



City of Santa Rosa

INDEPENDENT REPORT ON THE SANTA
ROSA POLICE DEPARTMENT'S
INTERNAL INVESTIGATIONS RE
PROTEST ACTIVITY, MAY/JUNE 2020

April 27, 2021



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GROUP

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Introduction

The tragic murder of George Floyd in Minneapolis occurred on May 25, 2020. In the days that followed, the general public's awareness of the incident grew steadily, in part because of a stunning video that reflected both the anguish of Mr. Floyd's final moments and the troubling indifference of the officer who had placed a knee on his neck. For many Americans, it was revelatory in a disturbing way; for others, it was a painful but all too familiar reflection of their longstanding perceptions regarding racial inequity and police violence. And across the country, outrage over the case began to manifest itself in demonstrations that were collectively unprecedented in their number, size, and intensity.

The unrest that followed in the immediate aftermath of Mr. Floyd's death was multi-faceted. Though it obviously varied in its particulars across the hundreds of jurisdictions where it occurred, some common elements emerged. One was a massive outpouring of support for the Black Lives Matter movement, which took the form of peaceful marches and other forms of "First Amendment" protest against police abuse and systemic racism. Another was the involvement – to a greater or lesser degree from place to place – of more confrontational, aggressive actors who expressed their anger in the form of destructive or assaultive behavior. A third was the significant challenge that the combination of these developments posed to law enforcement. In many ways, even very large and experienced agencies found themselves overmatched by the scale and multi-faceted nature of the unrest. And the role of police, as both the focal point of public anger *and* the entity responsible for maintaining order while facilitating free speech, was itself a complicating factor.¹

Momentum for these developments grew as the week progressed. By Thursday night, angry protestors had breached a police precinct station in Minneapolis and set it on fire. And, across a country that was already on edge and struggling with the effects of the COVID-19 pandemic, longtime activists and newly energized community members took to the streets for organized – and less-organized calls for change.

¹ In some locations around the country, an additional element of the unrest was widespread looting activity that emerged as an opportunistic response to the pervading instability. Some relevant incidents were reported in Santa Rosa – particularly in efforts to break into stores within the Santa Rosa Plaza. But law enforcement response to those events helped minimize their impact.

This phenomenon made its way to Santa Rosa by the weekend, and by Saturday the demonstrations had begun in earnest. It was on this night that collateral disruptive activity, including vandalism and marchers on the 101 Freeway, also led to the first confrontations with police. The next four days in the city were marked by widespread protest that took various forms, and by clashes with police as unlawful acts prompted dispersal orders, curfews, arrests, and multiple instances of force by Santa Rosa Police Department (“SRPD”) officers and their mutual aid affiliates from around the county.

As in many jurisdictions, the police actions in this context added a significant layer to the broader concerns about law enforcement that animated the entire movement. Santa Rosa residents and other concerned parties questioned many of the responsive tactics that were – like the demonstrations themselves – without precedent in recent memory. The use of tear gas was particularly striking in this regard, hearkening back as it did to the protest movements of earlier generations and the heavy-handedness of notorious police “crackdowns” in U.S. history. And news stories quickly emerged about individuals who had been engaged in protest activity and had been seriously injured by police munitions that had struck them in the face or head, in contravention of intended use.

As the days progressed, SRPD also moved to a strategy that involved significantly more arrests of people who were in violation of curfew restrictions; this prompted further challenges from those who believed their activity should have been given more deference in light of its underpinnings in legitimate protest. And for their part, the Department’s officers were on alert for a series of shifts that extended for 12 hours or more at a time while navigating very new enforcement challenges – and bearing the brunt of considerable (and occasionally assaultive) public hostility.

Within days, conditions in Santa Rosa had returned to a more conventional footing, with active protests (and attendant unlawful activity) coming to an end along with Santa Rosa’s curfew orders. But questions remained, as did the public’s appetite for a vigorous assessment of policing in general and SRPD’s handling of the protests in particular. This Report stems from a portion of the City’s responsive efforts in this regard.

Report Overview: Scope of Work

It was prepared by OIR Group, a team of experts in police practices that has provided outside oversight of law enforcement agencies since 2001.² It focuses on SRPD’s

² Located in the Los Angeles area, OIR Group has provided a range of oversight, monitoring, and investigative services for jurisdictions throughout California and in several other states. It is

internal review processes in the investigation, evaluation and – where appropriate – remediation of uses of force and allegations of officer misconduct that emerged between Saturday, May 30 and Tuesday, June 2. And it does so from a unique perspective: namely, the opportunity as an independent oversight entity to participate in, monitor, and provide public information about the series of investigations connected to those days.

Under the terms of its agreement with the City, OIR Group was asked to work with SRPD's Professional Standards Team "to ensure a thorough, complete and objective investigation" into numerous uses of force and the 15 related complaints or allegations of misconduct that occurred during the protest period. This included direct consultation throughout the investigation and review process.

Over the course of several months, OIR Group assessed the Department's evaluation of use of force events, using the complete access to hundreds of hours of body-worn camera recordings provided by SRPD for the four relevant days. It reviewed SRPD's response to citizen complaints based on the available evidence and provided input on outcomes. And it participated in witness and subject interviews for those cases that resulted in formal administrative investigations into possible violations of policy. In short, OIR Group had the chance to engage closely with SRPD at each phase of its process.

Report Overview: Findings

Throughout this working relationship, the Department has been fully cooperative. This has taken many forms, beginning with unfettered access to the body-camera recordings, reports, and other evidence that comprised the core of each review. SRPD has also been patient in its explanations, receptive to suggestions, and extremely responsive at all phases of the process. On more than one occasion, it brought new information to our attention that added to their own accountability issues (and workload). And the members of the Professional Standards Team showed impressive diligence in attempting to sort through the uncertainties that very much complicated the analysis of key allegations. In the end, our vantage point allowed us to confirm the agency's commitment to the appropriate handling of these matters.

led by Michael Gennaco, a former federal prosecutor and nationally recognized authority on police oversight. Along with its work in Santa Rosa, the OIR Group team has completed, or is in the process of completing, formal reviews of police responses to demonstrations in two other California cities, as well as Iowa City (IA) and Kalamazoo (MI).

In terms of *process*, then, these internal reviews reflect well on the Department in terms of their rigor and legitimacy. As discussed below, the *substantive* issues revealed by the process are more complex. There were indeed specific instances in which officers violated Department policy in ways that resulted in serious injury to members of the public. Importantly, the shortcomings that led to these injuries were *not* found to be a product of malice or deliberate intent. But the harms that resulted were nonetheless an important reminder of the respective policies' importance, and the Department held the officers accountable with formal discipline.

On other specific occasions, the Department determined that its personnel had failed to meet expectations, and the command staff intervened in the form of a documented counseling and/or other remedial steps. Other complaints that emerged from this period were reviewed carefully but led to the determination that no misconduct had occurred. These are discussed in more detail below.

More broadly, this large-scale internal review produced insights into operational shortcomings that were systemic in nature and that compromised performance in a few different ways. Some of these were a function of SRPD – like many other agencies around the country – having to respond to circumstances of a scale, intensity and duration that was quite unfamiliar. To its credit, the Department began the process of learning and adapting even as the unrest continued. Since then, its own internal assessments and this investigative scrutiny have generated additional ideas for reform.

Perhaps most notably, these include a significantly revised policy: one that clarifies and puts further restrictions on the authorized use of “Control Devices and Techniques.” The new version of Policy 308 addresses the various less lethal munitions that were deployed in crowd dispersal efforts and that constituted the vast majority of force that was used. Because the appropriateness and safety of these devices in the unique context of protest activity continues as a worthy topic of review, these new policy updates are an important enhancement to the Department's approach.

The Report also discusses other tactical and process issues that emerged during the review and for which OIR Group recommends adjustments to future operations. Some of these ideas have already been implemented – again, to the credit of SRPD.

This Report is intended to offer a reckoning with SRPD performance during some of the most intense days in Santa Rosa's recent history. With an eye toward necessary accountability, it details ways in which the Department fell short – while also acknowledging the unlawful behavior that confronted it at the edges of the many peaceful demonstrations during that period. But OIR Group has long maintained that

the most worthwhile internal review processes within a law enforcement agency are also holistic and forward looking.

By holistic, we mean that the review extends beyond the bottom-line issues of policy compliance to assess performance issues more broadly and potential systemic concerns more pro-actively. The goal for these aspects of the internal scrutiny is to benefit from specific incidents as a source of lessons learned that can enhance the *future* effectiveness of individual officers and the agency as a whole.

Accountability and a commitment to ongoing reform have never been more relevant to the work of law enforcement agencies. By enlisting an outside entity to participate in these investigations and provide public transparency, the City is manifesting a recognition of these new expectations. Similarly, the Department's engagement with the process is another constructive sign. We hope this Report also proves to be a positive contribution to the dialogue with the community of Santa Rosa.

Review of Uses of Force

May/June 2020: Extensive Deployment, Limited Assessment

SRPD officers used a high volume of force during the May 30 to June 2 window covered by this review, with the vast majority of these deployments occurring in the late night/early morning hours of Saturday into Sunday, and Sunday into Monday. Most of these occurred in the context of crowd control situations, as officers sought to enforce dispersal orders through chemical munitions (including numerous “tear gas” canisters) and 40mm “less lethal” impact rounds of various types. Some of the force was done in response to aggressive or assaultive behavior from members of the crowd: throughout those two nights in particular, officers were subjected to a large number of thrown objects, including rocks and fireworks. Some of the force was in response to efforts by crowd members to thwart the deployed gas munitions by covering them (as with cones) or throwing/kicking them back in the direction of the “skirmish line” that officers had formed to advance their efforts at clearing the downtown area. And a smaller percentage of the force (including takedowns and baton strikes) was used in the context of effectuating arrests against resisting subjects.

Well after the events of late May and early June, the total number of munitions deployments was eventually compiled to the best of the Department’s ability by adding up everything that had been captured by body-camera recordings and/or individual officer reports. It constituted an unprecedented volume for the agency, including a total of more than 120 40mm “launched” munitions and some 30 individual uses of gas devices.³

Along with being intrinsically reflective of the SRPD tactics in those specific days, these high numbers – and the unique circumstances in which the underlying actions took place – are factors in the difficulties the Department encountered in conducting an effective review. Unlike their normal force review process, which is clearly dictated by policy and consists of several steps of information-gathering and supervisory assessment, dozens of deployments occurred in short time spans as officers performed the mission of crowd control in its various forms.

The implications of this were various. SRPD’s force policy that requires timely notification to supervisors occurred belatedly if at all – not out of an apparent desire to conceal (particularly since the body camera recordings were extensive, and since

³ The Department’s Annual Report for 2019, available online, offers an interesting point of contrast: for the entirety of that year, SRPD used the 40mm less lethal weapon one time. There were zero uses of gas.

officers had complied overwhelmingly with policy expectations about activation), but from the press of demands the officers faced during extended shifts that followed one another in close succession. It was frequently the case that a few days had passed before officers attempted to document their actions and the reasons for them – and they often did so without using the recordings to refresh their recollection. Nor did sergeant-level supervisors perform their expected due diligence with the usual promptness or thoroughness. And another distinctive factor was that – again in a significant deviation from the norm – there was usually no identified subject who could be asked about injury or other relevant information. Instead, the overwhelming majority of subjects of the force were *not* taken into custody, and their identities or version of events or other relevant evidence were not documented.

Accordingly, there were many instances we noted in which report details were limited, omissions of specific deployments occurred, and analysis was cursory. This dynamic was compounded when the Department opted to stand down temporarily while waiting for guidance from the City about the potential role of an independent, outside entity.⁴

Although an understanding of the larger context is important, these shortcomings in thorough documentation and timely evaluation are nonetheless deserving of criticism – and a commitment to avoid such scenarios in the future. A concerted effort should have been made to have officers timely document and explain *each* deployment, and to give it appropriate supervisory consideration in a relatively timely fashion.⁵

RECOMMENDATION ONE: SRPD should enhance its planning, messaging to personnel, and supervisory follow-through to ensure that officer activities (including any and all uses of force) in the context of a large-scale event are appropriately and timely documented and reviewed

⁴ The exception to this general rule was in the efforts the Department had made quite promptly in June, after learning of injuries that had occurred in specific incidents. We also note that the Professional Standards Team did significant work over the summer in assessing the adequacy of documentation and identifying larger systemic shifts that were warranted.

⁵ It should be noted – both to credit the relevant officer and to reinforce the notion that it is feasible – that at least one officer who was involved in several force uses over the course of different shifts in that week was relatively meticulous in describing each one and the motivation behind it. OIR Group also noted other instances in which cross-references between recording and documentation reflected conscientious efforts by the officers.

Creditably, the Department acknowledges this issue and has already considered ideas for addressing it.⁶ The body camera recordings of some officers actually included an innovation along these lines – the officers narrated their observations and decision-making in “real time,” an approach that surely facilitated their later recollection.

Supplemental Process: Findings and Recommendations

When OIR Group was selected in September to play its part in the process, the Department’s Professional Standards group undertook the sizable project of cataloguing and reaching some form of initial judgment on dozens of individual force deployments. Many of these were grouped together under individual “case numbers” that housed multiple deployments, based on proximity in time and the shared purpose of the officers at the given stage of an operation.

For example, as officers ordered the crowd to disperse from Old Courthouse Square on Saturday, there were subsequent and periodic confrontations that led to force deployments as the main cadre of officers advanced north on Mendocino Avenue in an effort to promote people’s departure from the scene. Three different “city blocks” of this operation, which unfolded over the course of a few hours, were combined for analysis under one number. In such instances, the force was assessed individually but judged collectively as “in policy” under the umbrella of the officers’ authority to respond to crowd resistance (and occasional aggression).

Importantly, some exceptions to these collective judgments *were* identified from within the larger assessment. These were “pulled out,” given their own individual case number, and investigated more comprehensively. This occurred in the instance of known injuries to subjects, specific complaints from members of the public (some of which were by third parties), or issues that emerged during the review process. OIR Group was also responsible for some of these further inquiries – and in one case requested a formal administrative investigation that SRPD agreed to conduct.⁷

This process had limitations, many of which resulted from the original structural reporting flaws described above. The passage of time and the minimalist documentation made reconstruction and evaluation more difficult. Some of this, though,

⁶ Officer performance is significantly impacted by directly communicating expectations. Had officers been advised at crowd control briefings that each would be expected at the end of shift to document any force used, there would likely have been more adherence to SRPD reporting policy

⁷ It involved a baton strike during an arrest and is discussed in more detail below.

was mitigated by the extensive body camera recordings and the Department's painstaking efforts at sorting through these hundreds of hours of video to establish a coherent, reasonably detailed description of unfolding events.⁸

Additionally, while the amount of work invested by the Department in this "after-the-fact" supervisory force review numbered hundreds of hours, and while OIR Group independently tracked the SRPD findings against its own access to reports and recordings, there was one misguided aspect of the Department's approach. This was the delegation of the lion's share of initial responsibility to a sergeant who had been highly involved with the deployments during the "busy hours" of the two primary days of confrontation – and had himself been responsible for multiple individual force uses that he was then attempting to assess.

This dynamic is highly irregular and, for obvious reasons, problematic. SRPD certainly acknowledged this when the subject was raised, while also citing the very unusual circumstances that were underpinning the project in first place.⁹ And in fairness, there are explanations for how and why it happened, primarily relating to the very labor-intensive nature of the review endeavor, the sergeant's assignment within Professional Standards, and that individual's relevant training and expertise. Perhaps most importantly, the Department committed to a secondary assessment of each one of that person's deployments, as conducted by a lieutenant. OIR Group also tracked the deployments as part of its participation.

Even so, that structural flaw complicated the process in ways that should have been avoided. An additional fact that illustrates this quite compellingly – while also speaking to the Department's remedial safeguards – is that the sergeant in question actually became the subject of a formal investigation with regard to one of his force deployments, and a policy violation was sustained. Accordingly, we encourage the Department to develop protocols that reinforce and ensure the normal distinction between participants and reviewers.

RECOMMENDATION TWO: SRPD should utilize its supervisors in traditional command and control functions to the extent possible and leave actual force deployments to its line level officers.

⁸ Interestingly, it should also be noted that the recordings, while enormously useful, were certainly far from conclusive in establishing the legitimacy of many individual deployments. This was particularly true with the 40mm munitions, which were often targeted at people who were not clearly discernible on the recordings due to distance and dark conditions.

⁹In normal conditions, it would be both rare for a sergeant to use force at all and relatively easy to assign its evaluation to another supervisor.

RECOMMENDATION THREE: SRPD should ensure that its force review process maintains appropriate objectivity by avoiding the involvement of actual participants in the underlying deployments.

Overall, we concurred with the assessments of SRPD regarding compliance with policy in the multiple uses of force we evaluated. Much of this was because there was clear evidence in support of the outcome; in other instances, we did not have a basis for disagreeing with the Department's finding even though (or because) the available evidence was limited. This evaluation process was often interactive, and the Department's representatives were extremely diligent about answering questions, addressing concerns, and considering alternative points of view. On the very few occasions when we might have reached other conclusions if acting on our own, we had robust discussion with Department leadership and ended up sufficiently satisfied that its ultimate course of action was reasonable.

Apart from issues of individual deployment and accountability, the larger, more systemic issues that we identified along the way included the following:

- *Use of the 40mm Launcher*

As cited above, the 120 individual deployments of 40mm munitions by SRPD officers, most of which occurred over the course of several hours on two separate nights, was an extraordinary event in the Department's history. The overwhelming majority of these occurred in the context of attempting to effectuate dispersal orders, in response to a range of unlawful activity (including vandalism, attempts at looting, interference with traffic, and aggression toward police in the form of myriad thrown objects). The rounds themselves were comprised of various less lethal options, from "impact" munitions intended to strike individuals to gas-bearing cartridges that the launcher allows the user to send further "downrange" than a thrown canister or other variety.

While the issue of tear gas deployments is its own question (that we discuss more fully below), almost 100 of the 40mm launcher's individual uses were "impact rounds" that targeted members of the crowd for various reasons. Reliance on this tactic in the "crowd control" context became part of the nation-wide scrutiny of law enforcement in the aftermath of the demonstrations in multiple jurisdictions. Among the issues were the injuries that sometimes resulted – some quite serious and not consistent with intended effects of the munitions – as well as the difficulty of appropriate specific, reliable target

acquisition in the context of a dynamic crowd situation. Both of these concerns were relevant in Santa Rosa.¹⁰

Another issue worth further consideration is the unique context of the protests, and the advisability of a relatively aggressive tactic in what was essentially a mission of crowd dispersal rather than arrest. To be clear, the overwhelming majority of these uses as reported in Santa Rosa were responsive to specific unlawful acts, most commonly assaultive behavior by particular crowd members (especially in the pervasive throwing of various objects toward law enforcement) or efforts by individuals to thwart the gas munitions by covering them or directing them back toward the line of officers through kicking or throwing. A smaller number were more ambiguous, and we discussed individual instances with the Department to request further consideration and review. But an important distinction between “peaceful protest” and volatile, dangerous resistance to the police should be kept in mind.

The larger exercise worth pursuing is a re-thinking of the entire dynamic that gave rise to these deployments. Even when technically justified, the less lethal munitions in Santa Rosa were a confrontational exercise of state authority that in some ways became self-perpetuating: they served to *fuel* the hostility toward police that was animating much of the crowd’s behavior in the first place, thereby provoking more antagonistic acts – and further police retaliation. Cities, states, and judges faced with similar concerns have moved to prohibit or severely limit the use of less lethal munitions in the protest context.

Certainly, whether to keep policies as is, place greater restrictions on less lethal deployment, or prohibit their use in a First Amendment context altogether, solutions to this paradigm are not easily arrived at. SRPD representatives explained to us that it did not consider simple retreat to be an option, out of (reasonable concern) that at least some of the demonstrators would exploit the opportunity to re-engage in the problematic activity that had prompted the original declarations of an “unlawful assembly.” And the blurred lines between genuinely peaceful protesters and aggressive agitators have confounded jurisdictions across the U.S.

What *did* eventually seem to work in Santa Rosa was the shift to an arrest-based strategy that limited the amount of ongoing physical confrontation that occurred. After waiting a few hours until after a City-imposed curfew had gone into effect, SRPD made announcements and then engaged in multiple arrests – very few of which led to a use of force. This strategy also had its detractors. But minimizing physical force is a value.

¹⁰ We discuss specific incidents of concern – and the investigations that arose from them – below.

More specifically along those lines, and importantly, SRPD's leadership took ownership of the widespread discretion it had given its officers with regard to the 40mm deployments. It realized that the clashes that the City had experienced warranted a review – and ultimately a tightening – of its 40mm policies. The new version addresses specific behaviors and places more limits on officer “reactionary authority.” This detailed new policy, along with the training and supervisory emphasis that presumably is accompanying it, should help clarify (and reduce) the number of future instances that deployments occur.

While the policy is an important step forward, there is room for SRPD to do more. Former President Obama's Task Force convened during his administration and offered a number of recommendations for policing in the 21st Century that have been viewed by many police professionals as aspirational. One of the key recommendations coming from the Task Force is that policing should engage the community when considering significant changes in policy. SRPD did not do this in reformulating its policy regarding the use of less than lethal options. In light of the high community interest on this issue, the City should convene a broader discussion about whether and how less lethal munitions should be deployed in the First Amendment assembly context.

RECOMMENDATION FOUR: SRPD should engage with its community to determine whether and how less lethal munitions should be deployed in a protest situation.

- *Dispersal Orders*

One of the arenas for debate as the nation-wide demonstrations ran their course last June was the legitimacy of “dispersal orders” that were issued by law enforcement in an effort to end crowd gatherings that had allegedly become unruly/unlawful in one or more ways. These orders were often the precursor to uses of force that included “crowd control” techniques such as the deployment of tear gas.

The appropriateness of these tactics has been called into question on several fronts. The gas, in particular, has engendered controversy – in part as a unique symbol of oppressive government authority but also because of the difficulty in controlling it, and the indiscriminate way it effects people who may have varying degrees of culpability.¹¹

¹¹ It is telling that no one in SRPD could recall the last occasion in which the agency had used tear gas in a crowd control context.

Another fundamental question is the legitimacy of the dispersal orders in the first place, and whether they were used too readily and as a pretext for suppression of speech.

It is not surprising, then, that two of the individuals who made legal claims against the Department based them on their experience in encountering tear gas during their participation in protest activity. SRPD found that its officers had acted in keeping with current policy – and that at least one of the deployments cited in a claim had actually involved the Sonoma County Sheriff’s Department.¹² We concurred with this outcome. We also note that SRPD had followed protocol in its justifications for the declaration of unlawful assembly and its use of appropriate announcements.

The larger issue of whether tear gas should be an authorized tactic in the contemporary protest context is one which we certainly encourage SRPD and the City to continue engaging with its public and to reach a collaborative consensus. At the same time, we found resonance in the concern raised within complaints that they were subjected to gas “without *audible* warning or provocation.” [Emphasis added.]. Particularly at the outset of the clashes with police that unfolded over several days, we noted multiple instances in which hostile crowd reaction was predicated at least in part on seemingly genuine confusion as to what was happening and why. Given our own difficulty at times in discerning the warnings as we reviewed the video, this seemed understandable – and important to avoid in the future.

In our view, it is central to the legitimacy of dispersal orders that they be well-founded in terms of the provocation, clear, issued well in advance of actual force, advise members of the crowd where they should disperse to, and are sufficiently audible that they eliminate any ambiguity or uncertainty on the part of crowd members as to the status of the situation. The Department has acknowledged room for improvement in this regard and has purchased new equipment that should improve capacity and performance when announcements are required in a large crowd environment.

RECOMMENDATION FIVE: SRPD should revisit, refine, and reinforce its protocols for clear communication with crowds to avoid confusion or uncertainty to the extent possible.

RECOMMENDATION SIX: SRPD and its community should engage in discussion as to whether tear gas should be deployed in First Amendment

¹² Additionally, it should be noted that the Department’s first use of tear gas was on Saturday night, in mutual aid support of CHP in an effort to clear protestors from the 101 Freeway, and following a CHP dispersal order. Whether SRPD should deploy tear gas in a mutual aid context is a related question deserving of community dialogue.

protected gatherings and if so, whether limits should be placed on its use or authorization.

- *Arrest Teams*

We noted a handful of force encounters in which SRPD officers were determinedly trying to dislodge and disperse individual protestors who were resisting through simple refusal to move (as opposed to aggressive action of any kind). This ended up resulting in awkward, close proximity efforts at shoving people that left a poor impression and were of mixed effectiveness.¹³ Regardless of whether the shoves were within SRPD's force policy, the larger question was whether such force was necessary, effectual, and proportional to the situation being encountered.

The Department came to recognize that dealing with such individuals through assigned arrest teams would be a more effective tactic, and adjusted accordingly. As we noted above, this reduced the number of force uses.

Misconduct Investigations

Identified Policy Violations in Conjunction with Injuring Force

The most serious consequences of SRPD actions during this period involved force issues. One relates to a serious facial injury case. It occurred in the early morning of Monday, June 1, in one of the final hours of a protracted series of confrontations between police and protestors following an initial order to disperse. In the midst of multiple deployments of various kinds, directed at a large grouping of protestors who were positioned at an intersection and who were engaged in various forms of resistant behavior (including throwing objects at the line of officers), the man was struck in the face from long range. He got up under his own power and left the scene, and the Department was not aware of what had happened to him until much later.¹⁴

¹³ This included the odd, ineffective "steamrolling" of two seated protestors in Old Courthouse Square on Saturday night. They were unhurt, but the tactic reflected poorly.

¹⁴ Months into the investigation, the Professional Standards Team became aware of a contemporaneous recording in which an officer was heard reacting inappropriately to the injury after apparently witnessing it occur. (He was some distance from the officers actually deploying force, who were seemingly not aware that the man had been struck in the head.) While this comment was not directed at (or heard by) a member of the public, it was disappointing in its callousness. The Department addressed this inappropriate behavior through formal non-disciplinary remediation.

Reaching this conclusion was an extremely lengthy – and at times convoluted – process. SRPD was genuinely unclear for months about the specific manner in which the individual had been injured. Though relevant evidence certainly existed, it was far from definitive, in part because the distance, darkness, and confusion of activity created persistent ambiguity. Different theories – including one posited by the victim himself in his legal filings that was eventually discounted – emerged about what exactly happened and why. Indeed, an outside expert on munitions had reviewed the body camera recordings and made an initial finding that he then revised – only to have *that* theory somewhat debunked during a detailed interview with the subject officer that occurred later.

Ultimately, SRPD reached a conclusion about what had happened, and whom should be held accountable. The officer who was found to be responsible is receiving discipline for unsafe practices in the deployment of his 40mm launcher. The evidence does *not* establish that harm to this particular person was intentional or at all driven by his profile in the community. On the contrary, officers did not give any “real time” indication during recordings or otherwise that they knew his identity. Nor is it at all clear that he was even the intended target of the round at issue, and no evidence suggests that any officers deviated intentionally from SRPD’s prohibition against aiming such munitions at the head. Nonetheless, the officer is receiving formal discipline for the way in which the less lethal force was deployed.¹⁵

The other sustained discipline case involving force relates to the use of "barricade rounds" with the 40 mm launcher in the crowd control context. This should never have happened. The special rounds are intended for tactical purposes and are designed to penetrate surfaces (such as windows) so that gas can be released against a "barricaded" subject. Unfortunately, there were several issues that allowed this to occur. One was the fact that a canister full of a new style of barricade round had been ordered a couple of years earlier (and never previously used). This round was very similar in appearance to the black-tipped hard foam "baton" rounds that the officers were authorized to use (and did use in high volume throughout those days). Another was that control of the retrieval and distribution of munitions as the night went on was seriously inadequate -- a function of poor protocol and the extraordinary demands of the situation.

¹⁵The investigations for this and other cases discussed in this Report are complete, and notices as to intended consequences have been prepared. However, it should be noted that, at the time of this writing, the final steps of the process – which include officers’ standard rights to further consideration and/or appeal of discipline – are still pending in some instances.

The canister of fifty rounds made its way into the field under specific circumstances that remain unknown in spite of significant investigative efforts. It is believed that four of these rounds were ultimately used before the Department fully recognized and addressed the problem. Only one is believed to have struck anyone; unfortunately, it resulted in serious injury. While some of the underlying failings were more of a "systemic" problem (for which corrective action as subsequently taken), the Department also found that individual officers needed to be held accountable for their involvement. These sustained allegations (all leading to formal discipline) included the following:

The officer who actually fired the round that resulted in serious injury to the subject's groin was found to be culpable. Although he plausibly denied knowing that it was a barricade round (which he understood to be a completely inappropriate munition for the context), he ultimately bears responsibility as a grenadier for whatever comes out of his weapon. He is believed to have fired two of the other rounds as well, but it did not strike any individuals.

Another grenadier was determined to have fired the fourth barricade round. This happened the following night. The round did not hit anyone, but that officer was found to have violated policy under the same principle as his colleague (though he received a lesser discipline in light of the relatively benign outcome of his deployment).

Four other officers were interviewed as subjects because of their own alleged involvement in distributing or possessing the rounds. Three of these individuals were exonerated -- including an officer who unequivocally recognized the problem as the canister of rounds initially arrived in the field. However, as that individual stated in his interview and as recordings confirm, he took appropriate affirmative action in flagging the issue for two different supervisors -- both of whom were experienced tactical officers for whom the significance should have been clear. One of these sergeants is no longer with the agency and declined to cooperate with interview requests. The other had seemingly (and somewhat plausibly) forgotten the relevant brief exchange by the time of his interview in March, but upon review of relevant recordings acknowledged what had occurred. While he had apparently taken some preventive action with members of his immediate team, he failed to assert himself more proactively to alert others and make sure the rounds would not be used. He is receiving formal discipline.

The harm caused by the deficient handling of these dangerous rounds was severe -- and could easily have been worse. Accordingly, and along with individual accountability, the Department's responsive steps in addressing the underlying systemic

flaws is of paramount importance. Our understanding is that this process is well underway.

RECOMMENDATION SEVEN: SRPD should review and amend its protocols for the purchase, storage, and distribution of the various types of 40mm less lethal munitions, and should add safeguards that would ensure the highly restricted and supervised use of “barricade rounds” for their intended function.

Other Force or Injury Cases: No “Sustained” Findings of Misconduct

In separate instances that resulted in subsequent media attention and legal claims, two other individuals – one female adult and one male adult – who had participated in protest activity were struck in the head and injured. Both asserted the culpability of SRPD and offered theories as to what type of munition was involved. The Department conducted investigations into both allegations, but the results were inconclusive.

In the case involving the man, his legal claim did not provide specifics about the circumstances in which his injury had occurred. SRPD was not previously aware of an incident involving the man, and was not able to connect any of its known uses of force to an outcome that involved him. (It did, however, use media accounts in an effort to narrow down the possible deployments at issue. This, however, did not lead to corroborating information.)

Through his attorney, the man declined to give a statement to the SRPD investigators, and the complaint case generated by the Department did not ever identify a subject officer. In fact, it is not entirely clear that the force at issue was even deployed by SRPD personnel (as opposed to one of the Department’s mutual aid law enforcement partners).

In the other case, the Department was able to make significant – but not conclusive – determinations as to how the woman was injured. Using a private person’s video recording of the event’s immediate aftermath, and syncing it through visual evidence to officer body camera recordings from the other direction, the Department established the time and place of the incident – a notably active skirmish between officers enforcing dispersal orders and a crowd that was resisting with varying degrees of intensity or aggression. Still, limitations in the camera angles and field of vision meant that the exact particulars of the case remain unclear. Three officers were identified as having deployed *potentially* relevant munitions during the tight window of time that the

investigation established. However, none of these individual munitions was definitively linked to the woman's injury.¹⁶

This open-endedness is, of course, unsatisfying on one level. But SRPD seems to have engaged in appropriate due diligence in reaching this impasse. Moreover, if more relevant information becomes available in the future, there is no obstacle to the Department's revisiting issues of possible accountability in each of these matters.

In another legal complaint connected to a use of force¹⁷, the Department initiated an investigation and found the officers' conduct to be in policy. This involved an individual who was arrested in Old Courthouse Square on Saturday night after physically engaging with the officers on a "skirmish line" in defense of a couple of protestors seated on the ground. OIR Group reviewed multiple body camera angles and found the officers' actions (which included a baton strike and takedown to overcome resistance) to be justified.

Additional Misconduct Allegations Leading to Accountability

Another officer is receiving low-level formal discipline in connection with a specific use of force that occurred on Monday, June 1, and that we identified and suggested should be handled as a formal administrative investigation. It involved a single baton strike of a subject who was being arrested. Because the force itself raised concerns about necessity and propriety under all the circumstances (including the fact that two other officers had begun to grasp the subject at issue), it became the focus of an administrative investigation. Ultimately, the Department determined that the force was technically justified (if subject to legitimate criticism), but the officer was held accountable for a couple of peripheral issues: failure to timely activate his body camera, and a contemptuous comment that he directed at the subject in the immediate aftermath of the arrest. The Department also agreed to direct the officer to attend a highly regarded training program relating to de-escalation techniques.

¹⁶ She, too, declined through her lawyer to participate in the Department's administrative investigation.

¹⁷ It should be noted that it is to the Department's credit that it affirmatively treated allegations that emerged through the legal claim process as "citizen complaints" for which it initiated an administrative review into possible misconduct, as if the complainants had contacted the Department directly. We have long considered legal claims to be an important source of feedback and potential accountability – a "complaint with a price tag attached." But many agencies do not use them as triggers for investigation, since the processes are technically different.

Other problematic conduct was identified at different steps of the review process – including concerns raised internally by SRPD or by OIR Group during the course of the investigations. These matters were resolved outside of the formal discipline process, but the resolution was intended to clearly convey to personnel the ways the Department's expectations had not been met. These included the following:

An officer who took temporary custody of a teenage driver before releasing him to family was recorded using extensive profanity in his comments to the subject. Importantly, they were not intended as verbal abuse or the demeaning of that individual -- instead, it seemed like more of a gruff effort to constructively advise. Nonetheless, the choice of language did not reflect well and was technically out of policy.¹⁸

In the same incident involving the young driver, the sergeant who had initially conducted the traffic stop was counseled because it was later determined that he had failed to activate his body camera in a timely fashion. (The stop was recorded in full by a partner officer, and no problems were found regarding its legitimacy -- in spite of it receiving some social media attention and prompting a third-party complaint.)

Lastly, our review of a force incident on Monday evening showed that two different officers had fired 40mm rounds at a subject who was later arrested -- and had not properly documented their actions.¹⁹ Though the rounds themselves were found to be in policy (though standards for deployment have subsequently been tightened considerably), the officers were counseled for their failure to provide appropriate documentation and notification -- including to the paramedics who responded to the scene to treat the agitated subject.

This brings the total to 10 "interventions" involving eight different officers (two of whom received formal discipline for one case and documented counseling for a separate incident).

¹⁸ In the course of our extensive review of officer recordings, we noted numerous instances of profanity among SRPD personnel. It should be noted that the vast majority of these were not directed at, or audible to, members of the public, and that, overall, the officers handled themselves with restraint and professionalism in what was undoubtedly a stressful context. Still, given the proliferation of recordings – both internal and external – that accompany contemporary policing, and the poor impression that profanity makes in the public when it comes to light, it behooves SRPD to reinforce its own policy and encourage verbal discipline among its officers.

¹⁹ It should be noted that the body cameras of the officers had, in fact, created a record of what occurred – a reminder of the usefulness of that evidence and SRPD's compliance with activation policies throughout that period.

Other Complaint Cases: Officers Exonerated

Other citizen complaints resulted in findings that the officers had acted appropriately. One woman objected to be approached by an officer in tactical gear as she sat in her car watching a traffic stop that had attracted the attention of her – and others. She described the SRPD response as “excessive” and alleged that the officer had told her she had to leave. The implication was that she had been singled out unreasonably and that the intimidating behavior of the officers was not appropriate.

The recording of the encounter corroborates much of what the woman said, although she was not in fact ordered to leave, and the officer was calm and professional in his interaction with her. We concurred that the officer – who was attempting to ensure the safety of officers in a traffic stop that had attracted several members of the public on the fourth day of the ongoing protest activity – had not violated policy.

At the same time, in spite of a couple of factual inaccuracies, the woman’s *perception* of events struck us as both sincere and understandable. Ideally, this type of complaint can serve as a constructive feedback loop for both parties, and we encourage the Department to invite this individual to discuss the matter further, explain the outcome, and acknowledge her perspective.

The Department’s approach to another complaint showed the value of holistic engagement with criticisms, even when policy violations do not turn out to be at issue. Here, in a “third party” complaint that had several facets (some of which overlapped with previously identified issues), a woman raised concerns about the inadequacy of mask use and availability in the context of the “mass arrests” that occurred on June 2. The Department found that there were valid aspects to the issues that had been raised and included references in its final memo to some of the adaptive protocols it had subsequently implemented – and that will potentially prevent future occurrences.

Conclusion

While the recent verdict in the trial of Minneapolis officer Derek Chauvin constituted an important milestone in the journey toward progress in America policing, the conversation continues. Some of the changes that arise in the near future will occur at the federal level, with the potential for new statutes and an administration that is committed to using the authority of the Department of Justice as a check on local law enforcement agencies. But as significant as those measures might be, the

overwhelming responsibility – and opportunity – for effectuating positive reforms will happen in the country’s thousands of individual jurisdictions.

This Report was created in response to the City’s recognition that the events of late May and early June warranted careful scrutiny. Ideally, transparency with regard to these findings, accountability for the performance failures discussed here, explanation as to the rigor with which SRPD has engaged in the process of internal review, and ideas for worthwhile systemic reform will be “takeaways” from this project. Our ultimate hope is that they will become building blocks for the strengthening of police-community relations in Santa Rosa. We thank the representatives of SRPD whom we met for their cooperation, and we wish them and the Santa Rosa community well. We also look forward to further dialogue with City leadership and its residents as they plan on how best to provide public safety in Santa Rosa.