
Chapter 5

Facilities



FACILITIES

The purpose of this report is to identify those areas of the BART Police Department which meets or needs improvement.

Lake Merritt (LMA) is the headquarters for BART Police Department however, the facility is woefully inadequate. Even though the department has other satellite locations, in better condition LMA is the Headquarters. It should be a show place and the face of the BART Police Department. It is embarrassing to say the least to bring guests and representatives from other departments into the building.

The district has established space standards that have never been applied to the police at LMA. The Chief and Duty Chiefs office's are small; also the clerk's area is very small.

The locker rooms (male and female) are disgusting. The floors are filthy, the lockers dusty and there is some sort of brown stuff running down the walls.

There is only one "holding area", the cell is adjacent to the area where personnel must go for supplies and to write police reports. There is not enough space to interview, more than one subject at a time. The walls are thin, so there is no privacy or confidentiality.

The entrance at 9th and Madison is frequently used for urination and defecation. The stairwells and hallways leading into the LT office smell like urine.

Trying to make conference calls or any other calls is next to impossible, because the sound of trains passing by occur every few minutes.

Major Substations:

- Castro Valley
- El Corrito Del Norte
- Powell Street San Francisco
- San Bruno
- Bayfair (Personnel & Training Background)

Remote Substations:

- Hayward
- Dublin Pleasanton
- Concord
- Walnut Creek
- Pittsburg/Baypoint
- Milbrae



Tour of Facilities

During a tour of the locker rooms, a sign was posted in the women's shower "Parts needed to fix the shower" and was dated August 2005. The refrigerator in the men's eating area was dirty and in need of repair. It was not getting much use by staff because of its condition.

These officers stated that no one cleans their locker rooms and that they only come in to change and go out on patrol. An inspection of the facilities at least once a week would be helpful.

The entire building is being renovated, the building is laced with asbestos and sitting in the office's you can hear the trains running every 15 minutes.

The department has indicated its desire to move to another facility.

When interviewed, some managers stated that the agency had been trying to move for the last couple of years with a lack of success. Managers spoke very respectful and straight forward. A camera was used to take pictures for this report of the police department main office, its satellite facilities and substations (a disk is available for review of the facilities).

On visits to several stations that BART Officers are assigned to. Castro Valley, which is a new station, was in excellent condition, and then traveled to the Dublin station which had a bathroom which was converted to a 10x10 office. Several officers that were there were asked to leave so pictures could be taken, not everyone could fit in the office at the same time. There were no windows in this room and no peep hole in the door. The staff made it clear in several different ways that there is certainly room for improvement at the BART Police main office and some of its substations. The office at Powell Street was clean and well organized.

It would be helpful if the police department conducted an inspection of the all the BART Police facilities to determine what the needs are at each facility and its deficiencies. They should create an inspection sheet to determine what the needs are for each facility along with the deficiencies of each location. These then would be prioritized by a rating system to be provided to BART administration.

The Police Department must continue to make improvement to its facilities and structures even when management fails to meet its needs. Lighting around the facilities is almost nonexistent. There is no signage at the Headquarters building stating that the BART Police are there. The employees want a place to call their own and it would boost their morale and get the customer and public support.

BART must ensure that adequate fencing and lighting exist around all customer parking lots. The exact amount of property under the jurisdiction of BART Police Officers needs to be clearly established, thereby creating a Police perimeter. Police substation need to be accessible to the public and must be constricted and or upgraded to provide adequate space and location flexibility to facilitate the de-centralization process.

Media Relations

The BART police department has been trying for years to have its own media person to speak for the police and to this date that has not happened. The general manager stated that four individuals have been identified to speak for the department, with the media department continuing to take the lead role when the police are involved and no uniform personnel are allowed to speak on camera to the press.

The importance of employing a public information officer within the BART Police department cannot be overstated. They have individuals who have excellent communication skills and a positive attitude. Customer riding the system would look at this as a step forward seeing a uniformed officer as the face of BART when dealing with media print and television. A police public information officer could send a message that the police are on top of any concerns that the riding public may have.

Transit agencies are in the fore front and need to portray a positive image as the first line of safety if a problem should arise.

Recommendations

The BART Police department should be moved to a more professional building with adequate space to accommodate its headquarters staff and clerical personnel.

The substations should be renovated and new furniture would improve the looks of the substations.

The media department should have a member of the police department assigned to its staff to respond to police and related requests. Management can make this happen with a stroke of the pen.

BART Police Management Audit

Topical Area: Facilities

Issue: Space needs for the BART Headquarters and its sub-stations

Current Application or Practice: The agencies headquarters is inadequate and insufficient to support the workload and service demands of the BART PD.

Commendation or Recommendation: The Police department must push for a new police facility to houses the command and clerical staff. Also roll call is being held in a small room with no window or air vents. The building is being renovated and is laced with Asbestos, which is unhealthy and unsafe.

Justification: This recommendation is based on the study team's review and critique of the facilities.

Implementation Strategy: Develop and implement a written plan to address the immediate needs of the department for safety reasons.



BART Police Management Audit

Topical Area: Facilities

Issue: Satellite Facilities

Current Application or Practice: BART satellite facilities have been subject to deferred maintenance and are in need of renovation.

Commendation or Recommendation: The BART satellite facilities are in dire need of renovation or a new facility. The low quality of these facilities as an effective working environment serves as a disabling factor for all the employees working in them. It also creates the perception that the BART administration does not value their contribution to the BART mission.

Justification: The current condition of the BART satellite facilities which is supported by NOBLE's inspection of these facilities is documented by photographs.

Implementation Standards: BART administration should develop a capital improvement plan in which it will articulate in a written document how the current condition of each satellite facility will be addressed.



Chapter 6

Policies / Procedures / Tactics



A. Biased-Based Racial Profiling

NOBLE reviewers met with several members of the BART Police Department including the Chief of Police, members of the command staff and a cross-section of BART Police Department supervisors as well as officers and non-sworn personnel from within the department. No conclusion could be reached to determine if in fact racial profiling is being sanctioned and /or being used by members of the BART Police Department due to the following factors:

The BART Police Department was unable to provide data which captures and identifies all police contacts; time, date, location, vehicle, pedestrian, consensual, or non-consensual. The limited data provided indicates a disproportionate number of traffic contacts with African-Americans and Hispanic-Americans; however, comparing only race data severely limits the opportunity to calculate the multiple correlations between and among factors associated with traffic stops and field interrogations.

The BART Police Department has a varied and transit ride ship that is solely identified by survey studies.

The BART Police Department has a varied and transit demographic service area: San Mateo County, San Francisco County, Alameda County and Contra Costa County. The racial make-up of each county served may differ from the violator population due to geographic areas, times of day and variations in police deployment.

These factors make it virtually impossible to accurately measure, analyze and assess if the practice of racial profiling is occurring. However, based on the information obtained during this review it would serve in the best interest of the organization to reassess and adopt certain measures in the following recommended areas to prevent the real or perceived practice of racial profiling.

The following information was obtained during this review.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: Failure to have a Racial Profiling Policy

Current Application or Practice: The BART Police Department does not currently have a racial profiling policy in effect for the department to adhere to, nor in the history of the department have they had one. Command staff currently advises officers to adhere to the California Penal Code 13519.4 (f) "*A law enforcement officer shall not engage in racial profiling.*" BART Police Department advises that they are currently in the process of establishing a policy and have contracted the services of "Lexipol" Inc., a nationally recognized policy developer for law enforcement agencies. This process has been ongoing for the past two years.

Commendation or Recommendation: Establish and implement a racial profiling policy that is known and adhered to by all members of the police department. A mere understanding of culture differences is not enough to prevent the practice of racial profiling. There must be specific guidelines in writing and applicable to the organization and communities they serve. The BPD should continue to utilize "Lexipol" guidelines for policy development however, command staff should implement hard timelines to ensure the development and implementation of the policy is completed.

Justification: CALEA 1.2.9 *The agency has a written directive governing bias-based profiling and at a minimum, includes the following provisions:*

- a. a prohibition against bias-based profiling in traffic contacts, field contacts, and in asset search and forfeiture efforts;*
- b. training agency enforcement personnel in bias-based profiling issues including legal aspects;*
- c. corrective measures if bias-based profiling occurs; and*
- d. a documented annual administrative review of agency practice including citizen concerns.*

Profiling in itself, can be a useful tool to assist law enforcement officers in carrying out their duties. Bias based profiling however is the selection of individuals based solely on a common trait of a group. This includes but is limited to race, ethnic background, gender, sexual orientation, religion, economic status, cultural group, or any other identifiable group.

Law enforcement agencies should not condone the use of any bias based profiling in its enforcement programs as it may lead to allegation of violation of the constitution rights of the citizens we serve, undermine legitimate law enforcement efforts, and may lead to claims of civil



rights violations. Additionally, bias based profiling alienates citizens, fosters distrust of law enforcement by the community, invites media scrutiny, and invites legislative action, and invites judicial intervention.

Law enforcement personnel should focus on a person's conduct or other specific suspect information. They must have reasonable suspicion supported by specific articulated facts that the person contacted regarding their identification, activity or location has been, is, or is about to commit a crime is currently presenting a threat to the safety of themselves or others.

Annually, the agency should include profiling related training that should include field contacts, traffic stops, search issues, asset seizure and forfeiture, interview technique, cultural diversity, discrimination and community support.

Implementation Strategy: The Chief of Police and command staff should immediately develop and implement a racial profiling policy to be adhered to by all personnel.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: Failure to conduct internal review of policies.

Current Application or Practice: The BART Police Department does not conduct an annual review of policy and procedures to insure they are effective and addressing the concerns of citizens. A majority of the BART Police Department policies are outdated, dating back to the 1970's and 1980's. Information from interviews suggests the organization is very reactive and only attempts to make policy changes after critical incidents.

Recommendation: The Chief of Police should conduct annual internal reviews of the policies and procedures to determine if policy or procedural changes need to be made when applicable. This type of audit should be a part of the organizations ongoing effort to ensure they are meeting the needs of the community and preventing the practice of racial profiling. Methods that may be utilized include; the news media, radio, service or civic presentations, the internet, as well as governing board meetings. Additionally, information should be made available in languages reflective of the communities they serve.

Justification: CALEA 1.2.9 (a) (b) *The agency has a written directive governing bias-based profiling and at a minimum, includes the following provisions:*

- a. a prohibition against bias-based profiling in traffic contacts, field contacts, and in asset search and forfeiture efforts;*
- b. corrective measures if bias-based profiling occurs; and*

Implementation Strategy: The Chief of Police should direct an audit of the organizations' mission and value statements, code of ethics and all policies, procedures and practices to ensure they consistently reflect the goals and objectives of the BART Police Department. Once the policy is implemented the Chief of Police should inform the public.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: Fare Evasion Enforcement Policy

Current Application or Practice: Officers of the BART Police Department do not have any written guidelines for enforcing fare violators. Officers are allowed to use sole discretion in determining if a citizen is committing fare evasion. Anecdotal information suggests officers may have violated numerous citizens' civil rights when making possible fare evasion contacts.

Recommendation: To protect officers from unwarranted accusations of racial profiling and misconduct the BART Police Department should establish policy and procedure for the enforcement of fare evasion.

Justification: CALEA 1.2.9 (a) (c) *The agency has a written directive governing bias-based profiling and at a minimum, includes the following provisions:*

- a. a prohibition against bias-based profiling in traffic contacts, field contacts, and in asset search and forfeiture efforts;*
- b. corrective measures if bias-based profiling occurs; and*

Implementation Strategy: The Chief of Police should develop and implement a written directive addressing protocol on effective citizen contacts for fare evasion.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: P.O.S.T. Mandated Training

Current Application or Practice: All BART Police Department personnel have not received training on racial profiling. All entry level officers hired by the BART Police Department attend the Alameda County Sheriffs' Department Basic Academy and receive the P.O.S.T. mandated Learning Domain 42 (Cultural Diversity) Training. After completion of the Basic Academy there is no additional training on Cultural Diversity.

In March 2004, BART Police Department sworn personnel received P.O.S.T. mandated five-hour training on racial profiling. The training was conducted by P.O.S.T. certified instructors from within the BART Police Department. Officers hired after 2004 do not received any training on the prevention of racial profiling with the exception of the P.O.S.T. DVD refresher training.

On a letter dated April 4, 2008, the P.O.S.T. commission indicated the BART Police Department was in compliance with P.O.S.T. guidelines for the selection and training of peace officers and dispatchers for the year 2008.

Recommendation: All officers of the BART Police Department should receive training on racial profiling. They should continue to adhere to P.O.S.T. requirements by ensuring all sworn personnel receive racial profiling training. They should also commit to additional related training, remembering P.O.S.T. mandated training is a starting point, not the end state. The training should be inclusive of field contacts, traffic stops, search issues, asset seizure and forfeiture, interview techniques, discrimination and community support. The training must be clear in what constitutes probable cause to stop and detain individuals, so there is no question in the officers mind as to what tactics used are acceptable or not.

Justification: CA. PENAL CODE 13519.4(g) Every law enforcement officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training.

CALEA 1.2.9 (b)

c. training agency enforcement personnel in bias based profiling issues including legal aspects;

Annually the agency should include profiling related training that should include field contacts, traffic stops, search issues, asset seizure and forfeiture, interview technique, cultural diversity, discrimination, and community support.



- **California (P.O.S.T)** Administrative Manual requires the following training be adhered to:

Part I- Initial * 5 Hours (Included in Basic Course after January 1, 2004)

- Why are we here
- Racial Profiling Defined
- Legal Considerations
- History of Civil Rights
- Impact of Racial Profiling
- Community Considerations
- Ethical Considerations

Part II - Refresher ** 2 hours (To be completed every 5 years after initial training)

Implementation Strategy: The BART Police Department should contract P.O.S.T. certified law enforcement professionals to conduct instructor led training sessions on racial profiling as well as diversity training to all sworn staff.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: P.O.S.T. DVD Training

Current Application or Practice: In May 2008, BART Police Department sworn personnel received a two-hour P.O.S.T. mandated refresher training course on racial profiling in DVD format. Although this method is an acceptable training tool used by P.O.S.T., based on interviews, it is a useless and ineffective training method within the organization. There is no effective accountability method in place to ensure officers view the DVD's. Officers hired after May 2008 do not receive any training on racial profiling.

Recommendation: The BART Police Department should stop conducting racial profiling training in DVD format and initiate instructor led training.

Justification: CALEA 1.2.9 (b) *The agency has a written directive governing bias based profiling and at minimum, includes the following provisions:*

b. training agency enforcement personnel in bias based profiling issues including legal aspects;

Annually the agency should include racial profiling related training that should include field contacts, traffic stops, search issues, asset seizure and forfeiture, interview techniques cultural diversity, discrimination, and community support

Implementation Strategy: Stop all DVD training on racial profiling. Contract law enforcement professionals to conduct the initial training and subsequently have senior staff conduct annual in-service training once trained.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: Leadership Development

Current Application or Practice: The BART Police Department does not have a formal leadership development program in place.

Recommendation: The BART Police Department should implement a leadership succession plan to assist in the development of supervisors' decision-making and leadership skills as it relates to preventing racial profiling.

Justification: *CALEA 33.8.3 A written directive describes the agency's career development program. The agency should assist employees in planning their career paths through the utilization of formal schooling opportunities and law enforcement related training course to improve their skills, knowledge and abilities.*

Implementation Strategy: The Chief of Police should develop a leadership development succession plan, which would include police supervision, management education, seminars and conference opportunities to enhance the skills and professional knowledge of the law enforcement officers.

This will also enhance the department's professionalism and introduce officers to the latest and up-to-date information on effective police strategies among law enforcement agencies nationwide on preventing racial profiling.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: In-Service Training

Current Application or Practice: The BART Police Department does not have a written directive regarding in-service briefing training. Officers lack additional training on field contacts.

Recommendation: The BART Police Department should develop a written directive governing shift briefing training to keep officers up to date on current policies and law enforcement strategies to prevent racial profiling. They should also initiate additional shift briefing training on subject matters relating to, cultural diversity, interview techniques proper filed contacts, asset seizure and forfeiture.

Justification: **CALEA 33.5.2** *A written directive governs shift briefing training. Shift briefing training is a technique that may supplement all other training. Shift briefing training may be a useful element of agency training, if it is well managed and supervised. The goal of this training should be to keep officers up to date between formal retraining sessions. Agencies which do not have formal shift briefings, e.g., resident state troopers, deputy sheriffs, may accomplish the purpose of shift briefing training through other methods, to include in-car computers and other electronic means. To be useful to the agency, the shift briefing training program should be well structured and reflect the needs of the agency while being flexible enough to fit into a shift briefing setting. The written directive should include: planning for shift briefing training; techniques used in shift briefing training; relationships with the academy; instructional methods; instructional personnel; evaluation of shift briefing training; scheduling of training; and role of supervisors and officers.*

CALEA 1.2.9 9(b) *The agency has a written directive governing bias based profiling and at minimum, includes the following provisions:*

b. training agency enforcement personnel in bias based profiling issues including legal aspects;

Annually the agency should include racial profiling related training that should include field contacts, traffic stops, search issues, asset seizure and forfeiture, interview techniques cultural diversity, discrimination, and community support.

Implementation Strategy: The Chief of Police should develop and implement a written directive requiring shift briefing training. It should include planning for shift brief training; teaching use in shift briefing; relation with the academy; instruction methods instruction



personnel; evaluation for shift brief training; scheduling of training; and roll of supervisor and officers.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: Early Intervention System

Current Application or Practice: The BART Police Department does not have a process in place to monitor officers' activities in the field. Command staff members do not monitor officers' daily activities.

Recommendation: The BART Police Department should develop and implement an Early Intervention (EI) management system to obtain information of potential patterns of at-risk conduct involving all sworn officers. The system will allow supervisors to monitor and determine information relating to the actions of individual officers, supervisors, and specific units or divisions of the department such as:

- High number of citizen complaints
- High number of use of force incidents
- High number of resisting an officer arrest
- Large number of arrests that are not filed with the District Attorney as a result of improper detention and/or searches

Justification: U.S. Department of Justice. Community Oriented Policing Services: Early Intervention (EI) Systems for Law Enforcement Agencies: A Planning and Management Guide, August 2003 Walker, Sam Department of Criminal Justice University of Nebraska at Omaha
"Early Intervention (EI) systems are an effective mechanism for enhancing accountability within law enforcement agencies. pg. i

"An EI system also has the potential for considerable impact on the department as a whole. The system defines standards of conduct and provides a database for measuring officer performance and identifying substandard "pg.14

CALEA 1.2.9 (c) *The agency has a written directive governing bias based profiling and at minimum, includes the following provisions:*

- c. corrective measures if bias-based profiling occurs;*

Strategy for Implementation: The Chief of Police should develop policy and implement an (EI) system as soon as practical.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: Data Collection

Current Application or Practice: The BART Police Department does not collect sufficient data to assess and monitor officer contacts. The current data only captures a total number of traffic stops; inclusive of arrests, victims, and suspects. This data should be clarified to determine the time, date, specific location and circumstances and results surrounding each contact. Pedestrian and bicyclist contacts should be captured as well.

Examination of the traffic stop data from January 2006 to January 2008 indicate a high proportionate number of African –Americans and Hispanic- Americans stopped, with the highest contacts occurring in Zones 1 & 3 (Alameda County). Although these numbers are not indicative of racial profiling, the failure of the BART Police Department to capture specific data surrounding the contacts could add to the negative impact in both the African-American and Hispanic-American communities. The BART Police Department received two formal complaints of racial profiling in 2007 and 2008. Each complaint was not sustained due to insufficient evidence. One citizen alleged he was stopped because he was Hispanic, the other alleged he was stopped because he was poor. Both contacts occurred in Zone Area 1.

Traffic Contacts

Note: All contacts are a result of arrests, suspects, victims, etc.

Source: BART PD Staff

Race	2006		2007		2008		TOTAL
	Male	Female	Male	Female	Male	Female	
American Indian	14	0	6	0	0	0	20
Asian Or East Indian	7	11	36	0	2	0	56
Black	1079	475	828	389	371	147	3289
Chinese	27	16	16	6	0	0	65
Filipino	11	4	18	0	3	11	47
Hispanic/Latin/Mexican	908	204	1053	334	420	104	3023
Japanese	0	4	0	0	0	8	12
Other	206	57	161	116	105	39	684
Other Asian	110	63	90	81	61	44	449
Pacific Islander	36	6	0	3	12	11	68
Samoan	0	0	19	0	14	14	47
Vietnamese	3	0	0	3	0	0	6
White	451	263	506	383	186	174	1963
Unknown	9	11	70	2	6	0	98
TOTAL:	2861	1114	2803	1317	1180	552	9827



Demographics: Demographic composition of BART's service area

Population Zones*	Alameda (Zone 1-3)	Contra Costa (Zone 2)	San Francisco (Zone 4)	San Mateo (Zone 4)
White	56%	72%	58%	67%
American Indian/Alaskan	.7%	.8%	.6%	.5%
Black	14%	10%	7%	3%
Asian	25%	14%	31%	24%
Hispanic	22%	23%	14%	23%

Source U.S. Census Bureau: State and County Quick Facts. Data derived from Population Estimates, 2008.

*The Zones identified by BART Police staff are only indicative of counties served by BART **not** demographic % of ridership.

Demographics: BART Ridership/ Reported Ethic Identification

	2004	2006	2008
Base: (All Respondents)	6,142	6,150	6,216
White	44%	44%	44%
Asian/Pacific Islander	26%	30%	30%
Black/African American	12%	12%	12%
American Indian/Alaska Native	1%	2%	2%
NA/Other/Refused	18%	16%	16%
Hispanic	14%	15%	17%

Source: 2008 BART Customer Satisfaction Study



2006 – 2008 Traffic Contacts in Beats

2006	BEATS															TOTAL	
	Zone 1			Zone 2					Zone 3				Zone 4				
	10	11	13	20	21	22	25	26	27	30	31	32	35	42	43		45
American Indian	0	8	0	0	6	0	0	0	0	0	0	0	0	0	0	0	14
Asian Or East Indian	0	0	0	3	0	0	0	0	4	0	0	0	0	8	0	3	18
Black	727	140	70	69	89	0	0	18	29	198	118	29	30	25	9	3	1554
Chinese	0	0	0	0	0	0	0	0	0	0	0	0	0	0	43	0	43
Filipino	0	0	0	0	4	0	0	0	0	0	0	0	0	0	8	3	15
Hispanic/Latin/Mexican	327	57	14	12	102	6	6	26	63	126	168	18	116	43	19	9	1112
Japanese	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Other	54	11	6	3	13	3	0	7	0	48	47	35	17	3	6	10	263
Other Asian	39	8	0	0	9	0	0	7	8	9	17	15	0	20	30	11	173
Pacific Islander	17	0	0	0	0	0	0	0	0	5	0	0	15	5	0	0	42
Samoan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vietnamese	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
White	122	52	34	39	87	9	9	8	18	63	73	10	49	78	24	39	714
Unknown	12	2	0	3	0	0	0	0	3	0	0	0	0	0	0	0	20
TOTALS	1305	278	124	129	310	18	15	66	125	449	423	107	227	182	139	78	3975

2007	BEATS															TOTAL	
	Zone 1			Zone 2					Zone 3				Zone 4				
	10	11	13	20	21	22	25	26	27	30	31	32	35	42	43		45
American Indian	0	0	0	3	3	0	0	0	0	0	0	0	0	0	0	0	6
Asian Or East Indian	0	0	0	0	0	0	0	0	0	0	0	36	0	0	0	0	36
Black	288	136	92	51	185	16	0	17	81	143	132	13	27	24	0	12	1217
Chinese	0	6	0	0	0	0	0	0	0	16	0	0	0	0	0	0	22
Filipino	0	0	0	0	0	0	0	0	0	0	0	0	0	14	4	0	18
Hispanic/Latin/Mexican	225	37	49	9	183	6	40	68	47	166	222	45	14	93	153	30	1387
Japanese	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	11	10	4	0	46	3	9	3	0	10	21	6	20	20	88	26	277
Other Asian	15	0	0	3	3	6	0	0	0	47	26	0	28	12	21	10	171
Pacific Islander	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	3
Samoan	0	0	0	0	0	0	0	0	0	19	0	0	0	0	0	0	19
Vietnamese	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	3
White	132	18	28	10	47	17	46	132	109	105	40	50	42	16	50	47	889
Unknown	0	0	0	0	72	0	0	0	0	0	0	0	0	0	0	0	72
TOTALS:	671	207	173	76	539	48	96	220	237	506	441	150	134	179	319	125	4120

2008	BEATS															TOTAL	
	Zone 1			Zone 2					Zone 3				Zone 4				
	10	11	13	20	21	22	25	26	27	30	31	32	35	42	43		45
American Indian	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Asian Or East Indian	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
Black	133	72	36	19	48	0	7	47	8	45	63	9	0	31	0	0	518
Chinese	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Filipino	6	0	0	0	0	0	0	0	0	0	0	0	0	8	0	0	14
Hispanic/Latin/Mexican	56	19	5	6	62	0	0	69	11	75	68	13	18	83	21	18	524
Japanese	0	0	0	0	8	0	0	0	0	0	0	0	0	0	0	0	8
Other	12	0	3	5	12	0	4	8	6	0	10	11	15	46	8	4	144
Other Asian	6	6	0	0	0	0	0	0	0	13	15	0	2	48	11	4	105
Pacific Islander	23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	23
Samoan	0	0	0	0	0	0	0	28	0	0	0	0	0	0	0	0	28
Vietnamese	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
White	28	6	3	0	13	0	55	94	4	11	28	32	40	39	7	0	360
Unknown	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6
TOTALS:	264	109	47	30	143	0	66	246	29	146	184	65	75	255	47	26	1732

2006-2008 Traffic Contacts in Beats

Source: BART Police Dept. Staff July 2009



Demographics:

Demographic composition of the BART Police Department

BART Police Dept.	Total #	Asian %	Black %	Hispanic %	White %	American Indian/Native American %	Total %
Officers	150	18	17	17	47	1	100
Mgrs.	48	14	17	14	54		100
Other	75	21	12	9	59		100
Overall	273	17%	16%	11%	53%	1	100%

Source: Estimated Numbers from BART Police Department July 11, 2009

Recommendation: The BART Police Department should expand their current data collection method to record the following types of contacts:

- Traffic Stops
- Pedestrian stops
- Consensual Stops
- Non Consensual Stops

Data from that contact should include the following:

- Race, Age, & Gender
- Date, Time and Location
- If there was a search, whether it was a consent search or a probable cause
- Whether a custody arrest took place
- If traffic related, was a citation issued

The initiation of a more detailed data collection method would allow the BART Police Department to more accurately assess the use of available resources as well as respond to the concerns of bias-based policing in a more intelligence-led method. The statistical data gathered would also provide BART Police Department with more comparative data on officer contacts against ethnicity and gender of offenders. This information allows for an administrative review and is the first step toward effective management.

Justification: U.S. Department of Justice “A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned.” *Reno, August 2000*

“by documenting all stops can a law enforcement organization gain information about the nature and scope of the alleged problem.” pg. 43



Implementation Strategy: The Chief of Police should expand data collection methods to be inclusive of all officer contacts. Detailed data collection will allow the BART Police Department to measure the effectiveness organization as a whole. The data collection process should therefore be made permanent.



BART Police Management Audit

Topical Area: Racial Profiling

Issue: Community Outreach

Current application or Practice: The BART Police Department does not currently have any community outreach programs in place. We were informed that in May 2009, a youth outreach program was implemented, however officers of the department state it was only implemented to give the appearance of an outreach effort and has since been dropped. Command staff advised the program is still in effect, but meetings had been postponed due to union-management matters.

On July 30, 2009, we received an email from Command staff advising the BART Police Department was in the process of partnering with the Oakland Police Department Neighborhood Crime Prevention Council to address neighborhood problems and concerns in the community. The status of this partnership is unknown

Commendation or Recommendation: The Chief of Police should develop a directive regarding the development of community outreach programs. Programs the Chief of Police should consider:

- **Community Liaison Group** -- A group of 10-15 community members that meet monthly with the Chief of Police and command staff to offer advice on policy development and implementation.
- **Focus Group** -- A group of citizens who work together to discuss specific community concerns such as barriers to the citizen complaint process and police accountability.
- **Community Forum** -- A meeting that is open to the public where citizens can voice and hear concerns relating to matters of public safety. These can be held on a quarterly basis and should involve a wide-range of community stakeholders, such as faith-based organizations, concerned citizens, the District Attorney's Office and BART Police Department Command Staff.
- **Task Force** -- A group of citizens selected to develop action plans that can strengthen the relationship between the public and the police.
- **Community Policing Programs** -- On-going programs available to that public that promote a sense of ownership and mutual accountability.

Justification: CALEA 45.2.1 *The community involvement function provides the following, at a minimum:*

- a. *establishing a liaison with existing organizations or establishing community groups where they are needed;*
- b. *assisting in the development of community involvement policies;*



- c. publicizing organizational objectives, community problems, and successes;*
- d. conveying information from citizens' organizations to the organization;*
- e. improving practices bearing on police community interaction; and*
- f. developing problem oriented or community policy strategies, if any.*

Implementation Strategy: The Chief of Police should implement a community outreach program that is reflective of the needs of the communities served. Meetings should take place on regular bases or when deemed necessary by the Chief of Police. The Chief of Police should also make a concerted effort to partner with surrounding police agencies in engaging the community.



Chapter 7

Internal Affairs



INTRODUCTION

The National Organization of Black Law Enforcement Executives Management Audit Team conducted a study of the internal function. The team conducted research and review of topics such as police internal affairs investigations, patterns and practices, best practices, police ethics, and police administration. Some of the source materials included, but were not limited to BART Police General Orders/Operational Directive (policy and procedures), San Francisco Bay Area Rapid Transit District System Security Program Plan, The Standards Manual of the Law Enforcement Agency Accreditation Program, archived articles from local newspapers, federal consent decree report orders, internal investigative reports, manual and electronic logs and files, and other internal directives and documents. Many hours were devoted to conducting more than 30 interviews with employees at all levels of the BART Police organization in person and by telephone as well as a small number of employees not assigned to the police department to study this area.

Although information shared by those interviewed ranged from community service to opinions regarding the executive leadership of the department, the focus of the review was in the areas of internal affairs, discipline, and inspectional services. While the policy concerning the disciplinary process comports with national standards, there is no discernible effort by BART to conduct staff inspections.

Individual police employees are responsible for protecting the integrity of the department by ensuring their own ethical behavior. They must act in concert with the internal affairs function to maintain the professional standards of the department by reporting police misconduct and cooperating with every effort to eradicate wrongdoing and corruption.

BART Police has a dedicated office for the purpose of fulfilling the internal affairs function. In accordance with national standards, the investigator (sergeant) assigned reports directly to the chief of police. The investigator examines allegations of serious misconduct and delegates the investigation of administrative violations that do not rise to that level to line supervisors.



BART Police Management Audit

Topical Area: Internal Affairs

Issue: Public Trust

The notion of public trust dates back to the beginning concept of a democratic society when citizens started to entrust government officials with certain authority to act on their behalf. As government officials, police officers have been granted specific powers to act on behalf of the community to maintain an orderly society by protecting life and property, preserving the peace and arresting those who violate the law. Police have a social contract with the community they are sworn to serve. This social contract requires that the police act objectively, impartially, and professionally with members of the community as their part of the contract. Failing to do so means that police officers violate their part of the contract and no longer have the privilege to serve the community.

Current Application or Practice: Based on interviews with several ranks from within the police department, supervisors, officers to community members indicate there is a perception of eroding the public trust of BART PD. Most fixed responsibility with the executive leadership of the department citing benign neglect and community members citing the policing culture of the department as decaying from within. The fact that the department's policies and procedures were allowed to become antiquated with few updates over a period of more than 20 years helped to create this perspective.

Commendation or Recommendation:

1. BART Police reported only 13 internal affairs cases were received and investigated for 2008. The department's authorized number of sworn personnel was 206. Considering the total population on both sides of the San Francisco Bay served by BART, the number of sworn police officers and the number of calls for service, 13 is a questionably small number of complaints. Although there is no empirical data available, information obtained from members of the department through interviews suggests that complaints against police officers are discouraged and not documented. Strict guide lines should be developed and all personnel should be held accountable for receiving any complaints against police officers, documenting the complaint, and notifying a supervisor.
2. Executive oversight of the internal affairs function within BART Police appears to be lacking or ineffective, at best. Several internal sources made the following comments regarding executive oversight: There are no checks and balance in the investigative process; the department fails to track use of force incidents; policies need to be tightened to include tracking. Recently, the structure of the Internal Affairs Office was changed with the assignment of a second sergeant and placing a lieutenant in charge. This action



should increase accountability and effectiveness. However, it still will not address the issue of lack of executive oversight.

3. Achieving transparency and attaining public trust are goals that must be pursued. The publication of accurate annual internal affairs statistical data is one way to share information and build public confidence.
4. BART Police must be transformed into a verifiable policing culture of fairness, openness, problem-solving and community engagement.
5. BART Police has a 24-hour toll-free telephone number for civilians to call and make a complaint or compliment or otherwise provide feedback regarding officers' performance. The number is posted on the BART Police website along with a downloadable brochure outlining the procedures to file a complaint.
6. BART Police should allow complaints to be originated in person, from the toll free line, mail, email, third parties, or any other source.
7. Complainants should be notified by mail to acknowledge receipt of their complaint, and when the investigation is completed, notified of the findings in writing. State law prohibits the disclosure of specific disciplinary actions.

Justification:

1. Observations, independent research on internal affairs, review of federal consent decrees, and law enforcement best practices
2. BART Police Operational Directive Number 31, which states, in part, "... The Chief of Police will also be responsible for reviewing the complaint."

Implementation Strategy:

The commitment to build public trust must be lead by the executive leadership of the department. BART Police should adopt and strictly adhere to the principles in the below Police Oath of Honor established by the International Association of Chiefs of Police:

*On my honor,
I will never betray my badge,
my integrity, my character,
or the public trust.
I will always have
the courage to hold myself
and others accountable for our actions.
I will always uphold the constitution,
my community, and the agency I serve.*



This oath should be a signatory document signed by all police officers. The recommendations made should be implemented as stated.



BART Police Management Audit

Topical Area: Internal Affairs

Issue: Trust and Accountability

BART Police can build public trust by developing and enforcing strict ethical standards, promoting and implementing sound police practices, holding each employee accountable from top to bottom, addressing any perceived weaknesses within the agency, and establishing a formidable partnership with the community.

Current Application or Practice: During interviews, rank and file officers acknowledged the absence of a meaningful relationship with the communities they serve. They must recognize the importance of working with the community to address law enforcement concerns throughout BART properties. They also must commit themselves to total recognition of the neighborhoods, business communities, and visitors to the area as constituents and move forward as partners through community engagement.

While BART Police, in general, seems to have a superficial relationship with the community, individual members claim to have been self-taught in developing external relationships. Officers state they are assigned to various duties that require constant contact with the public. They rely on their own personalities and people skills to make their tasks enjoyable and achievable. Formal training in customer service and community involvement for the entire police department could improve their image and help to establish a meaningful relationship with external customers.

Commendation or Recommendation:

1. The executive leadership of the police department must be held to a higher standard. The office should have strict accountability to the BART Board and the communities served by BART through regular interaction with community leaders, civic groups, business associations, faith based organizations and other viable groups.
2. According to policy, BART Police is required to accept and investigate all citizens' complaints. Some officers stated certain cases were investigated and others were disregarded. Some indicated that complaints in certain instances were discouraged. In order to be accepted as a partner, BART Police must accept and investigate all complaints against police officers and the agency and be prepared to take the appropriate actions against officers found in violation of departmental policies. This will magnify BART's image in the community, as well as, reassure citizens that they have a voice and their message is important. This will further signify that BART is committed to quality police service and is determined to meet the challenge of changing undesirable police behavior.



3. Performance evaluations are used to monitor behavior and activities of employees. Supervisors are responsible for observing employees and recording their performance during a given rating cycle. Many officers were interviewed and none acknowledged receiving performance evaluations in recent memory. Two supervisors stated they have not been evaluated for more than 4 years and have not evaluated their subordinates for extended periods. BART Police should contact the Human Resources Department and establish a viable employee performance evaluation system that supervisors will be required to use. BART Police should conduct employee evaluations at least once annually.
4. Supervisors should use performance evaluations to encourage positive behavior and to correct unacceptable behavior by ensuring that appropriate actions are taken.

Justification:

1. **CALEA 45.2.1** The community involvement function provides the following, at a minimum:
 - a. Establishing liaison with existing community organizations or establishing community groups where they are needed;
 - b. Assisting in the development of community involvement policies for the agency;
 - c. Publicizing agency objectives, community problems, and successes;
 - d. Conveying information transmitted from citizens; organizations to the agency;
 - e. Improving agency practices bearing on police community interaction; and
 - f. Developing problem oriented or community policing strategies, if any.
2. **CALEA 52.1.1** A written directive requires all complaints against the agency or its employees be investigated, to include anonymous complaints.
3. **CALEA 35.1.1** A written directive defines the agency's performance evaluation system and includes, at a minimum:
 - a. Measurement definitions;
 - b. Procedures for use of forms;
 - c. Rater responsibilities; and
 - d. Rater training.

Implementation Strategy:

1. The Office of the Chief of Police in conjunction with the Training Coordinator should move immediately to secure customer service training and community involvement training from qualified outside educators.
2. The current BART Police policy requires the investigation of all complaints, including those filed anonymously. The Office of the Chief of Police is the reviewing authority and



must ensure the receipt and proper investigation of all complaints through closer supervision of the internal affairs function.

3. BART Police should contact the BART Human Resources Department for immediate assistance with establishing a viable performance evaluation system. Raters must be trained to perform a proper rating and all employees being rated should be trained to understand the performance evaluation system.



BART Police Management Audit

Topical Area: Internal Affairs

Issue: Community Access to the Complaint Process

Current Application or Practice: The BART Police Department currently has little or no outreach program. The Internal Affairs Office produced a tri-fold brochure containing procedures on how to file a complaint against a police officer, but the form is not easily accessible. The brochure can be downloaded from the BART Police website or it can be obtained from the Office of Internal Affairs. It is not available through any other source.

Commendation or Recommendation:

1. Internal Affairs has a 24-hour toll-free telephone number. Continue to market this number.
2. The BART Police mailing address, internet address, and toll-free telephone number should be visible and available at all train stations, police facilities, public libraries and other locations around BART properties.
3. Forms for citizens to compliment police officers for positive performance of duty should be developed and made available to the public.
4. Other informational materials and posters describing the complaint process should be developed and made available in English and Spanish.
5. On duty officers should be required to carry complaint forms in their vehicles and make the forms available to citizens who wish to file complaints immediately.
6. BART Police should develop a community outreach program to inform the public about the BART Police Department and internal affairs functions and procedures, including the methods for reporting civilian complaints and complimenting officers.
7. BART Police should develop a procedure to monitor telephone lines, including regular reviews of recorded telephone lines to ensure that callers are being treated with courtesy and respect, all necessary information about each complaint is being obtained, and that complainants are not being discouraged from making complaints against police officers.
8. An effective tool for supervisors to monitor officers' performance is to conduct audit trails. This can be accomplished through random sample mailings of questionnaires and telephonic follow-ups to persons who requested assistance from BART Police officers.

Justification: Observations, independent research on internal affairs, review of federal consent decrees, and law enforcement best practices



Implementation Strategy: Recently, two supervisors were assigned to the internal affairs function to complement the supervisor already assigned. All three can serve as an informal committee for the immediate development and implementation of the above recommendations.



BART Police Management Audit

Topical Area: Internal Affairs

Issue: General Order/Operational Directive (Policy and Procedures)

Current Application or Practice: BART Police has a written "Citizens Allegations of Misconduct against BART Police Personnel" policy that is outdated.

Interviews with command level personnel indicate a private company was hired to update and rewrite BART Police policy and procedures. An internal committee was established to provide input and coordinate the updates. The following information is provided regarding the current policies:

1. Many of the current policies under which BART Police operates were issued more than 20 years ago without updates. The Citizens' Complaint policy was issued in 1980 and last updated in 1997.
2. Complete and updated policy manuals are not made available to all employees, therefore, holding employees accountable is difficult, at best.
3. Officers should be required to report any and all instances of conduct by other officers resulting in use of force or a threat of force, violations of individuals' rights, making false statements, any other violations of administrative policy, federal or state laws or local ordinances. Officers should report such misconduct to a supervisor immediately.
4. Policy and procedures lacking in specificity tend to allow too much discretion and does not provide the necessary direction to hold individuals accountable. The Citizens' Complaint policy is general as it relates to the internal affairs function. The policy should include more detailed duties of the office.
5. All policies should be thorough and reviewed by legal counsel for compliance with federal and state laws and local ordinances.
6. Policy should clearly identify which complaints will be investigated by Internal Affairs and which will be delegated to line supervisors.

Commendation or Recommendation:

1. Several jurisdictions in the State of California have chosen to employ a private company to update and rewrite their police policy and procedures. BART has chosen this process as well. The success of this project will depend largely upon the knowledge and dedication of BART personnel assigned to the internal committee which provides input and coordinates the updates.
2. Upon completion of the policy and procedures, BART should maintain a sufficient supply of policy manuals to distribute to each employee whose duties are affected by the policy and procedures document. Each employee who receives a copy should be required to sign a statement acknowledging receipt of the document and the time and date received. The statement should also include language which states, "I understand that I



am responsible for reading and understanding the contents of this manual within 30 days after I receive it.”

3. In-service classes should be conducted by supervisors to review and reinforce the contents of the policy manual.
4. BART should consider immediate enrollment in the Commission on Accreditation for Law Enforcement Agencies (CALEA) accreditation process to ensure that the department operates in conformance with national law enforcement standards and restore the public trust in the agency.

Justification:

1. Observations, independent research on internal affairs, review of federal consent decrees, and law enforcement best practices
2. CALEA 52.2.1 A written directive specifies:
 - a. The type of complaints to be investigated by line supervisors; and the type of complaints that require investigation by the internal affairs function.

Implementation Strategy: The listed recommendations in this area should be prioritized by BART PD management and implemented.



BART Police Management Audit

Topical Area: Internal Affairs

Issue: Investigative Procedures

Current Application or Practice: Although many of the key provisions of an effective internal affairs policy are contained in the BART Police policy, the policy is outdated and in desperate need of revision. Moreover, some of the most important sections of the policy are not being followed.

Commendation or Recommendation:

1. Citizens must be permitted to initiate complaints or provide feedback on an officer's performance of duty. The information, including anonymous complaints, should be received in person, by telephone, mail, email, fax, or any other medium. Each complaint should be thoroughly investigated. The practice of not giving some complaints a formal investigation and classifying them as "inquiries" has become formalized within the BART Police Department. This practice should be discontinued. A policy mandate should require that these complaints are documented and investigated.
2. Confidentiality is crucial to the success of the internal affairs function. All allegations of misconduct should be documented and the files should be maintained in a secure area. The BART Internal Affairs office is located on the hallway near the police roll call room. Officers performing routine administrative tasks in the station are in a position to observe persons who enter the office. The office that houses the Internal Affairs Unit is also occupied by two other persons who perform duties not related to internal affairs and 3 field training officer work stations. The confidentiality of the office is, therefore, breached in many ways. The internal affairs function should be relocated to a site away from police headquarters to allow citizens who wish to remain anonymous to come to the office and discuss their concerns without fear of retaliation. Officers who enter the Internal Affairs office should be able to enter without being concerned about being ostracized by other officers.
3. Independent interviews with at least 3 sources indicate BART Police is in compliance with the records retention schedule required by California law for internal affairs investigations.
4. BART Police developed a brochure containing the procedures for citizens to file complaints against police officers. The brochure is posted on the BART Police website and contains a 1-877 toll free telephone number. However, the form is not easily accessible. To find it, a person would have to navigate 3 computer screens by going to the



BART Police home page, then to “frequently asked questions”, and a small “download” icon contained in a sentence. During interviews, several police supervisors and officers were asked about the brochure. Only one person acknowledged ever seeing the brochure. The brochures should be maintained at all police facilities, train stations, at public libraries, in all patrol cars, and other places immediately accessible to the public. The procedures and 1-877 toll free number should be publicized in area news papers, radio, television and other appropriate media.

5. BART Police compiles limited statistical data regarding the internal affairs function. Elaborate tracking systems should be designed to track investigations by category, date, disposition, officer’s name, and complainant’s name. Appropriate summaries of statistical data should be kept and made available to the public using local media, the website and upon request by any citizen. During one interview, an officer was able to relate the number of internal affairs cases investigated in 2008. When asked how he obtained the information he stated he filed a request under the provisions of the Freedom of Information Act. He further stated he did not attempt to obtain the information directly from the department by simply asking.
6. BART Police policy provides that citizen’s complaints may be investigated by Internal Affairs or a supervisor in the chain of command. However, it is not clear as to which cases should be assigned to whom. An effective internal affairs policy should make that distinction.
7. The current practice is to notify the executive leadership of the department on some internal affairs investigations. It is not clear as to which cases are sent to that level and when. The policy should be clear by listing procedures to notify the executive leadership of the department of complaints against officers or the department.
8. A 30 day period is set for the completion of internal affairs investigations. However, if the case is not completed during the required time, the investigator must notify the complainant and may continue the investigation. The complainant should receive verification, in writing, that his/her complaint has been received for investigation and should be provided periodic status updates. The complainant also should be notified, in writing, of the results upon conclusion of the investigation. California law does not permit publicizing specific details regarding disciplinary actions against an employee.
9. Police officers are entitled to certain rights and responsibilities when they become the subject of an internal affairs investigation. In addition to observing these rights, the Internal Affairs Office should issue the officer a written notice that he/she is the target of an investigation. If notifying the officer would likely jeopardize the investigation, the investigator is not obligated to make the notification.
10. A specific policy should be developed listing the procedures or prohibition for obtaining medical or laboratory examinations, photographs, participation in a line up, financial disclosure statements and polygraph examinations.



11. At the conclusion of internal affairs investigations, BART uses one of the following dispositions to close the investigation:

Exonerated- Action complained about did occur but was lawful, justified and proper.

Not Sustained- There is insufficient information/evidence to prove or disprove the allegation.

Sustained- The allegation is supported by sufficient information/evidence.

Unfounded- The allegation is false; alleged act did not occur; employee or BART Police Department was not involved.

No Finding- The complaining party or witness fails to cooperate after the investigation has commenced; the complainant withdraws the complaint; or the complainant is no longer available.

Special Considerations

1. BART PD uses a finding of the complaint pertains to an established policy which was properly handled or performed by an employee. "Policy Complaint" should be eliminated, as the definition is essentially the same as "Exonerated".

2. "No Finding" should be eliminated as a disposition, as it does not comport with national standards. Moreover, it creates opportunities for the improper dismissal of investigations.

3. When the complainant or victim in an alleged misconduct investigation withdraws the complaint or becomes unavailable for whatever reason to give a statement or provide additional information regarding the investigation, the investigator should not be permitted to close the case without further investigation. The investigation should continue to determine whether or not the allegation can be proved or disproved.

4. When the complaint is exonerated or unfounded, and however the current policy or tactics is not completely effective, a recommendation of policy and training should be made.

Justification:

CALEA 52.1-52.2.8 The internal affairs function is important for the maintenance of professional conduct in law enforcement. Agencies having an internal affairs function consistent with these standards will have the capability to respond appropriately to allegations of misfeasance, malfeasance, and nonfeasance by employees, and to complaints about the agency's response to community needs, thereby instilling public confidence in the agency.



Implementation Strategy: Recently, two supervisors were assigned to the internal affairs function to complement the supervisor already assigned. All three can serve as an informal committee for the immediate update and revision of the internal affairs policy to ensure that it conforms to national standards. The executive leadership of the department must assume the responsibility for ensuring that the new policy is developed and implemented in its entirety and enforced.



BART Police Management Audit

Topical Area: Internal Affairs

Issue: Early Warning and Intervention Applicable to Internal Affairs

Current Application or Practice: The BART Police Department does not have a system of early warning and intervention to identify potential employees' problems and address their issues by providing early intervention.

Commendation or Recommendation: BART PD should develop and implement a computerized early intervention system. Early intervention is an effective strategy for preventing mitigating or solving potential employee problems. The concept is for management to identify, manage, or resolve employee problems in their early stages.

1. Internal affairs case management software is available and should be employed to categorize investigations, officer behavior, discipline, developing trends and many others. In addition to serving as a repository for statistical data, periodic analysis can provide indicators that written policies may be deficient, deviant behavior may be prevalent, the number and kinds of disciplinary actions taken against an individual officer may be inordinate, or officers on the same shift or in the same unit may have developed a subculture contrary to the values of the department.
2. The purpose of an early warning and intervention system is to track indicators that will identify patterns of officer conduct that fall outside of the norm. The indicators may show positive performance by an officer or it may show unsatisfactory behavior.
3. This program will assist BART by identifying problem employees, identifying training needs, indicating the type of intervention required, and ultimately reducing misconduct.
4. BART would benefit by employing an early warning and intervention system which is a data-based police management tool designed to identify police officers who exhibit problem behavior, as indicated by high rates of citizen complaints, use of force incidents, and other evidence.
5. An essential part of this system is the maintenance of complete and accurate training records including the name of the course attended by officers, the beginning and completion dates, and the location where each member was trained.
6. The early warning and intervention system should also assist in identifying members of the department who are performing at an exemplary level but have gone unnoticed. Through documentation of citizens' commendations and departmental citation, these



members can be observed and considered for awards, monetary incentives or promotion for sustained superior performance.

7. A critical component of early warning & intervention systems is to identify police officers who may be having problems on the job or personal problems and make appropriate counseling or training available to them.
8. Supervisors should rely on timely and accurate data to maintain a proper perspective on the talents available within the BART Police Department. A mandate for regular review of information on individuals by supervisors is necessary for accountability and the identification of members or units that require intervention to prevent misconduct.
9. These systems are also used to identify and correct inappropriate behavior through individualized strategies that may include additional training, re-assignment to another division or shift, or some other action to ensure that the officer's actions do not become a liability for the department.
10. Early warning and intervention systems also monitor officers who have been the subject of interventions to determine whether the intervention was successful.

Justification: Observations, independent research on internal affairs, review of federal consent decrees and law enforcement best practices

Implementation Strategy: There are several versions of user-friendly software available through various vendors for internal affairs case management and early warning and intervention systems. BART's direct contact with a vendor of its choice can result in the selection of the most appropriate programs, proper software installation, and training on how to enter data, access information, and conduct proper analysis.



BART Police Management Audit

Topical Area: Internal Affairs

Issue: Training

Current Application or Practice: The internal affairs investigator for the department has a firm foundation with internal affairs investigations training, officer-involved shootings and several other classes related to administrative investigations, but not advanced internal affairs investigation. Recruits are not given any training regarding internal affairs.

Commendation or Recommendation:

1. Sergeants receive basic internal affairs training and attend officer-involved shooting training when they reach the rank of lieutenant. Additional training for anyone who conducts administrative investigations should include the following: misconduct investigation techniques; interviewing skills; observation skills; report writing; criminal law and procedure; court procedures; rules of evidence; and disciplinary and administrative procedures.
2. To reduce violations of administrative policies and internal affairs investigations, BART Police should train all recruits in professionalism communications, customer service, cultural diversity; integrity and ethics; civilian complaint procedures; and to cooperate in administrative investigations. Mandatory in-service training on these topics should be conducted annually.
3. The Internal Affairs Office should also provide training on internal affairs to recruits at the police academy and to others at in-service training. The Internal Affairs Office should also establish a system to share generic information regarding officer misconduct to the Training Coordinator to assist in evaluating written policies and the effectiveness of training.
4. All supervisors should receive mandatory leadership training that will address effective supervisory techniques to detect misconduct and problem employees.
5. BART Police should track all training information, including course title, dates of attendance, and location. All training records should be up-to-date at all times and maintained electronically.
6. Training is the foundation for sound police practices and should be evaluated and tracked in the field. Community policing should be a high priority training program for BART



Police. Officers should receive the highest caliber of community policing training from outside experts.

7. Field supervisors should spend most of their time in the field responding to calls, assisting officers, and providing training on-scene. They should meet with communities along with patrol officers at least once each quarter.
8. Training officers should be among the best trained officers in the department. Additional training should be identified and compared with national standards.

Justification: Observations, independent research on internal affairs, review of federal consent decrees, and law enforcement best practices.

Implementation Strategy: The Office of the Chief of Police and Training Officer should jointly identify and arrange outside training by highly qualified educators immediately.

1. The Training Officer should maintain an up-to-date electronic file immediately.
2. The Training Officer can conduct research and help facilitate the training recommendations in a priority sequence.



BART Police Management Audit

Topical Area: Discipline

Issue: Disciplinary Procedures

Current Application or Practice: BART has a well documented disciplinary process that is codified in its Operational Directives System. This directive, in conjunction with other departmental policies, provides required actions of training, rewarding employees, counseling, and punitive actions in the interest of discipline.

Commendation or Recommendation: BART Police Positive Discipline Guidelines support the concept of progressive discipline and contain the required elements of basic law enforcement disciplinary procedures. The policy is linked to Employee Relations Guidelines #21 and the Labor Agreement. Progressive discipline should be used except when exceptions based on the seriousness of the offense justify it.

The agency should develop a written directive which establishes:

- a. procedures and criteria for using training as a function of discipline;
- b. procedures and criteria for using counseling as a function of discipline; and
- c. procedures and criteria for taking punitive actions in the interest of discipline.

Justification: CALEA 26.1.4 requires a written directive which establishes a disciplinary system.

Implementation Strategy: Develop and implement a Discipline Policy that addresses all three discipline areas.



BART Police Management Audit

Topical Area: Inspectional Services

Issue: According to information obtained during interviews and from a review of department documents, BART Police does not have a unit or person dedicated to staff inspections. The function appears to be non-existent in the department.

Current Application or Practice: There are no requirements in the BART Police policy and procedures for staff inspections. The policy mentions the responsibility of police personnel to participate in a uniform inspection when required by the chief of police and the duty of officers to inventory police vehicles. The San Francisco Bay Area Rapid Transit District System Security Program Plan (SSPP) addresses the inspection of facilities and equipment.

Commendation or Recommendation: Develop a written directive that establishes the staff inspection function. Limited line inspections are occurring. However, all BART supervisors should routinely inspect uniforms, equipment, and facilities and initiate the appropriate actions for proper maintenance, upkeep, repairs, and replacement.

1. The department's efficiency and effectiveness should be assessed through the inspections process and the results should be used to improve the department.
2. A formalized system should be implemented to evaluate the quality of BART Police operations by ensuring that departmental goals are established, pursued, and achieved.
3. BART Police can evaluate and improve its performance by comparing the current level with previously established goals, objectives, policies procedures, and rules and regulations.
4. The department should establish a process to effectively compare what is required by BART Police to what is actually being done.
5. BART Police staff inspections should be used to monitor the effectiveness of specialized units such as Investigations, S.W.A.T., Special Investigations, Internal Affairs, Communications, etc.
6. The data derived from staff inspections can be analyzed and used to make decisions regarding allocation of resources, deployment of personnel, training needs, and modifications to departmental and individual unit goals and objectives.

Develop a written directive requiring line inspections within the agency and address the following:

- a. procedures to be used in conducting line inspections;
- b. frequency of inspection;
- c. responsibilities of the supervisor in each organizational component for both the conduct of inspections and correction of conditions discovered by the inspection;



- d. criteria to identify those inspections that require a written report; and
- e. follow-up procedures to ensure corrective action has been taken.

A written directive requires a staff inspection function, and includes provisions for:

- a. identity of the persons conducting the staff inspection;
- b. procedures to be used in conducting staff inspections;
- c. submission of a written report that identifies deficiencies and makes recommendations for their improvement and/or correction, and identifies positive aspects of the area being inspected;
- d. follow-up written report for noted deficiencies that cannot be immediately corrected; and
- e. a staff-inspection to be conducted within all organizational components at least once every three years.

Justification: CALEA 53.1.1 A written directive requires line inspections within the agency.

Implementation Strategy: BART Police may require outside assistance to implement this strategy beginning with training to help the agency understand the inspectional services function. Personnel from area police departments may be able to come to the department to assist with setting up the office and establishing the inspectional services function. BART Police may consider assigning one person to this function on a full-time basis to the operational efficiency and administrative precision that it desires.



Chapter 8

Discipline



BART Police Management Audit

Topical Area: Early Warning and Disciplinary System

Issue: Employee Accountability

Current Application or Practice: The Agency and district have several written directives that govern the Disciplinary Process:

- Positive Discipline Guidelines
Employee (BART District) Relations Guidelines #21
Date of Issue: February 23, 1999
- Discipline Procedures
General Order No. VI
Date of Issue: October 14, 1985
- Police Managers Procedure
Positive Discipline
Procedure NO. 3
Date of Issue: 01-21-85
- Positive Discipline Guidelines
Operational Directive NO. 77I
Date of Issue: February 2, 1987
Amended: February 2, 1987, October 6, 1992, June 4, 1997

During interviews, command staff explained the “BART District-wide” Positive Discipline process. The formal steps include:

1. Oral Reminder;
2. Written Reminder; and
3. Decision Making Leave.

These disciplinary actions are documented on a BART District form that is filed in an employee's personnel file. Any manager can review the file to determine if an employee is on any type of discipline and act accordingly for any current issues. The deactivation for those steps of positive discipline ranges from six to 12 months depending on the level of discipline. After that point, a manager will not have any record of the discipline action taken by the supervisor. The pre-disciplinary step of formal counseling is documented on a different form, but this form is not filed in the employee's personnel file. Instead, the manager in an employee's employee development record (EDR) files a formal counseling. These EDR files are decentralized and kept in the Zone where an employee works. As employees move from location to location, or are temporarily assigned to a location, the file may or may not move with the employee and it becomes difficult for a manager to track the comments in the EDR file. At one time, the EDR files were centrally located, but when the Police Department de-centralized operations, the EDR files were also de-centralized. The formal counseling entries in an EDR file are only active for 90 days and then removed. Again, this practice hampers the agency's ability to track employee



performance and behavior. The fact that an employee has been counseled regarding performance or behavior is relevant to subsequent decisions about the employee and a document establishing such a fact should not be removed from the employee's performance and discipline records until a significant period of time passes and no further similar conduct is present.

In discussions regarding the Agency's discipline process, many characterized the process as laced with "favoritism and lacking the appearance of objectivity." Agency supervisors and middle managers frequently described the culture as lacking accountability. One supervisor gave this example as the impression most officers have of the current discipline process, "Write me up...nothing will happen and it will be out of my file in nine months." The lack of discipline and accountability is the reason officers do not routinely ride the BART system; rather, they ride in patrol cars. A supervisor explained, officers are "not required to ride and so they don't." He further explained if riding the system is required, 30% - 40% of an officer's duty time could be spent riding the system with no impact to service, but officers do not ride the system because they "don't want to."

A command staff member described the current disciplinary system as moderately effective, indicating a traditional police discipline system would be more effective in creating accountability. Another supervisor described the disciplinary system as poor with no consequence. A supervisor stated it was common for officers, when assigned tasks they do not want to complete, to spontaneously state, "I'm sick" and depart work. In other cases, officers indicate they have to leave work to care for a sick spouse or child, and immediately take sick leave to avoid an assignment not to their liking.

Some members noted that discipline was weak to poor prior to the fatal shooting, but since the January 1, 2009 incident, discipline has changed and "tightened-up some."

A command staff member described the "Positive Discipline" policy and process as largely misunderstood and not fully executed in a manner that creates accountability. An overwhelming number of supervisors and a significant number of line personnel characterized the current disciplinary system as ineffective and recommended a more traditional police disciplinary system.

Line officers, in discussing the Agency's disciplinary system, typically referred to it as "petty" with serious violations overlooked depending on who was involved in the behavior. According to senior and ranking members, minor policy violations are frequently overlooked and "don't get dealt with" and those violations develop into major performance and behavior issues. Minority members commonly perceive the disciplinary system as unfair. The quotes below reflect the general tone of those interviewed regarding the Agency disciplinary process, rank and file alike:

- "Lax, fly by the seat of your pants, and a lot of uncertainty. Things here don't get addressed."
- "A lot of discretion in application...it doesn't seem to correct behavior."
- "Females and minorities are not treated fairly...if you challenge a policy there is a fear of retribution."
- "It's difficult to try and fire someone here. It is wishy-washy...supervisors can't act with confidence because you don't know when the rules will apply."



- “Discipline here is you either get fired or nothing gets done...it is worthless when trying to correct behavior.”
- Lack of discipline has resulted in a police department with no performance objectives, no measurements or standards of performance, or accountability.”
- “When new policies are distributed they are not reviewed with supervisors, consequently the intent is not always clear leading to inconsistent application of the policy and discipline issues.”

Ranking members were critical of the “overly de-centralization” of the Agency which allows officers to report alone for duty in the outer areas of the transit system. Consequently, it makes active supervision, discipline, training, and employee accountability difficult in many instances. The Agency does not have an Early Warning System (EWS) or Early Intervention Program policy or written directive.

Commendation or Recommendation: The Agency should consolidate the various discipline process general orders, directives, policies, and guidelines into a single Agency discipline policy to avoid confusion in applying and interpreting the disciplinary system. An example is the paragraph in the Police Managers Procedure NO. 3 (p.1), which lists seven entry designations for discipline, but Operational Directive NO. 77 (p.3) list five.

The agency should adopt a more traditional police discipline system, and centralize the EDR files. This would simplify discipline records review by supervisors, managers, and Internal Affairs. Numerous affordable computer software programs are available that can simplify this process.

Purging disciplinary matters in 90-days to a year or less does not provide for the proper and deliberate monitoring of problem employee behaviors or performance. The agency should consider significant modifications to the agency disciplinary system as the current disciplinary process does not provide for an effective Early Warning or Early Intervention program.

A comprehensive Personnel Early Warning System is an essential component of good discipline in a well-managed law enforcement Agency. The early identification of potential problem employees and a menu of remedial actions can increase Agency accountability and offer employees a better opportunity to meet the Agency’s values and mission statement. The lack of an early warning system and the failure to hold supervisors accountable for policy violations creates a custom and practice that predictably will permit or encourage an environment for inappropriate behavior to exist. *“An Early Warning (EW) System is a data-based management tool designed to identify officers whose performance is problematic and to provide those officers counseling or training designed to help improve their performance. Officers are identified on the basis of official performance data such as citizen complaints, use of force reports, and involvement in civil litigation, and other indicators. EW systems are recommended by a wide range of organizations. A January 2001 report by the U.S. Justice Department on Principles for Promoting Police Integrity included EW systems among its recommended “best practices.” The Commission on Accreditation for Law Enforcement Agencies (CALEA)...adopted a new standard (35.1.15) mandating EW systems for ...agencies.*



The International Association of Chiefs of Police (IACP) recommended EW systems in a report on controlling corruption. The report pointed out that an EW system is not just a system to focus on problem officers but as a "proactive management tool useful for identifying a wide range of problems," including for example, "inappropriate supervisory instructions to officers" and other management issues. In 1981 the U.S. Civil Rights Commission was the first official body to recommend EW systems as a response to the phenomenon of the problem officer." (Cultural Diversity and the Police Samuel Walker)

A Personnel Early Warning System includes options and reviews available through use of force reporting, the disciplinary system, employee assistance program, and Internal Affairs.

The first and second levels of supervision are crucial elements to a successful Personnel Early Warning System and their responsibilities emphasized in the Agency's procedures.

Justification: **CALEA 35.1.9** *A written directive establishes a Personnel Early Warning System to identify Agency employees who may require Agency intervention efforts. The system shall include procedures for:*

- a. Provisions to initiate a review based on current patterns of collected material;*
- b. Agency reporting requirements of conduct and behavior;*
- c. Documented annual evaluation of the system;*
- d. The role of first and second level supervision;*
- e. Remedial action; and*
- f. Some type of employee assistance such as a formal Employee Assistance Program, peer counseling, etc.*

- IACP National Law Enforcement Policy Center, Early Warning System, Model Policy, March 2002.
- Cultural Diversity and the Police, Samuel Walker, University of Omaha, and Bureau of Justice Assistance, 2001.
- International Association of Chiefs of Police (IACP), Early Warning System Model Policy, March 2002.
- U.S. Department of Justice, Office of Community Oriented Policing, Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide, 2003.
- National Institute of Justice, Research in Brief, July 2001, Early Warning Systems: Responding to the Problem Officer, Samuel Walker, Geoffrey Alpert, and Dennis J. Kenney.
- U.S. Department of Justice, Civil Rights Division, Special Litigation Section, Website: Conduct of Law Enforcement Agencies Settlements and Court Decisions.
- Consent Decree: United States of America v. City of Steubenville (Ohio) Police Department, September 1997.
- FBI Law Enforcement Bulletin, July 2005, Early detection of the problem officer, Dino DeCrescenzo.



Implementation Strategy: Consolidate discipline policies into a single Agency written directive. Modify the disciplinary process to capture the element necessary for an effective Early Warning System. Conduct training for all supervisors on the policy and the proper assessment of elements in the EWS, as well as, the options for addressing behavior or performance related issues identified through the EWS. Train Internal Affairs personnel in identifying threshold behaviors or performance indicators and detail the system that to be followed when initiate Agency intervention processes.



Chapter 9

Community Confidence



BART Police Management Audit
BART Police Community Survey
~ RESULTS ~
[Respondents: 1214]

SUMMARY

The following is a general summary of the strongest responses received by community members to topics within the Community Survey.

- a. Respondents to the survey most indicated they ride 5 days a week. [Question 3]
 - b. 48% of the respondents indicate they are satisfied with BART police services. [Question 4]
 - c. 59% of the respondent indicate that the relationship between BART police and the community is Fair or Better. [Question 5]
 - d. BART patrons indicated that the police patrol priorities should be [Question 9]:
 - i. Trains
 - ii. Stations
 - iii. Parking Lots
 - iv. Streets near BART stations
 - e. The majority of respondents [62%] indicate that police presence on the trains has stayed the same or decreased. [Question 11]
 - f. The majority of respondents [54%] indicated that police presence at BART stations has stayed the same or increased. [Question 12]
 - g. The majority of respondents [71%] indicate that travel on a BART train is safe after dark. [Question 17]
 - h. The majority of respondents [60%] indicate that they feel safe in a BART station after dark. [Question 18]
 - i. The majority of respondents [58%] indicate that they feel unsafe in a BART parking lot after dark. [Question 19]
 - j. The majority of respondents [59%] indicate that they have some or great confidence in the BART PD to prevent crime. [Question 20]
- i. The majority of respondents would rate the overall performance of the BART PD as from Fair to Good [70%]. [Question 21]



1. Do you live in the San Francisco Bay Area? [No answer: 4]

	YES	NO
Random Sample	95%	5%
Open Participation	94%	6%
Combined	94%	6%

2. Have you ridden BART within the last three years? [No answer: 6]

	YES	NO
Random Sample	100%	0%
Open Participation	99%	1%
Combined	99%	1%

3. How frequently do you currently ride BART? [No answer: 3]

	6-7 days a wk	5 days a wk	3-4 days a wk	1-2 days a wk	1-3 days a month	less than once a month	less than once/yr or never	don't know
Random Sample	15%	45%	15%	9%	10%	4%	0%	1%
Open Participation	10%	41%	13%	10%	13%	11%	2%	1%
Combined	11%	42%	13%	10%	12%	9%	2%	0%

4. Overall, how satisfied are you with BART police services? [No answer: 8]

	VERY SATISFIED	SOMEWHAT SATISFIED	NEUTRAL	SOMEWHAT DISSATISFIED	VERY DISSATISFIED
Random Sample	18%	26%	40%	10%	6%
Open Participation	29%	20%	29%	10%	12%
Combined	26%	22%	32%	10%	10%

5. How would you rate the relationship between the BART Police Department and the community? [No answer: 3]

	EXCELLENT	GOOD	ONLY FAIR	POOR	DON'T KNOW
Random Sample	5%	28%	24%	19%	24%
Open Participation	14%	23%	22%	26%	14%
Combined	11%	25%	23%	24%	17%

[Question #6 - purposely dropped]

7. Have you or anyone in your household had contact with any BART police officer for any reason in the last year? [No answer: 7]

	YES	NO	DON'T KNOW
Random Sample	23%	74%	3%
Open Participation	34%	64%	2%
Combined	30%	67%	3%



8. If yes, what was the nature of the contact? [check one of more] [No answer: 0]

	REPORT CRIME	OBTAIN INFO	TRAFFIC STOP	ASSISTED BY OFCR	INVOLVED IN INCIDENT	WITNESS TO CRIME
Random Sample	12%	21%	1%	3%	3%	6%
Open Participation	16%	20%	1%	12%	4%	5%
Combined	15%	20%	1%	10%	3%	5%

	ARRESTED	VICTIM OF CRIME	QUESTIONED BY POLICE	REC'D CITATION TICKET	OTHER	DON'T KNOW REMEMBER
Random Sample	0%	4%	4%	11%	25%	10%
Open Participation	0%	4%	5%	5%	22%	7%
Combined	0%	4%	5%	6%	23%	7%

9. In your opinion, what should be the policing priorities of the BART Police Department?

Patrolling streets near BART stations [No answer: 104]

PRIORITIES:	1	2	3	4
Random Sample	8%	7%	13%	72%
Open Participation	5%	6%	10%	80%
Combined	5%	6%	11%	77%

Patrolling BART stations [No answer: 58]

PRIORITIES:	1	2	3	4
Random Sample	40%	40%	17%	3%
Open Participation	39%	41%	17%	2%
Combined	40%	41%	17%	2%

Patrolling on BART trains [No answer: 63]

PRIORITIES:	1	2	3	4
Random Sample	49%	26%	18%	8%
Open Participation	49%	31%	13%	7%
Combined	49%	30%	14%	7%

Patrolling BART parking lots [No answer: 63]

PRIORITIES:	1	2	3	4
Random Sample	14%	26%	49%	11%
Open Participation	14%	22%	57%	8%
Combined	14%	23%	54%	9%



10. Please indicate how much you agree or disagree with the following statements.

BART police treat members of the community fairly. [No answer: 8]

	Agree strongly	Agree somewhat	Neutral	Disagree somewhat	Disagree strongly	Don't know
Random Sample	18%	22%	26%	10%	7%	17%
Open Participation	28%	19%	20%	11%	12%	11%
Combined	25%	20%	22%	10%	10%	13%

BART police are courteous. [No answer: 17]

	Agree strongly	Agree somewhat	Neutral	Disagree somewhat	Disagree strongly	Don't know
Random Sample	23%	31%	22%	10%	4%	10%
Open Participation	32%	22%	18%	9%	10%	10%
Combined	29%	25%	19%	9%	8%	10%

BART police handle themselves professionally. [No answer: 7]

	AGREE STRONGLY	AGREE SOMEWHAT	NEUTRAL	DISAGREE SOMEWHAT	DISAGREE STRONGLY	DON'T KNOW
Random Sample	23%	31%	23%	9%	4%	10%
Open Participation	33%	22%	15%	10%	12%	8%
Combined	30%	25%	18%	10%	10%	9%

BART police are actively on the lookout for crime. [No answer: 7]

	AGREE STRONGLY	AGREE SOMEWHAT	NEUTRAL	DISAGREE SOMEWHAT	DISAGREE STRONGLY	DON'T KNOW
Random Sample	20%	26%	19%	12%	8%	15%
Open Participation	24%	19%	21%	12%	11%	13%
Combined	23%	21%	20%	12%	10%	14%

11. In the past year, has BART police presence on the trains increased, decreased or stayed the same? [No answer: 4]

	INCREASED	DECREASED	STAYED THE SAME	DON'T KNOW
Random Sample	9%	21%	42%	28%
Open Participation	9%	20%	40%	30%
Combined	9%	21%	41%	30%

12. In the past year, has BART police presence at BART stations increased, decreased or stayed the same? [No answer: 5]

	INCREASED	DECREASED	STAYED THE SAME	DON'T KNOW
Random Sample	18%	14%	42%	26%
Open Participation	19%	13%	41%	27%
Combined	19%	13%	41%	27%

13. In the past year, do you think crime near the BART station where you live has increased, decreased or stayed the same? [No answer: 15]

	INCREASED	DECREASED	STAYED THE SAME	DON'T KNOW
Random Sample	19%	6%	39%	36%
Open Participation	24%	5%	37%	34%
Combined	23%	5%	38%	34%



14. Do you believe there is a crime problem on a BART train, station, or parking lot that has not been addressed by BART police? [No answer: 7]

	YES	NO	DON'T KNOW
Random Sample	25%	22%	52%
Open Participation	30%	32%	38%
Combined	28%	29%	43%

15. How satisfied are you with the response time of BART police officers to a crime in progress? [No answer: 14]

	VERY SATISFIED	SOMEWHAT SATISFIED	NEUTRAL	SOMEWHAT DISSATISFIED	VERY DISSATISFIED	DON'T KNOW
Random Sample	7%	11%	17%	5%	4%	55%
Open Participation	13%	11%	16%	4%	7%	50%
Combined	11%	11%	16%	4%	6%	52%

16. How satisfied are you with the BART Police Department's efforts to reduce crime? [No answer: 9]

	VERY SATISFIED	SOMEWHAT SATISFIED	NEUTRAL	SOMEWHAT DISSATISFIED	VERY DISSATISFIED	DON'T KNOW
Random Sample	6%	16%	29%	11%	7%	31%
Open Participation	12%	16%	22%	13%	11%	26%
Combined	10%	16%	24%	12%	10%	27%

17. How safe or unsafe would you feel riding a BART train after dark? [No answer: 6]

	VERY SAFE	SAFE	UNSAFE	VERY UNSAFE	DON'T KNOW
Random Sample	13%	62%	21%	3%	2%
Open Participation	13%	56%	21%	6%	2%
Combined	13%	58%	21%	5%	2%

18. How safe or unsafe would you feel in a BART station after dark? [No answer: 7]

	VERY SAFE	SAFE	UNSAFE	VERY UNSAFE	DON'T KNOW
Random Sample	7%	57%	28%	6%	2%
Open Participation	10%	49%	28%	10%	3%
Combined	9%	51%	28%	9%	3%

19. How safe or unsafe would you feel in a BART parking lot after dark? [No answer: 6]

	VERY SAFE	SAFE	UNSAFE	VERY UNSAFE	DON'T KNOW
Random Sample	2%	30%	41%	18%	10%
Open Participation	5%	30%	36%	22%	7%
Combined	4%	30%	37%	21%	8%

20. How much confidence do you have in the ability of the BART Police Department to prevent crime? [No answer: 4]

	GREAT DEAL OF CONFIDENCE	SOME CONFIDENCE	LITTLE CONFIDENCE	NO CONFIDENCE AT ALL	DON'T KNOW
Random Sample	7%	53%	24%	7%	9%
Open Participation	14%	44%	24%	11%	6%
Combined	12%	47%	24%	10%	7%



21. How would you rate the overall performance of the BART Police Department?

[No answer: 5]

	EXCELLENT	GOOD	ONLY FAIR	POOR	DON'T KNOW
Random Sample	6%	38%	30%	13%	14%
Open Participation	14%	33%	24%	19%	11%
Combined	11%	34%	25%	17%	12%

22. What is your current marital status? [No answer: 11]

	SINGLE	MARRIED	WIDOWED	SEPARATED	DIVORCED	MEMBER OF UNMARRIED COUPLE	NEVER MARRIED
Random Sample	35%	43%	1%	1%	6%	12%	1%
Open Participation	36%	45%	1%	1%	7%	8%	2%
Combined	36%	44%	1%	1%	6%	9%	2%

23. What is your age? [No answer: 15]

	<18	18-24	25-34	35-44	45-54	55-64	65 +
Random Sample	0%	7%	27%	22%	19%	17%	6%
Open Participation	1%	7%	26%	23%	22%	16%	5%
Combined	1%	7%	26%	23%	21%	17%	5%

24a. Are you Spanish, Hispanic or Latino? [No answer: 26]

	YES	NO
Random Sample	13%	87%
Open Participation	10%	90%
Combined	11%	89%

24b. What is your race or ethnic identification? [Respondent could check one or more]

[Answers: 1223]

	WHITE	BLACK OR AFRICAN AMERICAN	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	OTHER
Random Sample	58%	9%	18%	3%	13%
Open Participation	66%	11%	12%	3%	9%
Combined	63%	10%	14%	3%	10%

25. What is the highest level of school you have completed? [No answer: 10]

	LESS THAN HIGH SCHOOL	HIGH SCHL GED	TRADE/TECH SCHOOL	SOME COLLEGE	COLLEGE DEGREE	GRADUATE DEGREE	DON'T KNOW
Random Sample	0%	2%	2%	23%	37%	36%	0%
Open Participation	1%	3%	1%	20%	47%	27%	0%
Combined	1%	3%	2%	21%	44%	30%	0%

26. Please indicate your gender. [No answer: 22]

	MALE	FEMALE
Random Sample	48%	52%
Open Participation	49%	51%
Combined	49%	51%



27. What county do you live in?

	Alameda	Contra Costa	Marin	Napa	San Francisco	San Joaquin
Random Sample	49%	22%	1%	0%	17%	0%
Open Participation	44%	27%	0%			
Combined	45%	26%	0%			

	San Matco	Santa Clara	Solano	Sonoma	Other
Random Sample	6%	1%	1%	0%	2%
Open Participation					
Combined					



BART Police Management Audit

**Feedback from Community Meetings
June 22 & 23, 2009**

1. Look at "Big Picture" [e.g. Manchurian candidates] - officers being trained for deadly activities.
2. How deep is BART's investigation on officers [e.g. prior misconducts].
3. How are BART officers selected? The quality is suspect.
4. Issues of cover-up on police fatal shooting.
5. Poor crowd control tactics used by BART officers.
6. BART Police are "out of control".
7. Why would officers say: "We did nothing wrong" during the fatal shooting?
8. Intimidation by BART P.D. in use of dogs against the public.
9. Can NOBLE train officers on human diversity?
10. Inappropriate touching by BART personnel of community members.
11. Intimidation and retaliation toward those who complain of incidents by BART P.D.
12. Feels like she gets a run-around when complaints are made against BART P.D.
13. No accountability when BART errs.
14. Concern re: officers who are repeat offenders.
15. Investigate Police Chief GEE.
16. Cultural sensitivity training for BART officers is needed.
17. Psychological backgrounds of officers are needed.
18. BART: Internal Affairs attempts to discourage reporting to protect officer's record.
19. BART PD does not have proper training for control of crowds.
20. BART PD officers need to have more integrity.
21. Officers involved in the shooting should be fired.
22. Taser positioning needs to be proper.
23. Citizens Review Board needs to be overseen by citizens.



24. Understand the process of the fatal shooting investigation and resulting issues and criminal process.
25. The complaint and oversight process involving BART P.D. needs to be revised.
26. Do not use the BART website for P.D. complaints.
27. The improper use of taser weapons as toys by BART PD.
28. BART did not take an affirmative action after the shooting with the officers.
29. BART PD does not need weapons.
30. Does BART need a police force?
31. There are now three fatal BART police shootings of blacks that are unjustified.
32. BART Officers should be screened for hearing capabilities to understand the public.
33. Ensure that the public's complaints are being heard.
34. How the complaints are made and being processed needs to be reviewed.
35. Training of BART officers needs to be improved.
36. Hiring of BART police officers [quality of] needs to be improved.
37. The quality of Use of Force training and reporting needs improvement.
38. The integrity of BART officers concerning their activities is questionable.
39. BART Officers need to be involved with community members outside of their community.
40. Psychological fitness for duty of BART police officers is important.
41. BART needs to get more Community input.
42. BART police officers need to receive customer service training - they disrespect the Community.
43. Officers involved in the questionable police shooting should not be assigned as defensive tactics instructors.
44. The BART PD should be disarmed.
45. What role will racial profiling play in the BART P.D. Study?
46. A black police organization should investigate the BART police shootings.
47. The use of a para-military law enforcement agency for a transit system is not needed.
48. There is a lack of the perception of safety around BART police officers.



49. The tactical wing of BART PD should be eliminated.
50. At best, make BART PD officers just fare inspectors.
51. Give BART PD officers CPR & First Aid training if they are using tasers.
52. BART police officers should stop intimidating people. They need to be people-friendly.
53. How long and when are complaints investigated, and who does it?
54. BART PD should not have changed their police patches to just police after this incident.
55. Greater responsibility should be given to the local jurisdictions regarding BART enforcement.
56. BART PD unlawfully detains and harasses youths.
57. BART PD needs oversight and accountability for its action.
58. Have complaint forms at each BART station so that they can be privately completed.
59. Place BART PD officers' photos on the website.
60. The BART Board needs to be full-time to oversee the Police Department.
61. BART PD should not have a militarized approach, but focus on Service and Community problems.



Chapter 10

Context Background



BART Police Management Audit

Topical Area: Community Context

Issue: Should BART have a Police department

Current Application or Practice: BART currently has a full service transit police department which provides patrol services in a three-county area. The January 1, 2009, fatal BART police shooting was the precipitating incident which raised the question of whether BART should have a transit police department. The NOBLE Study Team has analyzed this question and provide the following written response.

Recommendation: It is recommended that BART continue to maintain a transit police agency. A transit police agency is highly beneficial because of BART's decentralized environment and high commuter traffic in the communities it serves. A public transportation system has a high degree of vulnerability in our 9/11 society. Safety and security has a high priority for the ridership of BART. The following is a list of the key reasons in answer to whether BART should have a police agency is most effectively responded to in the affirmative:

- a. Better responsiveness to calls for service;
- b. Higher degree of safety to all patrons;
- c. Understanding the goals of administration;
- d. Cohesiveness of response to client needs;
- e. Developing and implementing counter-terrorism strategies;
- f. Intelligence information gathering and sharing;
- g. Officer presence on the trains;
- h. Establishing police-community relations;
- i. The level of community crime;
- j. The volume of commuter traffic;
- k. Fare evasion and cashier stations; and
- l. Parking lot safety.

Justification: The NOBEL Audit Team's analysis of BART confirms the validity of maintaining a transit police agency. BART is a large decentralized transit system serving a high volume of patrons. Due to the high volume of people and assets, a special purpose transit agency is the most effective way to prevent, reduce, and solve crime.

Implementation Standards: Continue to maintain a transit police agency.



Chapter 11

Civilian Oversight



BART Police Management Audit

Topical Area: Civilian Oversight

Issue: Civilian Review Board

NOBLE MAJOR RECOMMENDATIONS

1. All appeals should stop at the General Manager. The decision at that level is final. The Board of Directors is a policy making body of elected officials and should avoid issues of management oversight other than for the General Manager.
2. The process of establishing an independent Citizen Oversight System for the BART Police Department should be developed at a pace sufficient for proper planning and should not be established solely because of the urgent and vocal demands of the community. The community may not like the end results because the system may be flawed as a result of establishing the policies, procedures and system too rapidly. The System must also be properly subsidized and carefully thought out and planned. The community should also be provided with monthly updates on the progress of the Civilian Oversight System.
3. The Independent Police Auditor, members of the Citizen Board or Investigators should not be police officers or former law enforcement officers. They also should not be investigators. When police officers are part of Citizen Boards they can inadvertently function as or be perceived as a "Police Commission or Panel of Review". In fact, since recommendations shall be made about BART Police Officers' behavior and conduct, respected psychologists and sociologists might be considered to be members of the Citizen Board. For example, psychologists are trained to perform psychological research, testing and therapy. They can recognize aggressive, "hyper-vigilant" police officers. Sociologists study human social behavior. This shall be helpful when reviewing complex cases involving multiple complainants, witnesses and police officers.
4. The BART Board of Directors should not appoint the Citizen Board directly. The Citizen Board should be free of politics and even the perception that they are influenced by politicians. If Board of Directors are politicians (or associated with politicians), appointment of Citizen Board members by politicians may appear impartial. Citizen Board members can be interviewed and hired by NACOLE, the California Human Relations Commission or another independent organization that they recommend. Minimum qualifications for the Independent Police Auditor, Citizen Board members and Investigators should be established. The BART Board of Directors should select Citizen Board members from a list provided by NACOLE.



5. There must be a clear, dedicated funding source for the Citizen Oversight System. The source of funding should be determined now. A budget must also be established as well as an organizational structure.
6. Regular and consistent training must be provided to Citizen Board members. This training shall include familiarization with POST, the BART system, Operational Directives (especially Positive Discipline Policy or Disciplinary Code), Contract Agreements, Grievance Procedures, Due Process Policies and Internal Affairs policies and procedures.
7. Citizen Board members as well as the Auditor should have a relationship with local prosecutors (District Attorney) along with the Offices of the State Attorney General and the United States Attorney. Complainants allegations should be forwarded to the appropriate agency for action.
8. Recommendations for Corrective Action: Independent investigative findings made by the Office of the Police Auditor shall include recommendations for corrective action, up to and including termination where warranted and shall include prior complaints and their disposition. Discipline that is recommended shall be consistent with past practice and uniformly applied. Any discipline action initiated by the Bart Police Department will comply with the Positive Discipline System guidelines (e.g. Operational Directive #77), other appropriate guidelines and any labor agreements in effect. Every officer is entitled to Due Process. When the evidence does not support the allegations of misconduct, the Auditor shall recommend to the Citizen Board that the matter be dismissed. The Citizen Board shall have a simple vote to determine if the matter shall be dismissed. This process must be appropriately documented in writing and endorsed by the Auditor and each member of the Citizen Board. Proper notification must be made in writing to the complainant and the BART police officer regarding the disposition of the investigation.

If the complainant wishes to withdraw a complaint, the Auditor shall forward documentation to the Citizen Board that is endorsed by the complainant. These procedures must be clearly communicated to all parties including the community.

9. Time limits should be indicated throughout the policy. For example, "In a confidential personnel meeting, the Auditor shall submit his/her investigative findings and recommendations in writing to the Citizen Board for review within 60 calendar days. Should the Citizen Board agree with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action within 10 calendar days. The Chief of Police shall implement the recommended action in accordance with the Positive Discipline guidelines, absent appeal."



Current Application or Practice:

BART has developed a committee to determine the feasibility of establishing the appropriate type of citizen oversight system (Civilian Review Board) at BART to ensure that the internal police accountability processes, methods and procedures (the Internal Affairs Investigations system) functions objectively, properly and without bias. The type of oversight established must enhance the professionalism of the BART Police Department and be responsive to the *community* they are sworn to protect and serve.

Regardless of the type of oversight selected there must be assurances that the process will hold the police responsible by investigating and hearing citizen complaints. The citizen oversight system **MUST** ensure that citizens, patrons and riders who use BART have alternatives to address their grievances and complaints. This shall give the community more confidence in the system.

There is not a current citizen oversight system (Civilian Review Board) application or practice. However, according to the BART Police Department's General Orders #1.021 their Internal Affairs Section *is* responsible for providing a prompt unbiased and expedient investigation of complaints regarding the conduct of Department employees. The organizational structure indicates one sergeant assigned to the Internal Affairs Unit currently conducts Internal Affairs Investigations. He reports directly to the Office of the Chief.

The BART Police Department does not currently have a process to ensure adequate oversight and accountability of their Internal Affairs process and assurances that the results of investigations for misconduct were properly investigated. A Civilian Review Board may be established for this reason alone. This is a BART internal decision based on operational, political, and community-related issues and concerns.

The department's current organizational structure relative to Internal Affairs and the current manner in which investigations are conducted are also inadequate. However, the Topical Area of Internal Affairs is being reviewed separately by the Audit Team.

In view of the fact that independent oversight has not been established it is difficult to get objective recommendations to make systemic changes and improve the overall services, operations and accountability of the BART Police Department. **Problems that may be identified as a result of a lack of oversight include:**

- Policy and procedural deficiencies may not systematically addressed or identified which can contribute to a culture that promotes racial profiling and allegations of racial abuse
- Complaints against police may not be investigated in a complete, equitable and unbiased manner
- There may not be analysis of the collective investigations conducted regarding misconduct
- Data is not utilized to identify trends that can serve as an "early warning system" of officers who exhibit a pattern of receiving allegations of misconduct or identification of other trends to help mitigate systemic problems



- Data may not be utilized to access disciplinary recommendations, dispositions and trends
- Data may not be used to access if corrective action and training are appropriately recommended or used

Therefore, if these issues critical to the mission of the BART Police Department and BART, then the appropriate form of civilian oversight should be established.

Recommendation: Models of citizen oversight.

BART should select the model of Civilian Oversight or hybrid of models that is most suitable to address the key concerns of police accountability.

There are a variety of Citizen or Civilian Oversight models. Each can improve policing to various degrees and facilitate trust between communities and law enforcement. The overall purpose of each model is to provide firm, consistent reviews and/or investigations in order to have adequate law enforcement services and improved management.

However, each model has inherent advantages and disadvantages. Critical problems regarding the oversight process can occur. However, there are recommended ways to avoid them.

Auditor and Ombudsman

Description

This model is best described as *an individual* who is responsible for conducting oversight. This person can have several titles such as Auditor, Monitor, Inspector General and Ombudsman. This model is independent from law enforcement or police functions. An individual reviews Internal Affairs (IA) investigations and complaints against police involving misconduct. If for example, the IA investigation is unsatisfactory or deficient, the Auditor may request further investigation or conduct an independent investigation. The Auditor may also carry out investigations not generated by complaints.

Function

Auditors identify, scrutinize or monitor and in some cases investigate complaints. They also make determinations/conclusions and develop findings or recommendations. They may conduct periodic audits to determine the efficacy of processes and procedures within the IA Division/Unit.

Strengths

The obvious strengths of this model is the Auditor's ability to function with more suppleness or flexibility than a board. The Auditor may have an extensive mission as opposed to just monitoring and investigating complaints against police conducted by IA. However, it is imperative that the Auditor have the authority to **compel evidence** from the law enforcement agency. Adequate funding, resources and facilities must also be made available to carry out his/her duties.



Weaknesses

The Auditor model relies on the ability, skills and dedication of one individual. Consistency and continuity of the quality of work may become problematic. The public may desire more than one person to participate in oversight to show objectivity and collaboration.

Critical Issues

Critical issues that must be taken under consideration are the extent of the authority and powers of the Auditor. There may also be concerns that the individual is not controlled or subject to control by the police department. Adequate and appropriate outreach to the community must also be addressed. The Auditor must be accessible and have the ability to listen to all parties and collect all evidence before analysis is conducted. He/she should be respectful but also not timid.

Commission/Board (Non-Investigatory Powers)

Description

The responsibilities of this variation of Commission/Board reviews Internal Affairs investigations and determines if they were conducted adequately. Members assigned to this type of citizen oversight document if they agree or disagree with the findings of the investigation. They may recommend additional investigations or policy proposals and play a role in officer discipline recommendations.

Function

This Commission/Board determines if IA investigations were conducted appropriately and adequately. They may direct the police department to take corrective or disciplinary action or to improve the quality of IA investigations. Policy recommendations are often made. Auditors identify, scrutinize or monitor and in some cases investigate complaints. They also make determinations/conclusions and develop findings or recommendations.

Strengths

This model typically produces findings more expeditiously than the investigative model, and can provide more community and citizens' input than the Auditor model. To maintain its integrity, members on these Commission/Boards need to have sufficient knowledge, ability and training to identify and discern problems that often encompass complex IA investigations.

Weaknesses

There is a considerable amount of labor and time required of volunteers. If the IA process is inadequate, and the Board is not competent, unskilled and/or trained, they may not recognize problems in the investigations.

As a result of working with IA investigations, this model is more vulnerable to being co-opted, although every model is subjected to this risk.

Critical Issues



Consistent with critical issues of Auditors, what must be taken under consideration are the extent of the authority and powers of Commission/Boards. There may also be concerns that the Boards are not controlled or subject to control by the police department. Adequate and appropriate outreach to the community must also be addressed.

The Board must be accessible and have the ability to listen to all parties and collect all evidence before analysis is conducted. The Board should be respectful but also not timid.

Just as important, they must not be permitted to become ineffective by internal conflicts amongst Board members that can result in splintering and divisiveness.

Commission/Board (Investigatory Powers)

Description

This model has the capability to investigate complaints. The Board makes findings and as a result, makes recommendations to law enforcement administrators regarding discipline and/or policy.

Function

It is important that this type of Board produce an investigation with findings that include specific recommendations regarding discipline and/or policy. Appropriate information regarding the results should be provided to the complainant, citizen(s) and/or the public. It is very important to provide fair, unbiased and consistent *external* investigation to facilitate law enforcement agencies to provide more efficient, equitable law enforcement services.

Strengths

This model can provide public confidence and give complainants and the community a greater sense of inclusion and a sense that the decisions or findings are made outside the police department or law enforcement agency.

In addition this Board must as with all others, should maintain it's integrity. Members and staff must have sufficient training, knowledge and ability to conduct competent, effective investigations. In addition, it needs:

- Ability to compel evidence (subpoena) and influence officers to testify
- Funding available to fully investigate
- Accessible and open public hearings
- Due process for police officers

Weaknesses

Again, there is a considerable amount of time and labor require of volunteers. If Board members are inadequately trained or skilled, their investigations may be poorly conducted resulting in substandard investigations that can cause the community, law enforcement agency or police department unwarranted problems. This process can also be adversarial if members become divisive.



Predictable Challenges of all Oversight Models

Regardless of the type of external model being used, it can increase the antagonism and suspicion of police managers and officers. So it is important to have some cooperation from within the law enforcement agency. You do not want to make it extremely challenging for Citizen Oversight members to investigate or to have police officials ignore or underestimate recommendations regarding policy or discipline.

Initially, external monitoring and oversight could face opposition from police officials, including the rank and file personnel unless the oversight process is “toothless”. If the process is credible, reliable and compelling that empowers the Board to investigate and police officers who were involved in misconduct are held accountable, opposition may include:

- Impeding funding
- Denigration of the Auditor, Board Members or staff
- Claims that police issues are too complicated for the public to comprehend
- Law suits from unions or employee groups to stop it
- Attempts to place supporters or sympathizers of police on Boards or let membership/appointments decline so quorums are not possible
- Pressure to impede the process or dissemination of information that should be open to the public

The community may expect:

- The oversight process to be up and running expeditiously

In order to reduce the opposition of individuals who may also resist “anything new” and disappointment of the community that the process is not moving fast enough, they must be informed that establishing Citizen Oversight requires time, planning and coordination in order to be successful.

If the process is recognized as “fair”, the community satisfaction and law enforcement acceptance will develop.

Three (3) Critical Mistakes for Civilians involved in Oversight to Avoid:

- Failure to be adequately prepared and informed about the relevant case details as well as legislation and governing policies
- Significant involvement or identification with the community or the complainant
- Significant involvement or identification with the police or law enforcement agency

Critical Factors that Work:

According to the National Association for Civilian Oversight of Law Enforcement (NACOLE), some of the critical factors that really make oversight work effectively in many communities is oversight:

- That is independent
- That selects people with integrity who will go where the facts lead them



- That supplies its participants and administrators with adequate budgets, training and time
- That expects them to listen intently and to address detailed issues with fairness, patience and compassion for all the parties

Appoint of Non-Police Personnel

Former or incumbent police officers should not be a part of Civilian Review Boards. The appropriate role of former police officers is sitting on Police or Review Commissions.

Additional Roles of Civilian Oversight

- To promote community awareness regarding citizens' or complainants to file complaints and to disseminate information about where to file a complaint
- To make concrete recommendations about police policies and procedures but also to recommend specific training and improvement
- Hold regular monthly meetings that are open to the public so they can voice general criticisms and make recommendation to review or reform police policy or practices
- Ensure that an "Early Warning System" is developed to help identify "problem officers"
- To publish regular or annual reports indicating the number and types of complaints that have been substantiated or unsubstantiated along with other important information and statistics
- To avail a summary report of all the complaints and dispositions
- To forge a relationship with local prosecutors and others involved in the criminal justice system
- To obviously make contact with the civilian regarding the filing of a complaint, if a police of misconduct is made known
- To protect officers from frivolous, petty or vengeful complaints and ensure that officers are given due process

Justification: The standards of performance in this area are primarily based on the benchmarks identified by the National Association for Civilian Oversight of Law Enforcement [NACOLE].

Implementation Standards and Considerations:

Options for Citizen Participation in the Disciplinary Process for Independent Police Auditor Investigations

The Police Auditor format outlined in the aforementioned proposal appears to meet the needs of the community and BART. It is imperative that the community and BART police officers believe that the system is fair and equitable.

The obvious strengths of this model are the Auditor's ability to function with more suppleness or flexibility than a board. The Auditor may have an extensive mission as opposed to just monitoring and investigating complaints against police conducted by Internal Affairs. However, it is imperative that the Auditor have the authority to **compel evidence** from the law enforcement



agency. Adequate funding, resources and facilities must also be made available to carry out his/her duties. These options appear to be covered in BART's proposal.

The Auditor should not be a former or incumbent police officer.

BART's proposal includes all of the following and key elements:

- To promote community awareness regarding citizens' or complainants to file complaints and to disseminate information about where to file a complaint
- To make concrete recommendations about police policies and procedures but also to recommend specific training and improvement
- Hold regular monthly meetings that are open to the public so they can voice general criticisms and make recommendation to review or reform police policy or practices
- Ensure that an "Early Warning System" is developed to help identify "problem officers"
- To publish regular or annual reports indicating the number and types of complaints that have been substantiated or unsubstantiated along with other important information and statistics
- To avail a summary report of all the complaints and dispositions
- To forge a relationship with local prosecutors and others involved in the criminal justice system
- To obviously make contact with the civilian regarding the filing of a complaint, if a police of misconduct is made known
- To protect officers from frivolous, petty or vengeful complaints and ensure that officers are given due process

Many of the recommendations made by BART in the proposal are also consistent with the National Association for Civilian Oversight of Law Enforcement Officers.

NOBLE recommends and endorses the proposal submitted by BART.



Chapter 12

Use of Force



BART Police Management Audit

Topical Area: Use of Force

Issue: Legal Requirements for the Use of Force

Current Application or Practice: The agency has several written use of force directives that provide for only that level of force that is reasonable in any given situation:

1. Lethal Force/Incidents Resulting In Death or Great Bodily Injury
Operational Directive NO. 74
Date of Issue: March 18, 1986 Revised: January 29, 1999
2. Use of Lethal Force
Operational Directive NO. 75
Date of Issue: 08/25/06
3. Use of Considerable Physical Force
General Order NO. III, section: 3.321
Update: '84
4. Arrest Control Devices
Directive NO. 73
Date of Issue: January 28, 1986 Revised: October 16, 2000

A review of the agency's use of force policies with members assigned to training and internal affairs and interviews with sworn personnel, describes an agency practice that requires, but does not always ensure, that all sworn personnel participate in firearms in-service training and qualify with their duty weapon two times a year. Officers, sergeants and lieutenants repeatedly described the agency as having no accountability system when officers miss mandatory training or firearms qualification. Even though training is required by policy, a review of firearms training records reveals that some sworn personnel, particularly the firearms records of ranking members do not reflect or document officers' annual firearms qualification training. Agency line supervisors characterized the entire department's training process as "seat of your pants," and in-service training as a "huge hole in the agency" with the possible exception of the tactical team and SWAT Unit.

There is no written examination as a part of the firearms qualification process regarding the legal requirements applicable to the use of force, but the agency does consistently review the deadly force policy during firearms qualification. Personnel related that a similar review of the less lethal weapon's policy does not routinely occur, and they indicated that it may have last been reviewed with some officers in 2004. Agency personnel indicate, and a review of policy substantiates, that the agency does not specifically address weaponless use of force incidents in their operational directives; General Order NO. III section 3.321 "Use of Considerable Physical Force" is defined as resulting in apparent physical injury, "whether the person receives or refuses medical treatment." However, only one agency member who was interviewed was familiar with that General Order. Additionally, the elements of reasonable force, as articulated in *Graham v.*



Connor, are absent in General Order 3.320, "Use of Force." The *Graham* standard does appear in the agency's Use of Deadly Force policy. Newly employed sworn members receive a copy of all use of force policies as a part of their new officer orientation, according to training personnel.

Commendation or Recommendation: There are several separate use of force policies and written directives addressing the various weapons authorized by the agency. The policies should be captured in a single use of force directive to avoid confusion and to ensure a consistent response by agency members when a use of force event occurs. The agency's use of force policy training process should ensure that all sworn members receive annual training addressing the legal justification for the use of force. There also should be a provision for tracking and mandating attendance at make-up training for those that do not attend regularly scheduled training. The agency should develop a written use of force testing instrument and ensure that all covered personnel perform satisfactorily on the examination as a part of their annual use of force training. Further, the agency should modify all of its policies regarding the application of force and capture the elements of reasonableness detailed by the US Supreme Court in the case of *Graham v. Connor*.

Justification: CALEA 1.3.1 *A written directive states personnel will use only the force reasonable to accomplish lawful objectives.*

- IACP National Law Enforcement Policy Center, Use of Force Model Policy, February 2006

Implementation Strategy: Develop and implement a written test addressing the legal justification for the use of force and modify all policies involving the use of force to conform to the fundamentals discussed in *Graham v. Connor*. Conduct an analysis of the use of force incidents by the agency and modify policy and training as dictated by the results of that review.



BART Police Management Audit

Topical Area: Use of Force

Issue: Legal Definitions for the Use of Force

Current Application or Practice: The agency has a written use of force directive that provides for definitions of conditional terms or similarly used terms:

- Use of Lethal Force
Operational Directive NO. 75
Date of Issue: 08/25/06

The definitions are clearly found in the deadly force policy but are not clearly defined in the less-lethal or weaponless policy.

Commendation or Recommendation: Complete a comprehensive use of force policy review and identify all definitions and conditional terms for weaponless and less-lethal force. Generate a single policy describing those terms. The agency's use of force training process does not ensure that all sworn members receive annual firearms training or a review of the use of force policy. Although required by the agency, a review of firearms training records reveal that some sworn personnel, particularly the firearms records of ranking members do not reflect or document their annual firearms qualification training or policy review. Additionally, for those that do attend firearms training, the agency does not require an annual written test covering the legal justification for the use of force. The agency should develop a written use of force testing instrument and ensure that all covered personnel perform satisfactorily on the examination as a part of the annual firearms training.

Justification: CALEA 1.3.2 *A written directive states that an officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury.*

Definitions of conditional terms, such as those for reasonable belief, serious physical injury, or similarly used terms that are used to qualify the directive shall be included.

Implementation Strategy: Develop and implement a written test addressing the legal justification for the use of force and a process for ensuring all members receive annual training on the policy. This will reinforce the importance of the use of deadly force policy and provide officers with guidance in the use of force in life-and-death situations and prevent unnecessary loss of life. Further, the agency should develop and emphasize and increase the use of judgment based use of force scenarios.



BART Police Management Audit

Topical Area: Use of Force

Issue: Legal Definitions for the Use of Force

Current Application or Practice: The agency has a written use of force directive that prohibits the discharge of "warning" shots:

- Lethal Force/Incidents Resulting In Death or Great Bodily Injury
Operational Directive NO. 74
Date of Issue: March 18, 1986 Revised: January 29, 1999

Commendation or Recommendation: The agency policy is consistent with accepted police practices.

Justification: *CALEA 1.3.3 A written directive governs the discharge of "warning" shots. The agency's policy addresses this standard.*

Implementation Strategy: N/A



BART Police Management Audit

Topical Area: Use of Force

Issue: Authorization of Less Lethal Weapons

Current Application or Practice: The agency has several written directives that govern and authorize the use of less lethal weapons during this review period:

- Carotid Control Hold
Operational Directive NO. 89
Date of Issue: March 18, 1987
- Processing and Handling Arrestees
Operational Directive NO. 44
Date of Issue: June 7, 1982 Revised: May 12, 1999
- Policy on Applying Handcuffs and Leg Restraints
Special Order NO. 06-03
Date of Issue: 3/3/06
- Taser Less-Lethal Weapon Policy
Bulletin NO. 08-70
Date of Issue: 09-19-08
- Electronic Control Devices-TASER
Operational Directive/Policy 309
Updated: April 7, 2009
- Arrest Control Devices
Directive NO. 73
Date of Issue: January 28, 1986 Revised: October 16, 2000

The agency authorizes the following "Arrest Control Devices" by policy:

1. Chemical Agents;
2. Police Impact Weapons;
3. Carotid Control, and;
4. Taser.

The use of Chemical Agents and Impact Weapons are detailed in a policy revised in 2000. In August 1987, the policy governing the use of the Carotid Control Hold was issued. The Taser policy was issued on September 19, 2008 and was updated and re-issued on April 7, 2009. Most personnel advised that the use of force policy, initial taser and revised taser policies were issued during training. However, if a member did not attend training, that member would not receive the policy. This lapse includes any supervisors who were responsible for ensuring policy compliance, but had not yet received the taser training. Personnel were questioned regarding the less lethal weapons that they carried and the training requirements associated with their use, some personnel stated that they had not received copies of the policy for less lethal weapons. Others stated they had received copies of the policies, but only during the initial training, which



ranged from four to 20 years previously. A review of the mandatory training list for sworn personnel for 2006, 2007, and 2008 revealed no mandatory training for all sworn personnel for OC Spray, Impact Weapons or the Carotid Control Hold.

The quotes below reflect the general tone of those interviewed regarding the agency's training for less-lethal weapons, for both rank and file:

- "The department does not provide continual re-training or in-service training for less lethal weapons."
- "No training on the carotid hold since police academy training in 1991, there may have been an agency policy review and a refresher of the carotid hold eight years ago, but I am not certain."
- "OC training in 1991 during the academy, no refresher or policy review since."
- "Some defensive tactics with the taser training in 2008, but prior to that, the agency had not provided any defensive tactics training for at least five years."
- "There was no policy review of weaponless tactics policy during the taser training and I can't recall ever receiving a policy review of that topic."
- "Received weaponless tactics training in 2009, and over three years ago before that time."

According to agency members, officers assigned generally to patrol or detective duties have not been re-trained on OC Spray, Impact Weapons (i.e., baton, ASP,) or the Carotid Control Hold since they were initially trained when the weapons were issued, except for 45 minutes of baton training in conjunction with the Taser training in December 2008.

Commendation or Recommendation: The agency should incorporate the various policies governing use of force into a single comprehensive policy to both reduce confusion and provide easy to find guidance in this critical area. The agency's less-lethal weapons' directives, except for the TASER policy, do not reflect an update or a review or revise date that demonstrates the policies have been critically evaluated in some time, in the case of the Carotid Control Hold over two decades and almost nine years for Arrest Control Devices. The agency should conduct a documented and comprehensive review of policies surrounding this high liability area and ensure the policy comports with the agency's current practice. An analysis of use of force incidents should be undertaken, the findings could prove beneficial and instructive during a policy review of less-lethal weapons.

Justification: **CALEA 1.3.4** *A written directive governs the use of authorized less lethal weapons by agency personnel.*

Implementation Strategy: Initiate a documented review of all policies detailing the authorization of less lethal weapons, with representatives from management, training, internal affairs and line officers. Generate a comprehensive policy for use of force related issues and conduct judgment based or scenario training on the revised policy. Develop and administer a



written examination reflecting the important training aspects of the less-lethal training. Incorporate the justification for the use of force as detailed in *Graham v. Connor*.



BART Police Management Audit

Topical Area: Use of Force

Issue: Authority to Secure Prompt Medical Aid for Affected Subjects Involved in a Use of Force Incident.

Current Application or Practice: The agency has several written directives that govern and authorize a response and evaluation by qualified medical personnel as soon as practical for a person affected by a use of force event:

- Electronic Control Devices-TASER
Operational Directive/Policy 309
Updated: April 7, 2009
- Lethal Force/Incidents Resulting In Death or Great Bodily Injury
Operational Directive NO. 74
Date of Issue: March 18, 1986 Revised: January 29, 1999
- Carotid Control Hold
Operational Directive NO. 89
Date of Issue: March 18, 1987
- Arrest Control Devices
Directive NO. 73
Date of Issue: January 28, 1986 Revised: October 16, 2000

Each of the nearly two dozen sworn personnel who interviewed was familiar with the policy requirement of securing medical care when specific types of force options were employed, despite the fact that not all policies required the same protocol. The most recent version of the taser directive mandates that the primary officer include in the police report the names of individuals who provided medical care on the scene and the names of medical personnel who removed the probes; the policy governing the use of batons and OC spray does not require that level of detail.

The following randomly selected custodial reports were requested and reviewed for compliance with the agency's medical aid requirement when the taser or OC spray is employed:

OC Spray:

- BART Police Department Report # 0810-3022
- BART Police Department Report # 0809-2467
- BART Police Department Report # 0808-2093
- BART Police Department Report # 0808-1488
- BART Police Department Report # 0806-2532
- BART Police Department Report # 0802-0405
- BART Police Department Report # 0802-0131



BART Police Department Report # 0712-0086
BART Police Department Report # 0712-0489

Taser:

BART Police Department Report # 0904-0430
BART Police Department Report # 0902-0097
BART Police Department Report # 0812-3338
BART Police Department Report # 0812-2064
BART Police Department Report # 0901-0024
BART Police Department Report # 0904-0234
BART Police Department Report # 0905-1431
BART Police Department Report # 0904-3095
BART Police Department Report # 0902-0070
BART Police Department Report # 0902-0883

The assessment of the randomly selected reports reflecting an incident where OC spray or a Taser was employed revealed that in all 19 incidents reviewed, medical assistance was documented in the police report. However, taser-related incidents occurring after the April 7, 2009 policy revision, which requires the police report to contain the names of personnel providing medical care, and the names of medical personnel who removed the probes, were not within policy in one of the two incidents reviewed after the policy revision. Agency personnel merely documented that medical treatment was provided. In each report, supervisor approval is evident whether the nature of the medical documentation complied with policy or not.

Commendation or Recommendation: The intent of this standard is to minimize the severity of obvious injuries and non-visible trauma commonly associated with weapons or hand-to-hand tactics. Such tactics may include neck holds, hard punches to the head, heart, or other vital organs, or restricting respiratory function. The agency practice is consistent with accepted practice as it relates to the medical requirement when less-lethal and lethal force is employed. The medical treatment requirements relating to weaponless tactics are less consistent. The agency should combine its use of force policies into a single policy and require a single uniform police report documenting medical treatment. Additionally, supervisors should be held accountable for ensuring policy compliance relating to the medical treatment documentation in a use of force event.

Justification: *CALEA 1.3.5 A written directive specifies procedures for ensuring the provision of appropriate medical aid after use of lethal or less lethal weapons, and other use of force incidents as defined by the agency.*

Implementation Strategy: Issue a single updated policy that addresses all use of force issues and conduct training on the revised policy. Perform periodic and random reviews of arrest reports for policy compliance relating to the medical response documentation and initiate



corrective or disciplinary action against supervisors who approve reports without the appropriate documentation.



BART Police Management Audit

Topical Area: Use of Force

Issue: Requirement for Use of Force Reporting

Current Application or Practice: The agency has at least six written directives that govern and define the reporting requirements involving agency personnel and their application of force:

- Lethal Force/Incidents Resulting In Death or Great Bodily Injury
Operational Directive NO. 74
Date of Issue: March 18, 1986 Revised: January 29, 1999
- Electronic Control Devices-TASER
Operational Directive/Policy 309
Updated: April 7, 2009
- Carotid Control Hold
Operational Directive NO. 89
Date of Issue: March 18, 1987
- Use of Lethal Force
Operational Directive NO. 75
Date of Issue: 08/25/06
- Use of Considerable Physical Force
General Order NO. III, section: 3.321
Update: '84
- Arrest Control Devices
Directive NO. 73
Date of Issue: January 28, 1986 Revised: October 16, 2000

The agency policies relating to a use of force by discharging a firearm, resulting in death or serious bodily injury, do not provide for an outside agency to conduct the criminal investigation of the shooting. Rather, the agency charges Internal Affairs with the Administrative Investigation and the Detective Section with the criminal investigation.

A policy compliance assessment was conducted with Internal Affairs, regarding the agency's adherence to Operational Directive NO. 74 "Lethal Force/Incidents Resulting in Death or Great Bodily Harm" issued March 18, 1986 and revised January 29, 1999, immediately subsequent to, the fatal BART shooting incident January 1, 2009. The matter continues to be the object of an outside administrative internal investigation and a criminal prosecution; consequently, the facts leading up to and surrounding the shooting incident were not discussed. The review focused on the agency's response to the incident and whether that response was consistent with the policy in effect at the time of the shooting. The examination consisted of a point-by-point review of all action steps dictated by policy when a deadly force incident occurs. Personnel familiar with the case file, and with access to the documents necessary for the evaluation, provided the agency



response to this inquiry, which noted the following areas as out of compliance with the agency policy governing deadly force events:

1. Paragraph IV. Section F. Reporting Procedures (2.) Discharging Firearms
“...the employee who discharged the firearm shall submit a written memo documenting the incident to chief of police via the chain of command...prior to the end of his/her assigned shift.”

According to Internal Affairs personnel, no memorandum was submitted by the involved officer to the chief of police.

2. Paragraph IV. Section F. Reporting Procedures (2.) Discharging Firearms
“A brief statement will be taken from the involved officer at the crime scene to determine crime scene perimeters...”

According to Internal Affairs, no statement was taken from the involved officer at the scene; rather he was allowed to go home without providing any statement. He subsequently resigned and refused to provide any type of statement to the agency.

3. Paragraph V. Procedure For Incidents Involving Police Employees Resulting in Death or Serious Bodily Injury (A.) Notification
“Whenever an employee is involved in an incident resulting in death...the following notifications shall be made: 1. Bart Police Communications Section;”

According to Internal Affairs, the BART Communications Section was not immediately notified of an officer-involved shooting. Agency records indicate at 0210 hrs, BART Communications received a radio transmission requesting a medical response for a subject with a gunshot wound. At 0223 hrs, BART Communications received a telephone call advising them that the shooting was officer-involved.

4. Paragraph V. Procedure for Incidents Involving Police Employees Resulting in Death or Serious Bodily Injury (C.) Criminal Investigation, 2. Methodology
“(1) The scene should be secured immediately. This responsibility includes...the identification and sequestration of witnesses.”

According to Internal Affairs, no witnesses who were on the train when the shooting incident occurred were sequestered, nor were any arrangements immediately made to halt the train and identify witnesses.

5. Paragraph V. Procedure For Incidents Involving Police Employees Resulting in Death or Serious Bodily Injury (D.) Administration Investigation, 2. Methodology
“a. During the administrative investigation...Unless intoxicant testing was part of the criminal investigation, intoxicant testing will be conducted as a part of the administrative investigation.”
“Interview statements...toxicology test results...shall not be revealed to criminal investigators without approval from the district attorney’s office and the Chief of Police.”



According to Internal Affairs, the Administrative Services Commander supervising the criminal investigation, ordered the officer involved in the shooting to take a breath and urine test after he refused to provide one voluntarily. The results of those tests were included in the criminal investigation, contrary to policy if the District Attorney and Chief of Police had not granted approval.

Generally, agency members interviewed were critical of the agency practice as it related to the manner in which the agency responded to the January 1, 2009, fatal shooting. Specifically, they criticized the failure of officers and the supervisor at the scene to immediately transmit a radio broadcast that there was an officer-involved shooting and the failure to stop the train and identify and separate witnesses. An officer commented that he worked the next station up from the Fruitvale shooting scene and witnesses coming off the train told him an officer shot a subject at the Fruitvale station. The officer thought the train passengers were joking. Officers characterized the shooting incident as a breakdown in communication at the scene and voiced frustration that still, almost six months after the incident, there has not been a departmental de-briefing regarding the incident. Employees continue to obtain their information about the shooting from media. A supervisor stated that the entire incident, from the failure to stop the train with the witnesses to the failure to notify other on-duty officers that there had been a police involved shooting, was a "failure of policy and communication."

The use of force policies that address the reporting requirements of less lethal weapons lack consistency in style and detail. The use of a taser mandates nine elements to be addressed in the "police" report. The application of the carotid control hold requires the reporting officer to document the event in the "crime" report and details several elements that are to be reported. Use of considerable physical force requires an "inter-office memorandum" submitted to the Bureau Commander. The policy addressing the use of impact weapons, OC spray, carotid control hold, or SIMS mandates documentation in the body of the "police" report and contains an additional requirement to check "other" and state "use of force." An assessment of the various policies reveals that the agency's practice does not include a standard uniform use of force report.

Numerous personnel report that officers are not trained in how to document and what variables should be noted in a use of force report. According to training and internal affairs personnel, all use of force incidents involving a firearm or less lethal weapon must be documented in the incident report by the primary officer. The agency does not have a separate use of force or response to aggression or resistance report. Officers are not required to document in a use of force report leg sweeps, elbow jabs, punches, kicks or other weaponless force.

In an interview with a sergeant responsible for conducting use of force reviews, the sergeant indicated that in the area of weaponless use of force, the current policy did not require a use of force report or a supervisor review. The supervisor indicated that, while he would be notified from time to time, it would depend on the officer. Likewise on other shifts it would depend on the officer and the supervisor if there was any use of force documentation for weaponless force. Several members interviewed indicated that, on occasion in cases where the on-duty supervisor was notified of a use of force event, a sergeant would not respond but would call the officer on a cell phone and obtain a briefing regarding the use of force incident. The member indicated that the agency does not provide training to sergeants or lieutenants on what is required of them in a



use of force review. Similarly, there is no defined format for conducting the review. Each supervisor “does it their own way.” According to most personnel interviewed, the agency does not formally train its officers about what information is required in a use of force report.

However, several officers indicated some training was done and believed that a use of force template detailing the reporting requirements was provided by the agency. Another supervisor stated that weaponless physical force is not defined by policy and is not tracked as a use of force event; an officer applying weaponless force is not required to report it and supervisors are not required to respond to the scene of the incident. Personnel routinely stated that less lethal use of force response incidents require a supervisor response only if it involves baton, OC, carotid hold or taser. All other incidents are up to the individual officer. A supervisor stated this matter was brought to management’s attention, specifically that “hands on” force reporting is discretionary and it is not documented or tracked, but there was no policy change or management engagement on the issue.

Commendation or Recommendation: The purpose of establishing a clear and consistent use of force or response to resistance reporting system within an agency is to provide effective review and analysis of use of force events. The agency should develop a reporting system that ensures all incidents involving the application of force, including leg sweeps, elbow jabs, punches, kicks or other weaponless force, are well documented and the salient facts surrounding the event noted. Serious consideration should be given to developing a separate use of force report that is completed when an incident involves the application of force; training in the proper documentation of use of force events is paramount. Sound and consistent reporting of use of force incidents will help identify trends, improve training and employee safety, and provide timely information for the agency when addressing use of force issues with the public. Early and accurate reporting helps establish and maintain agency credibility.

The use of force report should detail the necessary reporting elements to document use of force or response to resistance incidents, based on severity or other established criteria. A use of force report ensures information is captured consistently in a manner that lends itself to review and analysis. Elements of a use of force report should include:

1. Reporting officer
2. Date, Time, Location
3. Type of call
4. Number and names of all involved officers
5. Charge
6. Officer injury and suspect injury
7. Type and nature of force
8. Medical treatment and names of treating personnel
9. Drug and alcohol involvement
10. Photographs
11. Names of witnesses
12. Video or audio evidence

In deciding the threshold of when to generate a use of force or response to resistance report and



how extensive the report needs to be, the agency should conduct a needs assessment. The assessment should examine all incidents involving employees who have caused, or are alleged to have caused death or injury to another, have accidentally or intentionally discharged a firearm, or have applied weaponless force upon another to the extent it is likely to cause or lead to unforeseen injury, claim of injury, or allegations of excessive force, e.g., the use of neck holds, four point restraints (commonly referred to as the "hog-tie" restraint), punches, or kicks. The agency should also require that each officer involved or witnessing a use of force event generate a supplemental report detailing their involvement and observations.

If physically able, the primary employee involved should always be required to write a report detailing their involvement before the conclusion of the tour of duty on which the incident occurs. If physically unable, then a verbal report should be obtained and committed to writing as soon as practical. Written procedures should state by whom, when, and how the report will be submitted.

The agency should consider modifying its policy to provide for an "outside" agency to conduct the criminal investigation anytime an application of force by an officer results in death or serious bodily injury. Additionally, all officers and supervisory personnel should be trained on the importance of immediately notifying the communications center when a use of force incident occurs and the necessity of identifying and securing witnesses.

A part of the use of force policy should include a response to the scene of any incident by a supervisor requiring that the supervisor conduct a documented review of the incident, including by:

1. Interviewing the officer applying force
2. Interviewing other involved officers
3. Interviewing any third party witnesses
4. Interviewing the suspect
5. Photographing the suspect
6. Photographing any injuries to the officer
7. Photographing any damage to the involved officers' uniform
8. Ensure appropriate evidence is secured and documented, i.e., taser cartridge, firearm, spent rounds
9. Determining if any video or audio tape recording of the incident is available and making arrangements to secure it as evidence
10. Making an independent determination as to whether the use of force was within policy

In requiring a supervisor's response to all use of force incidents, the agency creates a culture of accountability and communicates that these events are taken seriously by the agency, which will reduce the likelihood of the improper application of force by its members.

Remarkably, for at least a decade the agency has required personnel to document in a report the pointing of a firearm at a subject. The 9th Circuit (*Robinson*) decided in 2002 that the pointing of a firearm was a seizure and hence a use of force. This is sound policy and the agency should be recognized for requiring this use of force reporting requirement.



Justification: CALEA 1.3.6 *A written report is submitted whenever an employee:*

- a. discharges a firearm, for other than training or recreational purposes;*
- b. takes an action that results in, or is alleged to have resulted in, injury or death of another person;*
- c. applies force through the use of lethal or less lethal weapons; or*
- d. applies weaponless physical force at a level as defined by the agency.*

- *Robinson v. Solano County*, 278 F.3d 1007 (9th Cir. 2002)
- IACP National Law Enforcement Policy Center, Reporting Use of Force, Model Policy, February 1997

Implementation Strategy: Issue a single use of force policy, which includes all agency authorized weapons and tactics related to the use of force. Develop and issue a use of force report form that captures consistently the use of force elements identified as critical by the agency, after conducting a thorough needs assessment. Conduct training for all sworn personnel on the policy and the proper completion of the use of force report.



BART Police Management Audit

Topical Area: Use of Force

Issue: Requirement for Administrative Review of Use of Force Reporting

Current Application or Practice: The agency has six written directives that discuss and define the reporting review requirements when there is an application of force:

- Lethal Force/Incidents Resulting In Death or Great Bodily Injury
Operational Directive NO. 74
Date of Issue: March 18, 1986 Revised: January 29, 1999
- Electronic Control Devices-TASER
Operational Directive/Policy 309
Updated: April 7, 2009
- Carotid Control Hold
Operational Directive NO. 89
Date of Issue: March 18, 1987
- Use of Lethal Force
Operational Directive NO. 75
Date of Issue: 08/25/06
- Use of Considerable Physical Force
General Order NO. III, section: 3.321
Update: '84
- Arrest Control Devices
Directive NO. 73
Date of Issue: January 28, 1986 Revised: October 16, 2000

The agency's policies authorize various types of use of force, including both lethal and less-lethal. Each has a reporting and review requirement that differ based on the nature of the force used by a member. In the use of the carotid control hold, the supervisor is required to "record a determination concerning the justification of the application of force." However, in a circumstance where there is a use of considerable physical force the officer is to "immediately call a higher ranking officer to the scene," with no policy guidance provided as to requirements of that supervisor upon arrival at the scene or a supervisor reporting requirement. The officer applying the considerable physical force, is required to submit an "inter-officer memorandum" to his bureau commander, but no findings as to whether the force was justified is required or any process of review is discussed in the policy. The use of considerable physical force is not required by policy to be tracked by Internal Affairs.

The recently re-issued Taser policy requires a supervisor to respond to the scene when there is a Taser deployment and to "make a recommendation on whether the use of the Taser was justified or not." That requirement was put into place several months after the initial Taser policy was issued because the policy did not mandate a supervisor response or review. The supervisor



review is then submitted up the chain of command for the bureau commander to make a on whether the Taser use was justified. Those findings are forwarded to Internal Affairs for tracking and auditing purposes.

According to several supervisors, the agency contracted with Lexipol as the vendor to provide written directive update support to the agency. Agency members indicate that Lexipol presents the agency with policies that generally address and conform to the law and accepted police practice. However, it is expected the agency will staff the policy and "tweak it" to ensure it covers all elements of the agency operation. Instead, the agency issued the Lexipol written directives without any critical review or adaptation for the Agency. In one instance, the failure to perform a critical review resulted in the initial Taser policy being disseminated without any mandate of a supervisor response and reporting requirement when a Taser is deployed, and without requiring that the Taser deployment and use of force report be forwarded to Internal Affairs for tracking purposes.

In the directive that deals with arrest control devices, the supervisor must review the use of force and make a "recommendation on whether the use of force was justified or not." The report is then required to be forwarded to the bureau commander who makes a determination if the action was justified or not. It is next forwarded to the police chief for "final disposition." The report is also required to be submitted to Internal Affairs for tracking. As a matter of policy, Internal Affairs does not conduct an independent review of a use of force incident unless specifically directed by a higher authority.

In instances of lethal force, the agency provides for detailed review and investigation, bifurcating its response by conducting a separate criminal and administrative investigation. However, supervisors indicate that the agency provides no specific training to supervisors about their responsibilities in a less lethal use of force incident.

During a review of the Internal Affairs tracking and review mechanism for use of force events with several supervisors, the process was characterized as flawed. Personnel explained there are no systems, and that not all use of force incidents are forwarded to Internal Affairs. "Some do get to IA and some don't." The use of force review process is conducted by the officer's sergeant and lieutenant, and then forwarded to the bureau commander before being sent to Internal Affairs for filing and recording. The policy indicates that the use of force report is also submitted to the police chief for final disposition; in practice, however, that does not occur. Internal Affairs conducts no review of use of force incidents unless directed to do so by the Chief of Police. It was explained that since the agency issued Tasers, there has been a separate "drop down" field in the electronic reporting system to assist in tracking those incidents in the reporting system. Other use of force events are not documented in a separate field or drop box. Additionally, Operational Directive No. 73 "Arrest Control Devices" was issued in 1986 and revised in 2000, when the agency's reporting system was "a hard paper process." During a discussion regarding policies, a supervisor referred to the current agency situation as one of "dueling policies," and advised that its policies routinely do not speak to officers' current practice. This was the case for the agency which adopted an electronic reporting system in 2004 but did not modify its use of force policies to ensure that all electronically-generated use of force reports would be forwarded to Internal



Affairs, in contrast to the "hard paper process" detailed in the policy which did have such a requirement.

An audit of randomly selected reports containing a use of force incident revealed a practice that lacked a consistent review protocol. The following reports were assessed for policy compliance:

BART Police Department Report # 0903-2649
BART Police Department Report # 0903-0259
BART Police Department Report # 0612-2444
BART Police Department Report # 0609-1104
BART Police Department Report # 0602-3506
BART Police Department Report # 0701-3608
BART Police Department Report # 0808-1488
BART Police Department Report # 0701-0917
BART Police Department Report # 0805-2635
BART Police Department Report # 0810-3000
BART Police Department Report # 0703-3796
BART Police Department Report # 0804-2432

In some instances, a sergeant composed a multi-paragraph memorandum detailing findings and noting a copy was submitted to Internal Affairs. In others, such in report# 0701-0917 the reviewing supervisor wrote in large red letters "Within Policy Per O.D. #74" and made what appeared to be "eyes" from the initials in O.D.(Operational Directive). This doodling suggests seriousness in conducting this review was absent. In other reports, the sergeant noted on the front of the incident report in ink "in Compliance with Taser Policy" and initialed and dated it. Both supervisor reviews appeared to be based solely on the incident report generated by the primary officer, and reflected a lieutenant endorsement, one with a "within policy" comment, the other with no comment by the reviewing lieutenant. Another set of initials with no date or clear finding was noted, contrary to Policy No. 73 (E.) (F.) Bureau Commanders Review; and, the findings of the Bureau Commander will be in writing and forwarded to the Chief of Police for final disposition. The written findings by the Bureau Commander and the final disposition by the Chief of Police were absent. Though it appears the Police Chief's initials may have been on the majority of the reports, the agency practice is not consistent with policy.

Supervisors upon promotion do not receive training as it relates to conducting a use of force review, "they're expected to know the policy," according to several supervisors. It is evident from the evaluation of randomly-selected reports containing a use force event that the agency has no standard or approved format for a supervisor use of force review.

A review of the re-issued TASER Policy and the following eight randomly selected reports was conducted:

BART Police Department Report # 0904-0430
BART Police Department Report # 0902-0097
BART Police Department Report # 0812-3338
BART Police Department Report # 0812-2064
BART Police Department Report # 0901-0024
BART Police Department Report # 0904-0234



BART Police Department Report # 0905-1431

BART Police Department Report # 0904-3095

Each reported reflected Taser incidents involving the discharge of probes. Each disclosed that the processing and tracking of the Taser cartridge, which is received into evidence, was not always consistent with policy and the practice varied with the approving supervisor. The written directive requires an officer upon discharging a Taser and its probes to receipt the cartridge into evidence. A review of the evidence form submitted with the cartridge noted an absence of cartridge identification number on the evidence submittal form, making chain of custody for a particular Taser cartridge disputable. In one case the cartridge was not submitted as required. Additionally, supervisors complained during interviews that there is a failure by command staff to follow-up on "Command Staff Notes" which have the affect of policy. Matters will be decided in the meetings, such as requiring all use of force reports to be submitted through the chain of command to Internal Affairs. After several days the former practice of not sending the use of force reports resumed with no consequence to any agency member.

Supervisors stated that Staff Inspections are not routinely completed by the agency to ensure the various agency entities are in compliance with the agency policy.

Supervisor's training for the proper review and documentation of a use of force event is absent. Agency members assigned to Personnel and Training advised they do not receive a copy of any use of force incident reports or a use of force analysis or review to identify training or policy needs.

An annual log of use of force events was provided by the Internal Affairs Unit. Personnel in that unit indicated, however, that there is no assurance all use of force events are forwarded to Internal Affairs because of a lack of agency accountability. The Internal Affairs Use of Force Log or Force Options Log is a tracking of use of force involving firearms for 2006, and firearms, OC spray, baton, and k9 for 2007 and 2008, and firearms, OC spray, baton, K9, and Taser for 2009. No provision for documenting or noting the use of weaponless force was noted on any of the reports. However, under the category of "NOTES" in the 2009 report was three incidents of "Physical Force" indicated. Prior to 2007 Internal Affairs generated a "Firearms Report."

Commendation or Recommendation: A single use of force policy, including a standard reporting and review process for each incident involving a use of less-lethal and weaponless force should be employed by the agency. The review should consist of an articulation of the facts as understood by the reviewing authority and a finding that is significantly detailed.

The process should include a charge requiring Internal Affairs to conduct an independent review of the use of force reports and to make a separate finding in addition to tracking and recording use of force events. Additionally, the Training function should receive a copy of reviews or analysis so they are in a position to identify training needs or policy issues.



Weaponless use of force reporting and review should include instances where the application of leg sweeps, elbow jabs, punches, kicks or other weaponless force, are well documented and the salient facts surrounding the event noted and reviewed as in any other use of force event.

The agency should critically review, adapt, and assign staff to implement all policies received from Lexipol and ensure each written directive contain the necessary agency policy requirements, particularly in high liability areas such as use of force.

Justification: CALEA 1.3.7 *The agency has a written procedure for an administrative review of each use of force report.*

- IACP National Law Enforcement Policy Center, Reporting Use of Force, Model Policy, February 1997

Implementation Strategy: Issue a single use of force policy, which includes all agency authorized weapons and tactics related to the use of force, and develop a standard use of force review process that details the responsibilities of each member, including the responding and reviewing supervisor. Ensure supervisors receive comprehensive training in conducting use of force reviews and provide for review of use of force reports by Internal Affairs for policy compliance. Initiate corrective or disciplinary action when non-compliance performance is identified as appropriate.



BART Police Management Audit

Topical Area: Use of Force

Issue: Administrative Leave in Use of Force Events Where Death or Serious Injury Result.

Current Application or Practice: The agency has a written directive that provides for administrative leave when an employee is involved in an incident where lethal force is applied and results in death or great bodily injury:

- Lethal Force/Incidents Resulting In Death or Great Bodily Injury
Operational Directive NO. 74
Date of Issue: March 18, 1986 Revised: January 29, 1999

Commendation or Recommendation: The agency policy is consistent with accepted police practices.

Justification: *CALEA 1.3.8 A written directive requires that any employee, whose action(s) or use of force in an official capacity results in death or serious physical injury, be removed from line-duty assignment, pending an administrative review.*

Implementation Strategy: N/A



BART Police Management Audit

Topical Area: Use of Force

Issue: Use of Force Training

Current Application or Practice: The Agency has at least six written directives that govern and define the training requirements of Agency personnel prior to utilizing a particular type of lethal and less-lethal force:

- Lethal Force/Incidents Resulting In Death or Great Bodily Injury
Operational Directive NO. 74
Date of Issue: March 18, 1986 Revised: January 29, 1999
- Electronic Control Devices-TASER
Operational Directive/Policy 309
Updated: April 7, 2009
- Carotid Control Hold
Operational Directive NO. 89
Date of Issue: March 18, 1987
- Use of Lethal Force
Operational Directive NO. 75
Date of Issue: 08/25/06
- Use of Considerable Physical Force
General Order NO. III, section: 3.321
Update: '84
- Arrest Control Devices
Directive NO. 73
Date of Issue: January 28, 1986 Revised: October 16, 2000

The Agency requires successful completion of the prescribed firearms course and qualification, which according to personnel, consists of two firearms qualifications a year for 2006, 2007, and 2008. Additionally a review of the lethal force policy is completed annually.

No training requirement is included in the "Considerable Physical Force" policy. The Agency's training requirements for OC spray mandate the successful completion of a supplemental departmental-approved course. Department members may carry the baton after proper training and certification. Personnel trained as prescribed by the Agency may only use specialty Impact Munitions Systems (SIMs). The Carotid Control Hold requires an officer to have successfully completed a department approved course of instruction in its application, followed by "periodic training thereafter." Taser training requirements mandate that Agency members successfully complete the department approved training prior to issuance of a Taser, or being authorized to purchase a Taser.



Interviews with Training Staff regarding the training that sworn personnel receive in the use of deadly force and less-lethal weapons revealed that the present training recordkeeping process is a combination of several systems that have been developed over several years. These include Training Management Software (TMS). Officers' folders contain paper certificates of individual officers receiving training only where the certificates are provided to the Training Unit. According to Training Staff, paper certificates are not always submitted to the Training Unit. The Agency is also able to access training records for POST certified training on the California POST Electronic Data Interchange (EDI). If no records for an individual officer were located after searching each of the described records systems, the Agency would have to search dozens of boxes of paper training records for the documented training, if such documentation is available. The Agency has maintained a "Range Log" for all firearms training, since 2006. The range log is on a computer database; prior to 2006 the range log was a paper record. Training Staff communicated frustration with the TMS program because it is not utilized to its full potential and because only one person has been trained to operate the system. When requested to produce several records from the TMS system for review, Training Staff struggled to access some information. They explained that records regarding high liability training prior to 1999 would be difficult to provide, as recordkeeping was not a priority. The training records between 1999 and 2003 are generally accessible; but from 2003 through 2006, there are significant gaps in the training records. Recordkeeping since 2007 "should be accurate" according to Training Section personnel. The Training Section participated in a review of firearms records, documenting deadly force training for 2006, 2007, and 2008.

The Training Staff advised that Agency members receive firearms proficiency training twice a year. At each of those in-service training sessions, there is a review of policy completed with attendees and attendance records are generated. Lesson plans are on file with the Agency, but no written examination is required governing the Agency's use of deadly force policy. Line supervisors and command staff members interviewed regarding the Agency's deadly force training practice generally indicated that deadly force training is conducted two times a year, and that the use of deadly force policy is reviewed at that time. Members advised that the Agency provides no "advance tactics training" and that the training which does occur is "catch as catch can." This characterization excludes firearms training which is provided twice a year, with several members indicating they received such training four times a year, along with a policy review at each training session. The firearms' training is not scenario-based.

Members who served as supervisors for years reported they had never received a notice of "missed training" for an employee who was accountable to them. The same can be said about an employee that "failed to show" for firearms qualification. The Agency lacks a "flagging" system for those who miss range or any other critical task training. A lieutenant noted that when he was promoted to lieutenant, he was surprised by the amount of "command staff" members (lieutenants and above), who failed to attend range. The practice requires the range master to schedule separate dates on the range for command staff to receive firearms qualification training. When he arrived on that "Command Staff" firearms training date, he was the only one there for the full day. He said when he initially arrived, he inquired of the range master where the other command staff members were and the range master responded, "Yeah, don't be surprised, you may be the only one." It was the lieutenant's assessment that command staff personnel lacked accountability. Another command staff member commented that the Agency does not have a



process at the command level to get any command staff member missing firearms qualification back to the range to complete the required qualification training.

The Patrol Division Commander, when provided with randomly-selected training records of officers who missed training on mandatory topics, indicated he would conduct a review and respond. The email response from the Patrol Commander essentially indicates that one officer was off on industrial injury leave for a year (January 29, 2006 through January 31, 2007). Upon returning, he "signed into a remote reporting location and his Sergeant failed to ensure that he watched the required training DVDs. His Lieutenant has counseled the Sergeant and the officer is currently making up missed training for 2007 and 2008." The response regarding the second officer's records advised that the officer "has almost completed making up all of her missed training. Her sergeant was also counseled to be diligent in ensuing that all direct reports complete the required training."

Training Staff advised that in instances of high liability training, or any training, no notification occurs through the chain of command detailing who failed to attend or to qualify with a firearm. The current process requires that, where an officer no-shows or fails a training requirement, the training sergeant should notify the individual officers and patrol sergeant. The patrol sergeant addresses and documents the action taken. No other notification occurs through the chain of command and the Training Section does not receive a follow-up as to the action taken by the patrol sergeant against the employee. Training personnel indicate the present procedure creates an environment where, conceivably, a sworn member could be working despite the fact that he had not qualified with a firearm for a year or more. A review of the Agency's firearms records revealed multiple individuals with no record of firearms training during one or more of the periods reviewed (2006, 2007, and 2008). The review also revealed that most line personnel participate in firearms training, but supervisors indicate that some detectives do not routinely qualify as required by the Agency. There is no compulsory attendance at the qualifications according to personnel, particularly as it relates to command staff members. The assessment of numerous agency personnel is that there is no accountability system in place to ensure all members complete required training.

Line officers randomly selected and interviewed regarding the Agency's use of force policies and training related they qualify with their firearm every six months. There is a deadly force policy review, but no written test given during the deadly force in-service training. Sworn personnel and supervisors alike consistently indicated that the Agency does not provide a sufficient level of less-lethal or weaponless training and many indicated that it had been a decade or more since that type of training had been provided, prior to the Taser training in 2008. The Taser training consisted of five-hours of Taser training and five-hours of defensive tactics and baton training, a total of ten-hours. The exception to this was for sworn personnel assigned to SWAT, or the Tactical Unit or those selected for SIMs training, where some additional weaponless tactics were trained and the policies reviewed. The Agency provides no re-certification training for OC spray, Carotid Control Hold or Baton, despite the requirement in the policy governing the Carotid Control Hold that periodic training occur. Members indicated that it had been anywhere from three years to over 20 years since they had training involving OC spray or the Carotid Control Hold, unless they had been recently hired and received it during the Field Training Officer program or from their former Agency if they had been laterally hired.



During interviews with the Training Staff regarding in-service training and specialized training conducted prior to January 1, 2009, indicates that the Agency did not have documented Agency-wide defensive tactics training for at least three years prior to the Taser training and baton training in late 2008. Individual officers assigned to SWAT or the Tactical Team reportedly participated in defensive tactics and weapons training, as did "new hires." Although the majority of the team members were involved in this training, no attendance records or class rosters and no training records for individual officers exist for less-lethal training. Training personnel indicated that comprehensive records are available for firearms training qualification and include attendance and the firing course curriculum.

Training Staff indicated that the Agency has not had a POST certified instructor for several years. Consequently, the Agency's internal training was not eligible for POST credit. According to Training personnel, California POST mandates that agencies have a certified instructor, lesson plans, and a roster of attendees in order for the training to be eligible for POST certification. However, the department did not submit that required documentation until late 2008. According to personnel, the Agency had one POST certified course in the last five years that was unrelated to firearms. "Everything in training is done on the fly," commented a sworn officer. The Training Section reports that it does not receive a copy of the use of force reports or an annual analysis of incidents involving the use of force for their review.

Sworn personnel advised they received initial training on OC spray, ASP, and the Carotid Control Hold at the academy or initially by the Agency, but only received in-service training on the Baton in December 2008, during the Taser training. Personnel repeatedly stated the only re-occurring in-service training they have had regarding use of force involves firearms and the recently acquired Tasers. When questioned regarding remedial training, personnel advised the Agency did provide in-service remedial training during firearms qualification for the weak shooters, for both duty weapon and rifle. During the interviews, a member commented, "We are finally getting the attention we've wanted; except for firearms we are weak in all other training." Members related generally that training is almost non-existent, even specialized training, such as hostage negotiators have not received training in over a decade.

Commendation or Recommendation: The Agency has several separate use of force policies and individual written directives for the various weapons authorized by the department. Combine the various policies into a single use force directive detailing the Agency's training requirement for each authorized force mechanism. The Agency's use of deadly force policy training process should ensure that all sworn members receive annual training addressing the legal justification for the use of deadly force, with a provision for tracking and mandating attendance for those that do not attend regularly scheduled training. Remove personnel from any position requiring a firearm when they fail to attend and achieve firearms qualification, until the member satisfies the Agency qualification requirements. The Agency should develop a written use of force testing instrument and ensure that all covered personnel perform satisfactorily on the examination as a part of the annual use of force training. Further, the Agency should modify all policies regarding the application of force and capture the elements of reasonableness detailed by



the US Supreme Court in the case of *Graham v. Connor*. The Agency makes sound use of remedial training for firearms training.

Establish biennial, in-service use of force refresher training. It need not be as formal as entry-level or recruit training. Accomplish less-lethal use of force retraining through a combination of methods. For example, conduct training during shift briefing sessions, which include reviewing legal updates on use of force issues, or conducting written or skills based tests on use of force and less-lethal weapons during annual firearms qualifications courses. Establish proficiency levels with input from certified weapons instructors or others in the Agency that can validate the criteria. Demonstrated proficiency with less-lethal weapons may consist of the same criteria used at entry level, or abbreviate or extend the training, based on the Agency's experience with the weapon or technique in the field. Requiring a written test on the salient points of less-lethal force will further ensure and demonstrate a comprehensive understanding of the Agency's policies.

Unless applied properly, Carotid Control Hold and other similar compliance techniques that rely on cutting off the flow of oxygen to the brain have the potential to cause serious injury or death. Therefore, the Agency, when authorizing the use of such techniques must make certain that its personnel properly receive in-service training in the use of these techniques to minimize the possibility of injury. In addition to the initial training, the Agency must require biennial refresher training to maintain the skills required for proper application of these tactics.

"Training, re-training, and training again. Department policies are ineffective unless they are intellectually and practically processed by the field supervisors who communicate them to the police officers and enforce them. Training is paramount to our mission of accountability."
(Gruber)

Justification:

CALEA 1.3.10 *A written directive requires that only Agency personnel demonstrating proficiency in the use of Agency-authorized weapons be approved to carry such weapons.*

CALEA 1.3.11 *At least annually, all Agency personnel authorized to carry weapons are required to receive in-service training on the Agency's use of force policies and demonstrate proficiency with all approved lethal weapons and electronic controlled weapons that the employee is authorized to use. In-service training for other less-lethal weapons and weaponless control techniques shall occur at least biennially. In addition:*

- a. Proficiency training must be monitored by a certified weapons or tactics instructor;*
- b. Training and proficiency must be documented; and*
- c. The Agency must have procedures for remedial training for those employees who are unable to qualify with an authorized weapon prior to resuming official duties.*

CALEA 1.3.12 *A written directive requires that all Agency personnel authorized to carry lethal and less-lethal weapons be issued copies of and be instructed in the policies described in standards 1.3.1 through 1.3.5 before being authorized to carry a weapon. The issuance and instruction shall be documented.*

- IACP Use of Force Model Policy, February 2006



- *Charles A. Gruber, "A Chief's Role in Prioritizing Civil Rights," The Police Chief, November 2004, vol. 71, no. 11.*

Implementation Strategy: Develop and implement a single policy that describes the training requirements of all weapons and tactics authorized by the Agency. Develop and require a written test addressing the legal justification for the use of force for both deadly and less-lethal encounters. Provide training in the documentation of use of force events with an emphasis on the elements contained in *Graham v. Connor*. Create and implement processes for reviewing and identifying personnel that are absent from high liability training, particularly firearms qualification and less-lethal weapons training and take appropriate disciplinary or corrective action.



BART Police Management Audit

Topical Area: Use of Force

Issue: Analysis of Use of Force Reports

Current Application or Practice: The Agency has no policy or practice requiring an analysis of use of force reports. Presently, weaponless uses of force incidents are not required to be reported and therefore are rarely forwarded to Internal Affairs for tracking. This makes an accurate analysis difficult. Supervisors and Internal Affairs personnel report inconsistencies in the distribution of use of force reports in those incidents that are required to be forwarded to Internal Affairs; this breakdown would also tend to frustrate an accurate analysis of use of force events. Supervisors said that no information or analysis is shared with them involving use of force incidents.

During a discussion with Internal Affairs regarding their tracking mechanism for use of force events, personnel characterized it as "flawed." Agency members explained there is no system to ensure accurate reporting and not all use of force incidents are forwarded to Internal Affairs. One supervisor stated, "Some do get to IA and some don't." when referring to the disposition of use of force reports. Internal Affairs several years ago developed a spreadsheet for use of force events, but weaponless use of force events are not carried as a category. In those rare instances when weaponless use of force events are reported to Internal Affairs, those incidents are scored under the category of "NOTES" and with the sole annotation, "physical force." Training Section personnel related that they do not receive a copy of the use of force reports or an annual analysis of incidents involving the use of force.

Commendation or Recommendation: The Agency should conduct an annual analysis of all use of force events. Few issues outweigh the concern raised in a community when it is perceived that members of a law enforcement Agency use inappropriate levels of force. A community rightfully expects that its law enforcement Agency will apply weapons and tactics that are only utilized in conformance with sound policies, procedures, and training. An analysis of use of force events will aid in ensuring these community expectations are met. Annually, the analysis should be reviewed with the Training Section and supervisors. A review of incidents of force may reveal patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications.

Justification:

CALEA 1.3.13 *The Agency conducts a documented annual analysis of those reports required by standard 1.3.6.*

CALEA 1.3.6 *A written report is submitted whenever an employee:*



- a. *Discharges a firearm, for other than training or recreational purposes;*
- b. *Takes an action that results in, or is alleged to have resulted in, injury or death of another person;*
- c. *Applies force through the use of lethal or less lethal weapons; or,*
- d. *Applies weaponless physical force at a level as defined by the Agency.*

Implementation Strategy: Issue a written directive that requires all use of force events to be reported on a specific use of force report form that will capture functional information lending itself to a useful and effective analysis; conduct an analysis annually. Distribute the annual analysis to the Training Section and review the analysis with all supervisors.



BART Police Management Audit

Topical Area: Use of Force

Issue: Authorization of Restraining Devices (Handcuffing and Leg Restraints)

Current Application or Practice: The Agency has two written directives that govern and authorize the use of handcuffs and leg restraints:

- Policy on Applying Handcuffs and Leg Restraints
- Special Order NO. 06-03
Date of Issue: 3/3/06
- Processing and Handling Arrestees
- Operational Directive NO. 44
Date of Issue: June 7, 1982 Revised: May 12, 1999

Policy requires all detainees and arrestees be handcuffed to the rear, with the handcuffs double-locked and checked for tightness. It allows detainees and arrestees to be handcuffed to the front under limited circumstances. A report is required documenting the handcuffing of an arrestee or detainee.

Policies governing the use of handcuffs and leg restraints were requested and Agency members initially advised that the department did not have a policy for "hog-tying, leg restraints or handcuffing." It was stated that as a matter of Agency practice, hobbling was permissible and hog-tying was not. Other members indicated hog-tying was practiced, but no policy existed. Personnel related hobbles and hog-tying are allowed by the Agency but did not recall if there is a policy, indicating they are rarely used. The following day an Agency member presented Special Order No. 06-03, dated 3/3/06 "Policy on Applying Handcuffs and Leg Restraints." The policy described the appropriate use of leg restraints and indicated it was in effect until Operational Directive No. 44 is revised. An employee advised he found the special order on a clipboard in the zone one sergeant's office. When questioned, a member of the unit responsible for the Field Training Program (FTO) advised he did not believe the new hires (officers employed recently and participating in the agency's FTO program) receive Special Order No. 06-03 because it is not a part of the manual. A copy of Operational Directive No. 44, "Processing and Handling Arrestees" was also provided. No revision to the policy in the last three years to include the change generated in Special Order No. 06-03 had occurred. During a dozen interviews or more, sworn personnel were asked if the Agency had a handcuffing policy. Almost universally, personnel indicated they were not familiar with the handcuffing policy or had knowledge if the Agency had one. Most advised the Agency custom was to double lock, check for tightness, and document the handcuffing event in an incident report. During at least one interview, it was indicated a report was not generated for detainees that were handcuffed (investigative detention) but not charged.



The following randomly selected custodial reports were requested and reviewed for compliance with the Agency's restraint policies:

BART Police Department Report # 0904-2065
BART Police Department Report # 0902-1014
BART Police Department Report # 0806-1311
BART Police Department Report # 0805-3351
BART Police Department Report # 0801-3156
BART Police Department Report # 0801-0246
BART Police Department Report # 0603-1609
BART Police Department Report # 0602-0108
BART Police Department Report # 0601-3552
BART Police Department Report # 0512-3925

The audit reflected that six of the ten incident reports documenting a custodial arrest did not comply with Special Order NO. 06-03, Applying Handcuffs and Leg Restraints, Date of Issue: 3/3/06, because the reporting officer failed to document the handcuffing of the suspect as required by policy. Policy requires documentation in the incident report indicating that the officer checked the handcuff for tightness and double-locking. In each report, supervisor approval was noted whether handcuffing compliance documentation was evident or not.

Commendation or Recommendation: The Agency's restraint directives were unknown to the majority of the members interviewed, supervisors and officers alike. It is necessary for officers to know when and how detainees are to be restrained and when, where, and how particular restraining devices are to be employed, including special and prohibited methods such as hog-tying. Members should be aware that some techniques have been found to contribute to serious physical injury or death, e.g., "positional asphyxia" and should be prohibited. Most members knew the custom of documenting the use of the handcuffs, and checking and noting for tightness and ensuring the handcuffs were double-locked noting those processes in the arrest report. Many had little operational knowledge regarding the use of leg restraints. The Agency had a compliance level of 40%, as it related to noting the required policy elements of handcuffing in the arrest report. Further, there is an absence of active supervision as it relates to reporting and documenting specific handcuffing policy elements, indicating a significant training or discipline need by the Agency for this high liability area.

Restraining devices also may be harmful to sick, injured, or elderly detainees, depending upon the nature of the sickness or injury. The written directive should be specific in defining circumstances when restraining devices would and would not be necessary and the extent of the officer's discretion in their application. The present policy requires handcuffing in every arrest situation. Consideration should be given to modifying the policy and provide for instances where handcuffing would not be warranted, requiring the arresting officer in those circumstances to document the basis for not handcuffing an arrestee or detainee.

Insofar as members acknowledge the use of handcuffs during investigative detention, the agency's restraint policy addressing that police action should be included. The 9th Circuit Court of Appeals discussed the legal implications of that issue in *Ward v. Darryl Gates* and provides policy guidance.



Justification: CALEA 70.2.1 *A written directive describes restraining devices and methods to be used during detainee transports with exceptions noted.*

- *Ward v. Darryl Gates et.al, 52 Fed.Appx.341 (9th Cir.2002).*

Implementation Strategy: Issue a single updated directive and conduct scenario-based training on the revised policy. Conduct periodic and random reviews of arrest reports for policy compliance relating to the documentation of the required handcuffing elements. Initiate corrective or disciplinary action against supervisors approving reports without the appropriate handcuffing documentation.



Chapter 13

Management Control



BART Police Management Audit

Topical Area: Management Control

Issue: Staffing Requirements

Current Application or Practice: The BART PD currently does not have a mandatory staffing requirement during special days or events.

Commendation or Recommendation: BART PD should require that 80% of its manpower work during special events or occasions when there will be heavy usage of the transit systems, train stations, or parking lots. Occasions such as New Year's Eve and Halloween are examples of when the maximum amount of manpower should be required to work in order that there is a sufficient staffing level to prevent and reduce crime and maintain social order.

Justification: It is a law enforcement best practice to dictate a high staffing level by law enforcement agencies during special days or events.

Implementation Standards: The BART PD should create a written directive that mandates 80% of the manpower is required to work during special days or events as declared by BART Management.



BART Police Management Audit

Topical Area: Management Control

Issue: CALEA Accreditation

Current Application or Practice: BART PD is currently not internationally accredited with the Commission on Accreditation for Law Enforcement Agencies [CALEA].

Commendation or Recommendation: It is recommended that BART PD should pursue becoming internationally accredited through CALEA.

Justification: Becoming internationally accredited through CALEA is quality control for BART Administration. If the agency achieves accreditation and maintains accreditation every three years, BART Administration knows that it's maintaining performance standards in the best interest of the community and the employees of the BART PD.

Implementation Standards: BART PD should file an application with CALEA to pursue accreditation. The accreditation must be achieved within three years of the application date.



BART Police Management Audit

Topical Area: Management Control

Issue: Deputy Chief Job

Current Application or Practice: The number two managers within the BART PD are commanders and they are both members of a collective bargaining unit.

Commendation or Recommendation: It is recommended that the BART PD add the job of Deputy Chief with two positions. One position will be a Deputy Chief for Operations and the other for a Deputy Chief of Administration. The Deputy Chief's job should be outside the police union. This should be a salaried job in which the Police Chief will have the discretion to rotate the individuals from Operations to Administration so that they have the ability to gain experience in both areas. The candidates selected for this job should be a part of the organization's succession plan. These executive police managers should not be in a collective bargaining unit.

Justification: It is a law enforcement best practice not to have managers in a collective bargaining unit. This creates the potential for actual or perceived conflict of interest when making management decisions. This also creates a higher level of accountability of the Deputy Chiefs to the Police Chief. This also enables the Chief to either promote from within or publicly advertise the Deputy Chief job. This recommended structure is a law enforcement best practice.

Implementation Standards: BART should modify its policy so that it can develop a new structure in which the number two managers in the police department are not members of a collective bargaining unit while having the ability to hire externally.



BART Police Management Audit

Topical Area: Management Control

Issue: Daily Supervision & Accountability

Current Application or Practice: The BART PD currently does not use a daily activity log or some other instrument to determine the work load and activities of its officers.

Commendation or Recommendation: The BART PD should establish a system of daily accountability for all employees to ensure the Mission major goals of the agency and performance standards are being achieved. A daily activity report might be used to critique the officers' work load and activity during a shift.

Justification: It is a law enforcement best practice for an agency to set performance standards and goals for each of its employees. These performance standards and goals are consistent with the agency's Vision and Mission.

Implementation Standards: BART PD needs to develop or identify an instrument to evaluate daily performance of its employees. This instrument will be reviewed by managers on a daily basis to provide feedback on job performance.



BART Police Management Audit

Topical Area: Management Control

Issue: Span of Control

Current Application or Practice: The BART Police Department is currently decentralized in four zones; however there is a lack of adequate supervision to assist in the prevention of racial profiling. The span of control for the first-line supervisors is geographically too broad. It reduces the supervisors' capability to respond to the officers on scene and provide appropriate supervision. Currently, the supervisors are not able to physically meet with officers at the beginning and ending of all shifts to give direction and guidance, or simply inform them of who they report to.

Officers are regularly offered overtime assignments to provide adequate staffing levels.

Recommendation: The BART Police Department should decrease the geographic span of control for first-line supervisors or increase the number of first-line supervisors to allow for adequate supervision of patrol shifts. The BART Police Department should also reassess its current shift schedules to minimize holding officers past their assigned shifts, as this may result in the increase of officer stress, fatigue and performance degradation, thus possibly impacting the officer's performance while contacting citizens in the community.

Justification: CALEA 11.2.1 *Each employee is accountable to only one supervisor at any given time.*

Agencies with decentralized strategies or community oriented policing may deploy supervisors geographically rather than temporally. Employees should have a clear understanding of this reporting relationship and accessibility to a supervisor.

Implementation Strategy: The Chief of Police should reassess the organizational structure of the department to ensure adequate supervision and staffing levels for all geographic service areas.



BART Police Management Audit

Topical Area: Management Control

Issue: Line Inspections

Current Application or Practice: The BART Police Department currently does not have any accountability measures in place to monitor officer activities or hold them accountable for their actions. Information from interviews suggests when accountability efforts are attempted they are discouraged by command staff. Most officers interviewed stated they have proactive time available but are not given direction or guidance.

Recommendation: All BART Police Department supervisors should develop and adopt audit mechanisms (line inspections) for calls for service, activity reports and relevant police reports to uncover possible police misconduct. They should also conduct random sampling of in-car videotapes, (if applicable) radio transmissions, and in-car computers (MDT's). Officers who fail to comply should be held accountable.

Justification: CALEA 1.2.9 (c) *The agency has a written directive governing bias based profiling and at minimum, includes the following provisions:*

c. corrective measures if bias-based profiling occurs; and

CALEA 53.1.1 (c) *A written directive requires line inspections within the agency and includes provision for the following at a minimum:*

- a. procedures to be used in conducting line inspections;*
- b. frequency of inspections*
- c. responsibilities of the supervisor in each organizational component for both the conduct of inspections and correction of conditions discovered by the inspection;*
- d. criteria to identify those inspections that require a written report ;*
- e. a follow-up procedure to ensure corrective action has been taken.*

Line inspections should be a primary responsibility of supervisors and managers at every level of the agency and should provide a mechanism for achieving accountability within the agency.

Implementation Strategy: The Chief of Police should implement a written directive requiring supervisor to conduct line inspection on officers' activity and reports and to hold them accountable to policy and procedures.



Chapter 14

Operations



BART Police Management Audit

Topical Area: Operations

Issue: Mission Statement

Current Application or Practice: BART PD currently does have a Mission Statement, but it needs to be updated.

Commendation or Recommendation: The Chief of the BART PD should facilitate a stakeholders group to develop a Mission Statement that describes the organization's function and purpose and how that purpose will be achieved. A Mission Statement should be updated at least every five years.

Justification: A Mission Statement is an international accreditation standard. [CALEA]

Implementation Standards: A Mission Statement for an organization should clearly address the question. "What are our organization's primary assignments in striving toward our vision?" The Mission Statement should meet, at a minimum, the following principle elements . . .

1. Who we are;
2. What we do;
3. Who we do it for; and
4. How we do it.



BART Police Management Audit

Topical Area: Operations

Issue: Vision Statement

Current Application or Practice: BART PD currently does not have a Vision Statement.

Commendation or Recommendation: The Chief of the BART PD should develop a Vision Statement that describes where the department is headed within the next three to five year period. A Vision Statement establishes a foundation for the organization's Mission Statement and major goals.

Justification: A Vision Statement is an international accreditation standard.

Implementation Standards: A Vision Statement should answer the question, "What do we want this organization to be like three to five years from now?" A Vision Statement should include the following principle elements . . .

1. Be clear;
2. Be expressed in present tense; and
3. Use visionary terms to spawn excitement.



BART Police Management Audit

Topical Area: Operations

Issue: Core Values

Current Application or Practice: The BART PD has not established organizational Core Values.

Commendation or Recommendation: The BART PD should develop Core Values which identify the conduct and the character exhibited at every member of the organization while achieving the Mission.

Justification: Core Values are the conduct and character exhibited by every member of the organization while achieving the Mission. Core Values describe . . .

1. Character;
2. Conduct; and
3. Behaviors.

The development and implementation is a law enforcement best practice.

Implementation Standards: The agency should develop a set of written Core Values involving a group of key stake-holders to articulate conduct and behaviors which the agency wants to establish as having a priority for their members. For example, the agency may develop Core Values such as “integrity” or “service”. Each core value should be defined.



BART Police Management Audit

Topical Area: Operations

Issue: Goals

Current Application or Practice: BART PD currently does not have a multiyear “strategic” plan for the department.

Commendation or Recommendation: BART PD should develop a multiyear plan which includes the following:

- a. long-term goals and operational objectives;
- b. anticipated workload and population trends;
- c. anticipated personnel levels;
- d. anticipated capital improvements and equipment needs; and
- e. provisions for review and revision as needed.

Justification: It’s a law enforcement best practice for an agency to have a Multiyear plan.

Implementation Standards: The BART PD should take a comprehensive approach involving a group of key stake-holders to articulate the major goals which should be achieved consistent with the organizational mission. Goals should specifically answer the question, “*What do we have to do to accomplish our Mission while striving toward our Vision?*” Each of the following issues identified above should be addressed.



BART Police Management Audit

Topical Area: Operations

Issue: Developing A Written Directive System

Current Application or Practice: The BART PD does not currently have an approved written directive system that indicates how and by what position on the table of organization policies and procedures are developed and implemented.

Commendation or Recommendation: BART PD should develop a written directive system that indicates how policies and procedures are developed and implemented. The agency should establish procedures for review of proposed or revised policies, procedures, rules, and regulations prior to their promulgation to ensure they do not contradict other existing agency directives or applicable law.

Justification: BART PD must have a formal written system for the issuance of written directives. However, the agency should make it clear what level of authority is required to issue each type of directive, e.g., only the Chief may issue rules and regulations, division commanders may issue standard operating procedures. The agency should also make it clear that a written directive pertaining to a subordinate component may not contradict a directive issued by a higher level authority, e.g., a division procedures manual may not contradict an agency-wide regulation. Every written directive should be reviewed annually by the issuing authority to determine if changes should be made because of changed circumstances or occurrences during the previous year. This is an international accreditation standard.

Implementation Standards: The agency should develop a written directive that indicates how policies and procedures are developed and implemented.



BART Police Management Audit

Topical Area: Operations

Issue: All Hazard Plan

Current Application or Practice: BART PD currently does not have a written All Hazard Plan for responding to civil disturbances, mass arrests, bomb threats, hostage/barricaded person situations, acts of terrorism, and other unusual incidents.

Commendation or Recommendation: The BART PD should develop an All Hazard Plan for responding to critical incidents, such as natural and man-made disasters. This would also include details for responding to civil disturbances, mass arrests, bomb threats, hostage/barricaded person situations, acts of terrorism, and other unusual incidents. This plan should also follow the Standard Incident Command protocols.

Justification: It is an international accreditation standard for all law enforcement agencies to have an All Hazard Plan in preparation to respond or mitigate an emergency or a disaster.

Implementation Standards: The BART PD Develop, implement, and practice an All Hazard Plan which would also include details for responding to civil disturbances, mass arrests, bomb threats, hostage/barricaded person situations, acts of terrorism, and other unusual incidents. This plan should also follow the Standard Incident Command protocols.



BART Police Management Audit

Topical Area: Operations

Issue: Records Management System-Comp Stat

Current Application or Practice: The BART Police Department does not have a records management system in place to measure and capture police contacts or track crime patterns and trends. Failure to capture this data makes it impossible for the BART Police Department to monitor officer activity or determine where to deploy available resources.

Recommendation: The BART Police Department should enhance their record management system to be able to capture sufficient data to effectively capture officer contact and track crime. A "Comp-Stat" process (a crime –mapping system) should then be implemented to track crime by statistical data. It would assist in the establishment of an accountability process to measuring the effectiveness of:

- Accountability Systems
- Accurate and timely crime intelligence
- Deployment methods
- Effective Tactics
- Follow up Measures

Justification: CALEA 15.3.1 A written directive establishes crime analysis procedures to include, at a minimum:

- a. identifying documents from which crime analysis data elements are extracted;
- b. disseminating analysis finding; and
- c. briefing the agency's chief executive officer on crime patterns or trends.

Implementation Strategy: The Chief of Police should develop and implement a written directive for the implementation of an enhanced records management system and the utilization of a "Comp-Stat" process. The Chief of Police and command staff would analyze the crime data on a weekly basis.

Effective and validated deployment of resources driven by statistical data will assist in the department in preventing, reducing, and solving crime.



BART Police Management Audit

Topical Area: Operations

Issue: Crime Analysis

Current Application or Practice: The BART PD does currently collect crime data. However, the department needs to take the next step and analyze this data on a regular basis, ideally weekly, for the purpose of developing strategies and tactics for the purpose of preventing, reducing, and solving crime.

Commendation or Recommendation: The BART PD should have a written directive establishes crime analysis procedures to include, at a minimum:

- a. identifying documents from which crime analysis data elements are extracted;
- b. disseminating analysis findings; and
- c. briefing the agency's chief executive officer on crime patterns or trends.

Crime analysis should provide currently useful information to aid operational personnel in meeting their tactical crime control and prevention objectives by identifying and analyzing methods of operation of individual criminals, providing crime pattern recognition, and providing analyses of data from field interrogations and arrests. Also, crime analysis can be useful to the agency's long-range planning efforts by providing estimates of future crime trends and assisting in the identification of enforcement priorities.

Justification: Effective law enforcement agencies collect and analyze crime data for the purpose of developing strategies to prevent, reduce, and solve crime. This is an international accreditation standard. [CALEA]

Implementation Standards: The agency should use a computerized information system that produces weekly reports by specific geographical areas which are provided to all managers of the police department. Managers will then be held accountable to develop strategies and tactics which include community involvement to prevent, reduce, and solve crime. A statistical analysis will be done every month to determine the effectiveness of strategies and tactics.



BART Police Management Audit

Topical Area: Vehicle Pursuits

Issue: Procedures for Conducting Vehicle Pursuits

Current Application or Practice: The Agency has at least two written directives that govern vehicle pursuits and the Agency training requirements for that critical task:

- Emergency-Vehicle Response and Pursuit Policy
Operational Directive NO. 22
Date of Issue: May 8, 2007, Revised: May 7, 2007
- Pursuit Policy Training Requirement
Bulletin NO. 07-15
Date of Issue: 05/08/07

The policy addresses most of the important components of a police pursuit directive. Interviews with personnel demonstrated that the expectations of the Agency are generally well known to all personnel. Absent in the policy was Agency guidance related to the most recent US Supreme Court decision involving vehicle pursuits, *Scott v. Harris* 550 U.S. 372 (2007). The United States Supreme Court ruled in *Scott v. Harris*¹ that “a police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.” The Agency policy reflects a higher legal burden, “no police unit should attempt...ramming...unless it appears reasonably certain that failure to do so will result in death or serious injury.” The Agency policy authorizes the Precision Immobilization Technique (PIT) for those trained on the maneuver, but personnel in the Training Section advised no one in the Agency has been trained to employ the PIT.

The Agency places heavy emphasis on POST DVD training, but no discussions with personnel occur before, during, or after viewing the DVD, questions are not answered, and “benchmarks” consistent with Agency policy are not reinforced. Some members advised the pursuit policy was reviewed during simulator training. Personnel indicate they receive pursuit training every two years; however police pursuit training was not required by the Agency until 2007. Pursuit policy training was also not provided to lieutenants in ensuring their responsibilities were executed pursuant to the written directive, according to ranking members. There was a recent review of a “Lexipol” pursuit policy, but it focused only on operational aspects of the directive.

Agency policy provides for “Administrative Review,” which includes a review by the bureau commander of the watch commander’s critique, and the completion of “CHP 187A Pursuit Report and pursuit critique...” The copies of these reports are required to be submitted to Internal Affairs and maintained. The Agency does not conduct an analysis of vehicle pursuits. Internal Affairs related that pursuit reports are not routinely submitted to their unit. Contrary to policy, personnel in that unit recall only receiving one pursuit report and that was a part of a directed internal investigation.



The following reports were selected for review with Internal Affairs for compliance with the Agency's policy:

BART Police Department Report # 0804-2796
BART Police Department Report # 0806-2650
BART Police Department Report # 0810-1309
BART Police Department Report # 0711-1147
BART Police Department Report # 0704-3600
BART Police Department Report # 0703-3244
BART Police Department Report # 0705-3474
BART Police Department Report # 0606-1034
BART Police Department Report # 0610-1470
BART Police Department Report # 0611-1534

Only one report complied with Agency policy, and that report was the focus of an Administrative Investigation with a sustained finding against a member for a policy violation. Nine of the pursuit reports did not have an Administrative Review and two of the nine did not include a completed CHP 187A, as required by policy and California law.

In an interview with the Patrol Bureau Commander he acknowledged that there had not been compliance with the Administrative Review requirement of the policy and said it would be addressed. On July 4, 2009, an email received from the Patrol Commander contained the minutes to the Command Staff meeting for 6/30/09 and included this entry:

"The department has not been diligent in adhering to the vehicle pursuit policy. Pursuit reports are not being forwarded via the chain of command to the executive level. The new Lexipol pursuit policy indicates reports are to be forwarded via the chain of command to the Chief and to internal affairs. Sergeants shall complete a separate vehicle pursuit form to accompany the report."

Commendation or Recommendation: Combine the Agency pursuit related policies into a single written directive. A review of the most recent US Supreme Court decision involving vehicle pursuits, *Scott v. Harris* 550 U.S. 372 (2007), should occur with serious consideration given to modifying the language in the Agency policy to mirror the court decision. In that case, the court ruled that "a police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." The Agency policy authorizes the Precision Immobilization Technique (PIT) for those trained on the maneuver. However, the Agency does not train the PIT. Research demonstrates that the PIT is significantly safer and more predictable than the ramming of a vehicle and the Agency is encouraged to train its members in its execution. Otherwise, remove the reference to the PIT from the policy.

The agency's training in pursuit should be frequent and robust. Training on the pursuit policy entails frequent discussion and review of the police pursuit policy and procedures during shift briefings, in addition to annual in-service training sessions, including a written test. A particular concern, relating to pursuit training for this Agency, includes the California State Code 17004.7 (b) (1) (d) "Public Immunity" which makes as a condition for immunity from a lawsuit the



adoption of a pursuit policy and annual training. Based on the response from Agency members, and the recordkeeping of training by the agency, in addition to the lack of follow-up by the agency when training is missed by those on extended leave or otherwise do not attend, this area should be a priority for detailed review and corrective action by the Agency.

California State Code 17004.7 (12) also requires an "Administrative Review" if the agency is going to enjoy the cloak of immunity for causes arising from a vehicular pursuit. Admittedly, the agency had not been complying with their pursuit policy in this regard. The agency immediately addressed the matter at the Command Staff Meeting when it came to their attention, but more must be done. A process of training for all personnel responsible for conducting reviews or reports to conform to the law and agency policy should be immediately implemented. Likewise, training should be conducted for all personnel in the proper completion of CHP 187A.

Internal Affairs should receive a copy of all reports generated in the course of a pursuit and conduct an independent review, ensuring the completeness of all appropriate forms. In addition, Internal Affairs should make a factual determination and finding as to whether the pursuit was in compliance with the Agency policy. An annual analysis conducted by Internal Affairs of all Agency vehicular pursuits and distributed to supervisors and the Training Section. The proper review of the use of force analysis by the Training Section will afford opportunities to identify training deficits or policy failures.

Finally, the Agency should develop a process of staff inspections or audits to ensure the Agency policies are in compliance. Nine out of ten pursuit reports randomly selected and reviewed reflected a violation of policy. A staff inspections process will identify these violations and provide internal opportunities for correction.

Justification: CALEA 41.2.2 A written directive governs pursuit of motor vehicles, to include:

- a. evaluating the circumstances;
 - b. officer's responsibilities;
 - c. designating secondary unit's responsibilities;
 - d. specifying roles and restrictions pertinent to marked, unmarked, or other types of police vehicle involvement in the pursuit;
 - e. assigning dispatcher's responsibilities;
 - f. describing supervisor's responsibilities;
 - g. specifying when to terminate pursuit;
 - h. engaging in inter and intra-jurisdictional pursuits involving personnel from the Agency and/or other jurisdictions;
 - i. requiring a written report and an administrative review of each pursuit; and
 - j. conducting an annual, documented analysis of those reports.
- California State Code 17004.7
 - Law Enforcement Pursuits in Georgia: Review and Recommendations, July 2006 Georgia Association of chiefs of Police Amicus Curiae Brief, *Scott v. Harris*
 - IACP Vehicular Pursuit Model Policy, October 1996
 - *Scott v. Harris*, 550 U.S. 372 (2007)

Implementation Strategy: Issue a single updated policy that includes all elements necessary to address and provide guidance to personnel in the critical area of police vehicle pursuits. Provide training for all members, including comprehensive training to ranking members charged with



supervision and review of pursuits. Conduct an annual analysis of all pursuits and review the findings with all personnel, particularly the Training Section.



BART Police Management Audit

Topical Area: Operations

Issue: Public Information Officer (PIO)

Current Application or Practice: The BART Police Department currently does not have a Public Information Officer (PIO) to communicate directly to the community on behalf of the police department.

Recommendation: The BART Police Department should create the position of a Public Information Officer (PIO) in order to have a representative from the police department communicate directly with the community under the authority of the BART Media Relations Office. This will help to facilitate providing accurate and timely information from a policing perspective.

Justification: CALEA 54.1.1 The public information function shall include, at a minimum:

- a. assisting media personnel in covering news stories at the scenes of incident;
- b. preparing and distributing agency media release;
- c. arranging for, and assisting at media conference;
- d. coordinating and authorizing the release of information about victims, witnesses and suspects;
- e. coordinating and authorizing the release of information concerning confidential agency investigations and operations; and
- f. developing procedures for releasing information when other public service agencies are involved in a mutual effort.

Implementation Strategy: The Chief of Police should select a public information officer (PIO) to assist the department in communicating directly to the community on police related incidents.

In order for effective and positive communication to occur within the BART PD, it is critical to have leadership at all levels of the organization that are committed to being the stimulus for change. The BART PD PIO should work in collaboration with the BART Administration Media Relations Office. There should also be training and mentoring regarding media relations. A media relations policy should be established and consistent with the above recommendations.



BART Police Management Audit

Topical Area: Operations

Issue: Community Engagement

Current application or Practice: The BART Police Department does not require officers in the field to be responsible for any proactive policing efforts in the community. Observations of officers on patrol did not make a concerted effort to engage members of the community on the platforms during available proactive time. Although this may not be reflective of the entire force, it's important for officers to engage citizens in a positive environment when possible.

Recommendation: The BART Police Department officers should focus more time on being visible on the platforms and riding the trains during proactive time. This will give officers the opportunity to engage members of the community in a positive manner when applicable.

Justification: CALEA 45.2.1 (e) (f) The community involvement function provides the following, at a minimum:

- e. improving practices bearing on police community interaction; and
- f. developing problem oriented or community policy strategies, if any.

Implementation Strategy: The Chief of Police should develop and implement policy requiring officers to spend proactive time on the platforms and trains.

