fair to the officer, mindful of human limitation, and most likely to produce effective, testimonial complete evidence.

RECOMMENDATION # 8: VVPD should amend its officer-involved shooting protocol to ensure that involved officers provide an initial statement about their actions and observations prior to viewing any related video recordings, including from their own body-worn cameras.²⁷

The second VVPD protocol we wish to highlight relates to the timing of officer interviews. The relevant provision in the Solano County Task Force Operations Plan reads as follows:

“The interview of an actor/involved officer should be conducted *as soon as reasonably practicable*. However, if circumstances exist including but not limited to: fatigue, emotional distress, or injury, and *consistent with departmental policy*, consideration should be given to allow for a reasonable period of time up to 72 hours for an interview to take place.”
[Italics added.]

VVPD’s own policy tracks this approach fairly closely. It therefore shows a recognition of the value of timeliness, but also provides latitude for the initial officer interview to take place as much as 72 hours later – as opposed to requiring its occurrence prior to the end of the involved officer’s shift. As with the viewing of video evidence, the “timing” topic has been the subject of considerable disagreement, and we know it is handled differently in several of the jurisdictions with which we have direct familiarity. In our view, though, with very rare exceptions, we consider the best practice to be securing a

²⁷ We consider this same concept to applicable to administrative investigations into officer misconduct for which body-worn camera evidence is relevant.

statement from the involved officers before the end of the shift in which the critical incident occurred.

Our reasons for this relate, again, to investigative integrity. The longer the time span between the event and the interview, the more opportunity for the purest version of the officer's recollection to be compromised by outside influence.²⁸ This has implications for public confidence as well as the efficacy of the case review. And, while we certainly recognize the traumatic nature of these events and are sympathetic to officer wellness concerns, we nonetheless consider the timely statement to be of paramount importance in critically evaluating the officer's decision to use deadly force.²⁹

One factor that complicates this analysis is the important point that officers who are subject to a criminal review are of course entitled to their Fifth Amendment rights against self-incrimination. Accordingly, any statement they make to criminal investigators is a voluntary one, and in some jurisdictions the potential value of that is given such deference that investigators are willing to wait a week or more. We understand this. But we feel strongly enough about the significance of a prompt statement that we advocate *requiring* the officer to give an *administrative* interview on that initial day if he or she declines to provide a voluntary one, even though that "compelled" statement cannot be used for the criminal investigation.³⁰

It should be noted that the new County-wide Task Force policy has good features in this regard – namely, the asserted recognition that a "sooner" interview is preferable, and a

²⁸ We are very familiar with the different "studies" that have emerged over the years about psychological and physiological factors that are said to influence memory, and we have heard assertions about the value of "sleep cycles" in helping with the process of clear recollection. These claims, however, have been debunked by the experts in the field of memory and recollection. See, e.g. "What Should Happen After An Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures", Rebecca Hofstein Grady, Brendon J. Butler, and Elizabeth F. Loftus, *Journal of Applied Research in Memory and Cognition*, 5 (2016) 246-251.

²⁹ We also make note of our understanding from several jurisdictions that many officers *prefer* to make a statement sooner rather than later, as a way of getting the story "off their chests." The Solano County Protocol certainly *allows* for this.

³⁰ To be clear, and as discussed in more detail below, every officer-involved shooting is reviewed on multiple "tracks," which can be overlapping but are nonetheless distinct. There is the review of legality (as ultimately determined by the District Attorney), and also an *internal* or administrative review by the employing agency to ensure compliance with departmental policy. Additionally, such incidents often become the subject of civil litigation, which was its own discovery process and standards.

72-hour cap on the scheduling. This is a firmer approach than we have seen elsewhere. Still, there is room for VVPD's own approach to be strengthened, and we encourage the Department to do so.³¹

RECOMMENDATION # 9: VVPD should amend its officer-involved shooting protocol to promote the acquisition of an interview with all involved personnel prior to the end of the shift (except in cases of officer injury or other extreme circumstance), including by conducting a mandatory administrative interview if the officer declines to provide a voluntary statement.

Administrative Review Process

While the criminal investigation and review process is central to issues of individual officer accountability, the reality is that prosecutions in such cases are quite rare. This is true in spite of the shift in recent years toward a more restrictive version of Penal Code 835a and a greater inclination on the part of the public to scrutinize these incidents and question officer decision-making. The reasons for this are various. Most obviously, they both include the legitimacy of officer performance and a legal standard that still gives officers considerable latitude. This is in light of the unique authorization they are given as law enforcement officers to use deadly force if necessary and (to quote a famous Supreme Court case) the “tense, uncertain, and rapidly evolving conditions” in which deadly force incidents often occur.

With that in mind, an agency's administrative review of an officer-involved shooting takes on added significance. It is there that the entirety of the event can be scrutinized, not only in terms of assessing officer performance but also as a vehicle for evaluating all aspects of the incident and looking for lessons to improve future Department operations. Importantly, the scope of such reviews includes whether involved officers acted in a manner consistent with policy, and should evaluate tactics and decision-making during the entirety of the event (and not just at the moment in which deadly force was used). But – almost as (or just as) importantly – an effective critical incident review will be a forum for a much deeper and broader assessment across a variety of topics.

³¹ The corollary to this expectation is that investigators will “hold up their end of their bargain” and be prepared to conduct the interview without hours of delay for the involved personnel.

In the best, most comprehensive of these review models, there is a systematic effort to address the following: department policy, training, equipment, communication and coordination, tactics, supervision, and post-incident response. The incidents become a forum for evaluating every aspect of agency performance, and for introducing responsive action items that can reinforce effective features and adjust to identified gaps or shortcomings.

Obviously, every incident is distinct. But it has been our experience that, overwhelmingly, these events provide significant learning opportunities that the most progressive agencies embrace. The combination of rear-facing accountability and forward-facing systemic improvement is a powerful one that is commensurate with the community impacts of these major events.

Against this backdrop, we were surprised by the minimalist approach that VVPD has taken to its own deadly force incidents, particularly in relation to the capacity for thoughtful assessment it shows in other arenas. If the administrative “document trail” that we assessed reflects the entirety of the Department’s efforts, then there is much room for enhancement.

Our understanding of the current process is that, after monitoring the initial phases of the criminal investigation, the Professional Standards lieutenant waits for the District Attorney’s Office to complete its review. He or she then proceeds to conduct an analysis of the investigative reports and evidence in order to determine whether VVPD policies and procedures were followed.

The lieutenant then drafts a memo summarizing the event and his own findings, and forwards it to the Chief of Police (along with a copy of the relatively detailed “closeout” letter from the District Attorney and any relevant VPD policy sections). Importantly, no additional investigative work – including separate administrative interviews with involved personnel – appears to have been part of the process.³²

In both instances, the official memorandum produced by the lieutenant was approximately two and half pages long. In both instances, it reached conclusions that

³²The Department explained to us that a Professional Standards representative does monitor the criminal investigators’ interviews with involved officers in real time, and has the opportunity to submit questions relevant to additional performance issues that implicate agency policy. While this is clearly better than no participation, it obviously provides less latitude to explore Department-specific concerns than would a separate interview.

found all officer actions to be consistent with policy. In neither instance were these conclusions supported by analysis or explanation, or anything beyond the recitation of relevant facts. And in neither instance was any training issue or suggestion for further review identified; nor did any peripheral aspect of either incident receive formal attention or discussion.

This is remarkable, and a disservice to both the seriousness of the event and the Department's own ability to conduct thoughtful, meaningful review of its own operations. To be clear, we do not have reason to believe that the relevant officer conduct was violative of policy or problematic in other ways. But we also do not have a substantive basis for *affirming* the legitimacy of the outcomes, or sensing that they were explored and considered as deeply as they should have been.

We take a moment here to focus on the Department's most recent shooting case by way of example. This incident resulted in a use of deadly force by three different VVPD officers, each of whom shot at the subject at the culmination of a lengthy vehicle pursuit marked by the subject's reckless driving and multiple collisions – including with a patrol car. The subject was still inside his truck at the time of the different shootings, which turned out to be fatal.

Approximately 14 minutes passed between the start of the incident (when the subject intentionally drove his truck into the doors of a Vacaville church) and its conclusion.³³ In that time, and during the different phases of the pursuit, officers tried a "PIT" maneuver³⁴, spike strips, and coordinated efforts to "box in" the suspect vehicle with their own. The incident also involved "shooting at vehicles" which has itself been

³³ The Department's active involvement was shorter; it was subsequent reckless driving by the subject near City Hall that first attracted a VVPD officer's attention.

³⁴"PIT" stands for "Pursuit Intervention Technique" a maneuver that law enforcement officers learn in training. It involves an intentional glancing blow with the target vehicle in order to spin it abruptly and incapacitate it. When it works well it can resolve a vehicle pursuit in a positive way. But because of its inherent potential danger to the subject, officer and uninvolved third parties, many agencies have closely circumscribed its use and carefully evaluated any deployment.

subject of considerable tactical discussion and policy evolution in agencies around the country.³⁵ More than one VVPD officer fired multiple rounds.

As this brief recap makes clear, the incident involved several features that could and should have been the basis for a robust and fruitful examination of policy, tactics, coordination, and officer performance. This apparently did not happen. Certainly, it should have.

In what is perhaps an example of “unintended consequences” from recent state legislation, some of the Department’s extreme reticence seems to have been a reaction to new transparency laws. Increased public access to information about individual cases, and to aspects of officers’ personnel history, has been a priority in several recent pieces of legislation. Materials – and categories of information – that have been considered confidential for decades have now been identified as “public records” that can be accessed by any interested party. And that reality has unfortunately influenced the approach some agencies have taken to creating new records in the first place.

In short, there are agencies – apparently including VVPD – that have chosen to “shrink the target” of publicly available information by making certain processes less comprehensive than they might otherwise be. One of these processes appears to be the administrative investigation into deadly force cases.

The effect of this approach in Vacaville is to give a shooting case *less* administrative scrutiny than a routine use of force, which is documented and then reviewed at multiple levels. And while the criminal investigation into deadly force events obviously provides a considerable amount of useful evidence and a basis for assessing whether an officer violated the California Penal Code, it has a focus and a scope that is inherently distinct from the broader inquiry of an effective internal review.

A corollary basis for this extremely narrow approach is the impulse toward limiting the documentation and analysis that would be eligible for discovery in civil litigation. We acknowledge that the nexus between deadly force and lawsuits is high, almost to the point of inevitability. Obviously, there is merit to being conscious of risk management and for considering the implications of a rigorous process that could generate grist for plaintiff’s attorneys. But we strongly believe that a robust administrative process is not

³⁵ The Department’s own “Shooting at Vehicles” policy was obviously implicated by the incident, but not directly referenced as part of the official administrative memo that endorsed the officers’ actions as consistent with policy.

only essential in its own right, but need not be mutually exclusive with effective regard for liability concerns.

On the contrary, we are aware of many agencies that balance the two effectively, and we take the position that rigorous scrutiny and a willingness to take corrective action have an influence on liability that is positive in its own right. To some extent, “difficult facts” will eventually emerge in a full-fledged civil discovery process. An agency’s choice to stand down in its administrative efforts so as not to facilitate that process is, in our view, more likely to further compromise the defense case than provide some sort of “protection by omission.” This is especially true in an evolving social context in which the default levels of public scrutiny for police operations – and the expectations for accountability – have been greatly heightened. And most importantly, a tepid or constrained review is a lost opportunity for self-assessment that might have beneficial implications for future performance – and can lessen future liability as a collateral consequence.

Our sample size is admittedly quite small. But our conversations with Department leadership show a recognition that there is ample room for improvement in its current response. Accordingly, we recommend a simple – but much more vigorous – model that will routinize the Department’s process and ensure a timely, comprehensive, and productive review of any deadly force incident. We have seen variations of this model emerge quite effectively in several agencies with which we have worked.

The first “phase” of our recommended approach would involve having designated personnel in place to make an initial response to the scene and assume responsibility for the Department’s administrative investigation. In Solano County, that now would obviously involve proper coordination with – and deference to – the Task Force protocol.³⁶ But the goal should be to establish an immediate sense of the incident’s parameters, and as many facts as possible.

These first information-gathering steps should be the prelude to a formal, if preliminary, presentation to Department leadership and subject matter experts. Ideally, this debrief will take place within days of the incident, would include body-worn camera recordings and other relevant and available evidence, and will provide the Department an

³⁶ To the extent any issues involving “access to information” are unclear in this early phase of the County’s new arrangement, we encourage VVPD to engage with the other parties to the agreement and maximize its ability to move forward internally without compromising the criminal review.

opportunity to identify those issues – apart from involved officer accountability – that may merit a prompt agency response. Participants in this meeting should include command staff, training personnel, and other subject matter experts as needed.³⁷ The categories mentioned above – training, tactics, policy, communication and coordination, supervision, equipment, post-incident response, and other relevant case-specific elements – should all be systematically covered in light of their applicability to the incident.

Moreover – and without waiting several months for the criminal investigation to be resolved – this first meeting can provide a forum for developing responsive action items to address the questions or concerns that emerge from the presentation and discussion. The point is to use the incident as an opportunity to scrutinize performance in a *holistic* way, and with the intention of reinforcing effective features and adjusting to any limitations or shortcomings by giving them direct attention. Action items – and the parties responsible for addressing them – should be documented and assigned to a particular individual to help ensure appropriate follow-through. And one individual should be given the responsibility to report to the Chief regarding progress of any action items on a regular basis.

The next phase of our proposed model would entail a formal administrative investigation into the performance of involved and witness officers. This should necessarily include an interview – even if officers gave statements as part of the criminal investigation. The goal is not to re-hash the initial interview but instead to ensure that the wider “lens” of administrative issues is encompassed in terms of the topics that are covered, including tactics and any efforts at de-escalation. And standardizing this practice – regardless of the circumstances of the particular case – will ideally serve to remove any stigma associated with the investigative process. The theory of conducting the investigation is that these incidents are *inherently* worthy of formal and comprehensive review, as opposed to happening only when there are indicia of a potential policy violation.

After assessment by Department leadership of individual officer performance at the conclusion of the administrative investigation (which, in our experience, should happen as soon as is practicable after the District Attorney legal review is finalized), the final phase of the overall process would be a “close out” that formally documents outcomes and provides relevant updates on the status of any action items generated by the

³⁷ This could include, for example, a dispatch supervisor in an incident for which the handling of a 911 call was relevant to the officer response.

incident. Part of that finalization would be to assign a supervisor to conduct a debrief of involved, witness officers and field supervisors regarding any issues identified during the review process.

By making this a regular practice, VVPD would be establishing infrastructure to ensure that critical incidents³⁸ receive the thoughtful, rigorous attention that they deserve. The following recommendations are intended to help guide that process, with a recognition that adaptations may be necessary or advisable.

RECOMMENDATION # 10: VVPD should move away from any operational or strategic philosophy that emphasizes avoiding the potential for public disclosure over the full-fledged engagement in appropriate exercises of well-documented self-critique and remediation.

RECOMMENDATION # 11: VVPD should work to design a robust, comprehensive model for the administrative review of officer-involved shootings and other critical incidents.

RECOMMENDATION # 12: VVPD's critical incident review model should standardize the separate evaluation of each of the following elements as they relate to the underlying case: training, tactics, policy and procedure, equipment, communication and coordination, supervision, and post-incident aftermath.

RECOMMENDATION # 13: VVPD's critical incident review model should incorporate a range of participants to ensure appropriate subject matter expertise and allow for the holistic assessment of these events.

RECOMMENDATION #14: VVPD should incorporate formal administrative interviews of involved and witness officers as a means of assessing performance in all aspects of the case.

³⁸ We advocate an inclusive approach to utilizing this model at the discretion of the Chief of police, to go beyond officer-involved shooting incidents or in-custody deaths and encompass other unique or high-profile events, such as significant uses of force or vehicle pursuits that result in injury or death.

RECOMMENDATION # 15: VVPD's critical incident review model should consist of different phases in order to provide appropriate deference to other processes (such as a criminal investigation into a use of deadly force) while allowing the Department to address time-sensitive, systemic, or non-performance related issues with efficiency and relative immediacy.

Other Internal Review Mechanisms

Use of Force

As discussed above, deadly force incidents are a rarity for VVPD. Somewhat more common are other types of physical force that are used in the context of taking individuals into police custody. It is certainly and significantly the case that such encounters occur in a small fraction of a year's worth of police contacts and arrests.³⁹ However, force deployments of any kind are an exercise of police authority that raise issues of accountability, compliance with policy, officer safety, liability, and the rights of individuals who are involved in these incidents. And though it is less common for non-deadly force cases to rise to the level of public attention, it is incumbent on law enforcement agencies to prioritize clear policy, effective training, and the meaningful internal review of officer performance in each specific force encounter.

In 2021, VVPD counted 41 incidents in which force was used – some of which entailed multiple deployments.⁴⁰ We looked at a sampling of five packages of case materials that the Department provided. Our goal was not to re-litigate or weigh in on specific outcomes, but rather to gain a further understanding of how the Department's processes get applied in relation to the performance of the officers in the field. Our takeaway was that the *potential* of the current system is strong. There were individual elements in the cases we reviewed that fulfilled that potential in the form of close scrutiny and managerial response that extended beyond the "bottom line" finding as to policy compliance. At the same time, we were occasionally puzzled by missing elements in both the underlying packages of evidence and the findings of the "Responding to Resistance Review Team," which is entrusted with evaluating these incidents on behalf of Department management. We discuss those impressions and attendant recommendations for improvement below.

³⁹ Per statistics provided to us by the Department, VVPD receives approximately 50,000 to 60,000 calls for service each year.

⁴⁰ This was slightly higher than other recent years, which totaled 30 and 37 incidents respectively.

The Process

The standards for use of force by VVPD officers are featured within a lengthy policy that also describes obligations for reporting and initial supervisory responsibilities. The latter include responding to the scene, addressing any injury needs, conducting an interview with the subject, identifying witnesses, and taking photographs. This information-gathering is clearly appropriate, and the handling supervisor is also expected to triage the incident for potential policy violations. But there is a lack of clear direction regarding actions the sergeant's "preliminary review" is meant to take in terms of compiling the evidence, offering analysis of the known facts in light of relevant policy, or making individualized findings. Instead, much of the formal responsibility rests with the "Responding to Resistance Review Team,"⁴¹ which we understand was developed in 2019 in order to enhance the evaluation of force cases.

We think the concept is quite good – and goes beyond what many agencies do in this important arena. Per policy, the Team is responsible for reviewing all uses of force and to make recommended findings (which we discuss in more detail below). The Team is comprised of five members: the Professional Standards Division lieutenant, the Division Commander of involved personnel, a "Defensive Tactics Team" supervisor, the City Attorney or an Assistant City Attorney, and a subject matter expert for any specific force options that were utilized. It appears from the records of our examples that other attendees occasionally participate as well. In theory, this combination of voices and perspectives seems to lend itself to the kind of thorough analysis and robust discussion that produces effective review.

Prior to meeting, the Team receives copies of relevant information from the incident (including a sampling of the involved officer's body-worn camera footage). Individual cases are then discussed as a prelude to the Board's reaching a formal finding of some kind. Those findings are then memorialized on a standard "Blue Form" template created by the Department, and further action occurs from there if it has been directed by the group.

⁴¹ VVPD is the first agency that we have encountered to frame its "Use of Force" policy as a "Response to Resistance" policy. We question the wisdom of this approach, insofar as it appears to shift the focus on to subject behavior and to assume that resistance has in fact occurred.

We ended up with questions about each of those elements, particularly in relation to their execution in the specific cases we studied. Accordingly, we believe there is room for VVPD to strengthen its existing process in a few different ways.

Our first of these observations relates to the evidentiary “package” which the reviewing Team apparently receives. Our experience with five recent examples suggests that this is not a uniform process – and that relevant information or evidence was not always available. (The policy appears to leave production of materials to the discretion of the involved employee’s chain of command.) Body-camera recordings were generally excerpted instead of posted in their entirety, and were occasionally omitted altogether for one or more cameras in cases involving a multi-officer response.⁴² The recorded statements of subjects about the incident were also not included, even when they were reportedly acquired. (Nor did we see examples of supervisors documenting/summarizing their contact with subjects in written case reports.) The packages also do not seem to include any medical records or photographs of injuries, or copies of radio traffic, or other potentially significant evidence.

Some of this may be a product of the limited “infrastructure” that the Professional Standards Division has in terms of support staff and administrative resources, a concern we discuss in more detail below. And, while there are efficiency arguments in favor of limiting the number of materials that reviewers are asked to consider, we would advocate a more standardized and inclusive approach.

As for the discussion that ensues at the Responding to Resistance Review Team meetings, participants have shared with us their perspective that the substantive conversations are often thorough, wide-ranging, and spirited in identification and processing of issues. We hope this is the case, but the documentary evidence is sparse – or even minimalist – in this regard. Accordingly, it is difficult to know whether individual elements of the incident were covered at all, and if so with what analysis or takeaways.

In one incident we reviewed, for example, an officer conducted a vehicle pursuit of an auto burglary suspect whom he came to believe was armed. Officers eventually terminated the pursuit out of safety concerns, and the subject crashed shortly thereafter. Other officers responded to radio traffic and arrived at the scene at different times; one

⁴² Our understanding is that the key excerpts are identified and provided for convenience of the reviewers. However, all participants also have access to the full library of relevant recordings, which they can and do assess at their discretion.

ended up in a foot pursuit that culminated with a confrontation as the subject reached a wall at the back of a property. The officer kicked at the subject repeatedly while keeping his weapon drawn. Then other officers arrived, and one deployed his Taser before placing it on the ground to assist his partners with handcuffing as the suspect continued to struggle.

At that point, an additional officer picked up the Taser with the intention of administering a second cycle to incapacitate the subject – but inadvertently fired a second cartridge and struck one of the other officers in the leg, administering a short electric charge. The subject was safely taken into custody shortly thereafter.

This was a case with several challenging tactical issues, the use of multiple force options, and a notable – if ultimately not consequential – mistake by one of the VVPD participants in accidentally using a weapon against a fellow officer. But the sum total of Review Team documentation was the finding that “no further action was required,” and there is no indication of any further follow-up. If a robust and holistic discussion of the incident did occur, it is not evident from the formal paperwork and does not appear to have led to any response, remediation, or improvement.⁴³

Another of the cases we looked at that similarly concluded “no further action” was a straightforward Taser deployment that, in our view, raised debatable questions about the officer’s tactics and whether the deployment (at an unarmed individual who was running away from a detention) was consistent with policy requirements. While we are open to the idea that the force was justified (and note the officer’s own detailed rationale for her actions in support of that concept), the formal record is quite sparse – and thus not as persuasive as it might easily have been.

To the extent this lack of detailed documentation is an outgrowth of the same transparency concerns we discuss above, we reiterate our hope that VVPD will move away from this strategy. Thoughtful analysis and appropriate intervention will

⁴³ Interestingly, the officer who mistakenly deployed the Taser was a supervisor who had arrived on scene to assist. Our understanding is that supervisors ideally refrain from going “hands-on” themselves so as to better be in a position to manage and oversee. Nothing in the record suggests this was noted, assessed, or addressed by the Team as part of the review. At the same time, in our discussions with VVPD leadership about this case, they mentioned two relevant things: the Department’s own preference for greater detachment by supervisors at the scene, and the sheer necessity in many instances of supervisors getting directly involved because of the staffing limitations we cite elsewhere.

necessarily redound to a law enforcement agency's benefit, and the development of a formal record of those efforts will help ensure that these goals are met.

On the other hand, a third incident we reviewed showed some of the strengths of the current process. It involved the pursuit and eventual apprehension of a burglary and assault suspect. VVPD officers engaged in a high-speed pursuit that lasted for over eleven minutes and included unsuccessful attempts to stop the driver with a PIT maneuver and spike device. Eventually the subject's car was disabled, and a foot pursuit ensued. It culminated in three different VVPD officers' using their Taser (one while simultaneously holding his duty weapon in contravention of policy). One successfully struck the subject with Taser probes, and he was then taken into custody.

Encouragingly, several issues were identified by the Review Team as warranting further attention. These included deficiencies in the involved officers' reports, failure to warn before Taser deployment as required by policy, weapons control deficiencies, and gratuitous profanity that was directed by the officers toward the subject after he was handcuffed. We also noted the existence of supplemental memos that explained the specific concerns and the steps – included directed retraining – that were taken to address them. These elements reflect careful scrutiny, appropriate response, and effective documentation.

However, we noted *other* aspects of the same incident that we would have hoped received more attention (including the initial decision by one officer to engage the subject with his weapon drawn, which preceded the vehicle pursuit as well as the foot pursuit subject believed to be armed).⁴⁴ This is consistent with our idea that effective internal review should be holistic rather than narrowly focused on specific “bottom line” elements. And the process seems to lack a methodical way of making and itemizing clear, overt determinations regarding the actions of each officer in scenarios like this: encounters that involve multiple people and multiple force options.

We now turn our attention to the “findings” portion of the process. As it stands, the protocols for the Review Team call for it to choose from a menu of four options. They are as follows:

⁴⁴ While the pointing of a firearm is not classified as reportable force by VVPD (a common position that some California agencies are re-evaluating), the Department does provide policy thresholds and guidelines for doing so; compliance with those does not appear to have been evaluated in the cases we reviewed.

- No further action required;
- Training Referral;
- Policy Review; or
- Professional Standards Referral.

Per the relevant policy (303.5.2), Team members are directed to choose *only* one of these options, which at times seems to constrain the evaluation to its detriment. More than one of the examples we looked at seem to have lent themselves to multiple findings, but each was restricted to one.

The “Policy Review” category is also oddly convoluted as described. It encompasses two different circumstances – the identification of a policy revision or training need that the incident has brought to the Team’s attention, *and* the identification of policy violations that are not directly related to the force itself, and therefore apparently resolved outside of the discipline process. And the Professional Standards Referral, which calls for further formal investigation (thus implicating employee rights) is meant to be reserved for “serious failures in adherence to policy, decision-making and/or performance.” This is a standard that is once ambiguous and restrictive in a way that seems to limit the Review Team’s flexibility and deter appropriate accountability.

In short, we think this process could benefit from some shifts in philosophy and procedure, and make the following suggestions accordingly:

RECOMMENDATION # 16: VVPD should engage first-level supervisors in a more substantive and documented summary of their investigative efforts and preliminary conclusions as to policy compliance and other potential issues.

RECOMMENDATION # 17: VVPD should eliminate the “Response to Resistance” concept and revert to describing officers’ activity as “Use of Force”.

RECOMMENDATION # 18: VVPD should ensure that body-worn camera recordings for all officers, and other evidence such as photographs, dispatch recordings, and subject statements, are included in the package of materials that is provided for the Responding to Resistance Review Team.

RECOMMENDATION # 19: VVPD should re-structure the policy and procedures of the Responding to Resistance Review Team to provide for a more methodical, consistent, and comprehensive framing of issues that arise from each use of force incident.

RECOMMENDATION # 20: VVPD should change its “Blue Form” and attendant policy to increase clarity as to the Responding to Resistance Review Team “findings,” and should provide the Team with greater flexibility in addressing the various issues that may arise within a single incident.

RECOMMENDATION # 21: The Response to Resistance Review Team should take an inclusive and holistic approach to evaluating incidents, to encompass tactics, decision-making, supervision and other features of officer response as dictated by the circumstances of each case.

RECOMMENDATION # 22: VVPD should find ways to ensure that comprehensive analysis of all uses of force is properly documented in some form, and that the discussion points of the Response to Resistance Review Team are captured in a more comprehensive manner.

As for other issues, we take this opportunity to comment briefly on officer profanity, which was a feature in more than one of the cases we looked at (and was expressly addressed by the Review Team in one). We are quite familiar with the reality of law enforcement profanity in relation to force encounters (and other interactions), and we recognize that officers are human beings and that these situations are inherently tense. We are also well-versed in the notion of “tactical profanity,” by which officers profess to consciously strengthen their language in order to convey seriousness and cut through resistance at the lowest possible level.

At the same time, and in the era of body-worn camera recordings (to say nothing of cell phone videos), it is worthwhile to note a couple of things. The first is that “not all profanity is created equal,” and that the above justifications cited by officers are not always applicable to the specific circumstances in which questionable language is used. And the second is that these moments remain noteworthy to the average member of the public, and can suggest that an officer is either out of control or gratuitously hostile – neither of which is ideal.

Accordingly, we encourage VVPD to give attention to this concept as needed, and to have reviewers take note of instances of profanity and address them as appropriate to the circumstances.

RECOMMENDATION # 23: VVPD should continue to remind its officers about effective verbal communication and the detriments to the use of profane or abusive language, and should make the notation of and response to such instances a component of the force review process.

Lastly, we encourage the Department to be more overt in its promotion and monitoring of principles of de-escalation as they apply to these incidents. “De-escalation” is a term that covers a range of tactics and strategic approaches.⁴⁵ These include communication techniques and concepts such as distance and cover that afford officers more time for reaction as they are encountering a potentially resistant individual. More broadly, the goal is to seek ways to defuse tensions, slow the encounter down to the extent possible, and minimize the need for split-second decisions and force deployments where possible

While VVPD does have relevant policy⁴⁶, and while de-escalation has long existed as a concept that law enforcement has sought to instill in its personnel, we have seen other agencies respond more directly to the new levels of public (and statutory⁴⁷) awareness and expectation.

With this in mind, we suggest that the Department make references to de-escalation (and any decision-making as to reasons for foregoing it) an expected part of the involved officers’ report-writing process, and a standard component of the subsequent review process.

⁴⁵Many law enforcement agencies think of their less-lethal equipment as having a de-escalation component, to the extent that it allows officers to engage more safely and increases the time and space with which they can interact with a subject without committing to a physical contact.

⁴⁶Policy 300.3.5 “Responding to Resistance/Alternative Tactics – De-escalation” states that “[a]s time and circumstances reasonably permit, and when community and officer safety would not be comprised, officers should consider actions that may increase officer safety and may decrease the need for using force.”

⁴⁷The new Penal Code standard for deadly force (835a) makes direct reference to efforts at de-escalation as part of the “totality of the circumstances” that go into the determination of objective reasonableness.

RECOMMENDATION # 24: VVPD should change its report writing policy to require that involved officers document any efforts at de-escalation and expressly note any circumstances making such techniques impracticable.

RECOMMENDATION # 25: VVPD should change its force review policy to expressly require any force evaluation and review to consider whether efforts at de-escalation were consistent with Department expectations.

The Complaint and Misconduct Investigation Process

With issues of police accountability gaining new levels of attention in the past couple of years, issues regarding the legitimacy and effectiveness with which law enforcement agencies conduct internal investigations are once again at the forefront in many jurisdictions. In places where public skepticism exists, two structural realities have long been at the heart of those doubts.

The first relates to perceived conflicts of interest when it comes to departments having responsibility for investigating complaints against their own personnel. And the second is the insularity/confidentiality of the process. Though there have been recent statutory shifts in the direction of further public access to records in cases involving some narrow categories of serious misconduct, for decades California law has treated the majority of personnel records as private and confidential. Though state law requires that all complainants receive notification letters at the outcome of investigations they have initiated, details are generally quite limited; accordingly, many people who participate in the process come away with questions about whether their issues received proper attention.

One approach to addressing this dynamic is to entirely remove investigative and decision-making power from the agencies and put it instead in the hands of an independent entity. But there are pitfalls and challenges to this paradigm.

In our view, a police agency's internal disciplinary system is integral to its overall effectiveness for reasons that both include and transcend the critical importance of public trust. An agency's ability to identify, investigate, and address performance issues of every kind is central to preserving its own standards. And it is the agency itself, with input and engagement from its community, that is best situated to set appropriate expectations and ensure that they are being met. The vast majority of policy violations that do occur are not serious enough to warrant dismissal from the organization. That means that meaningful remedial intervention into the lower-level performance lapses

that do arise is integral to the future performance of the relevant employee and the organization as a whole.

So, although the proper handling of egregious misconduct cases is an obvious necessity, it is only one component of a high-functioning system of administrative discipline. The others include fairness, consistency, timeliness, and “constructive rigor” – a willingness to hold people formally accountable in ways that are intended – and perceived – as beneficial instead of demoralizing or nitpicking.

This is the prism through which we evaluated VVPD’s internal discipline process. Our first impression is that the Department would benefit from additional resource dedication to the Professional Standards Division. We recognize that the same could be said of many of the Department’s functions; restoring budgeted staffing levels will ideally be a realized goal for VVPD in the months ahead. But the designated lieutenant for Professional Standards is effectively a “one-man operation” across several important administrative functions – including coordinating the Use of Force Review process we describe above – and a redistribution of responsibilities might enhance the Department’s ability to deliver on the components of effective accountability we describe above.

It is our understanding that 15-20 new external complaint cases has been the rough average submitted in recent years. Our lengthy experience in reviewing such data has led us to believe that numbers alone can be subject to different interpretations – a low volume could well reflect the excellence of the agency and the high degree of public satisfactions, but might also be attributable to a lack of trust in the process, or a lack of awareness about the availability of a complaint process in the first place. In relation to the other California agencies with which we are directly familiar, the amount is comparable on a proportional basis, though there are outliers in either direction.

We do, however, take this opportunity to share our observation that the complaint process could be more accessible in the most fundamental ways. Specifically, we noted on a recent visit that a shelf of forms available to the public at VVPD headquarters did not include the complaint form. And, while the form itself can be obtained via the Department website (along with some clear and useful information about the process), it is not clearly featured on the homepage or intuitively reached through the different menu options. We see this as an easy improvement to achieve.

RECOMMENDATION # 26: VVPD should make printed complaint forms accessible to the public in the lobby area of Department headquarters, and should more clearly feature the “Complaints and Commendations” link on its public website.

Along with potential new approaches to a sharing of investigative responsibility, we highly recommend that the Department invest in a software program that would allow it to create centralized investigative files and records, improve tracking and record-keeping, and therefore better organize its complaint review process. We looked at a small sampling of recently completed investigations, including five that were generated by citizen complaints.⁴⁸ The packages that we received were lacking in many of the materials we would have expected to see (and hope that internal reviewers were able to access), including body-worn camera video and recordings of interviews with complainants or other involved parties. We are aware of numerous agencies who compile those materials comprehensively and maintain them for easy, centralized access for reviewers – and as a readily attainable record of the Department’s individual and collective investigations.

RECOMMENDATION # 27: VVPD should invest in a software program that would standardize and facilitate its administrative investigation process and allow for the convenient collection and storage of investigative materials.

A second concern relates to the consistency with which complaints from the public are documented and resolved. Our understanding from different discussions with Department management is that supervisors who receive complaints in various forums have latitude in determining whether they rise to the level in which a formal inquiry should be initiated. Part of this calculation appears to be the preference of the complainant, or the extent to which the sergeant is able to “smooth over” the issue with explanations or assurances.

Although there is some validity to a “customer-centered” approach with regard to public complaints about officer behavior, we also see the pitfalls in it. In our view, an allegation of misconduct, even if minor in nature, is meaningful feedback in and of itself, and warrants some level of Department review independent of the complainant’s

⁴⁸ The officers were cleared of misconduct allegations in each of the five.

subjective outlook. In the same way that a frivolous or clearly baseless complaint should not be given undue attention just because of the insistence of an unreasonable member of the public, a potentially legitimate one should not be sidestepped just because the complainant decides (or is persuaded) that formal measures are not necessary.

Accordingly, we encourage the Department to document all complaints from the public and to engage in some level of initial review as to their merit. We support the idea of sergeant-level supervisors being entrusted to conduct a triage process based on readily available information. For agencies like VVPD, an assessment of body-worn camera evidence is often a reliable, definitive means of determining whether further investigative action is warranted. A memo that explains the steps that were taken and brings ownership to any attendant decision-making would help preserve the legitimacy of the process.

RECOMMENDATION # 28: VVPD should limit supervisory discretion to dispense with complaints informally based on perceptions of complainant preference or level of satisfaction.

RECOMMENDATION # 29: VVPD should revamp its complaint intake process so as to ensure that allegations of misconduct are documented and addressed in a consistent, inclusive fashion.

RECOMMENDATION # 30: VVPD should assign sergeants to handle the documentation and initial assessment of public complaints, so as to enlist them in the Department's commitment to accountability and assist the Professional Standards Division in performing its important duties

A third issue relates to uncertainty about VVPD's standard for accountability. Again, this is difficult to measure in light of a small sample size, within which the officers were primarily exonerated. But we heard repeatedly about a Departmental culture of disinclination to find fault with officer behavior, to side with officers in cases with ambivalent evidentiary findings, and to mitigate consequences in those situations where policy violations have been determined to occur.

We find the very low annual number of Department-initiated (as opposed to complaint-generated) misconduct investigations to be noteworthy, and consistent with our

impression that a rigorous accountability and discipline process for lower-level policy issues is not a current cornerstone of the agency's approach.

The one case in our sample that was internally-generated involved unprofessional conduct by an officer at the firing range. The officer acknowledged the issue in an email to his supervisor and the case was resolved very swiftly with an imposition of low-level discipline. And while this was fine, we also had the sense that the incident warranted a more rigorous assessment – including a formal interview with the officer that could have explored his actions more thoroughly (and which did not occur).

We do not advocate formal or stern discipline for its own sake, or out of a hostile desire to punish or penalize. But we do see a nexus between disciplinary outcomes and agency performance, both at the individual officer level and as a means of reinforcing expectations for the Department as a whole. When questionable conduct is overlooked, or treated with undue leniency, the particular officer's short-term windfall often comes with longer-term costs.

We also encourage the Department to look at complaint and misconduct cases holistically, and to go beyond the policy determination when there are other lessons to be learned and insights into improved performance to be gleaned. Ideally, the administrative discipline process serves as an opportunity as well as an important obligation and we are not certain that VVPD approaches it in this way.

Another area of interest for us is the effectiveness of communication with those people who do register complaints. As we mention above, state law requires notification as to case outcomes, but has otherwise constrained the amount of information that a law enforcement agency can share (so as to protect the privacy rights of involved personnel). Still, it has been our experience that departments have more latitude than they have traditionally exercised, particularly with regard to personalizing the responses and sharing process-related details that help convey the basis for the outcome and the legitimacy of the agency's investigation.

We found the VVPD notification letters we reviewed to have an effective tone, and to be better than those of many peer agencies in providing indications of personalized attention (particularly with regard to recapping the allegations raised by the complainant). One additional suggestion, though, would be to include a

description of investigative efforts and the types of evidence that shaped the case's disposition.

RECOMMENDATION # 31: VVPD should work to further personalize its notification letters to complainants (while remaining consistent with the legal privacy rights of officers) in order to provide more information (such as details about investigative steps) and better assure participants in the process as to its legitimacy.

Lastly, we take note of the fact that, in the past couple of years, the three misconduct cases involving the most serious allegations were each handled by an outside, independent investigator. There are advantages to this approach, and we are aware of other agencies that have successfully adopted it. At the same time, and to return to our initial theories as to the importance of agency control, it is important that the work of the outside investigator provides a thorough and objective basis for the Department's leadership to then take appropriate action – and appropriate ownership of the consequences.

Other Operational Issues

Performance Evaluations

The annual review of law enforcement agency employees by their supervisors is an interesting window into a department's culture. It can easily be perceived as chore rather than a meaningful opportunity for assessment and growth, and the temptation presumably exists to "take the path of least resistance" by leaning in the direction of praise and compliments that may or may not be based on detailed, thoughtful analysis. We have worked around organizations that fall behind a year or more in their completion of the reviews, that have tried a range of approaches without settling on something meaningful, or that go through the motions of critique without true engagement – or impact on the evaluated employee's performance. Stories are legion about officers whom a given agency wishes to discharge after a history of missteps, only to have that person point to glowing (if superficial) annual reviews in his or her own defense.

With that in mind, we looked at a sampling of 10 VVPD performance evaluations that were completed (with overall punctuality) in the aftermath of the 2021 calendar year. We asked for and received a mix of line-level officers, supervisors, and civilian staff. And we were impressed with the Department's approach and the results it produced.

VVPD utilizes a lengthy, detailed template to guide its supervisors through the process. It calls for individualized ratings across as many as 14 categories (each with several subheadings), and requires supervisors to choose between "Below Expectations," "Meets Expectations," and "Exceeds Expectations" for each topic area. These, in turn, provide the basis for an overall performance rating.

Importantly, the form is accompanied by a narrative section. In each instance we looked at, the supervisor made effective use of this opportunity, providing paragraphs' worth of description and supporting details to explain the basis for the accompanying ratings. Our sense was that the supervisors were invested both in the process and the well-being of their subordinates.

The template also includes a “pre-evaluation” form which prompts the employee to reflect on his or her own experiences of the year. There is an opportunity to highlight accomplishments, to discuss training opportunities and any takeaways that resulted, and to list community involvement where applicable.

The individual ratings of the officers tended to be quite favorable, but not universally so. There was nuance and variation across specific categories. And, to the credit of both the reviewers and their subjects, when employees were found to have “exceeded expectations,” there was ample supporting evidence to justify the decision.

One suggestion for what appears to be an unusually effective process is something we have seen elsewhere, which is a more formalized approach to the identification of specific goals. While some of the supervisor narratives included the reviewer’s hopes for the continued development of the employee, and while we saw that at least one civilian employee had attached a “formal goal plan” form to her own pre-evaluation documents, this did not seem to be standardized. It easily could be, and would add further focus to a process that is impressive in many respects.

We also find that a discussion of the evaluative criteria used to measure performance is ideally suited to a larger community discussion. As the public has come to expect more involvement in how public safety is performed in its City, receiving feedback from them on the traits that they would like a Department to incentivize provides a meaningful outreach exercise, free from the confidentiality concerns of internal investigations and uses of force. Whether organized as a general outreach session or targeted to leading luminaries in the community, receiving regular feedback from its public on officer traits that align with public expectations allow for the evaluative criteria to be partly defined by the public that officers serve.

RECOMMENDATION # 32: VVPD should add a “goals” section to its performance evaluation process in order to more concretely encourage (and subsequently measure) an effort at continuous development.

RECOMMENDATION # 33: VVPD should consider engaging with its public in order to receive feedback on the qualities expected of its officers and customize its evaluative process accordingly.

Community Engagement

In what is clearly a time of transition for law enforcement across the country, one of the more pronounced shifts is toward a higher level of community involvement in police operations. There are many facets to this concept.

The most traditional is the kind of positive outreach activity that connects police and the public at planned “meet and greet” events like Coffee with a Cop, or promotional appearances at schools and parks and other public gatherings. We see value in these opportunities, and it is to the Department’s credit that it prioritizes them. Clearly, VVPD appreciates the warm support that so many residents offer, and works to preserve it through outreach as well as its commitment to a safe city. Our understanding is that the Department has a civilian employee who is energetically involved in the coordination of such events, and this attention is an asset.

But at the same time that ongoing relationships with supporters need to be nurtured, a growing new paradigm asks law enforcement agencies to seek connection with – and input from – voices that may have a different experience of community life in general and policing in particular. This is a more complicated challenge, and part of why the dynamic during the local protests was frustrating to Department leadership was the seeming unwillingness of some of the activists to participate in dialogue. But it is a challenge that is worth pursuing in Vacaville, and should remain a priority even if the atmosphere of overt rancor has receded.

The need for more outreach and listening was a recurring theme at the Community Policing Forum we attended in June. To the Department’s credit, it not only acknowledged this sentiment as a reality but appeared to embrace it. Here we offer some specific suggestions that are meant to assist in this process.

One of the officers we spoke with at length emphasized the importance of “hard conversations” that solicit the perspective of individuals or groups who may not be traditional allies of the police. Bridging gaps and removing barriers can be painstaking work, but we are aware of agencies that have made interesting inroads in this regard by

specifically identifying organizations and leaders that represent marginalized groups.⁴⁹ The development of relationships over time can foster further avenues of connection, and promote better mutual understanding.

RECOMMENDATION # 34: VVPD should explore the innovative outreach programs recently implemented by other agencies that are specifically designed to enhance communication and connectivity with groups that are often marginalized in the community and/or distrustful of the police.

A starting point for that process is for officers to have a mindset that prioritizes grassroots interactions with residents, business owners, and community leaders. The development of District-based patrol initiatives (including the District Commander concept we discuss above) seems to us to be a step in a positive direction. But we also think the Department can provide further incentives by establishing specific expectations – and by making community engagement a more overt part of its evaluation process for officer performance.

RECOMMENDATION # 35: VVPD should further actualize its commitment to consistent and broad-based community interaction by developing incentives and mechanism for all officers to focus on localized relationship-building.

K9 Program

Police dogs have been a part of law enforcement for decades, and occasionally in controversial ways. Their association with abusive crowd control during the Civil Rights era is a lingering image in the minds of many people, and the dogs are inherently imperfect. More recently, the uncontrolled use of police canines has caused police agencies to be subject to federal “pattern and practice” consent decrees. Accidental bites, and unintentionally serious injury in

⁴⁹ Two examples that have impressed us of late are the “Voices” initiative by the Santa Barbara Police Department, and the “Bridges” program sponsored by the Anaheim Police Department.

apprehension cases, are a longstanding source of liability and public concern in many of the jurisdictions that have a K9 program.

For Vacaville, which has a roster of four service dogs that are assigned to patrol and assist in suspect search and apprehension, the controversy came from a very different place at the end of December 2020. This was, of course, the episode in which a VVPD handler was recorded on a cell phone video in the act of punching his dog during a training exercise. The public outcry was remarkable in its depth and intensity, and it certainly added to Department members' sense of feeling newly besieged during what was already a time of unprecedented antagonism. To this day, Department dispatchers regularly reference the thousands of calls – many of them quite vitriolic – that they received from around the world. And as recently as the September community listening session we mention above, one of the few notes of criticism from attendees related to that case.

That matter has already been the focus of considerable internal attention (including an administrative investigation into the handler's conduct). Importantly, it also prompted an in-depth audit of the program by a subject matter expert. We have reviewed that report, which was completed in April of 2021, and were impressed with its thoroughness and insights. It also included a number of specific recommendations.⁵⁰

In speaking with a supervisor who led the K9 program until his recent promotion, VVPD remains committed to its use of police dogs and believes in its effectiveness as a support to patrol operations. Last year there were 12 arrests that involved a K9 bite as part of the apprehension – and 66 in which the K9's were deployed but helped to effectuate the arrest without a bite.⁵¹

Team members have 16 hours of training with their dogs per month, and regularly overlap with SWAT training exercises to ensure the effective coordination of their operations. And each bite incident is documented and goes through different levels of assessment, within the unit and then as part of the Department's general force review process. The Department appears to have a

⁵⁰ To the Department's credit, the audit is posted on the VVPD website.

⁵¹ For advocates of K9 programs, the role of police dogs in serving as an incentive for the safe surrender of subjects is an important component of their value.

consciousness of the inherent liability issues associated with the use of police dogs, and is focused on guarding against it – with apparent success.

We have been advised by VVPD’s subject matter experts that the formal audit of the K9 program that was completed last year featured a number of helpful insights. It is our understanding that several of the recommendations that arose from that process have been implemented. But we also think there could be value in the Department’s updating the project, and continuing its process of moving forward from the punching controversy, by providing a formal and public status report that responds with particularity to each of the auditor’s recommendations.

RECOMMENDATION # 36: VVPD should revisit its 2021 K9 audit process by providing a public update as to the status of any recommendations for enhancing the program that were provided in the auditor’s final report.

Social Media and Public Information

VVPD has made a significant commitment to utilizing social media as a platform for sharing information with the public. Its Facebook has some sixty thousand followers, which is a tribute not only to community interest but also to the energy and skill with which its team of internal contributors curates the site. We had the opportunity to speak with the sergeant who leads the program, and spent time on the site ourselves in forming generally favorable impressions.

The idea for developing the Department’s social media presence dates back to 2014, when a VVPD lieutenant who was concerned about law enforcement’s portrayal in the national media expressed an interest in finding a forum for sharing ideas, perspectives, and information that the public may not otherwise have heard.⁵² The hope was to narrow the gap between prevailing critical sentiments and the experiences (and viewpoints) of actual officers. The site has evolved from there – and interestingly includes a high level of engagement with individual commenters.

⁵² This was in the aftermath of the controversial officer-involved shooting in Ferguson, Missouri that touched off a period of intense protest and scrutiny of American policing – very much a predecessor to the larger and more transformative movement that followed the murder of George Floyd in 2020.

Per the team leader, the dual focus of the site has been the dissemination of planned news and information about Department events, and community engagement. Approximately 15 VVPD employees (a mix of sworn and civilian personnel) volunteer to help curate the page as a collateral duty.

Recent postings include an informational feature on the Department's Forensic Evidence Team, real-time updates on enforcement activity, requests for assistance in identifying suspects, recruiting bulletins, City notices, the sharing of positive community interactions, and lighter features such as a commemoration of "National Dog Day." The site is appealing and works well, and it seems to be an asset to the agency and to the community.

At the same time, we hope the Department will avoid some of the pitfalls that come with maintaining control over "messaging." One would be an overly narrow lens that does not incorporate (or remain attuned to) the full range of community perspectives.⁵³ And another would be a lesser inclination to engage with (or "bother with") the mainstream media, which remains an important source of news for large swaths of the community. The media's access to the Department, and its attendant ability to ask uncomfortable questions or seek a range of information, should be recognized as an enduring obligation that VVPD should facilitate.

RECOMMENDATION # 37: VVPD should continue to utilize its social media platforms in providing valuable information and contributing to Department efforts at community outreach – with an emphasis on inclusion.

RECOMMENDATION # 38: VVPD leadership should work to ensure that its ability to connect with the public via social media does not preclude it from engaging regularly and cooperatively with outside media entities.

With regard to more traditional models of information-sharing, the Department collaborates with the City's "Public Relations Manager," a newly developed position that operates within the City Manager's Office. This approach is a fairly standard one, and our understanding is that it has worked well during its initial

⁵³ We were surprised to note, for example, that the site did not appear to help publicize the recent Community Policing listening sessions that occurred this summer.

months. Ideally, it will also function effectively when the public response to a sensitive future event becomes necessary. For that to happen, the subject-matter expertise of police personnel must integrate well with the larger mandate and communications expertise of the information officer.

The importance of this is clear from recent events in Vacaville. We heard repeatedly that the “dog punching” incident from December of 2020 was exacerbated by an initial press conference in which a Department manager defended the officer’s actions in a way that to many observers seemed premature – and did little to assuage the strong emotions that the video had generated.

In our view, the effective public response to a critical incident has certain core characteristics. These include accessibility, candor, an acknowledgment of public concern, and an emphasis on process that provides reassurance as to the steps that will be taken to investigate and address issues as needed. And they minimize any inclinations toward defensiveness or “spin.”

These are all values that are consistent with the transparency requirements that we discuss elsewhere, and that have direct implications on the amount of information the public is entitled to know. We hope the Department will emphasize these principals in coordination with other City officials if and when the need to do so arises.

RECOMMENDATION # 39: VVPD should continue engaging with the City’s Public Relations Manager and further develop its own philosophy of candid and constructive information-sharing with the community, particularly in conjunction with high-profile or controversial incidents involving its personnel.

Coordination with City Attorney's Office

In ways that are neither surprising nor unique to Vacaville, the Police Department is the City Attorney's largest "client" from a litigation perspective; it generates about half of the City's annual claims and lawsuits. Many of these are fairly routine and low-damage traffic accidents, but there have been other recent cases involving allegations of excessive force and other civil rights violations. Some have resulted in significant payouts as a function of settlement talks.

Without commenting on the particulars of any of those matters, we do have a perspective on the importance and value of regular, constructive interactions between police agencies and the lawyers who represent them. Litigation issues are certainly a component of this idea, and the flow of communication works best when it happens in both directions.

Ideally, a police department will have a regular protocol for apprising legal counsel of incidents with liability potential. Their willingness to share information candidly – even when the Department is not in its best light – is critical to proper assessment of legal strategy and the mitigation of potential exposure. But it also important for law enforcement to solicit the input of its legal experts in terms of gaining feedback from the litigation process, devising meaningful corrective actions, and focusing on future risk management.⁵⁴

Our understanding is that this does happen in Vacaville, and we consider it a paradigm worth reinforcing. And our appreciation of the current dynamic is heightened by our sense that the City Attorney's Office philosophy of liability management, and its level of engagement, do *not* extend in one of the problematic directions we sometimes see. Specifically, we mean the strategy of discouraging or suppressing rigorous internal review and remediation during the pendency of open cases, so as not to complicate the City's legal position.

⁵⁴For example, this review benefitted from a creative provision in the settlement agreement coming out of the use of force case involving the autistic juvenile. Pursuant to that agreement, we were afforded the opportunity to talk with the juvenile to gain his perspective about the event.

As we say elsewhere in this Report, we consider this approach to be not only short-sighted but also strategically dubious, insofar as a commitment to needed improvement ultimately reflects well on an agency that embraces it. Accordingly, we are pleased to be informed that the City Attorney's Office has in fact *encouraged* the Department to be thorough, thoughtful, and timely in its administrative responses to identified issues. Ideally, and consistent with other recommendations here, VVPD will itself embrace that mindset more comprehensively.

We also take approving note of the Department's willingness to actively engage the City Attorney's Office in other aspects of its administrative operations, including the force review and discipline processes.⁵⁵ The perspective of an independent outsider with knowledge of policing and legal insights is, in our view (and based on our own extensive experience) an extremely valuable one. It enhances the thoroughness of the process and the effectiveness of outcomes, and we encourage the Department to continue to prioritize and accommodate that input.

RECOMMENDATION # 40: VVPD should remain committed to incorporating the input of the City Attorney' Office into its internal review processes, and should maintain regular and collaborative communications with that Office as it addresses administrative issues involving it policies, procedures, and personnel.

⁵⁵ In fact, our understanding is that VVPD's 2019 development of its "Responding to Resistance Review Team" protocol, which we discuss at length elsewhere and see as having a number of actual and potential benefits, was at least partly a response to the encouragement of a City Attorney's Office representative.

Conclusion

In the various jurisdictions we have gotten to know throughout California and in other states since 2020, we have met countless officers and police executives who have acknowledged the challenges of navigating the contemporary “post-George Floyd” era. New state legislation has changed the parameters for authorized use of force, has influenced the standards for officers to gain or keep employment, and has provided new levels of public access to once-confidential files and records. And local governments – and the communities they represent – have supplemented these concepts with their own willingness to raise questions or push back against established practices.

For many law enforcement members accustomed to strong support, the lost “benefit of the doubt” and the heightened negativity have been as difficult to absorb as any of the aforementioned substantive adjustments. Demands for reform have strained morale and challenged agencies’ ability to adapt to a new environment.

In short, it has been a unique “pendulum swing,” with consequences that are continuing to unfold. And, in many ways, the reform movement and accompanying narratives have been uniquely disorienting for departments that pride themselves on their dedication to the community, the strength of their positive agency culture, and the effectiveness of their enforcement efforts.

The City of Vacaville has such a Police Department. And, as we hope this Report conveys, that pride is justified for many reasons. VVPD does many things well, and has exceptional features that the City will ideally continue to recognize and support. Several of our recommendations revolve around the continuation, resumption, or reinforcement of meritorious initiatives that the Department has established in the past. And we should also note that – for all the energy, stamina, and impact of the protestors who brought the national movement to Vacaville in 2020 – a reservoir of strong community appreciation for the agency has continued to exist and to make its own presence felt.

This reflects well on VVPD's commitments and the service it provides to its residents and business owners.

The challenge for effective agencies is to step back and recognize when new approaches, heightened levels of accountability, and greater responsiveness to a range of voices is nonetheless warranted. For a variety of reasons, Vacaville's government officials saw benefit in introducing a formal, outside assessment of the agency's policies and practices. Although the intensity of feeling that produced this impulse has perhaps dissipated, the exercise remains an important one. And we have identified key areas which we hope the Department will reconsider with an eye toward adopting suggested improvements.

The law enforcement agencies that will best succeed in the new paradigm are likely to be those that most embrace its potential. Rather than taking a defensive or dismissive posture, they will engage with political leaders and community members to ensure that changes truly are constructive, productive, and beneficial to the jurisdiction's overall well-being. And they will raise their own standards for internal review and accountability so as to promote their own operational success and community trust – and diminish the calls for a fractious loss of control over their own processes.

We think VVPD has the tools and the capacity to adopt and benefit from this mindset; in several respects the Department has already begun to do so. We consistently gleaned positive impressions from our interactions with civilian and sworn VVPD personnel of all rank levels and assignments; their skill level and commitment are obvious. The Department's foundation is strong. This bodes well for VVPD's ability to not only make effective adjustments but to thrive in law enforcement's new era.

Recommendations

RECOMMENDATION # 1: VVPD should remain engaged in the project of enlisting and facilitating community outreach as a core function of its operations, with a special emphasis on previously underrepresented or marginalized groups within the City.

RECOMMENDATION # 2: VVPD should work to build on its “District Commanders” model by assigning specific officers as Department liaisons to individual neighborhoods and groups.

RECOMMENDATION # 3: VVPD should prioritize the staffing of the Community Resource Unit as it continues to explore constructive ways of addressing homelessness concerns in the City.

RECOMMENDATION # 4: VVPD and the City should continue to prioritize an ongoing commitment to recruiting and hiring, and should explore ways of addressing current shortfalls in the ranks of sworn officers by redistributing or facilitating applicable tasks through investments in civilian staff and technology.

RECOMMENDATION # 5: VVPD should shift away from a reactive, defensive approach to meeting its obligations under recent state laws that impose new transparency requirements, and should instead pursue a model that takes initiative to release applicable information in a timely, instructive way.

RECOMMENDATION # 6: VVPD and the City should ensure that the Department has the resources to handle Public Records Act requests in a timely and effective fashion.

RECOMMENDATION # 7: VVPD should voluntarily expand on its existing Transparency Portal to go beyond current compliance practices and proactively provide the public with a greater range of information, particularly with regard to its uses of force and misconduct investigations

RECOMMENDATION # 8: VVPD should amend its officer-involved shooting protocol to ensure that involved officers provide an initial statement about their actions and observations prior to viewing any related video recordings, including from their own body-worn cameras.⁵⁶

RECOMMENDATION # 9: VVPD should amend its officer-involved shooting protocol to promote the acquisition of an interview with all involved personnel prior to the end of the shift (except in cases of officer injury or other extreme circumstance), including by conducting a mandatory administrative interview if the officer declines to provide a voluntary statement.

RECOMMENDATION # 10: VVPD should move away from any operational or strategic philosophy that emphasizes avoiding the potential for public disclosure over the full-fledged engagement in appropriate exercises of well-documented self-critique and remediation.

RECOMMENDATION # 11: VVPD should work to design a robust, comprehensive model for the administrative review of officer-involved shootings and other critical incidents.

RECOMMENDATION # 12: VVPDs critical incident review model should standardize the separate evaluation of each of the following elements as they relate to the underlying case: training, tactics, policy and procedure, equipment, communication and coordination, supervision, and post-incident aftermath.

RECOMMENDATION # 13: VVPD's critical incident review model should incorporate a range of participants to ensure appropriate subject matter expertise and allow for the holistic assessment of these events.

⁵⁶ We consider this same concept to applicable to administrative investigations into officer misconduct for which body-worn camera evidence is relevant.

RECOMMENDATION # 14: VVPD should incorporate formal administrative interviews of involved and witness officers as a means of assessing performance in all aspects of the case.

RECOMMENDATION #15: VVPD's critical incident review model should consist of different phases in order to provide appropriate deference to other processes (such as a criminal investigation into a use of deadly force) while allowing the Department to address time-sensitive, systemic, or non-performance related issues with efficiency and relative immediacy.

RECOMMENDATION # 16: VVPD should engage first-level supervisors in a more substantive and documented summary of their investigative efforts and preliminary conclusions as to policy compliance and other potential issues.

RECOMMENDATION # 17: VVPD should eliminate the "Response to Resistance" concept and revert to describing officers' activity as "Use of Force".

RECOMMENDATION # 18: VVPD should ensure that body-worn camera recordings for all officers, and other evidence such as photographs, dispatch recordings, and subject statements, are included in the package of materials that is provided for the Responding to Resistance Review Team.

RECOMMENDATION # 19: VVPD should re-structure the policy and procedures of the Responding to Resistance Review Team to provide for a more methodical, consistent, and comprehensive framing of issues that arise from each use of force incident.

RECOMMENDATION # 20: VVPD should change its "Blue Form" and attendant policy to increase clarity as to the Responding to Resistance Review Team "findings," and should provide the Team with greater flexibility in addressing the various issues that may arise within a single incident.

RECOMMENDATION # 21: The Response to Resistance Review Team should take an inclusive and holistic approach to evaluating incidents, to

encompass tactics, decision-making, supervision and other features of officer response as dictated by the circumstances of each case.

RECOMMENDATION # 22: VVPD should find ways to ensure that comprehensive analysis of all uses of force is properly documented in some form, and that the discussion points of the Response to Resistance Review Team are captured in a more comprehensive manner.

RECOMMENDATION # 23: VVPD should continue to remind its officers about effective verbal communication and the detriments to the use of profane or abusive language, and should make the notation of and response to such instances a component of the force review process.

RECOMMENDATION # 24: VVPD should change its report writing policy to require that involved officers document any efforts at de-escalation and expressly note any circumstances making such techniques impracticable.

RECOMMENDATION # 25: VVPD should change its force review policy to expressly require any force evaluation and review to consider whether efforts at de-escalation were consistent with Department expectations.

RECOMMENDATION # 26: VVPD should make printed complaint forms accessible to the public in the lobby area of Department headquarters, and should more clearly feature the “Complaints and Commendations” link on its public website.

RECOMMENDATION # 27: VVPD should invest in a software program that would standardize and facilitate its administrative investigation process and allow for the convenient collection and storage of investigative materials.

RECOMMENDATION # 28: VVPD should limit supervisory discretion to dispense with complaints informally based on perceptions of complainant preference or level of satisfaction.

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