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March 16, 2010

VIA HAND DELIVERY

Joseph Brann
Oakland Police Department
455 7th Street
Oakland, CA 94607

**Re: Pre-Disciplinary Response, Oakland Police Captain Ricardo Orozco and
Lieutenant Chris Mufarreh**

Dear Mr. Brann:

This pre-disciplinary response is being presented to you in conjunction with a verbal presentation related to the recommended demotion of Captain Ricardo Orozco to Sergeant, and the recommended demotion of Lieutenant Mufarreh to Police Officer. The pre-disciplinary hearing is scheduled to occur on Wednesday, March 17th at 9:30 a.m.

As legal counsel to Capt. Orozco and Lt. Mufarreh, I respectfully request that you consider the information we will present to you verbally during the pre-disciplinary hearing and also carefully review this written pre-disciplinary response and the attachments prior to making a recommendation of the final discipline in this matter. Since I am aware that your recommendation for final discipline will be made to City Administrator Dan Lindheim, I intend to send a copy of this pre-disciplinary response to Mr. Lindheim, as well as to the office of the City Attorney. Should you wish, I will also provide a copy of the pre-disciplinary response to Police Chief Anthony Batts, but I will follow your wishes and direction in that regard.

**I. INTRODUCTION AND SUMMARY OF RESPONSE ON BEHALF OF
CAPT. OROZCO AND LT. MUFARREH**

The purpose of a pre-disciplinary hearing is really to determine whether there is "just cause" for the imposition of the recommended discipline of these two command officers. In the event the proposed discipline is imposed following this hearing, both individuals, through this office, will file a grievance and request to go to arbitration to overturn the discipline. Thus, when deciding upon final discipline, consideration should be given to whether an arbitrator, applying a "just cause" standard for discipline, will uphold the demotion of Capt. Orozco and Lt. Mufarreh.

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In the event there is not "just cause" for the imposition of the recommended discipline as to these individuals, it would be ethically and fiscally irresponsible for the City to impose the recommended discipline simply to put both of these individuals through the rigors of an arbitration and the embarrassment of demotions, merely to have an arbitrator determine that there was no basis to impose the disciplinary demotions in the first place. Given the number of witnesses in this matter and the evidence which we have analyzed, the arbitration of these appeals would consume weeks and would undoubtedly cost thousands of dollars. I am confident when the "dust clears" from the arbitration, the City will spend additional thousands of dollars to compensate Capt. Orozco and Lt. Mufarreh for back pay when the disciplinary demotions are set aside.

There are a multitude of reasons why an arbitrator will not uphold the disciplinary demotions of these two individuals which are explained in excruciating detail below. But, in a nutshell, the proposed discipline will not withstand a "just cause" analysis for the following reasons:

1. The recommended discipline contravenes the principle of progressive discipline. Ricardo Orozco has been a police officer with the City of Oakland for over twenty-two years, during which he has enjoyed an unblemished record and substantial accomplishments for the City of Oakland and Oakland Police Department. He has been a Captain of Police since 2006 and has consistently received excellent performance evaluations.
2. Chris Mufarreh has been an employee of the Oakland Police Department for nineteen years and also enjoys an unblemished record with no prior discipline. He has been a Lieutenant of Police since 2005 and has received exemplary evaluations and praise for his work in the Criminal Investigations Division, the Internal Affairs Division, and the Patrol Division.
3. The proposed discipline of Capt. Orozco and Lt. Mufarreh does not relate to their assigned duties as Patrol Division supervisors, but instead to duties they stepped into on a one-time basis when no one else was there to perform the functions.
4. Under the facts of the incident which evolved on March 21, 2009, there is no proof that either committed a "gross dereliction of duty" – at most, this case involves second guessing decisions made in good faith and with no belief at the time that the decisions would put sworn personnel or others at risk of injury or death.

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5. The Department inaccurately portrays Capt. Orozco and Lt. Mufarreh as assuming roles of Tactical Operations Team leaders. In fact, there was no Tactical Team assembled to the knowledge of either of these individuals until 2:56 p.m., when a meeting occurred involving several of the Tactical Team sergeants. This meeting was also attended by Deputy Chief Kozicki, Capt. Orozco, Lt. Mufarreh and Lt. Lindsey.
6. Lt. Mufarreh's decision to coordinate a search for the suspect when arriving on the scene was appropriate under the circumstances and consistent with Department practice and sound police procedures.
7. Lt. Mufarreh, when arriving on the scene, took measures to ensure the initiation of crime scene investigation, the establishment of inner and outer perimeters, and the search for the outstanding suspect which had not properly been put into place prior to his arrival.
8. Lt. Mufarreh's refusal to authorize entry into the apartment at 2755 74th Avenue by uniformed patrol officers demonstrates his exercise of restraint and discretion under chaotic circumstances.
9. The information gathering and analysis process which led to the entry of the Tactical Team into the apartment at 2755 74th Avenue occurred in the aftermath of a brutal and unprovoked killing of two Oakland police officers at the same time; an incident unprecedented in the history of the Department, which set into motion a climate of chaos which led to personnel, communications, and tactical breakdowns at virtually every level. These breakdowns are not attributable to the actions or decision-making by Capt. Orozco or Lt. Mufarreh.
10. The Department and the Board of Inquiry have reached erroneous conclusions about certain facts.
 - a. No one saw Mixon being let into the apartment at 2755 74th Avenue, contrary to conclusions reached by the Department and the Board of Inquiry.
 - b. There was no "ad hoc" entry team created or assembled as that term is described in Departmental General Order K-5 and has been interpreted through the years.

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- c. There was ample legal justification for the Tactical Operations Team to enter the apartment without the need of securing a search warrant.
- d. If the Department was sincerely interested in assessing the unfolding events on March 21st, it would have identified the individual who was in possession of information that (1) Mixon was inside the apartment at 2755 74th Avenue; and (2) acknowledged radio transmissions of an officer who had seen movement at the front window before the Tactical Operations Team actually entered the apartment. Instead, the Department ignored this information and failed to provide it to the Board of Inquiry in its review of the matter.
- e. If the Department was honestly interested in looking at the events of March 21st, it would have determined that a series of claims made by Lt. Lindsey concerning information she allegedly developed about the suspect's whereabouts prior to entry into the apartment and her communication of this information to a whole host of OPD members was blatantly false. Instead, the Department simply sidestepped evidence and information staring it in the face concerning Lt. Lindsey's blatant dishonesty.

II. THE PROPOSED DEMOTIONS IGNORE THE LONGSTANDING SERVICE TO THE DEPARTMENT AND COMMUNITY AND THE EXEMPLARY, DISCIPLINE-FREE CAREERS OF CAPT. OROZCO AND LT. MUFARREH

a. CAPT. OROZCO

Capt. Orozco joined the Oakland Police Department in 1987. As a police officer, he was assigned to the Patrol Division, the Vice/Narcotics Unit (as an undercover buy officer, the Special Duty Unit, and the Internal Affairs Division.

Capt. Orozco was promoted to sergeant in 1996, where he was assigned to the Criminal Investigation Division, Patrol Division, Community Policing Unit, and Campus Life and School Safety Unit. Following his promotion to lieutenant in 2004, he worked in both the Patrol Division and Training Division.

In 2006, Orozco was appointed to the rank of police captain and was initially assigned to the Personnel Division. Later, he was transferred to the Patrol Division in 2007, where he served

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as an area commander from 2007 until 2009. Capt. Orozco was the commander of Area 2 on March 21, 2009 when this incident occurred (in Area 3).

Capt. Orozco holds a Management POST Certificate; he is a graduate of the Senior Management Institute for Police (2009), the Federal Bureau of Investigation National Academy (2006), and has also completed the SWAT Team Tactical Commander Course (2005). Capt. Orozco is the recipient of an OPD Blue Star as a result of being wounded by a bullet on duty, and the Medal of Merit.

In his twenty-three years of employment with the Oakland Police Department, Capt. Orozco has not suffered imposition of disciplinary action of any nature or type. Attached to this pre-disciplinary response as Exhibit A are three of the most recent performance appraisal forms issued to Capt. Orozco. Two of the appraisals (August 1, 2008- July 31, 2009 and December 23, 2006-July 31, 2008) relate to his performance as a police captain. The third evaluation (June 30, 2005-July 1, 2006) relates to his performance as a police lieutenant. All three evaluations concern his supervision and decision-making as a patrol supervisor. Significantly, all three evaluations contain consistent ratings of "exceeds expectations."

The initial evaluation attached as Exhibit A is Capt. Orozco's performance appraisal form for the period August 1, 2008 through and including July 31, 2009. This form was prepared by Deputy Chief Kozicki and relates to Capt. Orozco's performance as the Area Commander of Patrol Area 2. As you can readily see, Capt. Orozco is rated as "exceeds expectations" in every category mentioned, including "Team Work and Collaboration," "Accountability," "Adaptability and Problem Solving," "Performance and Ethics," and "Performance Management." It is somewhat ironic that Deputy Chief Kozicki included the following comments under the category of "Performance Management":

You are both a coach and mentor for your personnel. You have shown a willingness to ask tough questions related to officer effectiveness, efficiency and productivity. You have done this with a desire to improve as opposed to punish.

As discussed below, the Oakland Police Department, as an organization, could have taken the opportunity in this situation to educate and even criticize Capt. Orozco (as well as Lt. Mufarreh and Deputy Chief Kozicki) for perceived errors concerning the events of March 21, 2009 with a desire to improve their performance and not simply to punish. For reasons which are both regrettable and unsupportable, the Department has chosen to point a disciplinary finger at these two fine officers instead of using the events of this tragic occurrence to educate them, to make them better, more effective leaders in the event something like this ever occurs again.

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Attached to this pre-disciplinary response as Exhibit B is a breakdown of Area 2 crime statistics (which Capt. Orozco has commanded) for the calendar year 2009. As you can see from this document, Area 2, under Capt. Orozco's command, has achieved reductions in most of the crime areas listed. Many of these crime reductions are double digit numbers.

Attached to this letter as Exhibit C is a March 4, 2009 letter addressed to Chief Anthony Batts from the Chief Executive Officer of The Unity Council in the City of Oakland. As Ms. Gonzalez indicates, "As Area II commander, (Capt. Orozco) has been one of the best leaders we've had in our community. He understands our community, he can effectively communicate with our community, he has worked to improve relationships between the OPD and the community, he is extremely responsive, and his presence is felt here in our community and the area crime stats show the crime decreased under his command."

b. LT. MUFARREH

Lt. Mufarreh, like Capt. Orozco, has not suffered prior imposition of disciplinary action. Lt. Mufarreh joined the Oakland Police Department in 1990, where he served in the Patrol Division and as a member of the FBI Fugitive Apprehension Task Force in the Fugitive Unit. Lt. Mufarreh served on the Department's SWAT Team as an entry team member from 1995 until 2005.

In 1999, Lt. Mufarreh was promoted to the rank of sergeant. As a sergeant, he served as a patrol supervisor, as well as a criminal investigator in the Robbery and Homicide Divisions.

In 2005, Lt. Mufarreh was promoted to the rank of lieutenant, where he has served in the Criminal Investigations Division, Internal Affairs Division, and as a Deputy Area Commander in both Area 1 and Area 2 of the Police Department. He holds a Management POST Certificate and is a graduate of the FBI Advanced Training Course. He is the recipient of a Medal of Valor for exercising restraint as a member of the SWAT Team when fired at by a suspect.

Attached to this letter as Exhibit D are performance appraisal forms relating to Lt. Mufarreh's performance in the Internal Affairs Division from June 1, 2006 through January 27, 2007, his performance as a lieutenant in Police Service Area 4 from January 27, 2006 to May 31, 2007, his assignment as an Area 1 patrol commander from July 1, 2007 to June 30, 2008, and the most recent evaluation he received as a Area 2 lieutenant from June 30, 2008 to June 30, 2009. As you will readily see from looking at all these documents, Lt. Mufarreh received "exceeds expectations" ratings from different supervisors in each of these different roles as a lieutenant. Notable, however, are the "exceeds standards" ratings he received as the Area 1 Patrol Commander and as the Area 2 Lieutenant for decision-making and management and supervision of patrol operations while serving as a patrol lieutenant.

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In conclusion, when one looks at the personnel histories of both Capt. Orozco and Lt. Mufarreh, one readily sees two very well educated, highly experienced, committed, loyal employees who have no prior disciplinary records whatsoever. An arbitrator considering "just cause" and keenly aware of the concept of "progressive discipline" will not allow the proposed disciplinary demotions of these two fine and capable patrol commanders to stand for that reason alone

III. THE DEMOTION OF CAPT. OROZCO AND LT. MUFARREH WILL NOT BE UPHELD ON APPEAL BECAUSE THE DISCIPLINE IS PREMISED UPON ALLEGED DEFICIENCIES IN DECISION-MAKING CONCERNING DEPLOYMENT OF THE TACTICAL TEAM (WHICH NEITHER WAS A QUALIFIED MEMBER OF ON MARCH 21ST) AND ENTIRELY UNRELATED TO THEIR ASSIGNED AND CUSTOMARY DUTIES AS PATROL DIVISION SUPERVISORY PERSONNEL

It would be one thing if the proposed demotions of Capt. Orozco and Lt. Mufarreh were premised upon inappropriate management of Patrol Division personnel in their assigned Area (Area 2) or some other type of decision-making which related to either the assignment, deployment, or supervision over patrol officers in their normal, day-in and day-out functioning as Oakland police officers. But the Department has leveled no such criticism of Capt. Orozco or Lt. Mufarreh in their Patrol Division supervisory roles for the entirety of their assignments as a captain and lieutenant, respectively.

Instead, we have a situation in which the Department is proposing to demote both individuals because it disagrees with decision-making they engaged in on March 21, 2009, when they were thrust into decision-making roles concerning deployment of the Tactical Team which neither individual should have been in, nor has occupied since that date. Indeed, Capt. Orozco was no longer on the Tactical Team at all, but had simply responded to a request by Capt. Ed Tracey to go to the scene in Tracey's place; while Lt. Mufarreh had recently rejoined the Tactical Team to fulfill the position of a tactical commander, he had neither been to the tactical commander school nor been "shadowed" for the required period of time in order to function as a tactical commander. Lt. Mufarreh's only previous experience with the SWAT Team had been as an entry team member (operator).

If Capt. Orozco was serving at the time as one of the Department's alternate tactical commanders and continued to serve in that position today, at least there would be some articulable basis for the Department to express its concern about his role in the decision-making which led to the entry into the particular apartment. But the fact remains that the Department's discipline is premised upon decision-making which occurred in a position which Capt. Orozco did not occupy on March 21, 2009, and has not occupied since. Similarly, even if the

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Department levels criticism of Lt. Mufarreh for the manner in which he processed information to make recommended decisions relating to the Tactical Team, the fact remains that Lt. Mufarreh had not received any formalized training as a tactical commander and does not currently occupy any role whatsoever on the Department's Tactical Team.

The decision-making engaged in by Capt. Orozco and Lt. Mufarreh in their assignments as patrol commander personnel have been consistently rated as "exceeds expectations." Because of this, their demotion from positions where they have never been criticized or even counseled for inappropriate decision-making or behavior of any type has no factual or legal support, and will most assuredly be overturned on appeal.

IV. THE STRUCTURE AND ORGANIZATION OF THE OAKLAND POLICE DEPARTMENT ON MARCH 21, 2009 AND THE STRUCTURE AND ORGANIZATION OF ITS TACTICAL TEAM WAS A RECIPE FOR DISASTER

As legal counsel for the Oakland Police Officers' Association and Capt. Orozco and Lt. Mufarreh, it is our belief that there is nothing inappropriate about the Department or the City of Oakland pointing its finger at command level personnel when such personnel have engaged in inappropriate behavior violative of Department policy or the law. Although we will discuss the singular policy violation cited as the basis for discipline against both of these individuals below, there is no question that the Department believes that both Capt. Orozco and Lt. Mufarreh erred by participating in a briefing with Tactical Team leaders which led to their entry into the apartment at 2755 74th Avenue. There is also no question that the Department felt that Deputy Chief Kozicki, since retired, erred as well.

The Department's willingness to "examine its own management" in this case is *not* an examination of management above Kozicki, Orozco and Mufarreh. Rather, in an act of sheer hypocrisy, the OPD ignores examining its own management with regard to the manner in which the Department was "organized" and supervised on the morning of March 21, 2009.

Attached to this pre-disciplinary response as Exhibit E are a series of emails starting with an email sent from Deputy Chief Kozicki to area captains on February 23rd at 5:15 p.m. A copy of this email is sent to Acting Police Chief Howard Jordan.

Exhibit E includes three additional emails, all dated March 8, 2009. At 8:13 p.m., Capt. Orozco sent an email to Capts. Rachal and Toribio expressing his concerns about staffing the City with one lieutenant and indicating that he believed "we are setting up our Lt's for failure." In response, Capt. Rachal agreed and said that staffing the City with one lieutenant "...is BAD policy!" Capt. Toribio stated, in response, "I agree that each area needs to have a lieut working."

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Significant to this email is the following statement: **"Furthermore, we will stop the backfill of area lieutenants beyond one per shift citywide. We will discuss how best to coordinate this."**

Upon receiving this email from Deputy Chief Kozicki, Capt. Orozco forwarded it to his area lieutenants and asked for input. The Exhibit includes an email from Lt. Yelder which includes the following comment: **"Weekends would be a nightmare, sideshow, clubs, parties and homicides."**

After receiving Lt. Yelder's email, Capt. Orozco corresponded to Deputy Chief Kozicki pointing out, in part, that **"We have seven different line up times on the weekends, with six of the line ups going past 1800 hours! Add sideshow and the downtown, you have chaos."** Capt. Orozco proposed that on Saturday and Sunday (at least in Area 2), the day shift have two lieutenants on at any one time for citywide coverage. Capt. Orozco also made this very prophetic observation:

We are a very young department and we need to ensure there is a command presence and leadership to make sure everyone goes home safely and also stays out of trouble. I believe this can be a potential issue for the City and we may end up paying more later then now.

Less than one month later, on the morning of March 21, 2009, the Oakland Police Department, under directions from Deputy Chief Kozicki and with the full knowledge of Acting Chief Howard Jordan, established a management structure of the Oakland Police Department in which Lt. Drennon Lindsey, *who had been a lieutenant for approximately six weeks and had not received any formal training as a patrol lieutenant, and who had no tactical training or experience, was set to be the "Chief of Police" in the City of Oakland for that day.*

Attached to this pre-disciplinary response as Exhibit F is an email sent to the Area Captains from Monique Torres on Friday, January 23, 2009. Attached to her email was a color chart showing assignments for the "citywide" watch commander duties. The chart also shows whether the particular day is staffed by the "A" Squad (older officers, generally) or the "B" Squad (younger, newer officers, generally). As you can readily see from the calendar, March 21, 2009 involved deployment of the "B" Squad officers and also involved the Area 3 lieutenant (highlighted in purple) serving as the "citywide watch commander."

Attached to this pre-disciplinary response as Exhibit G is a copy of the Area 3 "final detail" for Saturday, March 21, 2009. In the upper right hand corner, Lt. Lindsey's assignment

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as the City's Watch Commander is confirmed by the following language: "City Watch Commander: Area 3."

A fact which is entirely missing from both the Internal Affairs investigation report and the Board of Inquiry analysis of this incident is the fact that until late Friday night, March 20th, Lt. Mufarreh was not supposed to be on duty the following day because of the budgetary issues discussed by Deputy Chief Kozicki in his email dated February 24, 2009. Indeed, had Capt. Orozco not decided to put budgetary considerations aside, the City of Oakland would have been under the direction of a brand new lieutenant (Lindsey) in Area 3, and two sergeants from Areas 1 and 2.

Late on Friday night, March 20th, Capt. Orozco decided that the budgetary concerns had to take a second seat to the need to manage his area with experienced and trained personnel. With that in mind, he corresponded with his lieutenants and had agreements from them to be present as Area 2 commanders on both Saturday, March 21 and Sunday, March 22, 2009 from noon until midnight.

Thus, because the Department was attempting to cut economic corners, it had set into place an "organizational chart" for March 21, 2009 which resulted in well over 100 officers on March 21st being "commanded" by Lt. Drennon Lindsey. Although the "outside" Board of Inquiry did remark on Lt. Lindsey's lack of tactical training, it appears that the Department kept from the Board the true picture of Lt. Lindsey's background and experience at the OPD, including her experience as a patrol supervisor.

From the information we have been able to gather, it appears that Lt. Lindsey spent time in patrol as a police officer for approximately two and one half years. She spent approximately six months as a patrol sergeant in 2003. Thereafter, she commenced detective assignments which lasted approximately six years. Following her promotion to lieutenant in early February, 2009, she was reassigned to Patrol.

Thus, Lt. Lindsey, at the time this event happened, had spent somewhere near seven and one half years in either investigative or administrative positions; she had somewhere around three and one half years of patrol experience, only six months of which involving supervisory patrol experience (in 2003). She had been a lieutenant in patrol for only six weeks when this incident occurred.

Notably, the Department's mismanagement of its patrol staff does not stop at the patrol level. More specifically, the Department's "recipe for disaster" also involved the "organization" and "management" of the Department's Tactical Operations Team.

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As the Department readily concedes, Departmental General Order K-5 is one of the primary policies which relates to the events of March 21st, and a policy which the Department apparently relies upon in attempting to discipline both Capt. Orozco and Lt. Mufarreh. This policy states, unambiguously and unequivocally that **"The Tactical Operations Team is under the operational control of the Special Operations Section (SOS) of the Special Operations Division (SOD)." (DGO K-5 II.A.)**

The same General Order provides in pertinent part as follows:

When tactical teams are deployed, they shall be under command and control of a Tactical Commander. The primary Tactical Commander shall be the SOS Commander. Additional Tactical Commanders shall be designated by the Chief of Police to serve in the absence of the primary Tactical Commander, or to serve as Assistant Tactical Commanders during operations.

(DGO K-5 II.B.1)

It would be undisputed that the Department's SOS Commander and, hence, its lead Tactical Commander on March 21, 2009 was Capt. Ed Tracey, were it not for the fact that Capt. Tracey disavowed that role. Specifically, when interviewed by Sgt. Floyd in Internal Affairs, Capt. Tracey indicated that the "lead Tactical Commander" at the time of the incident was Lt. Allison. (Internal Affairs Confidential Report of Investigation, p. 157). In fact, Lt. Allison was on the other side of the country at the FBI National Academy and was, for that reason alone, not serving in the capacity as the lead Tactical Commander of the Tactical Operations Team.

It is undisputed that Capt. Tracey served as a commander of the Motor Unit and responded to the hospital after Sgt. Dunakin and Officer Hege had been shot. Capt. Tracey telephoned Capt. Orozco while at the hospital, and asked Orozco to assume his duties as the tactical commander in connection with search for the suspect.

The "problem" with this, of course, is the fact that Capt. Orozco was not, at the time, designated by the Chief of Police to serve in the absence of the primary tactical commander, nor was he designated by the Chief of Police to serve as an Assistant Tactical Commander. Indeed, *Capt. Orozco was not even on the Tactical Team on this date.*

Contrary to the knowledge and understanding of Capt. Tracey, the Department's only other Tactical Commander on March 21, 2009, was Lt. Lawrence Green. Lt. Green's name has been noticeably absent from any of the documents in this case because on that date, Lt. Green

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was on an extended leave of absence in anticipation of the birth of a child. Thus, under the Department's management, Capt. Tracey and *only Capt. Tracey* had been designated and was qualified by Department policy to serve as a Tactical Commander. One might have thought that with Lt. Green taking an extended leave of absence, Department management may have "designated" a new and different lieutenant to serve as a tactical commander, but that had not been done and there was no one else qualified or designated pursuant to DGO K-5 to serve in Capt. Tracey's absence.

March 21, 2009 will undoubtedly be remembered by the Oakland Police Department as an unmitigated disaster caused by a combination of unanticipated and coincidental events: (1) Sgt. Dunakin's car stop of Mixon without any knowledge of the warrant for Mixon's arrest, the rape which shortly preceded this stop, or Mixon's possession of a handgun with intent to use it; (2) the fact that the car stop occurred only a few hundred yards from the apartment where Mixon had been staying and where he fled to following the shooting; and (3) the fact that Mixon had secretly acquired a high powered assault rifle which was stashed in the apartment unbeknownst to the pursuing police.

Obviously, no one in the OPD could have predicted the unanticipated confluence of these events on that day; however, the highest levels of the Police Department are now criticizing two of its most highly regarded and capable commanders for decisions they made in the chaotic aftermath of the death of two motor officers. The fact remains that the same Department management had, prior to March 21, 2009, plenty of time and ability to think and reflect on the manner in which it would structure and manage its patrol operation and its Tactical Operations Team. Placing the lives and safeguarding of the citizens of Oakland in the hands of a lieutenant with less than two months on the job is nothing less than malfeasance; disciplining Capt. Orozco and Lt. Mufarreh for decisions they made due to ineptness by Police Department management concerning both organization and management of the Tactical Operations Team is both repulsive and indefensible.

V. THE SINGULAR CHARGE THAT CAPT. OROZCO AND LT. MUFARREH COMMITTED A "GROSS DERELICTION OF DUTY" IN VIOLATION OF MANUAL OF RULES SECTION 234.00-1 WILL NOT SUPPORT THE PROPOSED DISCIPLINARY DEMOTIONS

The pre-disciplinary notices to both Capt. Orozco and Lt. Mufarreh assert a singular violation of the Manual of Rules – 234.00-1 Command Authority – Gross Dereliction of Duty.

The immediate problem for the Police Department is there is nothing in MOR 234.00 which defines the term "gross dereliction of duty." Thus, even if Capt. Orozco and Lt. Mufarreh would have memorized MOR sections 234.01-234.96 (the entirety of the MOR sections relating

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to "commanding officers") they would have had no idea whatsoever that the decisions they made on March 21st would somehow be viewed by the Department to be improper. Moreover there is nothing in the MOR 234 series which even purports to give guidance to a patrol area captain or a patrol area lieutenant when they are suddenly thrust into the roles of tactical commanders.

But that is only the start of the Department's "problem" in charging MOR 234.00. A second significant problem for the Department is that MOR 234.00 does not apply to either Capt. Orozco or Lt. Mufarreh according to the Department's Manual of Rules.

On March 21, 2009, Capt. Orozco was the Area Captain over Area 2. Duties of an Area Captain are set forth in MOR 222.00. As an aside, nothing Capt. Orozco did (or didn't do) on March 21, 2009 violated any of the provisions of MOR 222.00.

Lt. Mufarreh occupied the assignment as an Area Lieutenant. The duties of Area Lieutenants are set forth in MOR 226.00. As an aside, nothing that Lt. Mufarreh did (or didn't do) on March 21, 2009 violates any of the provisions of MOR 226.

MOR 234.00 is entitled "Commanding Officers." The term "Commanding Officer" is defined in MOR 150.44 as "Any command officer in charge of an organizational unit." Significantly, MOR 125.82 contains a definition of the term "area" ("a geographical area of the City under the command of a Captain."). MOR 125.40 contains a definition of the term "unit" ("any number of members and/or employees of the Department regularly grouped together under one head to accomplish a police purpose."). Thus, unlike an area, which has to be commanded by a captain, a unit can simply be a group of employees who are commanded by somebody other than a captain, to include, of course, a sergeant, a lieutenant, or even a civilian "commanding officer." The Department has a series of "units" whose "commanding officers" are governed by the provisions of MOR 234.00. For instance, the Youth and Family Service Division has the (1) Special Victims Unit, (2) Domestic Violence Unit, (3) ID Unit, and (4) Youth Intake Unit. The "Medical Unit" is under the Personnel Division while the "Weapons Unit" is under the Assault Division. The Field Services Unit is under the Special Investigations Section. Thus, the "commanding officers" of these various units, irrespective of their ranks or titles, would be held accountable as "commanding officers" under MOR 234.00.

The third significant problem in charging this violation relates to the language of the section itself. According to the Internal Affairs Division's conclusions, Capt. Orozco and Lt. Mufarreh violated MOR 234.2. This section states, in pertinent part, as follows:

COMMAND – The inspection, direction, and control of personnel under his/her command to assure the proper performance of duties

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and compliance with established rules, regulations, policies and procedures.

The problem with charging this section in the context of this case is the fact that the Department has not charged any of the individuals who comprised the Entry Team with having failed to perform proper duties or responsibilities. It would have been one thing if the Department would have accused other Entry Team members of inappropriate conduct or behavior, or of violating clear rules, regulations or policies. In that case, it would be understandable that the individuals who allegedly commanded them in those violations would have failed to assure the proper performance of subordinates' duties or to provide proper direction and control of them. However, that is simply not the case. Since the Department chose not to accuse the individuals who were allegedly "commanded" by Lt. Mufarreh and Capt. Orozco of any wrongdoing, this derivative section simply doesn't apply.

When all is said and done, the charging of these two individuals who have over forty years of combined experience and service to the City of Oakland with an MOR section which does not even apply to them under the Department's own definitions is shoddy, inept, and disrespectful. One would think that somebody in the OPD would give enough thought to its own Manual of Rules sections to be able to charge these two individuals with Manual of Rules sections that even apply to them.

VI. IF CAPT. OROZCO AND LT. MUFARREH DID NOT VIOLATE MOR SECTIONS 222.00 OR 226.00, RESPECTIVELY, AND IF MOR SECTION 234.00 DID NOT APPLY TO THEM UNDER THE DEPARTMENT'S DEFINITIONS, ARE THERE ANY DEPARTMENT POLICIES WHICH RELATE TO THEIR DUTIES OR DECISIONS ON MARCH 21ST?

On p. 277 of the Internal Affairs Division "Confidential Report of Investigation," it is concluded that "DGO K-5 and DGO M-4 have been determined to clearly be the controlling policies with regard to this incident." That same paragraph determines that "...Training Bulletin III-P would not be applicable." At the outset of this discussion, it should be understood that there were more Department policies "in play" and effective on March 21st than the three policies mentioned above which may arguably be applicable to this particular situation. For instance DGO K-7, entitled "Emergency Management Systems" sets forth policy and procedures concerning implementation of the Incident Command System (ICS) during emergencies and incidents as outlined in the order. The term incident which appears on page two of the DGO would clearly relate to the events that occurred on March 21, 2009, and the purpose of this policy is to discuss situations which involve multi-agency responses. In this case, the events of March 21st and the ensuing search for the suspect involved a number of police agencies other than Oakland, including the Highway Patrol, BART, and the Alameda County Sheriff's Department.

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Arguably, DGO K-7 applied to this incident as well, even though the Internal Affairs report makes no mention of its applicability. DGO K-7 provides that the Incident Commander has responsibility and authority for overall management of the unusual occurrence and assigns a series of responsibilities to that individual (DGO K-7, section V.A.1).

In addition, we are not certain why the Internal Affairs Division determined that Training Bulletin III-P was not applicable to this situation. Training Bulletin III-P is entitled "Barricaded Subject Incidents," and defines a barricaded subject incident as "...an incident in which a person armed with a weapon, explosive, or other dangerous device seizes control of a location and refuses to surrender to police custody." While the Internal Affairs Division was quick to dismiss Training Bulletin III-P as a "controlling policy" because *Mixon* was not given an opportunity to surrender before entry was made, *they should have read the final paragraph of the "definition" section on page one, which makes it clear that "Steps in this procedure can be adopted for use...during crimes in progress in which innocent bystanders are in danger. Also, steps in this procedure can be adopted for use during a high risk arrest..."* In other words, *Training Bulletin III-P did apply to this situation which involved a crime in progress where innocent bystanders were in danger and which also involved a high risk arrest.*

We suspect that the Internal Affairs Division did not want Training Bulletin III-P to be considered as "controlling policy" for a variety of reasons, including the pronouncement on page two of the Policy that "The ranking member at the scene of a barricaded subject incident will assume command of the incident until the arrival of a higher ranking officer." Clearly, under the language of this section, Deputy Chief Kozicki would have been the Incident Commander unless/until Acting Chief Howard Jordan arrived.

More significantly, Training Bulletin III-P contains the following language: *"The Incident Commander decides whether to call in sniper teams, entry teams, and/or hostage negotiation teams. Team members must be summoned as soon as the need for their specialized skills becomes apparent."* Since the Incident Commander has discretion to call the type of personnel that he/she thinks are needed, **there appears to be no such thing as an "ad hoc" team, which forms one of the bases for the discipline against Capt. Orozco and Lt. Mufarreh (and Deputy Chief Kozicki, despite his retirement).** For reasons set forth below, there was no violation of DGO K-5 by creation of an "ad hoc" entry team. However, if training Bulletin III-P applies to the events of March 21, 2009 (and we believe it does under the definition section described above), the Incident Commander clearly is afforded discretion to decide on the precise nature of the team needed to accomplish the particular objective. That is precisely what occurred in this case. A copy of Training Bulletin III-P is attached to this pre-disciplinary response as Exhibit H.

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DGO M-4, entitled "Coordination of Criminal Investigations" is one of the "controlling policies" applying to the events of March 21st, according to the Internal Affairs Division report. Arguably, much of the language in this DGO applies to the criminal investigation of the shooting of Sgt. Dunakin and Officer Hege and the handling of the "crime scene" which was supervised by Lt. Lindsey. For instance, section I.E.1 of DGO M-4 entitled "Ranking Officer at the Scene of the Crime" provides in pertinent part as follows: "The ranking supervisor or command officer shall assume command at the scene of a crime and shall be briefed of the circumstances of the incident by the preliminary investigator."

Perhaps the only section in DGO M-4 which may apply to the entry into the apartment appears at section I.E.2, which provides as follows:

Tactical decisions shall be made by the ranking patrol division member at the scene in accordance with the provisions of Departmental General Order K-5, 'TACTICAL OPERATIONS TEAM'

Naturally, if we follow the literal language of the above section, Deputy Chief Kozicki was the one in charge of making tactical decisions, since he was the ranking Patrol Division member at the scene.

There can be little dispute that DGO K-5 entitled "Tactical Operations Team" is probably the policy that most people would look to for guidance in evaluating the propriety of the conduct of matters relating to the deployment of the Tactical Operations Team on March 21st. The "problem" of applying DGO K-5 to both Capt. Orozco and Lt. Mufarreh, of course, is the fact that (1) Capt. Orozco was not even on the Tactical Operations Team on that date, and (2) Lt. Mufarreh had not yet attended the Tactical Commander's Course and undergone the period of "shadowing" required to serve as a tactical commander. Thus, there is a serious question as to whether the Department can apply the provisions of K-5 as a means to discipline either one.

Despite a serious question as to whether DGO K-5 would apply to Capt. Orozco or Lt. Mufarreh, the fact remains that language of the policy makes it clear that Deputy Chief Kozicki was ultimately responsible for the decision to deploy the Tactical Operations Team:

In all cases, the Tactical Commander shall be subordinate to the overall Incident Commander in terms of when and if tactical options will be initiated...the decision to deploy the Tactical Team on a course of action rests with the Incident Commander. (K-5, section II.B.2)

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The Incident Commander is responsible for *determining and approving* the appropriate course of action and the concept of the operation, based upon recommendations from the Tactical Commander and other Incident Command staff. [emphasis added] (K-5, section X.B.)

Thus, if one looks at the variety of OPD policies which arguably apply to the events of March 21, 2009, we see no less than four separate policies (DGO I-5, DGO M-4, DGO K-5, and Training Bulletin III-P) which contain provisions (which in some cases seem to conflict with one another or contradict one another) which arguably could be said to govern the response of the OPD and its command staff.

But while even the Department questions whether some of these policies may apply to the events of March 21st, the fact remains that all of the policies seem consistent in making the highest ranking member of the Department at the scene of the incident and/or the person designated as the "Incident Commander" ultimately responsible for approving deployment of the Tactical Operations Team. In this case, there is no dispute about the fact that the Incident Commander, as well as the ranking member of the OPD at the scene, and probably the individual with the most amount of experience in tactical operations was one and the same—Deputy Chief David Kozicki.

VII. THERE WAS NO "AD HOC" TACTICAL OPERATIONS TEAM, IN VIOLATION OF DGO K-5

The Department Internal Affairs investigation report, and the Board of Inquiry, which undoubtedly based its findings on the Internal Affairs report, concluded that Capt. Orozco and Lt. Mufarreh (and Deputy Chief Kozicki) formed an "ad hoc" Tactical Operations Team in violation of DGO K-5. This is simply not the case for two very clear reasons.

First, the language of section I.C. of DGO K-5, which discusses "ad hoc" Tactical Operations Teams, very clearly indicates that an "ad hoc" Tactical Operations Team is a team consisting of both Tactical Operations Team members and other police officers who have not received the training in specialized firearms or have the specialized equipment possessed by Tactical Operations Team members. The following language appears in the section referred to above:

Therefore, while it is appropriate for Incident Commanders to utilize Tactical Operations Team members for containment and/or response to exigent circumstances pending the arrival of the Tactical Operations Team, they shall not build ad hoc

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teams to handle critical incidents or use team specialized firearms or equipment in lieu of calling out the Tactical Operations Team.

Both Capt. Orozco and Lt. Mufarreh, who had been on the Tactical Operations Team, had always been told and understood that an "ad hoc" Tactical Team is one which is comprised of some members of the Tactical Operations Team and other non-Team police officers who happen to be there and be willing to be part of a tactical operation. Neither Capt. Orozco nor Lt. Mufarreh had ever been told, nor had it ever been suggested that an "ad hoc" team may exist if there are a portion of the assigned team members present to carry out a necessary tactical operation, but the full complement of the Tactical Operations Team has not yet arrived. Indeed, if that situation were to create an "ad hoc" Tactical Team, the Department may have to wait for hours and hours for every single member of the Tactical Operations Team to arrive before deployment could actually occur. Surely, the Department did not intend to delay the deployment of a qualified group of the Tactical Operations Team until every team member had arrived, obtained the necessary equipment and uniforms, and reported to the tactical command post.

In this instance, there were eight separate members of the Tactical Operations Team on scene and eminently capable of doing the entry. If anything, the Tactical Team members who were present were probably the "cream of the crop" insofar as training, experience, and presence of mind under pressure.

That issue notwithstanding, the fact remains that under the literal reading of DGO K-5 and under the interpretation of the term "ad hoc" which had previously been discussed and understood by Capt. Orozco and Lt. Mufarreh, there was no "ad hoc" team created or permitted to enter the apartment on March 21st.

VIII. IF DGO K-5 REQUIRES THE ENTIRETY OF THE TACTICAL OPERATIONS TEAM TO BE PRESENT BEFORE DEPLOYMENT CAN OCCUR IN ORDER TO AVOID THE CREATION OF AN "AD HOC" TEAM, WHY DOES TRAINING BULLETIN III-P GIVE THE INCIDENT COMMANDER THE ABILITY TO ESTABLISH A TACTICAL OPERATIONS TEAM CONSISTING OF ONLY THOSE INDIVIDUALS WHOSE SPECIALIZED SKILLS ARE NEEDED?

It is our belief that the Department's Internal Affairs investigators attempted to minimize the applicability of Training Bulletin III-P to the events of March 21st because of the inherent conflict between the discretion given to the Incident Commander in that document to formulate Tactical Teams as he/she sees fit and the Department's (erroneous) claim that DGO K-5 requires the incident commander to await arrival of all team elements before deployment can be made.

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The simple fact is that these two Department documents and policies seem to conflict and contradict one another. If the Department cannot write two policies with language which is consistent, how in the world does it expect to discipline its personnel for violating one of the two policies, even if they didn't violate the other one?

For these and a multitude of other reasons, the Department cannot and will not establish in an arbitration that the provisions of DGO K-5 concerning formation of an "ad hoc" team were violated by Capt. Orozco, Lt. Mufarreh or Deputy Chief Kozicki on March 21, 2009.

IX. THE ATTEMPTED DISCIPLINE OF CAPT. OROZCO AND LT. MUFARREH IGNORES THE FACT THAT DECISION-MAKING THEY ARE NOW CRITICIZED FOR OCCURRED IN THE MIDST OF DISORGANIZATION AND CHAOS AT EVERY LEVEL WHICH INVOLVED BREAKDOWNS IN COMMUNICATION, DISCIPLINE AND ORDER AT VIRTUALLY EVERY LEVEL OF THE DEPARTMENT

There can be no dispute about the fact that the brutal, callous murder of Sgt. Dunakin and Officer Hege by Lovelle Mixon took an emotional and physical toll on every law enforcement officer who had the occasion to see the immediate aftermath or hear about it. Every police officer who responded to the area of the incident knew that they were dealing with an individual who had not simply shot to escape the clutches of law enforcement officers – he had taken deliberate actions to ensure that the bullets which initially wounded both officers and put them on the pavement were followed by additional bullets to ensure that they were dead.

It is hard to believe that anyone in the law enforcement community and even a veteran and experienced Oakland police member like Deputy Chief Kozicki, Capt. Orozco or Lt. Mufarreh who had undoubtedly seen countless acts of brutality and many scenes of bloodshed and death would not or could not be affected by their knowledge of what occurred to Sgt. Dunakin and Officer Hege.

The problem here is that the Department thinks that somehow or someway the reaction, the thinking, and the decision-making by the three above-named individuals occurred in a different setting or far removed from the reality of the death of their colleagues or without regard to the manner in which the death occurred.

The fact remains that everyone who had become aware of the circumstances surrounding the shooting of Sgt. Dunakin and Officer Hege became ensnarled in an aftermath of utter chaos because even the Oakland Police Department had not experienced something quite like this, at least not within the historical perspective of the most senior members of the OPD working that day.

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Anyone who gives thought to the proposed discipline of Capt. Orozco and Lt. Mufarreh should give thought to some of the comments by others who talked about the chaos which followed the shooting of Sgt. Dunakin and Officer Hege and some of the representative actions/reactions/breakdowns which had nothing to do with the actions or directions or orders issued by Capt. Orozco or Lt. Mufarreh.

When asked about the aftermath of the shooting and the situation prior to entry into the apartment at 2755 74th Avenue, Sgt. Rick Andreotti, a highly experienced OPD officer and former Homicide investigator made the following statement:

I don't care if General Schwarzkopf was there. I had never, ever experienced a more chaotic situation and it had nothing to do with anybody from OPD. It was just, it was information overload and the dispatcher has all the right in the world to put all that information out. It was the nature of the scene. You had two officers were critically injured, dead and not pronounced yet, going to die. (Taped interview, not transcribed)

In Lt. Lindsey's Homicide interview, she made the following statement: "I mean, honestly, I could see that Dunny—I believed that he was already DOA and, uh, my officers were hysterical. Uh, they were yelling. They were frantic." (Lindsey Homicide interview transcript, p. 4, lines 20-21).

Sgt. Jack Peterson, who was also involved in the initial crime scene investigation, had this to say about the chaos created by the initial shooting:

The guys were falling apart.

Once the officers had been transported I was trying to get my guys to calm down um, they were all covered in blood, and crying and shaking and uh, and then, at some point, they put out that address on 74th and they all ran over there. And at that point, I was just kind of, in a fog, man. I didn't know what was going on.

(Peterson IAD interview, not transcribed).

Sgt. Blair Alexander, who is also a veteran member of the OPD, and a current member of the Tactical Team, and a highly ranked military reservist with experience in combat, stated that when he initially arrived on 73rd, shortly after Sgt. Dunakin and Officer Hege were shot, it was "very congested with (officers) all over the place." He stated that he tried to "unscrew that

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perimeter cause there was a lot of cops out there and they're all doing their own thing." As Sgt. Alexander drove around the perimeter which he was attempting to set and try to get officers oriented to what they were supposed to do, he observed citizens in the area getting into cars and the area becoming more and more congested. He recalled hearing reports of a person running who was described as a male with glasses. He recalled hearing a broadcast about a woman at the hospital on the west end that may have been involved. Sgt. Alexander summed up the situation in his Internal Affairs interview by saying **"it was craziness going on, just craziness."**

Officer McGuinn, who was on the Tactical Team and drove the Bearcat to the front of the apartment on 74th Avenue, talked about hearing, at one point, that the suspect who shot Sgt. Dunakin and Officer Hege could be in the apartment. When officers in the area heard that "I couldn't tell you how many officers came running down the street. It was a lot of them, though. They were coming down. There were different agencies out there as well. Everybody came running down and everybody pretty much ran to the sidewalk, *right in front of this place. I mean literally, right in front of the place. There was no cover, no one had any concealment.*"

Indeed, Lt. Mufarreh must have seen the same thing described by Officer McGuinn because at 1:48 p.m., Lt. Mufarreh broadcast over the radio the following: **"Everybody in front of this house, you guys need to take cover."** The description of the conduct of the various officers by McGuinn and the description of the events by the other individuals above, reaffirm the fact that the customary and usual "discipline" expected of police officers in the aftermath of a crime appears to have broken down at many levels.

The number of incidents of breakdown, miscommunication or failed communications are too numerous to discuss in anything less than a book. However, here is a sampling of some of the events representing the chaos which followed the initial broadcast of a "940B-Officers Down" at 1:16 p.m.:

- When Lt. Lindsey arrived at the scene at approximately 1:19 p.m., she said that it appeared that Sgt. Dunakin was already dead and "...my officers were hysterical – they were yelling, they were frantic. They were trying to do CPR. I mean, they are very young, so you know, some of them, that was their first homicide scene.
- At 1:19 p.m., Officer Toribio provided a suspect description and stated that the suspect had fled southbound on 74th but it was unknown whether he was on foot or in a car.
- At 1:19 p.m., Sgt. Mork stated "we have enough units out here. I need units to fan out. Spread out and look for these people."

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- Sgt. Bassett advised that when he arrived at approximately 1:21 p.m., he observed a lot of people at the scene with no obvious task and had not been given any direction. He stated "there seemed to be again just a lot of chaos." He stated there were "frantic responses" on the radio.
- Bassett advised that people were not entirely sure whether there was one suspect or two or even if the information about the suspect running south on 74th was reliable or not.
- At 1:22 p.m., Officer Midyett advised that a Volvo had been following the suspect.
- Sgt. Bassett states that different officers were broadcasting information relating to both a Volvo and a blue VW Bug possibly being involved with the suspect.
- At 1:27 p.m., the communications operator advised that there was a call coming into the Department about a possible suspect at 7815 Sterling. The suspect was possibly in a 1994 or older Ford Mustang, faded red, parked on the corner of Sterling and Lamp.
- At 1:31 p.m., Lt. Mufarreh, who was en route to the area of the shooting, asked if there was a command post set up. He was advised by Sgt. Alexander that none had been set up.
- At 1:31 p.m., communications operators advised that there was a call at 90th and Lawler concerning a Toyota Camry containing two or three male black suspects and a male Hispanic who jumped out of the vehicle and fled. The vehicle was described as being stolen.
- At 1:33 p.m., there was a broadcast that an individual had come to the front desk of the Eastmont Substation advising that an individual matching the description of the suspect was at 76th and Ney, and asking officers to contact the individual.
- At 1:35 p.m., there was a broadcast about two occupants in a vehicle at 75th and MacArthur and that one of the individuals was armed.
- At 1:43 p.m., Unit 8A37 broadcast that a red Volvo was southbound on 73rd Street and that the Volvo had been following the suspect.

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- At 1:43p.m., after former OPD Officer Karla Rush talked to Sgt. Pope in the communications division and advised him that she had talked to an informant who possibly knew about the whereabouts of the suspect, Pope advised units over the radio to have Officer Mitchell call him ASAP. Despite that broadcast, Officer Mitchell, who Karla Rush stated was in contact with the informant never called Pope to relay any information he possessed.
- At 1:49 p.m., Lt. Mufarreh requested a blue alert "if we haven't already done so." That request was "copied" by the Communications Division. For reasons which are unclear, the Department did not initiate the blue alert for another thirty-nine minutes, at 2:33 p.m. Eight minutes before that occurred, Lt. Lindsey requested a "blue alert" *without calling a Communications supervisor.*
- At 2:02 p.m., a witness advised Officer Toribio, who advised other officers that the suspect fled southbound in a newer VW Bug, blue in color. Supposedly, there was a female in the same car, according to Sgt. Andreotti's broadcast.
- At 2:04 p.m., Unit 3V8 (Officer Perez-Angeles) broadcast that there were people looking out of the "target location, southbound window, first level." That broadcast was acknowledged at 2:04 p.m. immediately afterward by Sgt. Sakai. However, neither Capt. Orozco nor Lt. Mufarreh heard the broadcast nor were aware of it.
- Officer McGuinn, after placing a possible witness in the backseat of his patrol car, left the patrol car with the witness inside, and walked back to the Eastmont Mall to get into the Bearcat and return to the scene in the Bearcat. Later, McGuinn stated "I left the keys in there, and I'll be quite honest with you, to this day, I don't know where the car is." McGuinn obviously left the police car with the witness in the backseat and did not see either the car or the witness later the same day.
- At 2:31 p.m., the communications dispatcher stated that the Alameda Sheriff was advising that a witness was coming into one of their facilities to give information on the suspects at 3:00 p.m.
- At 2:39 p.m., Unit 8L79 was inquiring as to whether anyone had found the blue Volkswagen mentioned earlier.

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- At 2:57 p.m., an unknown officer told Sgt. Covington that there was a CDC number of the suspect and asked Covington if he had the number. Covington advised that he had it and told the unknown officer to call him.
- A photograph was developed of suspect Lovelle Mixon before the entry into the apartment at approximately 3:04 p.m. We now know that Lt. Lindsey had a copy of Mixon's photograph before entry, but did not share it with either Capt. Orozco, Lt Mufarreh or Deputy Chief Kozicki.
- Homicide Sgt. Tony Jones also had seen the photograph by looking inside a patrol car and it appears that Officer Kevin Kaney also had a copy of Mixon's photo which he had received from Officer Omega Crum. At the direction of Sgt. Knight, Officer Kaney distributed a few of the photographs to people at the "crime scene" (around the location where St. Dunakin and Officer Hege were shot).
- It now appears that no photo of Mixon was provided to Capt. Orozco, Lt. Mufarreh or Deputy Chief Kozicki, nor to any of the officers on the outer perimeter prior to entry into the apartment at 3:04 p.m. More significantly, however, Lovelle Mixon's name was never broadcast before the 3:04 p.m. entry despite the fact that he was known and indentified as the suspect almost an hour before entry was made.

We have included a discussion of some of the descriptions of the chaos and some of the breakdowns in communications and discipline which occurred at various levels in the aftermath of the shooting of Sgt. Dunakin and Officer Hege. This has not been done to criticize the actions of other OPD personnel on the scene; to the contrary, it has been done merely to give anyone who reviews this matter a sense of the despair and disorganization which existed despite the best efforts of everyone concerned to bring some order to the chaos.

We do not want one left with the impression, as the OPD seems to have attempted to create, that the only three miscreants who made emotionally-driven, erroneous decisions or judgments in the aftermath of the shooting of Sgt. Dunakin and Officer Hege were Capt. Orozco, Lt. Mufarreh and Deputy Chief Kozicki.

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X. LT. MUFARREH'S INITIAL ROLE WAS NOT THAT OF A TACTICAL COMMANDER OR AN INCIDENT COMMANDER—HE STEPPED INTO THE ROLE OF COORDINATING THE SEARCH FOR THE SUSPECT AND ATTENDING TO DETAILS WHICH HAD BEEN LEFT UNATTENDED PRIOR TO HIS ARRIVAL ON THE SCENE

As noted in the Independent Board of Inquiry report (p. 12), Lt. Lindsey initially **focused on the crime scene investigation involving the shooting of Sgt. Dunakin and Officer Hege "...rather than focus on overall command and control."** Sgt. (Acting Lt.) Blair Alexander announced his arrival on the scene at 1:23 p.m., four minutes after Lt. Lindsey had initially come onto the air. From the radio transmissions as well as the Independent Board of Inquiry report (p. 12), it appears that Acting Lt. Alexander started trying to "unsnarl the jumbled traffic which started to occur when police blockades at or near the crime scene and the response crowded three main thoroughfares in East Oakland."

At 1:31 p.m., Lt. Mufarreh arrived and asked whether a command post had been set up. It had not. Lt. Mufarreh met Sgt. Alexander at the Eastmont Substation on a suggestion by Alexander, and at 1:37 p.m., Sgt. Alexander advised that "Lt. Mufarreh is going to go ahead and handle any searches that are going to go on during this. I'm Alexander—I'll handle the outer perimeter and Lt. Drennon Lindsey will go ahead and handle the scene itself."

At 1:49 p.m., as noted previously, Lt. Mufarreh made the following transmission: "If we haven't done so, do a blue alert." **Lt. Mufarreh's request to activate the SWAT Team at 1:49 p.m. was acknowledged by the Communications Center immediately following. Despite acknowledgment of Lt. Mufarreh's request that the SWAT Team be activated, as noted above, the actual activation of the SWAT Team by the Communications Division did not occur for another 44 minutes. By that time, a number of members of the Tactical Team had arrived in the area after receiving telephone calls from other officers who had heard about the situation.**

Significantly, and contrary to assertions or inferences that had been made, Lt. Mufarreh did not "anoint" or "appoint" himself to be a tactical commander or an incident commander at all. Instead, he was simply one of three lieutenants who were taking command of a major portion of an overall operation which involved (1) investigation of the original crime and preservation of the crime scene (Lt. Lindsey); (2) establishing an outer perimeter to contain the flight and possible escape of the suspect (Acting Lt. Alexander); and (3) coordinating searches for Nixon within the perimeter set up by Sgt. Alexander (Lt. Mufarreh).

Admittedly, under the OPD 2009 Patrol Watch Commander calendar establishing a "citywide watch commander duty" list (Exhibit F to this pre-disciplinary response), Lt. Lindsey

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should have been the overall commander of the entire City, and presumably, the commander of this incident until relieved of that duty by a higher-ranking officer.

Contrary to inferences in the various reports, this was not a situation in which Lt. Mufarreh "relieved" Lt. Lindsey of any command she might otherwise already have or expect to have; rather, this was a situation where, according to Lt. Mufarreh, he believed that the brand new lieutenant was "completely overwhelmed" and took measures to try to divide major supervisory responsibilities between the three area commanders who had arrived on scene.

Certainly, the Department will be hard-pressed in an arbitration to accuse Lt. Mufarreh of anything other than quickly sizing up a terrible situation and working with Sgt. Alexander and Lt. Lindsey to divide up responsibilities for things which had to be done and which needed individual supervisors.

XI. LT. MUFARREH EXERCISED SOUND JUDGMENT AND REASONING BY REFUSING TO ALLOW A TEAM OF PATROL OFFICERS TO ENTER THE LOWER APARTMENT AT 2755 74TH AVENUE SO THAT IT COULD BE DEALT WITH BY THE DEPARTMENT'S TACTICAL OPERATIONS TEAM

The initial radio broadcast of officers being shot and a request for assistance was initiated at 1:16 p.m. At 1:40 p.m., former officer Karla Rush telephoned the Communications Division (Sgt. Pope) and stated, "I've got an informant out there who's telling me he thinks the suspect's at 2755 74th Avenue." Officer Rush advised Sgt. Pope that the informant was "on scene right now with, I think, he said Officer Mitchell." As indicated above, Sgt. Pope attempted, without any success, to locate Officer Mitchell and to discuss with him the information relayed by former Officer Rush.

At 1:48 p.m., Sgt. Pope in the Communications Division inquired as to whether there were officers out at 2755 74th Avenue. That brought a response from Sgt. Alexander for units to "...go get there because I'm getting some information from radio room that's a possible location—at least let's get some eyes on it and I'll give Lt. Joyner a phone call right in a minute here." Within a minute, Lt. Joyner advised over the radio that "it's going to be the lower unit. He's in the lower unit there." That transmission was followed immediately by Lt. Mufarreh, who asked that the SWAT Team be activated by way of a "blue alert."

Significantly, the sudden focus by the Department and its officers on 2755 74th Avenue brought a rush of officers to that location. Lt. Mufarreh, sensing the possibility that the suspect may be at that location, but having failed to hear the SWAT Team activated, immediately did so, and his request for a "blue alert" was acknowledged by Communications.

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Soon after officers converged around the apartment building, and as related by Lt. Mufarreh in his interview with Homicide Sergeant Lou Cruz, he started to receive pressure from patrol officers and sergeants to allow them to enter and clear the apartment. Lt. Mufarreh identified Sgt. Sakai and Sgt. Andreotti as well as Alameda County deputies on the scene who were asking him to allow them to form a team to enter and clear the apartment.

Lt. Mufarreh's sound reasoning and decision to wait for the arrival of the Tactical Operations Team instead of sending patrol officers into the apartment is confirmed by Sgt. Andreotti in his Internal Affairs interview by Sgt. Jake Floyd. In that interview, Sgt. Andreotti stated that, after Lt. Mufarreh received a phone call from Lt. Joyner, Mufarreh told Andreotti that the suspect was "possibly" located at 2755 74th Avenue. Andreotti went to that location accompanied by other officers and directed the officers to set up an inner perimeter around the apartment building.

According to Andreotti in his IA interview, he told Lt. Mufarreh "...that they couldn't wait a long time...because in my mind, based on my experience, I would've put money on the fact that this guy would've kept going. And I based that off my general police experience, but specifically, I dealt with the wiretap in the Kevin McDonald shooting."

Sgt. Andreotti expressed doubts that Mixon would have, in fact, retreated to the apartment after shooting the other officers. He told Lt. Mufarreh that they could not wait all that long to do the search of the apartment and encouraged him to allow them to do the search with the patrol officers available and on scene.

Lt. Mufarreh advised Sgt. Andreotti that he would not authorize such a search, because the Tactical Operations Team had been called and was en route. During his interview, after describing this, Sgt. Andreotti made the following statement:

...And thank God he did [refuse to allow patrol officers to do the search] because it would have been me, a patrol rifleman, and some officers going in and clearing that apartment, and it, it could have been worse.

As it turned out, Lt. Mufarreh, much like the highly experienced and respected Sgt. Andreotti, had doubts about Mixon's presence in the apartment. Despite that, Lt. Mufarreh made the reasoned and thoughtful decision to entrust the decision-making concerning whether or not entry would be made and the type of entry to those members of the Tactical Team who had been specially trained and who were specially equipped for that purpose.

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**XII. LT. MUFARREH, MUCH LIKE SGT. RICK ANDREOTTI, BELIEVED
THAT IT WAS POSSIBLE, BUT BY NO MEANS CERTAIN, THAT THE
SUSPECT HAD RETREATED INTO THE LOWER RIGHT FRONT
APARTMENT AT 2755 74TH AVENUE**

There is no question that Lt. Mufarreh, much like Sgt. Rick Andreotti, an experienced, highly respected former homicide investigator, was skeptical that a suspect who had just shot two police officers would run a short distance and essentially "corner himself" in a nearby apartment. In some respects, Sgt. Andreotti was more vocal about his thinking on this issue than was Lt. Mufarreh. As Sgt. Andreotti said during his Internal Affairs interview with Sgt. Floyd:

Because in my mind, based on my experience, I woulda put money on the fact that this guy woulda kept going. And I based that off my general police experience, but specifically, I dealt with the wire tap in the Kevin McDonald shooting. ...it was my belief that they want to get as far away as possible...people, they normally run with, their support mechanism, really don't want a lot to do with them, because they don't want to get pulled into it, they don't want all this police contact, so the suspect's kind of like a hot potato. Their goal is to get out and they need to hustle to get people to get them out of there.

Sgt. Blair Alexander, also a highly experienced and respected member of the Department with Tactical Team experience and a vast amount of experience in military operations, was asked by Sgt. Floyd about how he evaluated the reliability of information coming from Lt. Joyner and over the radio about the suspect's possible presence at 2755 74th Avenue. In response to that question by Sgt. Floyd, Sgt. Alexander made the following response:

It came across to me as being fairly reliable, some of the other, because I have a person I know telling, respected person I know telling me this face to face. I am hearing it over the radio. But there was also all this other chatter. I can't specifically say what the description was of each subject and what the DOF was on them, and this stuff about this gal being at on the west end in the hospital being involved I'd say, there was a good chance. That was the location that definitely needed to be checked at same time. That's the way I felt, that's a possible location, but not the only one.

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Lt. Mufarreh admittedly had a brief discussion with Lt. Joyner, both over the telephone and in person, during which Lt. Joyner discussed some of the information he had received from the informant, (b)(5)(B)

Lt. Joyner, during his homicide interview (which is reported in the Internal Affairs summary report) stated that when he talked to (b)(5)(B) told him that he had not personally seen the suspect run into the lower right apartment at 2755 74th Avenue. Instead, (b)(5)(B) told Joyner "hey look, this lady that was out there told me that he went into that house." (b)(5)(B) gave the name of the lady as (b)(5)(B) Joyner then drove (b)(5)(B) to 74th Avenue where (b)(5)(B) pointed out that location. (b)(5)(B) later stated that he knew the suspect vehicle was associated with the apartment he had pointed out.

Lt. Joyner, like Lt. Mufarreh was clear about the brief conversation they had, both indicate that Lt. Mufarreh inquired as to whether (b)(5)(B) had personally seen Mixon run into the lower apartment and was told that he had not. Based upon this, Lt. Mufarreh concluded that it remained a possibility but by no means a likelihood or certainty that Mixon was in the apartment.¹

Much has been made by the Police Department about Lt. Mufarreh's statements that he believed it was possible Mixon was in the apartment but by no means certain. Clearly, no one communicated to Lt. Mufarreh that Mixon had been seen going into the apartment, a question he asked "point blank" to Lt. Joyner and to his informant. Lt. Mufarreh's belief of the "possibility" that Mixon was in the apartment was shared by Sgt. Andreotti and by Sgt. Alexander, despite the fact that Lt. Joyner had communicated the same information directly to Sgt. Alexander. It is hard to imagine that when this case "shakes out" in an evidentiary hearing, an arbitrator is going to find the conclusions reached or the reasoning behind those conclusions by Lt. Mufarreh to be subject to criticism let alone discipline.

¹ It goes without saying that, in evaluating this information, it would have been appropriate to consider not only the possibility that Mixon entered the apartment, but that he may have quickly changed clothing and fled before officers could set up an inner perimeter; it may have also been appropriate to consider that Mixon entered the apartment building, but would have actually gone to one of the approximately nine other apartments which were located in the three-story apartment building. In other words, there was nothing about the information provided by (b)(5)(B) to Lt. Joyner which made it any type of certainty that Mixon was in fact located in the apartment on the lower right front side of the building.

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XIII. RADIO TRANSMISSIONS AND OTHER ACTIONS BY LT. MUFARREH CONFIRM THE ACCURACY OF HIS STATEMENTS DURING INTERVIEWS THAT HE HAD INSUFFICIENT INFORMATION TO FORM A BELIEF THAT THE SUSPECT WAS CERTAINLY OR EVEN LIKELY INSIDE THE APARTMENT AT 2755 74TH AVENUE

Significantly, the independent Board of Inquiry found, on p. 36, that **"Lt. Mufarreh's assertion that he did not believe *Mixon* was inside the residence is in contradiction to the actions that were taken."**

First and foremost, it should be recognized that Lt. Mufarreh did not ever state unequivocally that he did not believe *Mixon* was inside the residence. Rather, in his interviews with Sgt. Cruz of the Homicide Section, Lt. Mufarreh stated that after talking to Lt. Joyner and learning that the informant had not seen *Mixon* actually go into the apartment, he believed the information concerning the location of the suspect in the location had "...transitioned from the suspect being inside the apartment to the probability that he was not inside the apartment because he had ample time to flee." (Homicide Investigation Report, p. 47).

When interviewed by Sgt. Floyd of the Internal Affairs Section, Lt. Mufarreh stated that he believed there was a "low probability" of *Mixon* being in the residence. (Internal Affairs Division Confidential Report of Investigation, p. 51). Lt. Mufarreh acknowledged that "...we felt that he was associated with that apartment." (Internal Affairs Confidential Report of Investigation, p. 51). Lt. Mufarreh, on p. 53 of the same report, repeated that **"...there is a probability that this person uh, you know, being in there uh, was low, and not just because nobody saw him go in there, but because of the totality of the circumstances because the perimeter wasn't set, because a long time had passed, because it was only, you know, seventy-five yards, or whatever it is exactly away from the scene. You know, he had killed two policemen. You know, if you know, he was suicidal he would have just waited for the next uh officers to show up."**

Thus, to set the record straight, Lt. Mufarreh never stated equivocally that he did not believe *Mixon* was inside the residence, but only that he felt that the probability of his being in the residence was low.

Clearly, radio transmissions and other actions taken by Mufarreh confirm his stated beliefs that the suspect *could have been in the apartment*, despite the low probability of that occurring. Specifically, at 1:50 p.m., after information was broadcast about the probability of the suspect being in the apartment, Lt. Mufarreh made the following radio transmission to all other

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officers in the area: **"Okay, the intel we have on this address is pretty good, however, he may not be here so make sure everyone holds their position wherever it may be."**

Later, at 2:00 p.m., Unit 3L74 wanted to "confirm that we're collapsing the Garfield perimeter and the Bancroft units and moving them further up." Sgt. Alexander, responding on the radio, directed the unit to hold the perimeter, which prompted the following response from Lt. Mufarreh: **"Yeah, 1L83, I agree. Hold the perimeter because he may not be in here."**

Also, as discussed below in greater detail, Lt. Mufarreh, when discussing the possibility of using a tracking dog with Sgt. Sakai, was concerned that if the dog led the handler and support officers to the front of the apartment and then "alerted," all of the officers might be exposed and at a disadvantage to the suspect, if he was inside.

Thus, the radio transmissions by Lt. Mufarreh clearly indicate that he recognized the possibility of Mixon's presence in the apartment. He was reluctant to use a tracking dog because the handler and other officers could be exposed to the dangerous suspect. More significant, however, is the fact that he declined requests from patrol supervisors, including Sgt. Sakai and Sgt. Andreotti to have the apartment "cleared" by Patrol Division personnel out of his belief that such an operation needed to be conducted by individuals with more specialized training and equipment. Clearly, if Lt. Mufarreh had concluded that Mixon was not inside the apartment, there would have been no need for the delay associated with the arrival of the Tactical Team to perform the entry.

XIV. IT IS CLEAR THAT LT. MUFARREH, WHEN REQUESTING ACTIVATION OF THE SWAT TEAM, ENVISIONED THAT THE SWAT TEAM WOULD "STAGE" AS A UNIT AT THE EASTMONT SUBSTATION

After Lt. Mufarreh requested activation of the Tactical Operations Team at 1:49 p.m. and heard the Communications Division confirm his transmission, he advised to "...have them stage at the Eastmont Substation."

At 2:36 p.m., when Deputy Chief Kozicki inquired about the command post for the "search out in east Oakland," Lt. Mufarreh advised that the "old Eastmont Substation is the 40 (location) for the SWAT Team's going to be."

Thereafter, at 2:56 p.m. Lt. Mufarreh asked whether there were any SWAT Team leaders on the scene yet, and was advised by Sgt. Gonzalez that he and other leaders were at 75th and Macarthur. Lt. Mufarreh reminded Sgt. Gonzalez that the command post for the "SWAT guys" was at the Eastmont Substation. He then requested that Gonzalez telephone him.

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There is no question in reviewing the circumstances of this matter that the Entry Team which ultimately entered the apartment, did not initially stage at the Eastmont Substation as directed by Lt. Mufarreh. There is also no question that Lt. Mufarreh, while giving that direction, was not in a position to run around and make sure everybody showed up in accord with that direction. Indeed, this is simply one more instance of the chaotic nature of the incident and the fact that the chaos led to a breakdown at every level, including the response of the Tactical Operations Team members and the fact that Lt. Mufarreh's attempt to stage them at a centralized location was ignored.

Nevertheless, from interviews conducted after the incident, we are now aware that most of the Entry Team members who made entry into the apartment essentially responded to the area of the initial shooting after being telephoned by fellow officers and told about what had occurred. With the exception of a few of the Tactical Team members who were already on duty and listening to the radio on March 21, 2009, most of the other Tactical Team members who were called by others, in all likelihood, never heard Lt. Mufarreh's request that they "stage" at the Eastmont Substation.

Thus, when interviewed by Sgt. Floyd, Sgt. Gonzalez stated that he was at home when he got a call from Officer Jones at 1:30 p.m. and heard about the shooting (Internal Affairs Confidential Report of Investigation, pp. 8-9).

After learning of the incident, Sgt. Gonzalez telephoned Sgt. Beaver, Sgt. Romans, Sgt. Reilly, and Sgt. Sansone and notified them of the incident. (Internal Affairs Confidential Report of Investigation, p. 177; p. 184). Both Officer Leite and Officer Jones were off duty and heard about the shooting from others. (Internal Affairs Confidential Report of Investigation, p. 21 (Leite); p. 192 (Jones)). It now appears that the only two Tactical Team members who formed part of the entry team who were already on duty when the initial shooting occurred were Sgt. Sakai and Officer McGuinn.

It also appears that as the Tactical Team members who were off duty arrived and gathered weapons and protective gear, they responded the short distance from the Eastmont Substation to the area where the initial shooting had occurred despite not being directed to do so by Lt. Mufarreh.

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XV. THE USE OF A TRACKING DOG PRIOR TO ENTRY INTO THE APARTMENT WAS REJECTED DURING A DISCUSSION INVOLVING LT. MUFARREH AND SGT. SAKAI BECAUSE OF THE POSSIBILITY THAT THE SUSPECT WAS INSIDE THE APARTMENT AND THE TRACK WOULD JEOPARDIZE THE SAFETY OF THE CANINE HANDLER AND SUPPORT OFFICERS

Judging from the "sustained" findings pertaining to Lt. Mufarreh in the Internal Affairs Confidential Report of Investigation (pp. 325-326) and the findings by the Independent Board of Inquiry (pp. 35-37) it does not appear that the proposed demotion is based upon any role he played in the cancellation of the tracking dog prior to the entry into the apartment. Nevertheless, at p. 13 of the Board of Inquiry report, the following passages appear: "At 1438 hours, Lt. Mufarreh acknowledged on the police radio that the ACSO tracking dog was minutes away from Sgt. Sakai and his team's location at 75th Avenue and Ney Street. However, Lt. Mufarreh made an independent command decision that the plan to use tracking dogs was "too dangerous" and ordered an ad hoc entry team to be formed."

As we have discussed above, there was never an "ad hoc" entry team formed at the request or direction of Lt. Mufarreh, in violation of DGO K-5. Moreover, the Entry Team members who ultimately entered the apartment were already present and at the scene, much to the surprise but unbeknownst to Lt. Mufarreh before inquiring about their arrival and location at about that same moment.

As to the decision not to use a tracking dog, Lt. Mufarreh, when asked about that issue in his Internal Affairs interview explained the discussion concerning the use of the dog as follows: "...there was a discussion about that and it was ruled out and um, I can't remember um, exactly the details on it, but it was something that it would just be better that if this person, you know, if there was somebody in there or associate in there or somebody was in there, that it would just be better to go ahead and clear that residence before we start using search dogs and stuff."

When Sgt. Floyd asked who offered that opinion, Lt. Mufarreh stated, "I know Dan was involved a lot in the um in the giving advice about dogs." (Mufarreh interview transcript, pp. 35-36).

Also, when interviewed by Sgt. Cruz during the Homicide investigation, Lt. Mufarreh discussed the conversation he had with Sgt. Sakai about using the tracking dog: "And another discussion we had or I had, and I know Orozco was nearby and I'm sure heard it, was with Sakai. And it was discussed about 'cause we're so focused on uh the tracking, that if we entered with it, you know, to search and tracking for the dogs, and that Sakai used to or was a dog handler, was

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an expert in that, and we deferred to his decision on it, the entry, disturbing any type of uh, tracking the dogs would pick up or not pick up, and ultimately it was fine. So uh you know, the main consultation with the entry team leaders was done with Erv and Sakai." (Homicide transcript, p. 26).

When Sgt. Mike Beaver was interviewed by Homicide Sgt. Cruz, the subject of using the tracking dogs was discussed. Beaver acknowledged that Sgt. Sakai had been talking about different scenarios as to who had the best dog for tracking. He acknowledged calling for an Alameda County Sheriff's Department dog, but stated that Sgt. Sakai was not sure how it would work. According to Sgt. Beaver, **"The team did not have a lot of experience doing tracks with dogs."** Beaver explained that there is a difference between a search with a canine and a "track" which is moving very fast: "The dog will just go." Beaver explained that the discussion concerned who would be able to keep up with the dog and where the rest of the team would fill in.

When Officer Anwann Jones was interviewed by Homicide Sgt. Cruz concerning the event, Officer Jones talked about hearing a discussion between Lt. Mufarreh and Sgt. Sakai concerning use of the dog. Officer Jones recalled that Lt. Mufarreh had said that he did not want to expose the Entry Team members to the apartment building during the tracking, which would have left them out in the open. Jones described the discussion between Sgt. Sakai and Lt. Mufarreh as an instance where both were "explaining their thought processes - it was not an argument." Lt. Mufarreh indicated that he thought it was best to have the team make the entry. Sakai simply said "okay."

Officer Leite, when interviewed by Homicide Sgt. Cruz, stated that he was present during a "briefing" near 74th and Macarthur which included himself, Officer Jones, Sgts. Gonzalez, Beaver, Sakai, Romans, and Reilly. The briefing was also attended by Lt. Mufarreh, Capt. Orozco and Deputy Chief Kozicki. According to Officer Leite, Lt. Mufarreh indicated that he felt it was safer to clear the apartment instead of using a tracking dog first, because if the dog were to track the front of the apartment, the search team would be exposed to the suspect's windows which had a view onto 74th Avenue. (Internal Affairs Confidential Report of Investigation, pp. 19-20).

There is not a shred of information or evidence that the decision to reject the use of a tracking dog prior to entry was some type of a unilateral demand or command issued by Lt. Mufarreh over the objection of anyone else. Indeed, from the various accounts of what occurred, it sounds very much like there was a discussion involving primarily Lt. Mufarreh and Sgt. Sakai, who had extensive experience working with dogs. As a result of that discussion, the decision was made for the Entry Team to go into the apartment and not expose themselves to possible

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weapons fire from the suspect, who would have most certainly been alerted to the presence of the dog and the Entry Team from the noise associated with the barking and the clatter of equipment.

Under the circumstances, nothing concerning the decision not to do the track prior to entry rises to the level of misconduct. Indeed, if anything, it represents simply another attempt by Lt. Mufarreh to make a reasoned exercise of judgment and discretion under very tense and uncertain circumstances.

XVI. THERE WAS NO TACTICAL OPERATIONS TEAM OR ANYONE TO SUPERVISE, COMMAND, OR DIRECT UNTIL APPROXIMATELY 2:57 P.M., WHEN ENTRY TEAM LEADERS AND MEMBERS MET WITH LT. MUFARREH, CAPT, OROZCO AND DEPUTY CHIEF KOZICKI AND A DECISION WAS MADE FOR THE TEAM TO ENTER THE APARTMENT

Both the Department's Internal Affairs report and the Independent Board of Inquiry report refer to and criticize Lt. Mufarreh for essentially appointing himself as the "Tactical Commander" for the Tactical Operations Team long before entry was made into the apartment. Nothing could be further from the truth. As stated above, Lt. Mufarreh's role was that of coordinating searches for the suspect. Those searches which he was trying to set up involved using various search teams and dogs in yards contained within the perimeter; one of the searches, of course, involved a search of the apartment at 2755 74th Avenue, and Lt. Mufarreh had directed Sgt. Andreotti to form a team of officers to surround that apartment and await for the arrival of the Tactical Operations Team.

At 2:57 p.m., Lt. Mufarreh learned, for the first time, that a number of the Tactical Operations Team leaders were present. He learned that when he was advised of that by Sgt. Gonzalez. Subsequent to a cellular telephone call with Sgt. Gonzalez at approximately 2:57 p.m., members of the Tactical Operations Team went to 74th and Macarthur where it was discussed and decided that the team would make entry into the apartment.

At the very moment the entry team was assembled as a group/unit, Deputy Chief Kozicki was present and was part of the discussion concerning the entry into the location. Capt. Orozco was present for the same discussion and had gone to that location, of course, in response to a request made earlier by Capt. Tracey to assume Capt. Tracey's role as the Tactical Commander despite the fact that he was no longer a member of the Department's Tactical Operations Team. Thus, in actuality, Lt. Mufarreh never served in the role as the Tactical Commander because there was no assembled Tactical Operations Team until the meeting/briefing occurred at 2:57 p.m. Clearly, the information gathered, along with the thoughts and reasoning of Lt. Mufarreh, were the subject of sharing and discussion during that meeting as well they should have been.

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Understandably, because of Lt. Mufarreh's vast experience and deliberative character, there was a certain amount of deference accorded to his reasoning and beliefs by those present who attended the meeting including, of course, Capt. Orozco and Deputy Chief Kozicki. But, under Department policy and under the facts of this incident, it cannot be said with any accuracy whatsoever that Lt. Mufarreh assumed the role of any type of command officer over the entry team, because the ultimate command role was fulfilled by Deputy Chief Kozicki as Incident Commander, while the Tactical Commander role was fulfilled, in the void of Capt. Tracey, by Capt. Orozco.

XVII. ALTHOUGH THE ENTRY TEAM LEADERS HAD BOTH THE ABILITY AS WELL AS THE ABSOLUTE RIGHT TO QUESTION THE DECISION TO MAKE ENTRY OR TO REJECT THAT IDEA ALTOGETHER, THERE WAS NO DISSENTION AMONGST THE ENTRY TEAM LEADERS

During the course of the investigation of this matter, each of the entry team leaders who participated in the "briefing" with Deputy Chief Kozicki, Capt. Orozco and Lt. Mufarreh were questioned about the subject of the briefing itself. Although all gave accounts of what they recalled at the briefing (some of which differ slightly) none of those interviewed indicated that any individuals raised objections or serious questions concerning the planned entry into the apartment. Indeed, as pointed out by the Independent Board of Inquiry report **"The entry team leaders did not question the 'enter and clear plan' and order by the tactical commander.** The responsibility to point out flaws in a plan falls on every professional present prior to the plan's execution." (Independent Board of Inquiry report, p. 28).

When interviewed, Deputy Chief Kozicki was asked if he observed any reticence or objections on the part of team leaders regarding the determination to make entry into the apartment. Kozicki indicated that he had not observed any such behavior. (Internal Affairs Confidential Report of Investigation, p. 118).

Lt. Mufarreh was asked the same question during his interview by Homicide investigators and stated that none of the entry team leaders expressed any reservations about the plan to "enter and clear" the lower apartment, nor were there any indications that the team leaders believed that the entry should be delayed. (Internal Affairs Confidential Report of Investigation, p. 47).

Finally, during his interview with Internal Affairs, Capt. Orozco was asked whether or not any of the entry team leaders expressed reservations about making entry into the apartment. Orozco responded as follows:

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No. I mean nobody objected to make an entry, and um, that's what we rely on, you know, if there's somebody that has any concerns, any issues, you know, we're not there to dissuade anybody, we certainly want to hear your opinion. So if somebody has something to say, bring it out on the table so that we can discuss it.

(Internal Affairs Confidential Report of Investigation, p. 93).

Sgt. Mike Reilly, when interviewed by Homicide Sgt. Cruz stated that even though there can be discussions amongst the team after an order is given to clear a building, there was no such discussion in this case. Sgt. Reilly stated that he agreed with the plan to "enter and clear" the apartment. (See, Reilly transcript of Homicide interview, p. 29).

In addition, Sgt. Gonzalez, who served as the entry team leader, stated that, following the meeting with Lt. Mufarreh, Capt. Orozco and Chief Kozicki at 74th and Macarthur, Lt. Mufarreh had indicated that the command staff thought the entry team should clear the apartment so "we can free up these resources to start the track (elsewhere)." Sgt. Gonzalez stated that in addition to himself, Sgts. Sakai, Beaver, Romans and Officers Jones and Leite were at the "briefing." Sgt. Reilly, according to Gonzalez, arrived at the location. During the briefing, Gonzalez stated that he would be the team leader. During the same interview, after describing the briefing, Gonzalez stated "we all agreed to go clear the house first" (before using canines to track the suspect within the perimeter). (Internal Affairs Confidential Report of Investigation, p. 9; p. 12).

Thus, this investigation discloses that while the very capable and highly experienced entry team leaders had both the opportunity and the ability (both through the strength of their character as police professionals and under department policy) to object to or even express reservations about going into the apartment, no such objections or reservations were registered.

**XVIII. PURSUANT TO DEPARTMENT POLICY AND PRACTICE, IT WAS THE
ENTRY TEAM LEADERS THEMSELVES WHO DETERMINED TO
ENTER THE APARTMENT USING A DYNAMIC ENTRY PRECEDED
BY DEPLOYMENT OF THE DIVERSIONARY FLASH BANG DEVICE.
THE ENTRY TEAM WAS COMPRISED OF EXPERIENCED, HIGHLY
COMPETENT, SUPERIOR MEMBERS OF THE TACTICAL
OPERATIONS TEAM**

Much criticism seems to be leveled at both Lt. Mufarreh and Capt. Orozco for the "dynamic entry" made into the apartment by the Tactical Operations Team. Of course, not a day goes by without Capt. Orozco and Lt. Mufarreh reminding themselves of the fact that two very

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fine Oakland Police supervisors died as a result of that entry, which constitutes a rather substantial emotional burden in and of itself.

That having been said, the fact remains that, pursuant to the standard operating procedure of the Tactical Operations Team, once there was an agreement that the entry team was going to go into the apartment, the plan formulated for going into the apartment was made by the team leaders themselves. Certainly, Capt. Orozco or Deputy Chief Kozicki could have countermanded or overturned the entry team plan if they had found it to be inappropriate for unsafe to officers and others in the area. Given the discussions which occurred and which they overheard, neither one of these two commanders believed that the entry plan devised by the entry team leaders was inappropriate or irresponsible.

According to Deputy Chief Kozicki:

I saw the makeup of the team, what I remember is five team leaders, from my involvement in the tactical team. They're briefing Sgt. Romans, Sgt. Sakai, Sgt. Reilly, Sgt. Beaver and Sgt. Gonzalez. I looked at this team, I listened to the briefing, I know that what they were about to do, there was nothing reckless in what they were about to do."

(Internal Affairs Confidential Report of Investigation, p. 109).

Capt. Orozco also explained that, once it was discussed and decided that entry would be made into the apartment, the entry team leaders who were present gave thought to and devised the entry plan:

I mean this was something that sergeants Romans, Gonzalez and Sakai had come up with. They had devised it. Um, you know, in fact one of the -- generally my job is to slow the tactical team down sometimes on the scene because they are always wanting to go in. And in this case, it was rather slow, methodical. They had taken time for planning and they had really thought this out.

(Internal Affairs Confidential Report of Investigation, p. 77).

During the Internal Affairs interview, Lt. Mufarreh also acknowledged that the actual plan for entry was made by the entry team leaders:

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...The plan they came up with was on their own. How they were gonna stack, who was – I am sure their (inaudible) a team leader, alright, and then they came up with their plan about banging and all that stuff, that was their – that their plan. They're the experts. I would never do that, plus I'm not even qualified to do a plan for them.

(Internal Affairs Confidential Report of Investigation, pp. 58-59).

The reality that the entry plan was determined by the entry team leaders is also confirmed through statements made by Sgt. Reilly in the investigation. Specifically, Sgt. Reilly stated that, following the discussion with Lt. Mufarreh, Capt. Orozco and Deputy Chief Kozicki at 74th and Macarthur, Sgt. Romans and Sgt. Gonzalez were putting together an entry plan as "...we walked southbound 74th Avenue towards our armored vehicle." (Internal Affairs Confidential Report of Investigation, p. 185).

During his Homicide interview, Sgt. Gonzalez stated that he specifically advised Lt. Mufarreh, Capt. Orozco and Deputy Chief Kozicki that he was going to be serving as the team leader for the entry team. He also confirmed that he put together a "stacking order" and devised a plan to relocate the armored vehicle for the entry. Plans were made to send up a "breaching team" to force entry through the first gate. (Internal Affairs Confidential Report of Investigation, p. 10).

When questioned about the tactical decisions which were made, Sgt. Gonzalez stated (much similar to the thinking of Lt. Mufarreh) that "based on all the information that I had received driving to the Eastmont Substation listening to the radio about the suspect getting into a car driving off, the fact that this location was 100 yards from where the suspect had killed two cops – I believed that it was highly unlikely that the suspect was in this house." (Internal Affairs Confidential Report of Investigation, p. 12).

The fact that the entry team leaders discussed and devised a tactical plan for entry into the apartment was consistent with the Department's own practices and procedures.

The members of the Tactical Team who had arrived at the location and who ultimately talked to Lt. Mufarreh were, without question, the highest quality, highest trained and most experienced members of the Tactical Operations Team. Indeed, during Lt. Mufarreh's interview by the Homicide investigators, he stated that he had "the best of the best of the SWAT Team present." The eight Entry Team members he had were a sufficient number for clearing the apartment and had there been any more operators, there would have been too many members making entry. (Internal Affairs Confidential Report of Investigation, p. 47).

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Similarly, Deputy Chief Kozicki, who knew the Tactical Operations Team members well, made the following statement:

They had the right team there, they had the right personnel there, they appeared to have a plan, they appeared to have considered contingencies...and nothing about their plan suggested it was reckless or irresponsible.

(Internal Affairs Confidential Report of Investigation, p. 117).

XIX. CONTRARY TO ASSERTIONS BY THE DEPARTMENT, DISCUSSIONS WERE HELD BY LT. MUFARREH, CAPT. OROZCO AND DEPUTY CHIEF KOZICKI TO CONSIDER ALTERNATIVE OPTIONS TO THE FINAL DECISION TO ENTER AND CLEAR THE APARTMENT

The Internal Affairs report and even the Independent Board of Inquiry report seem to be premised upon a fundamental misunderstanding of some of the decision-making which occurred prior to entry. The reading of these reports would seem to indicate that the authors of the reports believed that Capt. Orozco, Deputy Chief Kozicki and Lt. Mufarreh met with members of the entry team at 74th and Macarthur, discussed the reasons why using a tracking dog would not work under the circumstances, discussed the alternatives to entry, and then directed the entry team to come up with a plan to make entry. That is not how the planning or the discussions of this matter actually occurred.

In fact, prior to the meeting between Kozicki, Orozco and Mufarreh with the team leaders at 74th and Macarthur, they had discussed amongst themselves (with Lt. Drennon Lindsey present) some of the options and alternatives available concerning deployment of the Tactical Operations Team. Those discussions involved a variety of options which, for one reason or another, were rejected.

When interviewed by Sgt. Cruz in the Homicide investigation, Deputy Chief Kozicki stated "we did talk about evacuation (of the entire apartment building). We did talk about a search warrant. And I know that they considered 'surround and call out' as well as sending the dog in on a long lead. So, with all those things in mind uh I think, in my experience, my background, I think that Capt. Orozco, who was the tactical commander, um pretty much considered all the things he should have considered and that the team went forward."

During this same interview Deputy Chief Kozicki did not recall whether or not there had been a discussion using chemical agents, but stated that he had talked to Capt. Orozco and Lt.

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Mufarreh since the incident about that consideration. (Internal Affairs Confidential Report of Investigation, p. 111).

Similarly, Lt. Mufarreh, when interviewed, stated that a variety of options other than going into the apartment were discussed, including the use of gas and "calling out." He stated "all the options were discussed and were thought out and it was decided to, uh, that we would not be prudent to use gas, and it would not be prudent to evacuate, because it was too dangerous. (Internal Affairs Confidential Report of Investigation, p. 41).

Sgt. Jake Bassett was interviewed by the Internal Affairs Division on April 20, 2009. During that interview, **Sgt. Bassett stated that he heard Lt. Mufarreh discuss the possible use of the public address system of the Bearcat to give directions to whomever might be in the apartment** (Transcript of interview, p. 9). Again, on p. 20 of the same interview, Sgt. Bassett affirmed that he believed it was Lt. Mufarreh's idea to use the public address system of the Bearcat to make contacts with occupants of the apartment. Sgt. Bassett stated he did not know why that did not happen.

Finally, Capt. Orozco talked in detailed fashion about the alternative plans and discussions which occurred prior to the decision to make entry. Orozco made the following statement concerning the possibility of using gas:

The (apartment building) was still occupied. My concern was that if we gas this unit, then now we would have to deal with, and the suspect possibly being inside, that we would have to now deal with the resident inside this unit and that would just be chaotic.

Orozco also discussed the consideration of "calling out" the suspect:

... We considered also giving an announcement, but we didn't know where the suspect was and again, the concern was that he could have popped out anywhere and jump on an officer, so that was a concern as well. We just did not know where this suspect was, so we felt by doing a quick entry into the unit, doing a sweep, clearing it then we could proceed with the search.

Capt. Orozco also stated that he questioned Sgt. Sakai about the use of the canine:

Sgt. Sakai said that – that the team preferred going in at this point with just the team members that the dog would be more of a

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hindrance at this point, because they wanted to flash bang and go inside the unit.

Capt. Orozco explained during the same interview that Sgt. Sakai had done some reconnaissance on the apartment and based on the information he had developed it was not practical to do an evacuation. The fact that this reconnaissance was done is, of course, contrary to assertions leveled at Lt. Mufarreh and Capt. Orozco that no such activity occurred.

Contrary to assertions made by the Department and even the Board of Inquiry, then, there were discussions about alternatives to the dynamic "clear and enter" plan. Perhaps the only option not discussed at any length, based upon interviews reviewed, would have been the plan to break one of the large front windows of the apartment and insert a throw phone into the apartment. While the possible failure to consider that singular option may warrant discussion in a debriefing session and consideration for another event in the future, the failure to engage in that discussion or consideration hardly warrants the severe disciplinary penalty being proposed here.

XX. THE INVESTIGATION BY THE POLICE DEPARTMENT FAILED, FOR ONE REASON OR ANOTHER, TO IDENTIFY THE OPD SERGEANT WHO HAD THE GREATEST ABILITY TO KNOW AND UNDERSTAND THAT LOVELLE MIXON WAS IN THE LOWER RIGHT HAND APARTMENT AT 2755 74TH AVENUE PRIOR TO THE TACTICAL TEAM MAKING ENTRY AT APPROXIMATELY 3:04 P.M.

The reality of talking about an incident of these tragic proportions weighs heavily upon anyone who cares about the Oakland Police Department as an organization and its individual members. One could readily understand why it would be hard for anyone to "point the finger" at an outstanding police employee who tragically died while trying to apprehend Lovelle Mixon on March 21, 2009. Yet, the Oakland Police Department seems to be willing to point a very heavy handed disciplinary finger at two valued, experienced, accomplished and trusted employees for making decisions which ultimately resulted in the death of Sgt. Sakai and Sgt. Romans.

If the Department was "intellectually honest" in its investigation, it had information staring it in the face which is painful but extremely revealing. That information is that the singular individual in the command and supervisory structure of the Oakland Police Department who undoubtedly had the greatest ability to know that Lovelle Mixon was in the lower right hand apartment at 2755 74th Avenue on March 21st at approximately 3:04 p.m. was Sgt. Dan Sakai. We know that to be the case by a number of interview statements and radio transmissions which are irrefutable.

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As we are all aware, Lt. Ersie Joyner contacted (b)(5)(B) after (b)(5)(B) had, in turn, contacted former Officer Karla Rush and advised her that **Mixon** was believed to be in the apartment at 2755 74th Avenue.

When interviewed, Lt. Joyner stated that he became aware that Sgt. Sakai had taken over the Designated Arrest Team (DAT) in front of the apartment (prior to becoming part of the Entry Team and making entry). **Lt. Joyner stated he spoke with Sgt. Sakai "several times" over the radio on Patrol 4 to give him updated information he was receiving from (b)(5)(B) and from Officer Rush.** (Internal Affairs Confidential Report of Investigation, p. 154).

During his interview with Internal Affairs, Sgt. Bassett indicated that he recalled a meeting involving Lt. Mufarreh, **Sgt. Sakai** and Sgt. Bassett with Lt. Joyner sometime earlier in the afternoon. According to Sgt. Bassett, Lt. Joyner was describing information he had received from the informant about the suspect's possible presence in the apartment.

At 1:49 p.m., Lt. Joyner (Unit 1L84) stated "1L84, advise those units, it's going to be the lower unit. He's in the lower unit there." Following that broadcast, Sgt. Sakai (4L71) stated "4L71, confirm we want to get a perimeter on it, correct?"

At 1:54 p.m., there was a discussion on Patrol 4 between Lt. Joyner and Sgt. Sakai during which Lt. Joyner stated "I'm just south of the location with my eyes. The building, the big tall building right there, the beige unit, the downstairs unit, there should be a pawn shop right on the backside of it, the one with the pawn shop in the back yard." **Sgt. Sakai indicated that he understood the message from Lt. Joyner.** At 1:56 p.m., Lt. Joyner further advised Sgt. Sakai as follows: "All right, listen up. When you go inside that building there, there's a short hallway, there's also supposed to be one unit downstairs that's going to be to the right. That's where the suspect's been staying or at least was seen going in there." Sakai once again acknowledged the transmission.

Significantly, at 2:04 p.m., Unit 3V8 made the following broadcast: **"3V8 just an update. Target location, southbound window, there's people looking out. First level."** That transmission was immediately acknowledged by Sgt. Sakai:

And 4L71, I copy that. Just for all the units on the perimeter around the target, 2755, we have the DAT all set up so (inaudible) come out if they do come out otherwise they are standing by right now.

At the time the above radio transmission was occurring, Lt. Mufarreh was in discussions with Sgt. Andreotti concerning his duties as the supervisor over the DAT. During the Internal

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Affairs interview of Lt. Mufarreh, he was asked if he ever heard a transmission from an officer who appeared to see people moving at the front window of the apartment. Lt. Mufarreh appeared to be startled by such a report and said "no." Similarly, neither Capt. Orozco, who was still travelling toward the scene and on the telephone constantly with Capt. Tracey, Deputy Chief Kozicki and others, heard the brief radio transmission, nor did Deputy Chief Kozicki. Only a few officers who were questioned about hearing such a transmission acknowledged that they had, in fact, heard the transmission about people moving at the window from Unit 3V8. Undoubtedly, the failure to hear and/or process information such as this was simply representative of the chaotic events and the amount of radio traffic (and telephone calls simultaneously) going on between patrol officers, supervisors and command staff who were either at the scene or responding to the scene.

While it is startling to hear about the information possessed by Sgt. Sakai prior to the entry into the apartment, it must also be observed, regrettably that Sgt. Sakai did not appear, prior to taking part in that entry, to share any of the information he learned from Lt. Joyner during private conversations with him, nor to share his acknowledgment of the broadcast concerning movement at the window, with other members of the Entry Team or even with Capt. Orozco, Lt. Mufarreh or Deputy Chief Kozicki with he attended the "briefing" at 74th and Macarthur.

No one can or should discuss the information possessed by Sgt. Sakai or the manner in which he "handled" this information with others at the scene without having a heavy heart. It is simply unpleasant if not seemingly disrespectful to talk about such a fine individual and fine law enforcement officer in anything less than glowing terms. While we take no great delight in bringing this information to the attention of the hearing officer, we believe, nevertheless, that the OPD as an organization had an obligation to bring it to the attention of the Independent Board of Inquiry and it appears to have utterly failed to do so. We will not ascribe any particular motive or reason for its failure, but simply note that it occurred.

XXI. EVEN IF THE ENTRY INTO THE APARTMENT HAD BEEN DELAYED TO ALLOW MORE INTELLIGENCE GATHERING TO OCCUR, THERE WAS NO WAY THAT THE DEPARTMENT WOULD HAVE EVER KNOWN IN A REASONABLE AMOUNT OF TIME ABOUT MIXON HAVING ACCESS TO A LOADED, HIGH-POWER ASSAULT WEAPON INSIDE THE APARTMENT

The criticism of Deputy Chief Kozicki, Lt. Mufarreh and Capt. Orozco includes after-the-fact assertions that the decision to enter and the entry itself was rushed, which contributed to the loss of life.

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A review of the interview statements of the three individuals indicates that they were appropriately considering a variety of factors, including the passage of time and the fact that it was going to start getting dark within a matter of a few hours, and there was a large outer perimeter where searches for the suspect could and should be occurring before dark, if possible.

As Lt. Mufarreh expressed during his interview with homicide:

It's 3 o'clock. It's getting to be mid-afternoon, you know, the sun is going to come down. What if this guy is hiding in the yards somewhere? What if this guy is completely somewhere else? We couldn't just focus all our attention and all our resources on this one location, you know, especially with all probability he wasn't even there.

(Internal Affairs Confidential Report of Investigation, p. 40.)

Later, when interviewed by Internal Affairs, Lt. Mufarreh reaffirmed his earlier statement, making note of the limitations of intelligence-gathering, particularly as it related to Mixon's possession of weapons:

...And the probability of him being in there, uh, was low at that time. Obviously with the information we have now, it changes that—which was very low. No clue this person obviously had an assault weapon. There was no reason to ever even indicate that...I'm not thinking that this guy is in there with a SKS ready to shoot it out. I'm thinking he's on the freeway somewhere and some CHP officers would pull him over for speeding and he's gonna kill two more cops.

(Internal Affairs Confidential Report of Investigation, p. 57.)

Captain Orozco, when interviewed by Internal Affairs, also talked about issues concerning time and the passage of time:

Again, I wish we had the luxury of time on our side and I just felt we didn't have time on our side. We had a rather large perimeter. We didn't know where the suspect was and it was something that we needed to start a search at and that's what we felt the decision—that's why we made the decision.

Orozco continued when he was asked why time was not on their side:

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Because Sean, we—the incident happened at 1 o'clock. At 3 o'clock is when we started the initial entry element. We're talking about two hours after a shooting, so the public safety aspect was a concern of mine too. Is that I was concerned that we had somebody out there with a gun, um, that was in our community and we just didn't know where he was at. So the concern that he already killed two officers and now he's out fleeing, we needed to start a search point at some point and so that was—another factor is that if he's not there, then we need to move—we need to start our perimeter making it bigger or start looking elsewhere. We just didn't know where he was at.

(Internal Affairs Confidential Report of Investigation, p. 87.)

Finally, during his interview by Homicide investigators, Deputy Chief Kozicki talked about the difficulties associated with the timing of the entry and decisions to wait longer or take other approaches:

It's fine to sit back three weeks after an incident and say, 'Well, time was on your side' when in fact time is only on your side to the extent that *you* control time. If your adversary controls time, then time is not on your side.

(Internal Affairs Confidential Report of Investigation, p. 119.)

There can be no question that the record concerning radio transmissions and other information gathered, including the statements of Capt. Orozco, Lt. Mufarreh, and Deputy Chief Kozicki, indicate that those who were actively gathering information to make as informed a decision as possible felt that a further delay in clearing the apartment would only potentially lead to endangering the lives of other officers on the perimeter or who may unknowingly stop a car containing the suspect. With that in mind, a decision was made expediently once it became clear that properly equipped and trained entry team members had arrived in the area.

Borrowing Deputy Chief Kozicki's observations about the benefit of hindsight analysis, the fact remains that, for those individuals who entered the apartment, their ability to know or understand that *Mixon* was in possession of a high-powered weapon would not have changed if they would have delayed entry into the apartment for hours, days, weeks or even months.

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As part of our review of this matter, when we did not see reports concerning the manner in which Nixon came to have possession of the SKS rifle (or the handgun he used to shoot Sgt. Dunakin and Officer Hege, for that matter), counsel telephoned Lt. Whent in Internal Affairs and later, Lt. Medeiros in the homicide division. In both cases, counsel requested to know if there were any reports concerning the manner in which Nixon came to be in possession of both the handgun used in the initial shooting of Sgt. Dunakin and Officer Hege, and the SKS rifle which he fired when the Tactical Operations Team entered the apartment.

Both individuals indicated that the assignment of determining how and where and when Nixon obtained both weapons had been undertaken by the ATF, and that ATF Special Agent Al Mabanag had been assigned to do the work. Lt. Whent had not seen a final report from Agent Mabanag, but indicated that it was his understanding that Mabanag had gone as far as Oregon to try to locate information concerning the SKS rifle and how it came to be in Nixon's possession.

Lt. Medeiros advised that he had not seen a report from Agent Mabanag and did not believe a report had been completed. Lt. Medeiros indicated that he did not know whether or not Mabanag had been able to determine from his investigation how Nixon had come to be in possession of the SKS rifle, and did not give me any definitive information concerning Nixon's possession of the handgun.

Counsel indicated to both Lt. Whent and to Lt. Medeiros that the reason for our interest in this issue is to determine whether, had the entry team taken a greater amount of time to try to develop information concerning Nixon's possible possession of weapons (other than the handgun used to shoot Dunakin and Hege), would they have been able to determine, within a reasonable time, that he had purchased or possessed the SKS rifle. Both indicated that, given the difficulties which apparently have been encountered by Agent Mabanag in the search for that answer, it is not likely that such information could have been developed or known within a reasonable period of time, even if the entry into the apartment had been delayed on March 21st.

Thus, in the final analysis, while Deputy Chief Kozicki, Capt. Orozco and Lt. Mufarreh are alleged to have made a decision which, to some, in retrospect, appeared to be "hasty," there is no question that delaying the entry would not have produced information that Nixon was in possession of a high-power assault weapon. Indeed, we are almost to the one-year anniversary of the incident, and it appears that the manner in which Nixon obtained the weapon or even the fact that there is a record of him coming into possession of it is still not fully determined.

XXII. DEPUTY CHIEF KOZICKI, AS THE INCIDENT COMMANDER, WAS ON THE SCENE, AWARE OF THE THINKING AND REASONING OF LT. MUFARREH AND CAPT. OROZCO, AND GAVE THE APPROVAL WHICH RESULTED IN THE ENTRY INTO THE APARTMENT

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Capt. Tracey was interviewed by Sgt. Floyd of Internal Affairs concerning the manner in which the decision-making of the Tactical Operations Team occurs, and accountability of the decision-makers is *supposed* to occur. After explaining that Deputy Chief Kozicki was the Incident Commander, Capt. Tracey made the following statement:

He's the highest ranking officer. We've run into this problem before, right? You show up – you're the highest ranking officer – the ball kind of gets dropped on you. Unless you say, hey, look, I'm just here to ask a few questions and out of here – you're in charge. That's the way it works: you're the highest ranking person, you show up, it usually drops on you.

(Internal Affairs Confidential Report of Investigation, p. 165).

As we noted previously in this letter, DGO K-5 provides in pertinent part that, "the incident commander is responsible for determining and approving the appropriate course of action and the concept of the operation, based upon recommendation from the tactical commander and other incident command staff."

In this case, the internal affairs investigation made several separate findings concerning Deputy Chief Kozicki's role and responsibility in connection with the decision to enter the apartment on March 21:

Each of the three involved commanders clearly has a level of culpability with regard to the decision to make entry. However, ultimately, Deputy Chief Kozicki, being the highest ranking officer on the scene, giving tacit approval of the plan, and filling the role of the incident commander, clearly has the most culpability of any of the three.

(Internal Affairs Confidential Report of Investigation, p. 317.)

Deputy Chief Kozicki...acknowledges he knew entry into the suspect's apartment was about to be made and did nothing to prevent the entry. It is reasonable to assume that an officer of his rank, position, and extensive service on the Tactical Operations Team would take notice that no other options were being utilized. He admitted his lack of intervention constitutes tacit approval.

(Internal Affairs Confidential Report of Investigation, p. 304.)

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Finally, the Internal Affairs Division report acknowledges, clearly and unequivocally, the Deputy Chief's ultimate responsibility for the decisions which were made:

As the Incident Commander, Deputy Chief Kozicki was ultimately responsible for the decision to allow the members of the Entry Team to make entry into the suspect's apartment. He acknowledges knowing what the plan was and admits to failing to intervene in the initiation of the plan.

During his various interviews, Lt. Mufarreh never claimed to have been the person who should make a "final decision" concerning entry into the apartment or the method by which entry was to be accomplished. Indeed, he repeatedly emphasized that he had only been an "operator" on the Tactical Team some years earlier, and that he had not even been to tactical commander school at the time this incident occurred. For that reason, it is understandable why any decisions or recommendations made by Lt. Mufarreh should have been discussed and evaluated by others with more experience.

Capt. Orozco, who has been Lt. Mufarreh's immediate supervisor for some months, and who knew of his sound decision-making and presence of mind in difficult situations, had a right to give deference to some of the opinions and conclusions reached by Lt. Mufarreh concerning the likely presence of Mixon in the apartment.

Contrary to claims made in both the Internal Affairs division report and/or the Independent Board of Inquiry report placing Capt. Orozco at the scene just ten minutes before entry was made, that is simply not the case. Capt. Orozco, who had heard about the shooting and who was responding to assist in any way he could, had a telephone call with Capt. Tracey at approximately 2:28 p.m. During this telephone call, Capt. Tracey had asked Capt. Orozco if he would go to the scene to supervise the Tactical Operations Team, since Tracey was going to remain at the hospital. Capt. Orozco agreed to go to the scene in response to Capt. Tracey's request.

At 2:34 p.m., Capt. Orozco, who had arrived in the area of the Eastmont substation, telephoned Lt. Mufarreh to determine his location. Upon learning of Lt. Mufarreh's location, Capt. Orozco went directly there. Capt. Orozco was at the area of 74th and MacArthur at approximately 2:35 p.m., one half hour before entry was made. Deputy Chief Kozicki arrived at the same location a few minutes later. According to Deputy Chief Kozicki, he believed he was on the scene for approximately 25 to 30 minutes before entry was made (Internal Affairs division report of investigation, p. 112).

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Lt. Mufarreh provided both Capt. Orozco and Deputy Chief Kozicki a briefing on information which had been developed concerning both the initial shooting of the two officers and information relating to the apartment. That is when options were discussed other than making an entry into the apartment. This is the discussion which occurred in the presence of Lt. Lindsey, and the point in time when Deputy Chief Kozicki asked if a search warrant was required to make entry into the apartment. As we know, Lindsey responded by indicating that, in view of the fact that there were "exigent circumstances," no search warrant was required.²

At that point in time, a decision was made to alert the Tactical Operations Team that they would need to make an entry in order to "clear" the apartment which was under surveillance.

From the information in the Internal Affairs report of investigation, and even from the Board of Inquiry's findings, it appears that the individuals reviewing the actions of the personnel on that date believed that both Capt. Orozco and Deputy Chief Kozicki could have taken greater time to examine either the amount of information possessed by Lt. Mufarreh or his thought processes. That, in retrospect, is a highly subjective call, as it is clear that both individuals believed that Lt. Mufarreh had a substantial knowledge of what had originally occurred and what the current situation was with regard to the search for the suspect.

In any event, the discussion which occurred, and which preceded Lt. Mufarreh asking for the whereabouts of SWAT Team leaders at 2:56 p.m., was not rushed or hasty, even though it was also not prolonged by indecision or paralysis to make a decision based upon the information known at the moment.

In the scheme of a quasi-military operation like the Oakland Police Department, we do not have a situation where Capt. Orozco is accused of special acts of misconduct, while Lt. Mufarreh is accused of other or different acts of misconduct, and separate fault yet is being assessed against Deputy Chief Kozicki for still different acts of misconduct. In essence, "fault" is being assessed against all three individuals for a plan which was discussed by the three and which was agreed upon, in the final analysis, by the individual who was, according to Department policy, "in charge" and the one entrusted to make the decision.

While there is little doubt that the after-the-fact analysis by the Department has resulted in its criticism of the decision which was made, the Department's "reasoning" or "analysis" for disciplining Lt. Mufarreh and Capt. Orozco makes absolutely no sense—are they to be "faulted" and punished for not having recognized that Deputy Chief Kozicki had given far too much deference to the thinking or reasoning of either Mufarreh or Orozco? Are they to be "faulted" or

² It is worth observing that, if Lt. Lindsey had told the three others that she knew Mixon was inside the apartment, as she claims, there would have been *no need* for Deputy Chief Kozicki to ask if a search warrant was needed.

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punished because they didn't demand that Deputy Chief Kozicki vigorously cross-examine Mufarreh about the manner in which he gathered information or analyzed it?

In the final analysis, individuals in the Oakland Police Department can only be held in accordance with policy. In this case, the Department's own policy says that the individual with the final decision-making authority in this case was Deputy Chief Kozicki and everybody knows it and knew it then. This appears to be simply a case in which the Deputy Chief has now retired, and the Department feels the need to point the disciplinary finger at someone (or anyone) because of the reality that lives were lost.

As stated earlier in this letter, if finger-pointing needs to be engaged in, it should be pointed in the direction of those who had set into place the organization and management of the Oakland Police Department and its Tactical Operations Team in such a way that appropriate police resources were not in place on March 21, 2009 to deal with a crisis of this magnitude, nor anything close to it.

XXIII. THE DISCIPLINE OF MUFARREH AND OROZCO SEND A SIGNAL TO OPD SUPERVISORS AND MANAGERS THAT, IN FUTURE CRITICAL SITUATIONS OR WHEN LIFE OR DEATH DECISIONS NEED TO BE MADE, THE BEST AND SAFEST COURSE OF ACTION IS TO (1) NOT SHOW UP, OR (2) IF YOU SHOW UP, DO NOTHING, AND (3) MAKE NO DECISIONS

It is no mystery nor secret in the Oakland Police Department that the only two "active" employees who are receiving discipline as a result of March 21, 2009 are Capt. Orozco and Lt. Mufarreh. It is probably not much of a mystery or secret that Deputy Chief Kozicki suddenly and quickly submitted retirement papers shortly before the "public" version of the Independent Board of Inquiry report was released. Finally, it is probably no mystery or secret that the discipline being recommended against Capt. Orozco and Lt. Mufarreh relate to the gathering of information and the decision reached with that information on March 21st.³ If the death of four officers on March 21, 2009 did not create a scar on many members of the rank and file, management and supervision in the OPD, the "message" sent by the discipline of Capt. Orozco and Lt. Mufarreh to everyone in the Department will achieve that result.

³ We recognize there are criticisms of the fact that a command post or incident command center was not established at some location further removed from the scene of the initial shooting and where information could be relayed/obtained and processed in a more calm and deliberative manner than otherwise occurred at 74th and Macarthur. However, we do not believe even the often mean spirited Oakland Police Department management thinks there is a basis to discipline Lt. Mufarreh (or Capt. Orozco, for that matter) simply because they should have retreated to a different location and declared it over the radio to be the command center. That is clearly an issue which lends itself to training and will not support the imposition of discipline.

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What we are left with by anyone who takes stock of this incident and the aftermath is that those individuals who didn't even have to be there and didn't have to make a single decision (1) made the drive, (2) got out of their cars, (3) got on the radio, and (4) made decisions. Those who, for one reason or another, failed to fulfill their assigned roles or failed to get out of their cars or failed to show up in time to be involved in a decision-making process have skirted any responsibility for their failures, save and except some criticism by the Board of Inquiry in some instances, and random and sporadic criticism in the locker room and in the hallways and in the sanctity of patrol cars about the failure to supervise, take charge, or make decisions.

As pointed out early in this letter, the Department's calendar for the "citywide watch commander" imposed a duty on Lt. Lindsey to be the citywide watch commander on March 21st. There is no question, as the Area 3 lieutenant, that she was the one to step up initially and become the overall incident commander.

In contrast with her assigned duties and responsibilities, and as noted by the Independent Board of Inquiry, **"Rather than focus on overall command and control, Lt. Lindsey focused on the crime scene investigation."** (Independent Board of Inquiry Report, p. 12).

Lt. Lindsey, who was present during the briefing given by Lt. Mufarreh to Capt. Orozco and Deputy Chief Kozicki recalls portions of that conversation. She particularly recalled Deputy Chief Kozicki's inquiry into whether a search warrant was needed to enter the apartment, and, according to virtually everyone at that discussion, it was Lt. Lindsey who indicated that no such search warrant was needed because there "are exigent circumstances." Yet, by the time she was interviewed for the first time eleven days after the incident, *Lt. Lindsey told Sgt. Cruz that she had no idea that entry into the apartment was about to be made.* According to Lt. Lindsey, she walked back to the barber shop near the location of the initial shooting, went to the restroom, and then heard "Boom! Boom!" During her interview, Lt. Lindsey said that she had no idea that entry was about to be made and was not apprised of the fact that entry was going to be made: "Honestly, I'm still shocked that it happened as quickly as it did." (Internal Affairs Confidential Report of Investigation, p. 130).

Frankly, with regard to Lt. Lindsey, it is understandable, on the one hand, that she did not place herself in the role of an overall commander. From our knowledge of her background, she had not been in patrol for at least five years prior to her promotion to lieutenant, one and one half months earlier. On the other hand, when the investigation unfolded after this incident, Lt. Lindsey was perceptive enough to see that if she distanced herself from having any significant or meaningful role in the decision-making process which resulted in the entry, and expressed her surprise and shock of it all, she might be able to avoid having an ugly disciplinary finger pointed at her.

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At the time of this incident, Lt. Lindsey's supervisor and the Area Captain for Area 3 was Capt. Rachal. The finding of the independent Board of Inquiry concerning Capt. Rachal's performance could not be any clearer or more damning:

He appears to have done nothing to further the mission or control the critical incident or exercise his rank in an appropriate manner.

He did not fulfill the role of providing support to an inexperienced commander who was being overwhelmed by the complexity of circumstances.

He did little to monitor the situation or advise Lt. Lindsey of the command and control steps necessary during a critical incident of this nature.

Capt. Rachal took few steps to determine what precisely was occurring or to determine whether Lt. Lindsey required additional assistance or direction and did not perform as an Area Commander.

(Independent Board of Inquiry Report, p. 39)

The Independent Board of Inquiry essentially determined that Capt. Rachal did nothing he should have done in his role as an Area Commander. It is clear from the investigation that when he finally arrived on the scene, he did not even have a radio with him and apparently made no effort to get one. The occurrence happened in his area and was happening in his area, but he made no effort to even participate in the briefings which occurred, even though he had arrived by that time.

It is clear, of course, that there is no recommendation to discipline Capt. Rachal for anything he did or, more accurately, failed to do in his role as a captain. This is simply another example of the Department's willingness to discipline individuals who stepped into the void of leadership and decision-making that should have been provided by others.

Capt. Ed Tracey was the Tactical Commander of the Tactical Operations Team on March 21, 2009. As pointed out above, there was only one other alternate Tactical Commander

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assigned to the team at the time, Lt. Green, who was on an extended leave due to the impending birth of a new baby.

It is completely understandable and goes without saying that Capt. Tracey must have been emotionally affected by the slaying of two motor officers who worked under his command. Nevertheless, from our review of interviews and other materials in this case, we are very much aware that there were a number of officers who attended to Sgt. Dunakin and Officer Hege immediately after their shooting and while they lay on the street bleeding profusely from their wounds, and who cut clothes off them and who gave them CPR and who watched their lifeless bodies be carried away and who, while bloody and dazed from their experience, ran down the street and around the corner when they heard that a possible suspect might be at the apartment at 2755 74th Avenue.

We are very much aware that Lt. Mufarreh, Capt. Orozco and Deputy Chief Kozicki saw the motorcycles and items of clothing and uniforms removed from the bodies of their brothers next to the pools of blood as they tried to put all of that aside and made decisions on how best to locate and apprehend the suspect. In other words, Capt. Tracey was undoubtedly affected by the reality of what had just occurred, but so were a lot of OPD personnel who brought themselves to perform and make decisions.

What is most obvious in the context of this discussion is that neither the Internal Affairs report of Investigation nor even the Board of Inquiry takes up issues relating to the fact that (1) Capt. Tracey is literally the only current Tactical Team Commander and there is no other alternate Commander available, and (2) Capt. Orozco, who was asked to do the job, is no longer on the Team. Moreover, there is no discussion about the failure of Capt. Tracey to perform his assigned responsibility despite the heavy emotional cloud hanging over him that day. In truth, there was no member of the law enforcement community unaffected by the same cloud, and in some cases, perhaps, affected even more significantly than Capt. Tracey.

Acting Chief of Police Howard Jordan was also close to the decision makers' location before entry was made, but from our investigation, he had the "good sense" to stay in or near his police car at the Eastmont Substation a few blocks away. Of course, had Acting Chief Jordan walked or driven the short distance to 74th and Macarthur, and taken an active interest in the decisions that were being made or that were about to be made, he would have become, *ipso facto* under Department policy, the "Incident Commander."

Since Acting Chief Jordan was not interviewed about his decision to remain at or near his car and to avoid going to the location where decisions were being made, we cannot and will not ascribe a purposeful motive to avoid the responsibilities of a decision-maker. We simply observe that it worked out a whole lot "better" for the Acting Chief of Police to avoid taking part in or

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approving a decision relating to the apprehension of the suspect, and to allow others to do it instead.

The net effect of the discipline of Capt. Orozco and Lt. Mufarreh will ultimately be to send a very clear and emphatic message to supervisors and managers in the OPD that decision-making can and does lead to disciplinary consequences. Maybe to some, the message will be that decisions can and should be made, but they should be made slowly, carefully, and only after much thought in every possible and conceivable alternative is discussed, dissected and analyzed. That will, of course, induce tentativeness in the Department's decision-makers and will, undoubtedly, lead to decisions not being made in a timely manner or maybe not being made at all due to the deliberative process taking forever. When lives are lost because decisions aren't made or they aren't made as quickly as they should, more heads will roll because the decision-makers either didn't want to make decisions or took too long to do it.

The OPD and the City should be giving serious thought to the message they are sending to the supervisors and managers of this Department in this disciplinary case.

XXIV. DECISIONS MADE AND/OR THE REASONING WHICH LED TO THOSE DECISIONS BY CAPT. OROZCO AND LT. MUFARREH OCCURRED UNDER THE STRESSES OF AN INCIDENT WHICH HAD NEVER OCCURRED BEFORE IN THE CITY OF OAKLAND, AND WERE MADE IN AN EFFORT TO CONDUCT A SYSTEMATIC AND DISCIPLINED SEARCH FOR THE SUSPECT IN A WAY WHICH WOULD MINIMIZE THE THREAT OF DANGER TO OFFICERS AND OTHER BYSTANDERS. UNDER THE CIRCUMSTANCES, DISCIPLINARY ACTION IS UNWARRANTED WHILE THIS MATTER GIVES RISE TO A VERY CLEAR OPPORTUNITY TO LEARN FROM THIS EXPERIENCE FOR EVERYONE INVOLVED

As provided in the Departmental Discipline Policy Manual (Training Bulletin V-T, II-5.2, *"Generally, disciplinary recommendations should be directed at modifying behavior; a penalty should reflect the totality of the circumstances (including mitigation and aggravation for each member/employee, including the individual's past history, rather than resting solely on a single sustained complaint or incident. Training and other forms of remediation should be considered as part of any disciplinary recommendation."*

The Department seems to recognize the importance of modifying behavior and also seems to recognize that this can be achieved through "training and other forms of remediation." If there was ever a case at the OPD which lent itself to "training and other forms of remediation," this is it.

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It would have been one thing if decision-makers had been advised that Lovelle Mixon (1) had been observed to enter the apartment at issue, (2) was known to have a high-powered rifle inside, (3) that was loaded, and (4) he had not been observed to exit by officers who quickly established a perimeter. It would have been one thing if those decision-makers with that information would have directed the Tactical Operations Team to enter by using diversionary devices. That, of course, simply was not the case here.

Given the chaos that was associated with the suspect's reported escape in more than one vehicle, the possibility of others being involved in both the initial incident as well as his subsequent flight, the sheer unlikelihood that he would "corner" himself in an apartment and thereafter arm himself with a high-powered rifle, the decision to send a very experienced and highly capable entry team to clear the apartment was hardly irresponsible or reckless.

While matters such as these always lend themselves to after-the-fact analysis and reconsideration, absent some evidence that the decision-makers engaged in conduct which almost assuredly placed officers or bystanders at risk for injury or death, we have simply a situation which requires a disposition by the Department which will allow those involved in this incident and their successors to learn from this event and make decisions based upon the learning curve in future matters.

This should not be yet another case in which the OPD, in its Departmental Discipline Policy Manual, claims to recognize the importance of training and other "remedial" measures short of formal punitive action, but ignores the importance of those measures. In deciding on a final disposition of the investigation we are confident if/when an arbitrator hears from Capt. Orozco and Lt. Mufarreh and has the opportunity to review their outstanding performance for a combined period of four decades, the heavy handed disciplinary penalties recommended here will be entirely set aside.

XXV. EXIGENT CIRCUMSTANCES EXISTED TO ALLOW THE TACTICAL OPERATIONS TEAM TO ENTER THE APARTMENT WITHOUT A WARRANT

In the Department's apparent zeal to criticize and discipline Capt. Orozco and Lt. Mufarreh, the Internal Affairs investigators conclude that "the entry and search of the suspect's residence was...unlawful as articulated by Lt. Mufarreh and Capt. Orozco. If Lt. Mufarreh, Capt. Orozco and Deputy Chief Kozicki did not believe the suspect was in the apartment then they gave an unlawful order when, without being able to articulate legal justification, they would have ordered the entry team to make entry and search the suspect's apartment." (Internal Affairs Confidential Report of Investigation, p. 297).

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On p. 296 of the same report, the following statement appears: "Considering this applicable definition of probable cause versus the statements given by Lt. Mufarreh and Capt. Orozco that they believed the suspect fled the scene, probable cause was clearly lacking." Subsequently, the Internal Affairs report sustains Lt. Mufarreh for "gross dereliction of duty," in part, because he "...gave an unlawful order if he did not truly believe the suspect to be inside the residence." (Internal Affairs Confidential Report of Investigation, p. 326). Similarly, the same report found Capt. Orozco to be "unable to articulate a lawful justification for entry into the suspect's apartment" thereby allowing Lt. Mufarreh to give an "unlawful order."

The determination to "sustain" Lt. Mufarreh for "giving an unlawful order" and for Capt. Orozco for being "unable to articulate a lawful justification for entry into the suspect's apartment" entirely misses the reality of what occurred - a discussion which included Deputy Chief Kozicki, during which Deputy Chief Kozicki questioned whether a warrant was needed and was satisfied that one wasn't needed. In other words, there can be no question from this investigation that the ultimate decision that entry could occur without a search warrant was made by Deputy Chief Kozicki after discussing this subject. *At most, Lt. Mufarreh and perhaps Capt. Orozco can be criticized for not having on the tip of their tongue the esoteric/academic distinction between "fresh pursuit" and "hot pursuit" (either of which constitute an "exigent circumstance") while standing on the corner of 74th and Macarthur.*

It was undoubtedly easier for the Internal Affairs Division to know the distinction between these two forms of "exigent circumstances" while sitting in front of a computer and spending hours upon hours formulating a basis to sustain Lt. Mufarreh and Capt. Orozco for various violations than it was for them to deal with this thorny legal issue on the streets of Oakland.

Ultimately, after considerable research on the subject of exigent circumstances, the Internal Affairs Division concluded that **"The Entry and search of the suspect's residence was lawful given the totality of the circumstances but unlawful as articulated by Lt. Mufarreh and Capt. Orozco."** (Internal Affairs Confidential Report of Investigation, p. 297).

By coming to the above conclusion, it appears that the Internal Affairs Division has decided that misconduct allegations should be sustained and discipline taken against them because their thinking or interpretation of the law was askance, even though Deputy Chief Kozicki who made the final decision to allow the entry to occur, stated "I didn't hear anything to indicate that the suspect wasn't in the apartment. I think there was a likelihood that he was, and there was a likelihood that he wasn't." In essence, by sustaining allegations of misconduct against Capt. Orozco and Lt. Mufarreh for their interpretation of "exigent circumstances" in the context of this case, *the Department is essentially sustaining them for an inappropriate thought*

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process that could have led to an illegal warrantless entry if it were not for the fact that Deputy Chief Kozicki had a greater belief that the suspect was there and was the final decision-maker concerning the search.

With all due respect to the Internal Affairs Division and its legal analysis starting on p. 297 of its report, Internal Affairs analysis concerning "exigent circumstances" was also wrong.

The Alameda County District Attorney's Office, in its "Point of View" publication for Winter, 2010, had a keynote article entitled "Exigent Circumstances." In the introductory portion of this article, after observing that the term "exigent circumstances" is elusive to begin with and its definition has been expanding by the courts, there appears the following sentence: **"Because of these developments, the term 'exigent circumstances' has become a bloated and almost meaningless abstraction."** The article points out the difficulty of police officers who are forced to make split second decisions concerning whether a warrantless entry can occur because of "exigent circumstances":

But the business of policemen and firemen is to act, not to speculate or mediate. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. (Citing *Wayne v. U.S.* (D.C. Cir. 1963) 318 F.2d 205, 212)

As the article explained in recognizing the difficulties that officers face in determining whether to take the time to get a warrant or to enter:

In testing the reasonableness of the search we might ask ourselves how the situation would have appeared if the fleeing gunman armed with a shotgun had shot and possibly killed other officers or citizens while the officers were explaining the matter to a magistrate.

(*People v. Bradford* (1972) 28 Cal.App.3d 695, 704)

Significantly, the extensive article discusses "exigent circumstances" (including hot pursuits and fresh pursuits) under the term "investigative emergencies." The article defines fresh pursuits as "...investigative pursuits in the sense that officers are actively attempting to apprehend the suspect, and in doing so, are quickly responding to developing information as to his whereabouts..."

In discussing the issue of "fresh pursuit" the article cites to two separate cases which are instructive in this context.

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In the case of *In Re Jessie L.* (1982) 131 Cal.App.3d 202 the defendant was charged with murder, attempted robbery and other offenses. These offenses had been committed by the juvenile defendant and three of his friends, including David C. After David C. was arrested, he provided an interview statement to the police which concluded one morning at 6:30 a.m. He implicated the defendant in the crimes and after David C. provided the address where he believed the defendant was staying, a group of officers went to that location approximately two and one half to three hours later. There is no indication in the decision that the defendant was observed by others to go into the residence prior to the arrival of the police or that they believed (or simply didn't know) whether the defendant was inside. Nevertheless, the court concluded that the warrantless entry into the location to search for and ultimately arrest the defendant was reasonable under the circumstances:

The police could reasonably conclude that there was no time to get a warrant and that the remaining suspects must be promptly arrested because they might flee or destroy evidence upon word getting out that David C. was in custody and had made statements to the police. Immediate flight was a reasonable possibility in light of the seriousness of the crime involved, murder. The police did not idly sit by during a period in which a warrant could have been obtained, but promptly gathered together a number of officers and went to the locations involved. There was no violation of *Ramey*.

(131 Cal.App.3d at pp.213-214)

In *People v. Escudero* (1979) 23 Cal.3d 800 the defendant was charged with burglary. He had been arrested after two deputy sheriffs received a message while on patrol about a burglary in progress. They received a description of a suspect vehicle and later obtained registration information which indicated that the vehicle had been recently sold to the defendant, and the deputies obtained an address where they believed the defendant was staying. Approximately thirty minutes after the burglary had been broadcast, the dispatcher telephoned the owners of a ranch where the defendant was staying and confirmed that the defendant worked there.

Approximately one hour after the burglary, six officers arrived at the ranch and ultimately entered a building known as the foreman's house where the defendant had been living. They did so without a warrant, and the defendant, following the arrest, claimed there was no exigent circumstances. The court rejected the defendant's claim. In doing so, the court noted that the victim of the burglary had observed the defendant committing the crime and had given chase immediately, first on foot and then automobile. Although the victim had lost sight of the

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defendant, he promptly gave the police the defendant's description and registration information which in turn produced the defendant's address which was broadcast over the radio. The defendant had apparently reached the premises only a short time before the deputies arrived and entered his bedroom.

In determining that no warrant was required for the entry into the defendant's room, the court discussed two other cases which are almost directly on point with this case. Specifically, the court relied upon previous authority contained in the cases of *People v. Gilbert* (1965) 63 Cal.2d 690, 705-707 and *People v. Smith* (1966) 63 Cal.2d 779, 795-797.

In *People v. Gilbert*, defendant Gilbert and an accomplice, Weaver committed a robbery/murder at 10:30 a.m. and escaped by automobile. Following the directions of eye witnesses, a pursuing officer apprehended Weaver some blocks away in one of the getaway cars. Weaver had been wounded in the shoot-out and was taken to a hospital, where he told an FBI agent the name and address of his accomplice, Gilbert. This information was broadcast over the police radio and at 1:00 p.m., another agent went to Gilbert's address. Additional officers arrived ten minutes later and they entered the premises without a warrant. Gilbert was not present, but they found evidence which implicated Gilbert in the robbery/murder. *At the time the police had entered the residence, they had no idea whatsoever whether Gilbert was inside or not.* The court did not even discuss whether the officers believed that it was likely or less than likely that he was inside. Instead, the court upheld the lawfulness of the police conduct on the ground that a search is constitutionally reasonable "when the officers enter in fresh pursuit of escaping felons to make an arrest." In *Gilbert*, the court concluded that it was "...not unreasonable for the police to assume that the missing accomplice *might* be on the premises and that they entered in fresh pursuit to search for the suspect and make an arrest. (63 Cal.App.2d at pp. 706-707).

In *Smith*, a similar scenario occurred. In that case, Smith and an accomplice, Walker, tried to cash a fictitious check at a store and were detained for investigation. Smith drew a gun and shot his way out of the store, killing two police officers. He then escaped in a car. Other police arrived on the scene and arrested Walker. When questioned, Walker stated that Smith had been living with her at her address. Two officers were dispatched to the address and without obtaining a key from the landlord, they entered through a window (and without a warrant) and found the premises to be unoccupied. However, they found incriminating evidence which was used to prosecute Smith for shooting the police officers.

Once again, the officers who entered the apartment had no idea whatsoever whether they would find Smith inside or not, and the court did not hinge its decision upon whether it was "likely" or "unlikely" in the minds of the officers that the suspect was inside. Instead, the court emphasized that the manhunt for Smith had begun immediately and it was reasonable for the police to believe he *might* stop at his house before continuing his flight, to obtain clothes, money

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or ammunition. The court concluded as follows:

Fresh pursuit of a fleeing suspect who has committed a grave offense and remains dangerous to life and limb may constitute exceptional circumstances sufficient to justify a search without a warrant. [citations]

(63 Cal.2d at p. 797)

As in both *Gilbert* and *Smith, supra*, the "manhunt" for Lovelle Mixon began immediately after his shooting of Sgt. Dunakin and Officer Hege. Those who participated in the decision to direct the Tactical Operations Team to enter and clear the apartment knew that Mixon had some kind of "ties" to the apartment and had possibly been staying there. Whether or not it was likely or even improbable that Mixon was there is not the issue; based upon the reasoning of the courts in *Gilbert* and *Smith*, it was reasonable for them to believe that he might stop at his house before continuing his flight to obtain clothes, money or ammunition, and they remained in fresh pursuit of a fleeing suspect who had committed a grave offense and remained dangerous to life and limb.

There is no question that the entry into the apartment without a warrant occurred under the same type of "exceptional circumstances" discussed by our courts in the two cases discussed above.

**XXVI. CERTAIN FINDINGS AND CONCLUSIONS REACHED BY THE
INDEPENDENT BOARD OF INQUIRY (BASED UPON INFORMATION
PROVIDED TO THEM BY OPD) WERE SIMPLY WRONG**

Based upon *misinformation* supplied by representatives of the Oakland Police Department to the Independent Board of Inquiry, the Board made a series of assumptions and/or conclusions which were simply incorrect.

For instance, the Board of Inquiry found (p. 37) that entry into the apartment was made within ten minutes of the arrival of Capt. Orozco. As stated above, that is simply not true. Capt. Orozco telephoned Lt. Mufarreh at 2:34 p.m. when he had arrived in the location of the original incident and learned of Lt. Mufarreh's location. He joined him within a minute or two of that telephone discussion. Capt. Orozco's first transmission over the radio was at 2:52 p.m., but by that time, he had arrived, discussed the incident with Lt. Mufarreh and Deputy Chief Kozicki (who arrived at approximately 2:37) and was simply advising radio that he was on the scene.

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The Independent Board of Inquiry determined that "reasonable alternatives to dynamic entry were disregarded" (including such things as evacuations, use of a bull horn, PA announcements, use of canines, and use of chemicals).

As discussed above, this is also a faulty conclusion by the Board of Inquiry. In fact, alternatives to dynamic entry were discussed between Lt. Mufarreh, Capt. Orozco and Deputy Chief Kozicki shortly after Deputy Chief Kozicki's arrival at 2:37 p.m. Both Lt. Mufarreh and Capt. Orozco talked about those alternatives and their consideration as did Deputy Chief Kozicki in interviews with both the Homicide Investigators and with the Internal Affairs investigators. At the time he was interviewed, Deputy Chief Kozicki could not recall about the discussion they had concerning the use of chemicals. However, Capt. Orozco talked about discussion of options in his initial interview with Homicide (Internal Affairs Confidential Report of Investigation, p. 74) and during his Internal Affairs interview (Internal Affairs Confidential Report of Investigation, pp. 94-95). Similarly, Lt. Mufarreh outlined discussions he recalled about options in his interview with Homicide investigators (Internal Affairs Confidential Report of Investigation, p. 41) and during the Internal Affairs interview itself (Internal Affairs Confidential Report of Investigation, pp. 64-68).

The Independent Board of Inquiry erroneously concluded that the briefing which included Lt. Mufarreh, Capt. Orozco, Deputy Chief Kozicki, Lt. Lindsey (with Capt. Rachal in the area) occurred at 2:50 p.m. (Independent Board of Inquiry Report, p. 13). In fact, as stated above, this briefing occurred at about 2:37 and concluded fifteen to twenty minutes later, when Lt. Mufarreh, at 2:56 p.m. inquired if there were any SWAT Team leaders on the scene yet.

Reading the Independent Board of Inquiry Report concerning the briefing referred to above, one would be led to believe that the discussion involving Mufarreh, Orozco, Kozicki and Lindsey (with Rachal nearby) more or less "blended" into a briefing with the "ad hoc" entry team. That was, as described in greater detail below, simply inaccurate.

Indeed, one of the more significant inaccuracies in the Independent Board of Inquiry Report is its conclusion that at 2:38 p.m., Lt. Mufarreh acknowledged that the ACSO tracking dog was minutes away from Sgt. Sakai's location at 75th Avenue and Ney Street but seemingly made an "independent command decision" that the plan to use tracking dogs was "too dangerous" and **"ordered an ad hoc entry team to be formed."**

First of all, at 2:38 p.m., Lt. Mufarreh was, as stated above, discussing possible entry into the apartment with Capt. Orozco, Deputy Chief Kozicki and Lt. Lindsey (with Capt. Rachal nearby). Sgt. Sakai was not at the location where that discussion occurred, but was, as noted by the Board of Inquiry, at 75th and Ney.

It was not until 2:56 p.m., when Lt. Mufarreh inquired if any SWAT Team leaders were

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on the scene yet that he realized that Sgt. Gonzalez, Romans, Beaver and Reilly were standing by at 75th and Macarthur. A meeting then occurred which included Sgts. Sakai, Gonzalez, Beaver, Romans and Reilly, and Lt. Mufarreh and Capt. Orozco during which a discussion occurred concerning the dangers associated with deploying the tracking dog and exposing the Tactical Team members to possible gunfire at the front of the apartment, and a decision was made for the Team to make entry without using the dog.

Contrary to the Board of Inquiry finding, this discussion did not occur at 2:38 p.m. but somewhere around 2:57 p.m. More significant, however, is the fact that Lt. Mufarreh had not "formed" an "ad hoc" entry team at all; the sergeants who were at the meeting were there either because they had been alerted earlier in the day by telephone calls at home or had responded to the "blue alert" notification and had come to the scene as Tactical Team members (instead of going to the Eastmont Mall, where Lt. Mufarreh had earlier directed the Tactical Team to assemble).

Perhaps the most glaring and substantial inaccuracy with the findings by the Independent Board of Inquiry was its finding on p. 26:

Mixon's location was identified with probable cause from at least two sources. One of the sources actually saw Mixon enter the location with the company of a female.⁴

As will be discussed below, Mixon's prior association with the apartment at issue, and his possible presence in that apartment was identified with information supplied initially to former Officer Rush, and then to Lt. Joyner, by informant (b)(5)(B). As discussed below, all of the evidence in this case establishes that, if Lt. Lindsey truly knew or even believed that Mixon had any ties with the apartment at issue (and based upon our independent investigation it is unlikely that she did have such information), she shared it with virtually no one she came in contact with (including Mufarreh, Kozicki, Orozco or Rachal, as she claimed in a supplemental report) and never advised anyone of that information over the radio.

The Independent Board of Inquiry's findings that "one of the sources actually saw Mixon enter the location with the company of a female" is completely false and unsupported by any information in the entire investigation report. Indeed, (b)(5)(B) who was interviewed, never saw Mixon enter the apartment after he fled southbound on 74th Avenue. (b)(5)(B) who was interviewed by OPD Homicide investigators (but never by the Internal Affairs investigators) has clearly indicated that, when she heard two shots while at her apartment, she ran up the street

⁴ The "source" referred to appears to be (b)(5)(B) whom the Board erroneously believed had told Lt. Lindsey she saw Mixon let into the apartment. We note, however, that (b)(5)(B) could not identify Mixon in a photo lineup shown to her the evening of March 21st.

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to the location where Sgt. Dunakin and Officer Hege were shot and never saw Mixon running, let alone enter the apartment in the company of a female.

The Board of Inquiry's erroneous conclusion about Mixon being seen let into the apartment might be more understandable if there was, in fact, a "credible" source of information who actually saw Mixon in the company of a female enter the apartment. Although we can only surmise that this came as a result of misinformation supplied at one time or another by Lt. Lindsey in the investigation, there appears to be no other source, and it now appears that the Board of Inquiry was completely misled or given erroneous information by representatives of the OPD either verbally or through the presentation of other documentary information which we have not identified.

The Independent Board of Inquiry appears to have been comprised of highly trained, qualified, thoughtful and experienced law enforcement personnel. They have made number of findings and recommendations which appear to be understandable, justified, and which will provide valuable assistance to the OPD and its Tactical Operations Team in future matters. However, when all is said and done, the Independent Board of Inquiry was operating in this instance, much like Lt. Mufarreh operated on March 21, 2009 - they had to receive information from whatever sources were available, process it as best they could, analyze it, and come to conclusions or inferences based upon the information they received. Like Lt. Mufarreh, this Board made a lot of good and sound decisions, but they made decisions which we know, after studying documents and doing additional investigative work, were erroneous. The fact that the Board was wrong about certain conclusions, opinions or inferences should not denigrate much of the fine work product produced.

XXVII. THE INTERNAL AFFAIRS INVESTIGATION, THOUGH VOLUMINOUS AND IMPRESSIVE ON THE SURFACE, IS FRAUGHT WITH A LACK OF THOROUGHNESS AND OBJECTIVITY

In the Oakland Police Department Departmental Discipline Policy Manual, former Police Chief Wayne G. Tucker offered the following introductory statement:

A fair, impartial, fact-finding investigation will shed light on misunderstandings and clarify policy and procedures. Upon occasion, it will also uncover misconduct. Though at times difficult to accept, such occasions should be viewed as opportunities to prevent continuing and increasingly serious misconduct, as well as opportunities to prevent others from erring.

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A great deal of the comments made by Chief Tucker, above, are particularly appropriate in this case. As we have discussed above, there were misunderstandings at many different levels on March 21, 2009 which led to a result that no one intended or wanted; there were policy and procedure breakdowns at many different levels which we are now aware of. The extensive investigative work concerning what occurred has provided opportunities for the Oakland Police Department and other police agencies who have tactical teams to learn from what occurred and prevent the loss of life in these highly volatile and dangerous situations.

Although the Oakland Police Department has apparently concluded that its investigation also, to use Chief Tucker's words, "uncovered misconduct," for the reasons we have argued above, it did not uncover "misconduct" committed by either Lt. Mufarreh or Capt. Orozco. Indeed, the work done by the Department has established that there were alternative approaches and ways of thinking about approaching the apartment at 2755 74th Avenue which were not probably given enough attention or consideration in our after-the-fact analysis of what went right and what went wrong. But, as we have argued above, the decisions were made in good faith, in the exigencies of a search for a violent police killer, and as daylight was slipping away and police resources were waiting to be directed in other areas in the event the apartment was unoccupied.

As we will discuss in greater detail below, while the investigation did not discover "misconduct" (a clear violation of Department rules, regulations, or policies) by either Lt. Mufarreh or Capt. Orozco, it discovered a glaring lack of performance by a number of individuals which the Department has conveniently chosen not to label or brand "misconduct," and also disclosed blatant and glaring misconduct which the Department has, for reasons which are speculative at this moment, chosen to ignore and/or cover up.

a. THE DEPARTMENT ASSIGNED A BRAND NEW INTERNAL AFFAIRS INVESTIGATOR AS THE "LEAD" INVESTIGATOR. HE HAD NO INVESTIGATIVE EXPERIENCE AND HAD NOT RECEIVED ANY FORMAL TRAINING IN INTERNAL AFFAIRS INVESTIGATIONS NOR DID HE HAVE ANY TACTICAL EXPERIENCE

The "lead" Internal Affairs investigator assigned to this case was Sgt. Jake Floyd. Sgt. Floyd, by all accounts, is a highly competent, dedicated police officer who is unquestionably bright. Yet, it is clear that Sgt. Floyd had been promoted to sergeant only some eight months earlier, and was transferred to the Internal Affairs division to work on the investigations side on February 7, 2009. Thus, Sgt. Floyd had only approximately 30 working days "under his belt" in Internal Affairs before he was assigned to be the "lead investigator" concerning this matter.

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To our knowledge, Sgt. Floyd had not yet attended a specialized school concerning Internal Affairs investigations, and he had no prior investigative experience with the Department prior to his assignment to the Internal Affairs division. In addition, Sgt. Floyd had not been a member of the Tactical Team and had little or no tactical team knowledge or experience, something he repeatedly reminded us of during interviews of Lt. Mufarreh and Capt. Orozco.

Perhaps the Department decided to "shore up" some of these issues by bringing in retired Officer Tim Shaver, an experienced police officer, supervisor, and Internal Affairs investigator who also possessed tactical team experience.

We do not know the extent to which Sgt. Shaver had input into formulation of questions or the direction in which this investigation occurred. Nevertheless, we remain troubled that a "brand new" Internal Affairs investigator with no Tactical Team training or expertise or investigative training or expertise was assigned an investigation with probably the most emotionally charged investigations in the history of the Oakland Police Department, and with enormous complexities and intricacies.

b. THE IMPOSITION OF DISCIPLINE AGAINST LT. MUFARREH AND CAPT. OROZCO IS WITHOUT "JUST CAUSE" BECAUSE IT CONSTITUTES DISPARATE TREATMENT

For reasons which are entirely unclear, a number of individuals who were involved in either acts (or in most instances, omissions) on March 21, 2009 have been given a complete "pass" by the Oakland Police Department. A brief discussion of those individuals is noted below.

1. Captain Ed Tracey

Captain Tracey had been an Oakland Police Officer for over 15 years when this incident occurred and was a tactical commander of the SWAT team. He was interviewed by Internal Affairs Sgt. Floyd, Sgt. Shaver, and Lt. Whent on June 4, 2009.

During his interview, Capt. Tracey stated that the lead tactical commander at the time of this incident was Lt. Allison (Internal Affairs Confidential Report of Investigation, p. 157), and that Lt. Green was also a tactical commander, even though he did not know where he was on the date of the incident (Internal Affairs Confidential Report of Investigation, p. 161). In truth, we believe that Capt. Tracey was wrong about this issue—Capt. Tracey was, at the time of this incident, considered the lead tactical commander, as Lt. Allison was at the FBI National Academy, and Lt. Green, an alternate commander, was on family leave. In other words, there

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were no other tactical commanders assigned to the Tactical Operations Team, as Capt. Orozco had resigned to make room for Lt. Mufarreh's entry onto the team.

Interestingly, Capt. Tracey indicated that he first learned of the shooting of Sgt. Dunakin and Officer Hege upon receiving a telephone call from Capt. Orozco. Deciding that Capt. Orozco would be a "reasonable" person to send to the scene, he told Capt. Orozco, "Look, just in case this thing becomes tactical at one point—you go to the scene and take care of things." (Internal Affairs Confidential Report of Investigation, p. 161.) As we now know, Capt. Orozco faces a two-step disciplinary demotion for agreeing to Capt. Tracey's request to go to the scene and "take care of things." Although, as stated above, one can readily understand why Capt. Tracey responded to the hospital and appears to have stayed there for the duration of the day, virtually no discussion occurs in the Independent Board of Inquiry report concerning the fact that the SWAT team was essentially commanded by an "ad hoc tactical commander" because the Department had no current tactical commanders available.

More significantly, although the Internal Affairs complaint investigation report lists Capt. Tracey as a "subject officer" in two separate Manual of Rules violations (including interfering with the Internal Affairs investigation by making suggestive comments to Lt. Lindsey), **the Internal Affairs division report of investigation contains no written findings concerning these allegations.** (See, Internal Affairs Confidential Report of Investigation, pp. 325-331).

The fact of the matter in this case is that the Department recognized that there was an issue concerning Capt. Tracey's failure to respond to the scene of a SWAT team callout and assume the role of tactical commander, which he occupied at the time. It is also startling, but indicative of the chaos which was associated with the entire day (and appears to have excused the actions/omissions/decision-making errors by virtually everyone except Orozco and Mufarreh) that Capt. Tracey, during his Internal Affairs interview, stated that he did not recall receiving an official notification that the Tactical Operations Team was being called out. Yet, after being shown a report generated by "One Call" indicating that Capt. Tracey had been called at 2:34 p.m., Capt. Tracey stated, "So there was a call." His response to that was, "Because, again, I got so many calls that day, and it was just a traumatic day. I don't remember all the people I talked to, like I said earlier, I don't even remember that."

We have discussed an intentional, volitional, conscious determination by Capt. Tracey to go to the hospital which effectively took him away from his assigned and very important role as the Department's Tactical Team Commander. We have done that not to suggest, for the minute, that there was not an understandable basis or reason for his making that conscious and deliberate choice. We do not believe for a minute that Capt. Tracey should receive disciplinary action because he did not fulfill the assigned role that he was trained to fulfill to and remained the only "qualified" and currently assigned tactical operations commander on the team that day.

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What we find alarming is that the Department seems to understand that there are mitigating circumstances at work for Capt. Tracey's thinking and reasoning, but, of course, neither Lt. Mufarreh or Capt. Orozco have received similar consideration.

2. Capt. Anthony Rachal

Capt. Rachal was, of course, the area commander of Area 3 on March 21, 2009. Although the Oakland Police Department has apparently chosen to give Capt. Rachal a complete "pass" for his actions/omissions that day, the Independent Board of Inquiry hardly did so. In fact, the Board of Inquiry found, as to Capt. Rachal, that:

- (1) His performance that day was deficient.
- (2) He appears to have done nothing to further the mission or control the critical incident or exercise his rank in an appropriate manner.
- (3) He unreasonably extended his response time to the scene in order to obtain his police vehicle which was in the opposite direction of the crime scene, but even then he failed to acquire a handheld radio or uniform.
- (4) He did not fulfill the role of providing support to an inexperienced commander who was being overwhelmed by the complexity of the circumstances.

It is **amazing** that the Board of Inquiry made such startling findings about the failures of Capt. Rachal when the Oakland Police Department did not even name him a subject officer to begin with, and made no findings whatsoever adverse to him in the Internal Affairs Division report of investigation. Since the Board of Inquiry was convened upon the conclusion of the Department's Internal Affairs Division investigation and findings, and had access to the investigation and its findings, it represents a very strong indication of the Board's disagreement with the judgment and decision-making of OPD and its leaders concerning the conduct of Capt. Rachal.

Much like Capt. Tracey, the failures and omissions of Capt. Rachal which are pointed out by the Board of Inquiry (and either conveniently, intentionally, ineptly, or a combination of all three, ignored by the OPD) merit further direction, education, counseling, and, in our opinion, non-punitive measures be implemented with regard to the deficiencies noted. Clearly, according to the Independent Board of Inquiry, Capt. Rachal could have performed at a much higher level and made decisions different than those he made. Clearly, according to the same Board of Inquiry, Lt. Mufarreh and Capt. Orozco could have performed at a higher level and made different decisions than they made. In either case, we are, as stated above, talking about improving performance through education and training and not through imposition of a disciplinary penalty.

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3. Lt. Drennon Lindsey

Before getting to the Department's attempt to ignore and cover up blatant dishonesty of Lt. Lindsey, conclusions reached by the Independent Board of Inquiry concerning her actions/decision-making on March 21 should be reviewed. According to the Board of Inquiry, Lt. Lindsey:

- (1) Viewed herself as the incident commander but did not identify herself as such or take any action in furtherance of this role, including implementation of ICS.
- (2) Did not establish a command post and appropriately staff it to handle the complexity of issues attendant to a city-wide response of all units and supervisors.
- (3) There was no staging area designated, no assignment protocols, and no overall plan to integrate and manage the arriving resources. (Independent Board of Inquiry Report, p. 34)
- (4) Initiated a citywide call for all units to respond which was unnecessary, especially as the on-scene supervisor just minutes before had declared that sufficient units were at the scene and other units should spread out and search for the suspect. (Independent Board of Inquiry Report, p. 21).

In other words, and according to the Independent Board of Inquiry, Lt. Lindsey's decision-making, actions and/or omissions on March 21st were numerous and, quite frankly, set the stage at the outset of the response for a chaotic situation with no real established command post and with units undoubtedly driving toward 74th and Macarthur at breakneck speed but having little or no guidance or direction once they arrive.

In this regard, our point is the same as that raised with regard to Capt. Tracey and Capt. Rachal—there were mistakes made by a lot of people other than Capt. Orozco and Lt. Mufarreh. Yet, the mistakes, errors in judgment, omissions, and the like, all of which contributed at one level or another to the chaotic turn of events preceding the entry of the Tactical Team into the apartment, seem to be either ignored altogether or conveniently disregarded for one reason or another.

The Department can't have it both ways—it can't insist to be committed to "correcting" the behavior of its managers or supervisors who make mistakes, errors in judgment or bad decisions—even in the literal heat of battle—and simultaneously disregard similar breakdowns by other personnel which have been convincingly established. That is why, if this case proceeds to arbitration, disciplinary action will be set aside on the grounds of disparate treatment.

However, the misconduct of Lt. Lindsey is far more serious than mere errors in judgment,

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discretion, or decision-making, based upon inexperience and the chaos of the day - it amounts to blatant dishonesty and the Department has done everything possible to ignore it and cover it up.

- c. **THE DEPARTMENT IS WELL AWARE THAT LT. LINDSEY WAS ONE OF THE VERY FEW PEOPLE WHO OBTAINED A PHOTOGRAPH OF LOVELLE MIXON AND HAD IT IN HER POSSESSION LONG BEFORE THE TACTICAL TEAM MADE ENTRY INTO THE APARTMENT AT 3:04 P.M., BUT FAILED TO EVER TELL CAPT. OROZCO, LT. MUFARREH, DEPUTY CHIEF KOZICKI, OR ANY OF THE ENTRY TEAM MEMBERS THAT SHE HAD A PHOTOGRAPH OR THAT SHE KNEW THE IDENTITY OF THE SUSPECT BEFORE ENTRY WAS MADE; SHE LIED ABOUT TELLING OTHERS, INCLUDING OFFICER KANEY, TO PROVIDE COPIES OF THE SAME PHOTOGRAPH TO OTHER INDIVIDUALS, AS NEITHER SGT. ALEXANDER, WHO COMMANDED THE PERIMETER AND NO OTHER PERIMETER OFFICERS WERE EVER PROVIDED A COPY OF MIXON'S PHOTOGRAPH NOR DID THEY KNOW HIS IDENTITY BEFORE ENTRY WAS MADE**

Attached to this correspondence as Exhibit I is a supplemental report prepared by Lt. Lindsey. It bears the date of March 21, 2009 and is four pages in length. Page two of that report contains the following passage:

Boyle also located paperwork inside of the suspect vehicle that had a CDC# written on it with the last name Mixon. The information on the CDC# was followed up on and it was later determined that the CDC# belonged to Lovelle Mixon, male black, with a date of birth of 18 Sep 82. **Officer Kevin Kaney gave me a CABS photo of Lovelle Mixon...**

During Lt. Lindsey's homicide interview, she stated that Officer Kevin Kaney had been able to determine, by use of a car computer, that the CDC# they had located came back to Lovelle Mixon. She indicated that officers at the Eastmont substation had printed photos and brought them to the scene. Lt. Lindsey stated the photo was time-stamped 1:55 p.m. "and that was the time that I actually had" the photo in her hand (Homicide interview transcript, p. 11:10-12:2).

Later in the Homicide interview, Lt. Lindsey made the following statement:

...When I found out the guy's name was Lovelle Mixon, I know I told people it was Lovelle Mixon. And I know that Kevin Kaney had a stack of CABS photos that we were disseminating. And I

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know if I didn't do it personally, I know it got done, that whatever I had I wanted to make sure that Lt. Mufarreh had, Lt. Alexander had, and everybody that was in command that knew. I wanted to make sure everybody—I said make sure, Kevin Kaney, everybody get a picture of this guy so we'll all be on the same page.

(Homicide interview transcript, p. 36:8-14.)

Attached to this response as Exhibit J is a March 2, 2010 memorandum prepared by Investigator Tom Leary of the law firm of Rains Lucia Stern. The memorandum is entitled "Pre-Disciplinary Letter: Lindsey and the Distribution of Photographs." As part of Mr. Leary's work on this case, he was requested to locate and interview Officer Kevin Kaney. His interview of Officer Kaney appears on pages 4 and 5 of this memorandum. Officer Kaney, when interviewed, was asked about the photos concerning suspect Mixon. After describing the fact that color photos of Mixon were printed and that Officer Kaney received "five or so" photos from Officer Sean Knight, he states that he approached a group of "command officers" standing together on MacArthur at 74th which included Lt. Lindsey. He reported handing one of the photos to Lt. Lindsey. She acknowledged receipt of the photograph. According to Officer Kaney, **"Lt. Lindsey did not tell, instruct, or ask [Kevin] to distribute any photographs."**

Thus, the claim made by Lt. Lindsey in her Homicide interview about instructing Officer Kaney to distribute these photographs is simply untrue.

Significantly, since Lt. Lindsey, in her Homicide Division interview, claimed to have had the photo of Mixon in her possession at 1:55 p.m., one would have thought that she may have discussed the photograph and provided it to Capt. Orozco, Lt. Mufarreh, and/or Deputy Chief Kozicki when she attended the discussion with them at approximately 2:37, when she reminded them that a search warrant was not needed to enter the apartment because they had "exigent circumstances." **Not only is her supplemental report dated March 21 (Exhibit I to this letter) silent as to providing this information to the individuals above, but she did not even mention in her interviews that she had provided them a copy of Mixon's photo or even the fact that she had a photograph in her possession.**

As indicated in the memorandum by Investigator Leary (Exhibit J to this letter), Sgt. Floyd asked Sgt. Alexander if he was aware of anyone ever receiving a photograph of Lovelle Mixon (prior to entry). Sgt. Alexander responded "No" and sounded shocked to hear that a photograph was, in fact, in existence prior to entry.

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Lt. Joyner was also interviewed by Mr. Leary concerning the photograph matter. Lt. Joyner stated that, despite numerous contacts with Lt. Lindsey (both on the phone and personal contacts), he did not see any photographs of the suspect when he was at the scene.

According to Sgt. Dave Carman in his Internal Affairs interview, he received a photograph of Mixon at the scene and believed there was a stack of the photos. He recalled seeing Lt. Lindsey having a copy of the Mixon photo but does not know how she obtained it. Sgt. Carman recalled some of the photos being given to the Homicide detectives who were present (Sgt. Jones and Sgt. Van Sloten) and the technicians who were processing the scene where Sgt. Dunakin and Officer Hege were shot.

As reflected in Mr. Leary's memorandum (Exhibit J to this letter), Sgt. Riley, one of the entry team members, stated that he was never given the suspect's photo or obtained any information concerning who the suspect was before entry was made (Riley Homicide interview transcript, p. 36, ll. 11-15). It is clear from Sgt. Gonzalez' Homicide interview that he never obtained or saw a photograph of Mixon before entry. It is clear from Officer Leite's Homicide interview that he never saw a photograph of Mixon nor knew of his name before entry.

In short, we now know that the "failures" in decision-making and other matters which were identified by the Independent Board of Inquiry (but never even commented upon in the Internal Affairs division report of investigation) by Lt. Lindsey represent far more serious "failures" than the Department wanted anyone to know.

It is now clear that (1) Lt. Lindsey was in possession of a photograph of Lovelle Mixon and knew his name when she met with Lt. Mufarreh, Capt. Orozco, and Deputy Chief Kozicki (with Capt. Rachal nearby) and utterly failed to tell them that she had a photo, ask them if they had a photo, or identify the suspect who was being searched for by name or photograph; and (2) Lt. Lindsey, in her Homicide interview, claimed that she told Officer Kaney to "make sure...everybody gets a picture of this guy so we'll all be on the same page." Officer Kaney, who was not interviewed by Internal Affairs, told Mr. Leary that Lt. Lindsey did not instruct him at all to distribute any photographs.

This same information was staring the Oakland Police Department and its Internal Affairs investigators straight in the face when they did this investigation—Drennon Lindsey talked about the development of the photograph on p. 2 of her supplemental report dated March 21, 2009; in her Homicide interview ten days later, she talked about these photographs but was not asked, nor did she volunteer that she did not share the Mixon photo in her possession with the individuals who made the decision to send the Tactical Team into the apartment (Kozicki, Orozco, and Mufarreh).

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It is clear from the interviews of those three individuals as well as the tactical team members who entered the apartment with Sgt. Romans and Sgt. Sakai that no one had received a copy of Mixon's photograph before entry was made. More significant, however, is the fact that we know from Lt. Lindsey's own statements that she possessed a photograph of Mixon more than an hour before entry was made and it was still not shared with the individuals who needed to be in possession of it the most.

If the Department's Internal Affairs investigation was truly committed to objectivity and thoroughness, this revelation would not have been hard to discover. It is clear from the manner in which this investigation was handled that the Department took extraordinary measures to cover up misconduct committed by Lt. Lindsey, for, perhaps, a variety of reasons which are not terribly germane to this discussion. The fact of the matter is that it occurred, and that it is inexcusable that it occurred.

XXVIII. LT. LINDSEY LIED IN HER BELATEDLY PREPARED SUPPLEMENTAL REPORT WHICH SHE DATED MARCH 21, 2009 ABOUT PROVIDING INFORMATION TO NUMEROUS INDIVIDUALS CONCERNING INFORMATION SHE HAD OBTAINED ABOUT MIXON'S PRESENCE INSIDE THE APARTMENT AT 2755 74TH AVENUE

- a. IN ALL LIKELIHOOD, LT. LINDSEY'S SUPPLEMENTAL REPORT DATED MARCH 21, 2009 WAS NOT DONE ON THAT DATE AT ALL—THE DEPARTMENT SHOULD REQUEST A FORENSIC EXAMINATION OF THE COMPUTER SHE CLAIMS TO HAVE PREPARED THE REPORT ON**

The Internal Affairs division report of investigation also summarizes Lt. Lindsey's interview by the Homicide investigators on April 1, 2009 (Internal Affairs division report of investigation, p. 132). During that interview, Sgt. Cruz asked Lt. Lindsey about "...your supplemental and the way it was packaged *when you gave it to me*. It was packaged, sealed very tightly, *and you hand-delivered it*. *Is that correct?* Lindsey stated *it was correct*." Lt. Lindsey then explained to Sgt. Cruz and other investigators that "...I just didn't want anybody to, of course, tamper with it or anything like that, but I have the original copy so I'm not concerned about that. But no, I just wanted to make sure it got to you, you know, safely and soundly." (Internal Affairs Confidential Report of Investigation, p. 132.)

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Upon reviewing Sgt. Cruz's chronological timetable and log concerning events happening in his investigation, I noted that there was no indication as to when this supplemental report in a sealed envelope was given to him by Lt. Lindsey. I telephoned Sgt. Cruz, who had since commenced employment with the Alameda County District Attorney's Office as an Inspector. I asked Sgt. Cruz when he got the report from Sgt. Lindsey, and his statement to me was it "showed up two or three days later." I asked him to confirm that he was talking about two or three days after March 21st and he stated he was.

Thus, based upon all of the information available to date, the first time anyone appears to have seen a copy of Lt. Lindsey's supplemental report dated March 21, 2009 is when it was hand delivered by Lt. Lindsey to Sgt. Cruz two or three days later and contained in a sealed envelope.

It is hard to imagine why Lt. Lindsey, who has been with the OPD for over a decade, would be concerned about someone tampering with her supplemental report.

However, she was questioned about it further during her interview with Internal Affairs. When questioned, she contradicted her account of how it came to be in Sgt. Cruz's possession during her earlier interview with him. Specifically, during her Internal Affairs interview in discussing why she had delivered it to him in a sealed envelope, she stated as follows:

I'm just a paranoid cop. I just wanted to make sure it was delivered to him, there was no pages missing, you know just so he could get what I wrote because I had to leave and I didn't get a chance to make it down to Homicide so I sealed the envelope and said, make sure this is hand delivered to Sgt. Cruz - so that's so he gets what I wrote.

(Internal Affairs Confidential Report of Investigation, p. 141).

Significantly, Lt. Lindsey admitted in response to a question from Sgt. Cruz during her Homicide interview that she had *personally* hand delivered the report directly to him in a sealed envelope. Yet, when interviewed approximately one and one half months later in Internal Affairs, she claimed that she had *somebody else* deliver it to Sgt. Cruz (never mentioning the identity of the deliverer nor did Sgt. Floyd ask). The fact of the matter is that Sgt. Cruz, if called to testify, will testify that it was Lt. Lindsey herself who hand delivered the report to him two or three days later, the first time the report appears to surface anywhere in the OPD.

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Given the inconsistent statements made by Lt. Lindsey concerning the preparation and delivery of her report to Homicide in the two interviews, one would have thought to question the accuracy and reliability of the date of the report—March 21, 2009.

If anyone is interested in putting Lt. Lindsey's credibility to rest, one should request that Lt. Lindsey identify the computer that she prepared the report on and then the OPD should, through a qualified forensic examiner, examine the computer and determine the date the original report (and any subsequent changes) was prepared.

In all likelihood, such a forensic examination will discover that the supplemental report was not prepared on March 21, 2009, the date contained on the report itself.

b. LT. LINDSEY LIED IN HER SUPPLEMENTAL REPORT AND IN SUBSEQUENT INTERNAL AFFAIRS AND HOMICIDE INTERVIEWS CONCERNING INFORMATION SHE CLAIMS TO HAVE SHARED ABOUT THE PRESENCE OF MIXON IN THE APARTMENT WITH OTHERS

In her supplemental report dated March 21, 2009, Lt. Lindsey claimed that she advised (1) Deputy Chief Kozicki, (2) Capt. Orozco, (3) Capt. Rachal, and (4) Lt. Mufarreh that she had received information (from (b)(5)(B) that suspect Lovelle Mixon was inside the apartment at 2755 74th Avenue.

RLS Investigator Tom Leary was asked to compare statements made by Lt. Lindsey from interview transcripts to statements made by other individuals interviewed or to statements obtained by Mr. Leary concerning the above issue. His March 3, 2010 memo entitled "Pre-Disciplinary Letter: Information Allegedly Provided by Lindsey" is attached to this letter as Exhibit K.

First and foremost, as noted in both the Independent Board of Inquiry report and the Internal Affairs investigation reports, Deputy Chief Kozicki, Capt. Orozco and Lt. Mufarreh have all adamantly insisted that Lt. Lindsey did not share any information concerning the possible or probable location of Mixon inside the apartment with them at any time prior to the entry by the Tactical Operations Team. Moreover, when Lt. Rachal was interviewed by the Internal Affairs Division, he also denied receiving any information from Lt. Lindsey concerning the suspect or his location before the entry was made. **As Rachal stated, if he would have been told about the suspect's location it is something he would remember "a strong statement**

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like that, yeah. I think I would. I think, anyway." Rachal stated that he believed he learned after the incident was over that Lindsey supposedly had such information. (See, Leary Memorandum dated March 3, 2010, Exhibit K attached to this pre-disciplinary response).

In order to simplify information contained in Investigator Leary's March 3, 2010 memo, below is a list of individuals Lt. Lindsey claims to have told about the information concerning Mixon's presence in the apartment prior to the entry into the apartment in either her supplemental report, or her Homicide or Internal Affairs interviews. The name of the individuals will appear at the left margin and the response of the individuals to whether they were told this information by Lt. Lindsey appears under the word "Response."

Name	Response
Mufarreh	No
Orozco	No
Kozicki	No
Rachal	No
Joyner	No
Beaver	No
Kaney	No
Alexander	No
Carmen	No
Wong	No
Covington	No
Peterson	No
"everybody that came up to me" [Sakai] [Romans]	N/A

The fact remains that Lt. Lindsey had repeated conversations with virtually every one of the individuals listed above and supervised many of these individuals at the crime scene where Sgt. Dunakin and Officer Hege had originally been shot. She had multiple discussions with Lt. Joyner, who states in discussing the matter with Mr. Leary that "at no time did Lt. Lindsey ever tell me she had a source who said the suspect was at 2755 74th Avenue."

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Virtually the only person we have been able to identify who indicates that Lindsey told them that (b)(5)(B) had information concerning the whereabouts of the suspect was Homicide Sgt. Tony Jones. Mr. Leary contacted Sgt. Jones and his partner, Sgt. Van Sloten and his report of their interviews concerning this issue are attached to this letter as Exhibit L.

It now appears that, if Lt. Lindsey, in fact, received any information from (b)(5)(B) concerning the probable or possible presence of Mixon in the apartment, the only individual she told about it was Sgt. Jones, and that appears to have occurred within minutes before the entry into the apartment by the Entry Team. There is not literally one other individual who she identified who agrees that such information was passed on to them by her.

The discussion of Lt. Lindsey's dishonesty on this issue hardly ends here. When Sgt. Floyd interviewed Sgt. Jack Peterson on this very issue, he identified this issue as **"the heart of where my investigation is right now."**

Indeed, if this issue was important and significant to Sgt. Floyd, one would have thought that he would have not only carefully reviewed the interview of (b)(5)(B) by CID Detectives Krupp and Flynn, but he would have take the time to contact (b)(5)(B) to ensure clarity, since some of the answers she gave during her earlier Homicide interview were not specific to the precise time when she communicated certain information to Lt. Lindsey.

With that in mind and realizing that Internal Affairs had not made any further attempt to interview (b)(5)(B) Mr. Leary contacted her and arranged an interview. A "comprehensive report" of Mr. Leary's interview of (b)(5)(B) is attached to this pre-disciplinary response as Exhibit M. A summary of that interview appears in Mr. Leary's March 3, 2010 memorandum, attached to this pre-disciplinary response as Exhibit K. As you can see from both the comprehensive memo containing (b)(5)(B) interview and even from the summary of that interview contained in Mr. Leary's report dated March 3, 2010, (b)(5)(B) is emotional and sometimes gives answers which are not entirely clear or need to be clarified to ensure accuracy.

In essence, when interviewed by Mr. Leary (b)(5)(B) states that she talked to Lt. Lindsey twice on the afternoon of March 21, 2009. The first time she talked to Lt. Lindsey, she saw her near the location where Sgt. Dunakin and Officer Hege had been shot. Relatives of Mixon were nearby and (b)(5)(B) could not say anything to Lt. Lindsey concerning her suspicions. (b)(5)(B) stated that she made a motion with her head in the direction of the apartment and was "giving her the looks." The only words she said she spoke to Lt. Lindsey were to give her (b)(5)(B) phone number and tell her to call her. (b)(5)(B) advised Mr. Leary she did

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not tell Lt. Lindsey that she knew where the suspect was (indeed, she never did know where the suspect was - she knew that **Mixon** had been staying at the apartment earlier in the week). (b)(5)(B) told Mr. Leary she made a motion with her head and gave Lindsey her phone number.

(b)(5)(B) stated that later she told Lt. Lindsey that there was a video at the barbershop which captured the initial shooting. That information appears to be accurate, as Lt. Lindsey alerted other officers to the existence of the video, which appears to have been learned from (b)(5)(B)

(b)(5)(B)

Contrary to Lt. Lindsey's statement to Internal Affairs that (b)(5)(B) provided her the name "Lovelle." (Lindsey Internal Affairs transcript, p. 8:7-17):

(b)(5)(B) advised Mr. Leary that she had no idea of **Mixon's** name until she heard it on the news the next day.

In conclusion, there is ample evidence which leads to an inescapable conclusion that,

- (1) Lt. Lindsey failed to provide people who were making decisions concerning entry into the apartment or those who actually entered it a photograph identifying **Mixon** and to provide them his name before the entry occurred;
- (2) Lt. Lindsey lied about instructing Officer Kaney to distribute the photograph of **Mixon** to others;
- (3) Lt. Lindsey lied about getting **Mixon's** name from (b)(5)(B) who did not know it until the next day;
- (4) Lt. Lindsey gave two inconsistent statements to Internal Affairs and Homicide concerning the preparation and suspicious manner of delivery of her supplemental report dated March 21, 2009 which showed up two or three days later;
- (5) Lt. Lindsey lied about giving information concerning **Mixon's** probable presence in the apartment before entry was made to twelve separate individuals (excluding Sgt. Sakai and Sgt. Romans);
- (6) Lt. Lindsey never initiated a radio broadcast indicating her supposed awareness of **Mixon's** location.

Based upon the interview of (b)(5)(B) by Mr. Leary, it appears that (b)(5)(B) never did tell Lindsey, at least verbally, that the suspect was located in that apartment. Clearly, Lindsey knew before entry that Lt. Joyner had talked to an informant who had such information, and, according to (b)(5)(B) she had attempted, by way of "looks" to alert Lindsey to the presence of the suspect in the apartment down the street.

Joseph Brann

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To compound the matters, Lt. Lindsey filed a false complaint against Capt. Orozco, Lt. Mufarreh and Deputy Chief Kozicki claiming they lied during their interviews when denying that she had provided them information concerning **Mixon's whereabouts prior to entry.**

All of the information pointing to Lt. Lindsey's dishonesty could have been developed through investigation by the Internal Affairs investigators. It is clear that they chose, for one reason or another, simply to avoid digging into what may be a politically or economically unpleasant subject for the Department and the City.

If the OPD and its Internal Affairs Division is to ever gain any credibility with its officers or their legal counsel, it needs to quit paying lip service to the notion that it conducts thorough, fair and objective investigations, and start doing it.

We do not know what weight an arbitrator will give to the attempt of the Department to "fasten" culpability on Capt. Orozco and Lt. Mufarreh while simultaneously and very clearly ignoring blatant misconduct by Lt. Lindsey through incompetence at its best, and sheer refusal to report the truth of her misbehavior at its worst. But an arbitrator will hear all about the beneficence extended to Lt. Lindsey.

XXIX. CONCLUSION

The proposed discipline against Capt. Orozco and Lt. Mufarreh is improvident, unwarranted, and unjustified for a number of reasons which have been discussed at length, above. If those who make decisions concerning this case at the OPD and in the City of Oakland want the sad and ugly saga of March 21, 2009 to be paraded in front of an arbitrator, it is our belief, as legal counsel to these two very fine and dedicated members of the Oakland Police Department that the information gathering and decision-making they engaged in in an effort to save lives and bring a terrible tragedy to a conclusion that afternoon, even if determined to have been hasty or without thought to other alternatives, was nevertheless taken in good faith and with an honest and sincere belief that it was the right course of action under the circumstances.

In contrast, the actions of the Oakland Police Department, particularly those of the Internal Affairs Division to focus blame on two individuals when there were countless other failures smacks neither of sincerity or good faith; and, finally, the Department's refusal/unwillingness to examine dishonesty of Lt. Lindsey in preparation of reports, by making formal, false complaints against other individuals and by lying during her Internal Affairs and

Joseph Brann

**Re: Pre-Disciplinary Response, Oakland Police Captain Ricardo Orozco and Lieutenant
Chris Mufarreh**

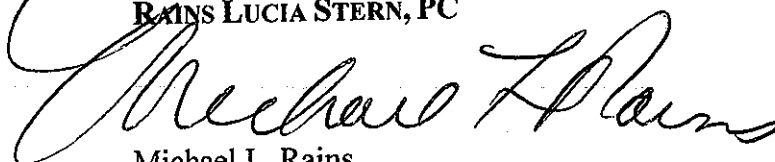
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Homicide Division interviews is, short of the loss of four fine officers, perhaps the saddest saga and the worst commentary on the management and operation of the Oakland Police Department arising from the horrific events of March 21, 2009.

Respectfully submitted,

RAINS LUCIA STERN, PC

A large, stylized handwritten signature in black ink, appearing to read "Michael L. Rains".

Michael L. Rains

MLR:sjs

Enclosures

cc: Ricardo Orozco
Chris Mufarreh
Dan Lindheim, Oakland City Administrator
John Russo, Oakland City Attorney

P286

OAKLAND POLICE DEPARTMENT

PERFORMANCE APPRAISAL FORM

Name of Member/Employee (LAST Name, First) : Orozco, Ricardo

Serial No.: 7583

Rank/Position: Captain of Police

Unit of Assignment: Bureau of Field Operations, Area 2

14-12-09 P12:44 IN

Appraisal Period: From: 1 Aug 08 to: 31 Jul 09

Appraisal Completed by ☒ Immediate Supervisor

☐ Other: (Describe)

Instructions

Type of Performance Appraisal (Check Box):

☒ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.

☐ **Probationary**

Indicate the performance appraisal interval:

☐ Probationary member/employee following promotion/rehire:
End of ☐ 3rd Month ☐ 5th Month

☐ Probationary member including the time spent in field training:
End of ☐ 5th Month ☐ 8th Month ☐ 11th Month

☐ Probationary Police Communications Dispatcher and Local 21 employee (following initial hiring):
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and
if extended: End of ☐ 14th Month ☐ 17th Month

☐ Probationary Local 1021 employees, following initial hiring:
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and
if extended: End of ☐ 11th Month ☐ 14th Month

RATINGS KEY

Exceeds Expectations

The performance of an employee at this level consistently exceeds all of the job standards and performance expectations. The employee is performing at a level well beyond what is normally expected of the majority of employees with similar duties.

Fully Effective

An employee at this level consistently meets the established job standards and performance expectations. The results consistently achieved are those the City would expect of employees in this position level.

Improvement Needed*

Performance does not consistently meet the essential job standards and performance expectations of the position or is marginally acceptable. Development is needed to reach full effectiveness.

Unacceptable*

Performance demonstrates an inability or unwillingness to meet job standards and performance expectations of the position. Immediate and sustained improvement is required.

* Ensure Section V, DEVELOPMENT PLAN is completed and/or attached.

SECTION I: ORGANIZATIONAL VALUES AND WORK HABITS

Name of member/employee: Orozco, Ricardo

Attendance: Reports for work regularly with a minimum number of absences (including sick and injured) and tardiness; gives notice when absence or tardiness is unavoidable; receives authorization when time off is needed; observes appropriate lunch and break schedules; submits justification for absences as required and/or requested.

Standards:

- Begins work at start of shift.
- Notifies on duty supervisor or patrol desk of absences at least 3 hours before the normal reporting time if assigned to a 24 hour a day unit or at least 1 hour if assigned to other organizational units.
- No inappropriate use of sick leave or tardiness.
- Does not exceed scheduled time for lunch and breaks.

Number of Hours/Days of Illness/Injury: 0

Comments: *Your duties as an Area Commander require a tremendous amount of flexibility in your schedule. I have observed you demonstrate the ability to provide leadership to your team when it is most appropriate. For example, you work evening shifts on occasion to better communicate with your team. You have also attended community events and safety fairs on the weekend. You always appraise me of your schedule and diligently respond to my directions or requests for information.*

Exceeds Expectations

Use of Time: Manages own time and uses appropriate work methods, techniques, and equipment to achieve the most effective and efficient result in the time available; is mutually respectful of the time and schedule of others; balances multiple priorities and focuses on desired outcome(s).

Standards:

- Handles work assignments in a timely manner; advises supervisor when and why assignments may require more time.
- Prioritizes multiple tasks to achieve desired results.
- Consistently uses time productively and engages in self-initiated activity.
- Complies with General Orders regarding personal use of departmental phones, computers, or other equipment.

Comments: *As noted above, your responsibilities can best be described as "24-7." You take this responsibility seriously and provide*

Exceeds Expectations

Name of member/employee: Orozco, Ricardo

constant leadership to your team. You complete your assignments in a timely manner and have stepped up to assist with Bureau-wide projects such as the management of the Bureaus equipment. You continue to serve as the Department's compliance coordinator for Task 47 of the Negotiated Settlement Agreement (NSA) – Community Policing.

Teamwork and Collaboration: Makes and sustains effective and productive relationships with other members of the organization and the public; is respectful of differing viewpoints; meets commitments to co-workers and/or team members.

Standards:

- Meets commitments to co-workers and team members at all times. Does "fair share" of the work within the team. Willingly contributes points to time sensitive group efforts as they arise.
- Treats people with respect at all times. Allows for differing points of view. Is open to feedback and constructive criticism.
- Maintains clean and hazard free work area.
- Keeps supervisor informed of potential problems.

Comments: *You always demonstrate a willingness to step up and handle tasks. For a portion of last year you served as one of the Department's Tactical Commanders and have successfully handled some very high risk-low frequency events. Finally, you regularly communicate with members of the specific community you serve and their city leaders and elected officials. An example of this has been your effort to inform and educate the community and civic leaders about the risks associated with unlicensed driving and the Department's efforts to address it. Your success in these very different areas is indicative of your ability to work and collaborate with a wide range of people. Another example of your success in this area has been your work to reduce gang violence in your area through the implementation of a "Boston-model" of "call-ins." Your work in this area is cutting edge and progressive.*

Exceeds Expectations

Customer Service: Responds effectively, courteously, respectfully, and in a timely manner to the needs of a diverse set of internal and external customers; provides information and services in a clear, concise, thorough, accurate, and timely fashion.

Standards:

- Treats all customers in a respectful and professional manner.
- Listens to all customers' concerns to resolve problems without unnecessary referrals.
- Has a working knowledge of the Department's complaint process

Exceeds Expectations

Name of member/employee: Orozco, Ricardo

and provides information to private persons upon request.

- Responds to customers' needs in a timely manner.

Comments: *An example of your superior performance in this area was your assignment of a resource officer to the Spanish-speaking community. You have made sure that the position is meaningful and has an appropriate level of responsibility. I have also found that you are keenly aware of the Department's limited resources and demonstrate common sense in what you promise to deliver. This understanding has enabled you to build new partnerships in an effort to leverage your resources in the best possible way. An example of this has been your efforts to work with Captain Figueroa in the establishment of a very effective Gang Unit to address common problems unique to portions of your two areas.*

Accountability: Follows through on assigned tasks; meets work deadlines or informs others in a timely fashion when/why a deadline cannot be met; makes responsible use of City resources (time and money).

Standards:

- Assumes responsibilities for all equipment, personnel, and situations under his/her control. Wears appropriate safety clothing/equipment at all times.
- Expends Departmental resources in a responsible and efficient manner (e.g., time, supplies, and money).
- Keeps supervisor informed about the status of assignments.
- Handles all assignments according to Departmental policies and procedures.
- Operates and maintains Department equipment (including vehicles) appropriately.
- Qualified with Departmental issued firearms in accordance with DGO B-12.
- Successfully completed all required training in accordance with the DGO B-20 and POST.

Comments: *As an Area Commander you have a number of tasks requiring regular updates. Your individual performance in this area has exceeded expectations. However, as a captain of police you are also held responsible for the performance of your subordinates. You have held your subordinates accountable when they have failed to meet expectations in this area. I encourage you to develop systems to help your subordinates meet assignment deadlines before they become past due. Your systems should include advance deadlines and spot-checks and*

Exceeds Expectations

Name of member/employee: Orozco, Ricardo

audits of known procrastinators. You document your subordinates work to enhance community policing and hold them accountable for enhancing the quality of community contact. An example of this was the work your PSO and Special Resource Lieutenant did to develop the Problem-solving database used by all of the PSOs. Another example has been your successful efforts to hold officers accountable for properly completing reports related to the collection of data related to biased policing (stop data). Finally, you have been involved in the development of a important course to teach officers about search warrant preparation.

Adaptability and Problem Solving: Adapts to organizational changes (e.g. technology, resources, and personnel); takes initiative in identifying the existence of a problem and takes appropriate steps to resolve it.

Standards:

- Takes advantage of opportunities to continuously improve skills and knowledge through offered training or other sources, including off-duty educational opportunities.
- Successfully undertakes and implements new work assignments as they arise.
- Adapts to organizational changes, which may include learning new skills and adjusting priorities.
- Completes assignments in a timely manner under adverse conditions and maintains an appropriate demeanor.
- Learns and implements new technologies, procedures, equipment etc., to perform work more efficiently, effectively and safely.

Comments: *Your abilities in this area are one of the reasons you were selected as one of three Area Commanders for the City. You are keenly aware of the crime problems facing your area and develop comprehensive strategies to address them. An example of this has been your development of the aforesaid special assignment gang unit and your area analyst's work to develop and disseminate crime information to your team. Another example was your professional efforts to manage the civil unrest associated with the BART PD officer –involved shooting that occurred in your area.*

Exceeds Expectations

Professionalism and Ethics: Maintains high professionalism, ethics, and standards. Develops working relationships based on honesty, trust, and respect. Establishes credibility with peers, subordinates, and community members.

Standards:

- Takes proper care of Departmental equipment.

Exceeds Expectations

Name of member/employee: Orozco, Ricardo

- Follows all Departmental rules and regulations.
- Demonstrates police values of fairness, integrity, respect, service, and teamwork.

Comments: *Your Internal Affairs experience and prior experience as a PSA commander make you particularly adept at relating to the professional and ethical challenges that face Patrol officers. I have noticed that you carefully weigh all of the factors involved and do not rush to judgment. I have reviewed your Personnel Assessment System history and the history of your immediate subordinates. There are no concerns in this area.*

Performance Management: *(Complete for supervisory/management positions)* Sets clear expectations and communicates City mission, goals, and policies; provides appropriate coaching and feedback; completes performance appraisals on time and consistent with the City's performance appraisal system; follows through on staff enhancement plans or corrective action to improve overall employee performance.

Standards:

- Completes all Performance Appraisals within established timelines. Includes all relevant information to support ratings. Conducts appraisals in a fair and unbiased manner.
- Maintains documentation on all staff members and their accomplishments (positive and negative) throughout the year.
- Takes appropriate steps to ensure that all staff under his/her supervision are performing at a fully effective or higher level through feedback, coaching, training, discipline, etc.
- Conducts subordinate meetings in accordance with DGO B-6.

Comments: *There are several examples of your of your performance in this are mentioned throughout this evaluation. You are both a coach and mentor for your personnel. You have shown a willingness to ask tough questions related to officer effectiveness, efficiency, and productivity. You have done this with a desire to improve as opposed to punish. Your ability to detail staff to address these activities will assist you in your role as an Area Commander.*

Required Review Comments:

(Complete for all personnel) The following areas have been monitored in order to identify patterns of misconduct or improper behavior.

Consulted iPAS on 14 Dec 09 (enter date). If information not obtained through iPAS, document the source in the Comment box.

Exceeds Expectations

Check the box and provide comments to include patterns and corrective action taken.

Name of member/employee: Orozco, Ricardo

Indicate in the Comment boxes all incidents which occurred during the appraisal period.

- ☒ The nature and progress of all complaints and investigations have been reviewed. **NOTE:** The appraiser shall not comment on, or consider in the appraisal, complaints that the Department has determined to be unfounded, exonerated, or that are still pending.

Comment on sustained and not-sustained complaints only:

- ☒ Uses of force (Identify the levels of force reviewed (levels 1-4);

(b)(5)(C)

- ☒ Arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrest for other offenses;

Comment: *You have not demonstrated any problems in this area.*

- ☒ Arrests involving charges of Penal Code Sections 69, 148 and/or 243(b)(c); and

Comment: *You have not demonstrated a problem in this area*

- ☒ Vehicle collisions.

Comment: Indicate whether the incident was preventable or non-preventable.: *You have not been involved in a vehicle collision during this evaluation period.*

Supervisory Skill Assessment (Complete for Personnel in Supervisory Positions Only):

Appraiser shall assess and comment on whether the supervisor acted to identify and address his/her subordinates' conduct in such areas as: patterns of misconduct, performance deficiencies, improper behavior, use of force, sick leave, line-of-duty-injuries, narcotics-related possessory offenses, and on-duty vehicle accidents

Comment:

Name of member/employee: Orozco, Ricardo

Collateral Duties: ☐ Yes ☒ No: If yes, complete below.

List Duties:

Document commentary from consultation with the unit supervisor:

Consultation with Former Supervisor(s):

☒ Not Applicable. I was your supervisor for the entire appraisal period.

☐ Document commentary from consultation with the previous supervisor: _____

SECTION II: PERFORMANCE OBJECTIVES AND STANDARDS

Use the Performance Objectives and Standards Provided by the Personnel Division or as developed in Section VIII, Communicating Expectations agreed upon in the previous Performance Appraisal or revision.

Position Title: Captain of Police – Area Commander

Exceeds Expectations

PERFORMANCE OBJECTIVES AND STANDARDS

1. Performance Objective: Perform the basic duties of a Captain of Police assigned to a geographic area of the city

Standards:

- Is aware of and meets the performance objectives and standards of the position of Captain of Police and Area Commander.
- Decides the goals and objectives, priorities, strategies and tactics to be employed in the Area
- Assigns work to Area personnel
- Supports the skill and career development of Area personnel through Department or outside training
- Evaluates the effectiveness of Area personnel.
- Ensures that appropriate and timely notifications are made to superiors, peers and other entities.
- Assures proper scene management of critical incident and special event sites.

Comments: *You have demonstrated an ability to excel in this area. You have met or exceed all of the standards listed above.*

2. Performance Objective: Effectively manages issues related to the perception and reality of crime in the Area

Exceeds Expectations

Standards:

- Effectively develops plans for operational contingencies and sustained operations.
- Develops strategic action plans to address identified problem areas.
- Implements action plans and ensures that all staff comply with the plan directives.
- Creates and integrated response to crime problems that includes the necessary specialized and patrol resources available in the Area.
- Requests other Departmental resources with justification and deploys them consistent with their mission, limiting that deployment to what is necessary to accomplish the goal.
- Effectively uses and understands electronic and anecdotal crime analysis resources

Comments: *Your performance in this area is best measured by your presentations at the Department's Crime Stop meetings. You have demonstrated that you are aware of the crime problems in your assigned area and have developed strategies to address them. Finally, you have also been able to provide metrics by which your strategies are evaluated and the results measured. Your patrol staff have developed some innovative SARA projects and are also engaged in the problem solving activities in the area.*

PERFORMANCE OBJECTIVES AND STANDARDS (continued)	Exceeds Expectations
<p>3. <u>Performance Objective:</u> Effectively develops and manages the Area's budget and expenditures.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Prepares budget requests based on assessment of current and future economic and staffing needs. • Manages expenditures within budget parameters. • Prepares financial reports for review. • Identifies financial challenges. • Demonstrates the ability to cost projects and operations. • Demonstrates knowledge of grant and revenue opportunities. • Tracks financial issues for the Annual Report. • Demonstrates working knowledge of the City's Oracle system <p>Comments: <i>Your command was the only one of the three areas to finish the last fiscal year within your overtime budget. You are on the same track for this FY. This is a very important and difficult task for commanders with responsibilities as significant as yours. I encourage you to continue to improve your understanding of the City's budgetary practices. Economic conditions in the current budget will require us to closely evaluate expenditures, particularly in the area of overtime. A clear understanding of the issues will improve your performance in this area.</i></p>	
<p>4. <u>Performance Objective:</u> Effectively establishes, maintains, and manages relationships with both the organized and unorganized members of the community.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Meets regularly with Neighborhood Services Coordinators and NCPC groups • Manages the community meeting requirements of the area • Demonstrates knowledge of influential organizations in the area • Maintains lines of communication with city leaders and other city agencies • Manages participation in the City's Service Delivery System • Manages working relationships with Measure Y funded programs and other community based organization in the area <p>Comments: <i>You have working relationships with members of your community, city leaders and city officials. Examples of this are your relationships with the Vice Mayor, your NCPC leadership, the leadership of the Unity Council, Measure Y programs and outreach workers, and the faith-based community. You also have working relationships with members of the "unorganized" portions of the community and have worked to involve them in your problem solving efforts.</i></p>	Exceeds Expectations
<p>5. <u>Performance Objective:</u> Effectively establishes roles and responsibilities for personnel assigned to the Area team</p> <p><u>Standards:</u></p>	

- Deploys Problems Solving Officer Teams in a manner consistent with expectations outlined in Measure Y and City Council Resolution 72727 (and follow-up resolutions).
- Deploys and staffs Crime Reduction Teams in a manner consistent with their mission.
- Encourages and manages Patrol resources and develops patrol officers and supervisors' ability to engage in problem-oriented policing
- Effectively uses other specialized resources (as assigned – i.e. foot patrol) to address crime and quality of life issues in the Area.

Comments: *As mentioned in the numerous examples above, your performance in this area is superior. An example of this has been the use of your power squads to address Sideshow problems on the eastern edge of your area.*

SECTION III: OVERALL APPRAISAL

Describe the employee's overall performance. If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall consult with the previous supervisor and consider as a part of this **OVERALL** appraisal.

Comments: *: Overall, your performance as an Area Commander exceeds expectations. You have used your limited resources (less than the other two areas) to maintain the lowest crime in the city. The quality of life in your area has shown improvement as a result of your efforts.*

Select From the Following:

SECTION IV: COMMENDATION RECOMMENDED

If applicable, describe how the employee's performance was truly exceptional and worthy of consideration for commendation.

If the member/employee has not received any of the following awards in the past three (3) years, he/she may be eligible pursuant to General Order B-1, Departmental Awards. (Check all that apply)

☐ Perfect Attendance Bar

☐ Perfect Driving Bar

☐ Outstanding Performance Evaluation Bar

☐ Advanced POST Bar

☐ Tactical Operations Team Bar

☐ Good Conduct Bar

Comments: None

SECTION V: DEVELOPMENT PLAN

A development plan shall be completed for each and every appraisal area that is rated as "Needs Improvement" or "Unacceptable." Describe the development plan or attach the Performance Deficiency Notice that addresses and corrects the deficiencies to bring the member/employee up to the level of "Fully Effective."

Comments: See attached, if applicable

SECTION VI: COMMUNICATING GOALS AND EXPECTATIONS

Establishing or revising a new performance plan for the NEXT performance appraisal period:
(Check to indicate completed)

- ☒ New plan discussed.
- ☒ Goals are linked to City Council and Department goals.

GOALS AND EXPECTATIONS: *I have updated the expectations for the new position of Area Commander. These expectations are outlined below:*

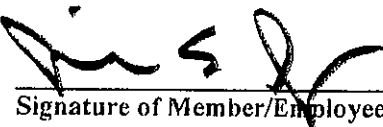


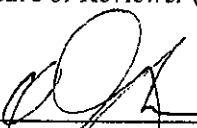

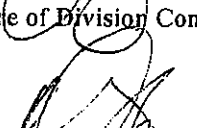
Over the course of the next year, I would like to see you accomplish the following:

- *Implement a comprehensive scheduling system for the Bureau.*
- *Improve your systems to ensure that your team meets important project due dates and timelines.*
- *Continue to improve your skills in the area of fiscal management.*
- *Increase the complexity and frequency of patrol-based problems solving projects in your area.*

Complete the comprehensive inventory of the Bureaus assigned equipment and improve our management of our equipment resources.

SECTION VII: ADMINISTERING THE APPRAISAL

The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. PLEASE PRINT LEGIBLY.

	Captain R. Orozco	7583	4 Dec 09
Signature of Member/Employee	Print Name	Serial #	Date
	D. Kozicki	7297	
Signature of Person Preparing Appraisal	Print Name	Serial #	Date
	D. Kozicki	7297	
Signature of Person Administering Appraisal	Print Name	Serial #	Date
<hr/>			
	Print Name	Serial #	Date
Signature of Reviewer (if necessary)			
	D. Kozicki	7297	
Signature of Commander/Manager	Print Name	Serial #	Date
	D. Kozicki	7297	
Signature of Division Commander/Manager	Print Name	Serial #	Date
	D. Kozicki	7297	4 Dec 09
Signature of Deputy Chief or Chief of Police	Print Name	Serial #	Date

☐ I wish to discuss this appraisal through my chain-of-command.

PDB

OAKLAND POLICE DEPARTMENT
PERFORMANCE APPRAISAL FORM
ANNUAL / SUPPLEMENTAL
PERMANENT / PROBATIONARY OPD PERSONNEL

INSTRUCTIONS

Type of Performance Appraisal (Check Box):

☒ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.

☐ **Supplemental** – In the event you supervised a member/employee for more than 120 days during the appraisal period but are not the regularly assigned supervisor on the last day of the appraisal period, prepare a Supplemental Performance Appraisal Form.

☐ Transfer – Duration of transfer: (# of days)

☐ Collateral Duties – Detail in Section II: Performance Objectives and Standards

(If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this Performance Appraisal Form.)

X Permanent

X Probationary

Name of Member/Employee: Ricardo Orozco 7583

Rank/Position: Captain of Police

Unit of Assignment: Bureau of Field Operations – Area 2 Commander

Appraisal Period: From: 23 Dec 06-31 Jul 08

Appraisal Completed by ☒ Immediate Supervisor ☐ Other: (Describe)

Indicate the performance appraisal interval:

☒ Probationary member/employee following promotion/reemployment:
End of ☒ 3rd Month ☒ 5th Month

☐ Probationary member following field training:
End of ☐ 5th Month ☐ 8th Month ☐ 11th Month

☐ Probationary Police Communications Operator or Dispatcher (following initial employment):
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and if applicable
End of ☐ 14th Month ☐ 17th Month

☐ Other probationary employees, following initial employment:

End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and if applicable
 End of ☐ 11th Month ☐ 14th Month

SECTION I: ORGANIZATIONAL VALUES AND WORK HABITS

Name of member/employee: Captain Ricardo Orozco

Attendance: Reports for work regularly with a minimum number of absences (including sick and injured) and tardiness; gives notice when absence or tardiness is unavoidable; receives authorization when time off is needed; observes appropriate lunch and break schedules; submits justification for absences as required and/or requested.

Standards:

- Begins work at start of shift.
- Notifies on duty supervisor or patrol desk of absences at least 3 hours before the normal reporting time if assigned to a 24 hour a day unit or at least 1 hour if assigned to other organizational units.
- No inappropriate use of sick leave or tardiness.
- Does not exceed scheduled time for lunch and breaks.

Comments: *Your duties as an Area Commander require a tremendous amount of flexibility in your schedule. I have observed you demonstrate the ability to provide leadership to your team when it is most appropriate. You always appraise me of your schedule and diligently respond to my directions or requests for information.*

Exceeds Expectations

Use of Time: Manages own time and uses appropriate work methods, techniques, and equipment to achieve the most effective and efficient result in the time available; is mutually respectful of the time and schedule of others; balances multiple priorities and focuses on desired outcome(s).

Standards:

- Handles work assignments in a timely manner; advises supervisor when and why assignments may require more time.
- Prioritizes multiple tasks to achieve desired results.
- Consistently uses time productively and engages in self-initiated activity.
- Complies with General Orders regarding personal use of departmental phones, computers, or other equipment.

Comments: *As noted above, your responsibilities can best be described as "24-7." You take this responsibility seriously and provide constant*

Exceeds Expectations

Name of member/employee: Captain Ricardo Orozco

leadership to your team. You complete your assignments in a timely manner and have stepped up to assist with Bureau-wide projects such as the comprehensive equipment inventory and scheduling project. You are also the Department's compliance coordinator for Task 47 of the Negotiated Settlement Agreement(NSA) – Community Policing.

Teamwork and Collaboration: Makes and sustains effective and productive relationships with other members of the organization and the public; is respectful of differing viewpoints; meets commitments to co-workers and/or team members.

Standards:

- Meets commitments to co-workers and team members at all times. Does "fair share" of the work within the team. Willingly contributes points to time sensitive group efforts as they arise.
- Treats people with respect at all times. Allows for differing points of view. Is open to feedback and constructive criticism.
- Maintains clean and hazard free work area.
- Keeps supervisor informed of potential problems.

Comments: You always demonstrate a willingness to step up and handle tasks. You are one of the Department's Tactical Commanders and have successfully handled some very high risk-low frequency events. You also recently managed the update of the Department's Community Policing Training Bulletin which included a set of complex negotiations with the monitoring team managing the Department's compliance with the NSA. Finally, you regularly communicate with members of the specific community you serve and their city leaders and elected officials. Your success in these very different areas are indicative of your ability to work and collaborate with a wide range of people

Exceeds Expectations

Customer Service: Responds effectively, courteously, respectfully, and in a timely manner to the needs of a diverse set of internal and external customers; provides information and services in a clear, concise, thorough, accurate, and timely fashion.

Standards:

- Treats all customers in a respectful and professional manner.
- Listens to all customers' concerns to resolve problems without unnecessary referrals.
- Has a working knowledge of the Department's complaint process

Exceeds Expectations

Name of member/employee: Captain Ricardo Orozco

and provides information to private persons upon request.

- Responds to customers' needs in a timely manner.

Comments: *An example of your superior performance in this area is your work on the Fruitvale Safety Project. This project brought together resources from the Department, community, and city to improve public safety and reduce blight in a large portion of your area. You took a leadership role in the project that eventually resulted in reduced crime and improved quality of life for the residents and businesses in the Fruitvale. I have also found that you are keenly aware of the Department's limited resources and demonstrate common sense in what you promise to deliver. This understanding has enabled you to build new partnerships in an effort to leverage your resources in the best possible way.*

Accountability: Follows through on assigned tasks; meets work deadlines or informs others in a timely fashion when/why a deadline cannot be met; makes responsible use of City resources (time and money).

Standards:

- Assumes responsibilities for all equipment, personnel, and situations under his/her control. Wears appropriate safety clothing/equipment at all times.
- Expends Departmental resources in a responsible and efficient manner (e.g., time, supplies, and money).
- Keeps supervisor informed about the status of assignments.
- Handles all assignments according to Departmental policies and procedures.
- Operates and maintains Department equipment (including vehicles) appropriately.
- Qualified with Departmental issued firearms in accordance with DGO B-12.
- Successfully completed all required training in accordance with the DGO B-20 and POST.

Comments: *As an Area Commander you have a number of tasks requiring regular updates. Your individual performance in this area has exceeded expectations. However, as a captain of police you are also held responsible for the performance of your subordinates. You have held your subordinates accountable when they have failed to meet expectations*

Exceeds Expectations

Name of member/employee: Captain Ricardo Orozco

in this area. I encourage you to develop systems to help your subordinates meet assignment deadlines before they become past due.

Adaptability and Problem Solving: Adapts to organizational changes (e.g. technology, resources, and personnel); takes initiative in identifying the existence of a problem and takes appropriate steps to resolve it.

Standards:

- Takes advantage of opportunities to continuously improve skills and knowledge through offered training or other sources, including off-duty educational opportunities.
- Successfully undertakes and implements new work assignments as they arise.
- Adapts to organizational changes, which may include learning new skills and adjusting priorities.
- Completes assignments in a timely manner under adverse conditions and maintains an appropriate demeanor.
- Learns and implements new technologies, procedures, equipment etc., to perform work more efficiently, effectively and safely.

Comments: Your abilities in this area are one of the reasons you were selected as one of three Area Commanders for the City. Your experiences as a Police Service Area lieutenant have been built upon to allow you to excel in this area. You are keenly aware of the crime problems facing your area and develop comprehensive strategies to address them.

With the advent of Area Command and the reorganization of the patrol function, there were a number of challenges that needed to be met. One of them was the management of the Bureau's property room. You used your leadership skills to select qualified personnel to manage the process. While this is still clearly a "work in progress," you were able to implement a system that minimized the impact of the change on our BFO team.

Professionalism and Ethics: Maintains high professionalism, ethics, and standards. Develops working relationships based on honesty, trust, and respect. Establishes credibility with peers, subordinates, and community members.

Standards:

- Takes proper care of Departmental equipment.

Exceeds Expectations

Exceeds Expectations

Name of member/employee: Captain Ricardo Orozco

- Follows all Departmental rules and regulations.
- Demonstrates police values of fairness, integrity, respect, service, and teamwork.

Comments: *Your Internal Affairs experience and prior experience as a PSA commander make you particularly adept at relating to the professional and ethical challenges that face Patrol officers. I have noticed that you carefully weigh all of the factors involved and do not rush to judgment. I have reviewed your Personnel Assessment System history and the history of your immediate subordinates. There are no concerns in this area.*

Performance Management: *(Complete for supervisory/management positions)* Sets clear expectations and communicates City mission, goals, and policies; provides appropriate coaching and feedback; completes performance appraisals on time and consistent with the City's performance appraisal system; follows through on staff enhancement plans or corrective action to improve overall employee performance.

Standards:

- Completes all Performance Appraisals within established timelines. Includes all relevant information to support ratings. Conducts appraisals in a fair and unbiased manner.
- Maintains documentation on all staff members and their accomplishments (positive and negative) throughout the year.
- Takes appropriate steps to ensure that all staff under his/her supervision are performing at a fully effective or higher level through feedback, coaching, training, discipline, etc.
- Conducts subordinate meetings in accordance with DGO B-6.

Comments: *You are both a coach and mentor for your personnel. You have shown a willingness to ask tough questions related to officer effectiveness, efficiency, and productivity. You have done this with a desire to improve as opposed to punish. Your ability to detail staff to address these activities will assist you in your role as an Area commander. An example of your performance in this area has been your efforts to improve the productivity of one of the teams assigned to your area. You noticed that the team was not performing at an acceptable level and took steps to correct the deficiencies.*

Exceeds Expectations

9 Required Review Comments:

Name of member/employee: Captain Ricardo Orozco

(Complete for all personnel) The following areas have been monitored in order to identify patterns of misconduct or improper behavior.

Indicate in the Comment boxes if no incidents have occurred during the appraisal period.

- ☒ The nature and progress of all complaints and investigations have been reviewed. **NOTE:** The appraiser shall not comment on, or consider in the appraisal, complaints that the Department has determined to be unfounded, exonerated, or that are still pending.

Comment on sustained and not-sustained complaints only: *You have not been the subject of a personnel complaint during this evaluation period.*

- ☒ Uses of force;

Comment: *You have not had occasion to engage in a reportable use of force during this evaluation period.*

- ☒ Arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrest for other offenses;

Comment: *You have not demonstrated any problems in this area.*

- ☒ Arrests involving charges of Penal Code Sections 69, 148 and/or 243(b)(c); and

Comment: *You have not demonstrated a problem in this area.*

- ☒ Vehicle collisions.

Comment: *You have not been involved in a vehicle collision during this evaluation period.*

SECTION II: PERFORMANCE OBJECTIVES AND STANDARDS

Use the Performance Objectives and Standards Provided by the Personnel Division or as developed in Section VIII, Communicating Expectations agreed upon in the previous Performance Appraisal or revision.

Position Title: Captain of Police – Area Commander

Exceeds Expectations

PERFORMANCE OBJECTIVES AND STANDARDS

1. Performance Objective: Perform the basic duties of a Captain of Police assigned to a geographic area of the city

<p>Standards:</p> <ul style="list-style-type: none"> • Is aware of and meets the performance objectives and standards of the position of Captain of Police and Area Commander. • Decides the goals and objectives, priorities, strategies and tactics to be employed in the Area • Assigns work to Area personnel • Supports the skill and career development of Area personnel through Department or outside training • Evaluates the effectiveness of Area personnel. • Ensures that appropriate and timely notifications are made to superiors, peers and other entities. • Assures proper scene management of critical incident and special event sites. <p>Comments: <i>You have demonstrated an ability to excel in this area. You have met or exceed all of the standards listed above.</i></p>	
<p>2. Performance Objective: Effectively manages issues related to the perception and reality of crime in the Area</p> <p>Standards:</p> <ul style="list-style-type: none"> • Effectively develops plans for operational contingencies and sustained operations. • Develops strategic action plans to address identified problem areas. • Implements action plans and ensures that all staff comply with the plan directives. • Creates and integrated response to crime problems that includes the necessary specialized and patrol resources available in the Area. • Requests other Departmental resources with justification and deploys them consistent with their mission, limiting that deployment to what is necessary to accomplish the goal. • Effectively uses and understands electronic and anecdotal crime analysis resources <p>Comments: <i>Your performance in this area is best measured by your presentations at the Department's Crime Stop meetings. You have demonstrated that you are aware of the crime problems in your assigned area and have developed strategies to address them. Finally, you have also been able to provide metrics by which your strategies are evaluated and the results measured. Your patrol staff have developed some innovative SARA projects and are also engaged in the problem solving activities in the area.</i></p>	<p>Exceeds Expectations</p>

<p>PERFORMANCE OBJECTIVES AND STANDARDS (continued)</p> <p>3. Performance Objective: Effectively develops and manages the Area's budget and expenditures.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Prepares budget requests based on assessment of current and future economic and staffing needs. • Manages expenditures within budget parameters. • Prepares financial reports for review. • Identifies financial challenges. • Demonstrates the ability to cost projects and operations. • Demonstrates knowledge of grant and revenue opportunities. • Tracks financial issues for the Annual Report. • Demonstrates working knowledge of the City's Oracle system <p><i>Comments: The Department did not have sufficient funds in its budget to implement the reorganization of its patrol function and new shift schedule. You took a leadership role in helping to advocate for additional funds from the City Council to assist with the endeavor. This enabled you to provide your team with the tools and facilities to be successful. As always, I encourage you to continue to improve your understanding of the City's budgetary practices. Economic conditions in the current budget will require us to closely evaluate expenditures, particularly in the area of overtime. A clear understanding of the issues will improve your performance in this area.</i></p>	<p>Exceeds Expectations</p>
<p>4. Performance Objective: Effectively establishes, maintains, and manages relationships with both the organized and unorganized members of the community.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Meets regularly with Neighborhood Services Coordinators and NCPC groups • Manages the community meeting requirements of the area • Demonstrates knowledge of influential organizations in the area • Maintains lines of communication with city leaders and other city agencies • Manages participation in the City's Service Delivery System • Manages working relationships with Measure Y funded programs and other community based organization in the area <p><i>Comments: You have working relationships with members of your community, city leaders and city officials. Examples of this are your relationships with the City Council President, your NCPC leadership, and the leadership of the Unity Council. You also have working relationships with members of the "unorganized" portions of the community and have worked to involve them in your problem solving efforts.</i></p>	<p>Exceeds Expectations</p>

5. **Performance Objective:** Effectively establishes roles and responsibilities for personnel assigned to the Area team

Standards:

- Deploys Problems Solving Officer Teams in a manner consistent with expectations outlined in Measure Y and City Council Resolution 72727 (and follow-up resolutions).
- Deploys and staffs Crime Reduction Teams in a manner consistent with their mission.
- Encourages and manages Patrol resources and develops patrol officers and supervisors' ability to engage in problem-oriented policing
- Effectively uses other specialized resources (as assigned – i.e. foot patrol) to address crime and quality of life issues in the Area.

Comments: As mentioned in the numerous examples above, your performance in this area is superior. An example of this has been the use of your power squads to address Sideshow problems on the eastern edge of your area.

SECTION III: OVERALL EVALUATION

Describe the employee's overall performance. If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this overall evaluation.

Comments: Overall, your performance as an Area Commander exceeds expectations. You have used your limited resources (less than the other two areas) to maintain the lowest crime in the city. The quality of life in your area has shown improvement as a result of your efforts.

Exceeds Expectations

SECTION IV: COMMENDATION RECOMMENDED

If applicable, describe how the employee's performance was truly exceptional and worthy of consideration for commendation.

Pursuant to General Order B-1, Departmental Awards, the member/employee is eligible to receive:
(Check all that apply)

☐ Perfect Attendance Bar

☐ Perfect Driving Bar

☐ Outstanding Performance Evaluation Bar

☐ Advanced POST Bar

☐ Tactical Operations Team Bar

☐ Good Conduct Bar

Comments:

SECTION V: SKILL ENHANCEMENT PLAN

Please describe the mutually agreed upon employee development plan needed to correct deficiencies to bring the employee up to the level of "fully effective." This must be completed for each and every rating that is less than "fully effective."

• **Comments:**

SECTION VI: EMPLOYEE COMMENTS

Comments:

RATINGS KEY

Exceeds Expectations

The performance of an employee at this level consistently exceeds all of the job standards and performance expectations. The employee is performing at a level well beyond what is normally expected of the majority of employees with similar duties.

Fully Effective

An employee at this level consistently meets the established job standards and performance expectations. The results consistently achieved are those the City would expect of employees in this position level.

Improvement Needed

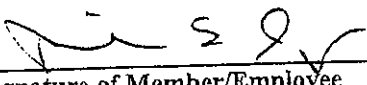
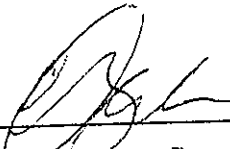
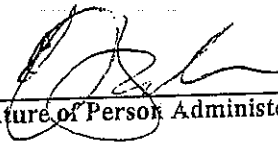
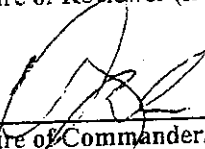
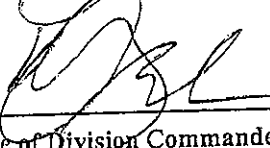

Performance does not consistently meet the essential job standards and performance expectations of the position or is marginally acceptable. Development is needed to reach full effectiveness.

Unacceptable

Performance demonstrates an inability or unwillingness to meet job standards and performance expectations of the position. Immediate and sustained improvement is required.

SECTION VII: ADMINISTERING THE APPRAISAL

The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. PLEASE PRINT LEGIBLY.

	Captain R. Orozco	7583	12 AUG 08
Signature of Member/Employee	Print Name	Serial #	Date
	D. Kozicki	7297	8/12/08
Signature of Person Preparing Appraisal	Print Name	Serial #	Date
	D. Kozicki	7297	8/12/08
Signature of Person Administering Appraisal	Print Name	Serial #	Date
<hr/>			
	Print Name	Serial #	Date
Signature of Reviewer (if necessary)			
	D. Kozicki	7297	8/12/08
Signature of Commander/Manager	Print Name	Serial #	Date
	D. Kozicki	7297	8/12/08
Signature of Division Commander/Manager	Print Name	Serial #	Date
	D. Kozicki	7297	8/12/08
Signature of Deputy Chief or Chief of Police	Print Name	Serial #	Date

☐ I wish to discuss this appraisal through my chain-of-command.

SECTION VIII: COMMUNICATING EXPECTATIONS

Establishing or revising a new performance plan for the next cycle:

(Check to indicate completed)

☒ New plan discussed.

☒ Goals are linked to City Council and Department goals.

EXPECTATIONS:

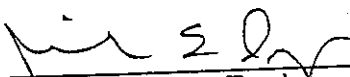
I have updated the expectations for the new position of Area Commander. These expectations are outlined below:

Over the course of the next year, I would like to see you accomplish the following:

- *Implement a comprehensive scheduling system for the Bureau.*
- *Improve your systems to ensure that your team meets important project due dates and timelines.*
- *Continue to improve your skills in the area of fiscal management.*
- *Increase the complexity and frequency of patrol-based problems solving projects in your area.*

Complete the comprehensive inventory of the Bureaus assigned equipment and improve our management of our equipment resources.

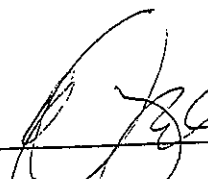
The performance expectations for the upcoming appraisal cycle have been communicated to the member/employee. **PLEASE PRINT LEGIBLY.**


Signature of Member/Employee

Captain R. Orozco
Print Name

7583
Serial #

12 Aug 08
Date


Signature of Appraiser

D. Kozicki
Print Name

7297
Serial #

12 Aug 08
Date

OAKLAND POLICE DEPARTMENT
PERFORMANCE APPRAISAL FORM
ANNUAL / SUPPLEMENTAL
PERMANENT / PROBATIONARY OPD PERSONNEL

INSTRUCTIONS

Type of Performance Appraisal (Check Box):

- ☐ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.
- ☒ **Supplemental** – In the event you supervised a member/employee for more than 120 days during the appraisal period but are not the regularly assigned supervisor on the last day of the appraisal period, prepare a Supplemental Performance Appraisal Form.
- ☐ **Transfer** – Duration of transfer: (# of days)
- ☐ **Collateral Duties** – Detail in Section II: Performance Objectives and Standards

(If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this Performance Appraisal Form.)

X Permanent

Probationary

Name of Member/Employee: Ricardo Orozco 7583

Rank/Position: Captain of Police

Unit of Assignment: Bureau of Field Operations – Area 1 Commander

Appraisal Period: From: 23 Dec 01-31 Jul 08

Appraisal Completed by ☒ Immediate Supervisor ☐ Other: (Describe)

Indicate the performance appraisal interval:

- ☐ Probationary member/employee following promotion/reemployment:
End of ☐ 3rd Month ☐ 5th Month
- ☐ Probationary member following field training:
End of ☐ 5th Month ☐ 8th Month ☐ 11th Month
- ☐ Probationary Police Communications Operator or Dispatcher (following initial employment):
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and if applicable
End of ☐ 14th Month ☐ 17th Month
- ☐ Other probationary employees, following initial employment:

DEC 08 2008

OPD/Personnel Division

End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and if applicable
 End of ☐ 11th Month ☐ 14th Month

Performance Standard: Enhancing Community Policing	Exceeds Expectations
Objectives:	
<ul style="list-style-type: none"> • Enhance the implementation and delivery of problem-oriented policing. • Work to improve the quality of police-citizen contacts. • Provide clear direction as to the prioritization of work while considering community input. • Create an environment in which all personnel are encouraged to engage in problem solving. • Encourage the use of contemporary techniques such as the SARA model of problem solving. • Support and assist in the development and expansion of the Neighborhood Crime Prevention Councils. • Utilize Measure Y resources to improve the delivery of city services to the community in the Area. 	
Comments:	
<p><i>"You have enhanced the quality of community contacts in Area 2. You have established effective working relationships with the NCPC leadership and implemented important changes to your Problem Solving Officer Program. You have open lines of communication with the political leadership and Measure Y outreach programs. You have encouraged, managed, and monitored an effective system of patrol-based problem solving efforts."</i></p>	

SECTION VII: ADMINISTERING THE APPRAISAL

The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. **PLEASE PRINT LEGIBLY.**



Signature of Member/Employee

Captain R. Orozco

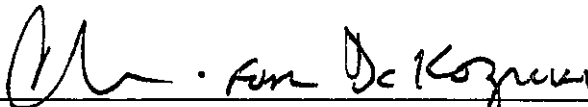
Print Name

7583

Serial #

26 Nov 03

Date



Signature of Person Preparing Appraisal

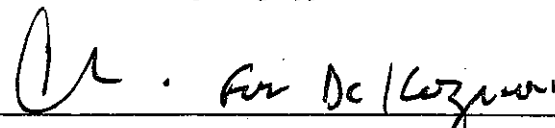
D. Kozicki

Print Name

7297

Serial #

Date



D. Kozicki

7297

Signature of Person Administering Appraisal

Print Name

*Serial #

Date

Signature of Reviewer (if necessary)

Print Name

Serial #

Date



Signature of Commander/Manager

D. Kozicki

7297

04 DEC 08

Print Name

Serial #

Date



Signature of Division Commander/Manager

D. Kozicki

7297

4 DEC 08

Print Name

Serial #

Date



Signature of Deputy Chief or Chief of Police

D. Kozicki

7297

7 DEC 08

Print Name

Serial #

Date

☐

I wish to discuss this appraisal through my chain-of-command.

OAKLAND POLICE DEPARTMENT
PERFORMANCE APPRAISAL FORM
ANNUAL / SUPPLEMENTAL
PERMANENT / PROBATIONARY OPD PERSONNEL

3
(Signature)

Instructions

Type of Performance Appraisal (Check Box):

- ☒ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.
- ☐ **Supplemental** – In the event you supervised a member/employee for more than 120 days during the appraisal period but are not the regularly assigned supervisor on the last day of the appraisal period, prepare a Supplemental Performance Appraisal Form.
- ☐ Transfer – Duration of transfer: (# of days)
- ☐ Collateral Duties – Detail in Section II: Performance Objectives and Standards
(If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this Performance Appraisal Form.)
- ☐ Permanent
- ☐ Probationary

Name of Member/Employee: Ricardo Orozco 7583

Rank/Position: Lieutenant of Police

Unit of Assignment: Strategic Area Command

Appraisal Period: From: 30 Jun 05 to: 1 Jul 06

Appraisal Completed by ☒ Immediate Supervisor ☐ Other: (Describe)

Indicate the performance appraisal interval:

- ☐ Probationary member/employee following promotion/reemployment:
End of ☐ 3rd Month ☐ 5th Month
- ☐ Probationary member following field training:
End of ☐ 5th Month ☐ 8th Month ☐ 11th Month
- ☐ Probationary Police Communications Operator or Dispatcher (following initial employment):
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and if applicable
End of ☐ 14th Month ☐ 17th Month
- ☐ Other probationary employees, following initial employment:
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and if applicable
End of ☐ 11th Month ☐ 14th Month

SECTION I: ORGANIZATIONAL VALUES AND WORK HABITS

Name of member/employee: Lieutenant Ricardo Orozco

Attendance: Reports for work regularly with a minimum number of absences (including sick and injured) and tardiness; gives notice when absence or tardiness is unavoidable; receives authorization when time off is needed; observes appropriate lunch and break schedules; submits justification for absences as required and/or requested.

Standards:

- Begins work at start of shift.
- Notifies on duty supervisor or patrol desk of absences at least 3 hours before the normal reporting time if assigned to a 24 hour a day unit or at least 1 hour if assigned to other organizational units.
- No inappropriate use of sick leave or tardiness.
- Does not exceed scheduled time for lunch and breaks.

Comments: *You always arrive for work hours early and rarely take time off. You have demonstrated a willingness to work the hours and shifts necessary to accomplish your mission as a Police Services Area (PSA) lieutenant. Furthermore, you have completed command assignments related to the Division's weekend crime suppression and special projects work. You are also one of the Department's Tactical Commanders. This requires you to further adjust our schedule and make time for training and call-outs. Your performance in this area is superior.*

Fully Effective

Use of Time: Manages own time and uses appropriate work methods, techniques, and equipment to achieve the most effective and efficient result in the time available; is mutually respectful of the time and schedule of others; balances multiple priorities and focuses on desired outcome(s).

Standards:

- Handles work assignments in a timely manner; advises supervisor when and why assignments may require more time.
- Prioritizes multiple tasks to achieve desired results.
- Consistently uses time productively and engages in self-initiated activity.
- Complies with General Orders regarding personal use of departmental phones, computers, or other equipment.

Comments: *You have continued to do an excellent job of commanding*

Exceeds Expectations

Name of member/employee: Lieutenant Ricardo Orozco

the officers working in your PSA. You take the time to keep the community and other stakeholders informed of developments in the area. You allocate time as needed to your significant collateral assignment managing the training for SAC and duties as a Tactical Commander.

Teamwork and Collaboration: Makes and sustains effective and productive relationships with other members of the organization and the public; is respectful of differing viewpoints; meets commitments to co-workers and/or team members.

Standards:

- Meets commitments to co-workers and team members at all times. Does "fair share" of the work within the team. Willingly contributes points to time sensitive group efforts as they arise.
- Treats people with respect at all times. Allows for differing points of view. Is open to feedback and constructive criticism.
- Maintains clean and hazard free work area.
- Keeps supervisor informed of potential problems.

Comments: *You demonstrate a commitment to the SAC team and our efforts to address emerging crime trends. The members on your team are occasionally asked to assist other areas that have more significant crime problems. You realize the collective importance of this effort and participate with enthusiasm.*

You are a strong supporter of the Department's mission. You have demonstrated your commitment by meeting with influential members of the community where you provided them information related to their concerns and criticisms of our programs. Your involvement in this process has been instrumental in reducing their anxieties.

Exceeds Expectations

Customer Service: Responds effectively, courteously, respectfully, and in a timely manner to the needs of a diverse set of internal and external customers; provides information and services in a clear, concise, thorough, accurate, and timely fashion.

Standards:

- Treats all customers in a respectful and professional manner.
- Listens to all customers' concerns to resolve problems without unnecessary referrals.
- Has a working knowledge of the Department's complaint process

Exceeds Expectations

Name of member/employee: Lieutenant Ricardo Orozco

and provides information to private persons upon request.

- Responds to customers' needs in a timely manner.

Comments: *You continue to work closely with the Neighborhood Crime Prevention Councils in your PSA as well as other groups. You are aware of their priorities and use the resources at your disposal to address them. You maintain a close working relationship with the Neighborhood Services Coordinators in an effort to improve the quality of life, reduce crime, and reduce fear in your PSA. You have applied your customer service philosophy to all who live in your PSA. You have demonstrated empathy and understanding of the complex and changing demographics of the PSA in an effort to tailor your approach to the problems.*

Your work with groups such as Oakland Community Organizations and the Unity Council are instrumental to improving the quality of life in your PSA. You worked with your PSO, Sean Festag, to develop a successful program to address increasing robberies in the PSA.

Accountability: Follows through on assigned tasks; meets work deadlines or informs others in a timely fashion when/why a deadline cannot be met; makes responsible use of City resources (time and money).

Standards:

- Assumes responsibilities for all equipment, personnel, and situations under his/her control. Wears appropriate safety clothing/equipment at all times.
- Expends Departmental resources in a responsible and efficient manner (e.g., time, supplies, and money).
- Keeps supervisor informed about the status of assignments.
- Handles all assignments according to Departmental policies and procedures.
- Operates and maintains Department equipment (including vehicles) appropriately.
- Qualified with Departmental issued firearms in accordance with DGO B-12.
- Successfully completed all required training in accordance with the DGO B-20 and POST.

Comments: *You have continued to hold yourself and personnel assigned to you accountable. You have continued to complete assignments in a*

Exceeds Expectations

5

Name of member/employee: Lieutenant Ricardo Orozco

timely manner. As the training manager for SAC, you have taken the necessary steps to ensure that our training is both contemporary and complete. You coordinated major training assignments related to crowd management and the Negotiated Settlement Agreement (NSA). You have a great appreciation for the importance of training to the success of SAC and the Department. Your crowd management training was expanded to include officers from Patrol. You assumed responsibility for the completion of this training with enthusiasm.

Adaptability and Problem Solving: Adapts to organizational changes (e.g. technology, resources, and personnel); takes initiative in identifying the existence of a problem and takes appropriate steps to resolve it.

Exceeds Expectations

Standards:

- Takes advantage of opportunities to continuously improve skills and knowledge through offered training or other sources, including off-duty educational opportunities.
- Successfully undertakes and implements new work assignments as they arise.
- Adapts to organizational changes, which may include learning new skills and adjusting priorities.
- Completes assignments in a timely manner under adverse conditions and maintains an appropriate demeanor.
- Learns and implements new technologies, procedures, equipment etc., to perform work more efficiently, effectively and safely.

Comments: *You have taken the time to improve your knowledge of the various computer systems used in SAC. The use of the server and tasking software has improved your efficiency. You have done well in this transition. You hold your people accountable to the timelines given to complete internal investigations and reports. You have worked with your Problem Solving Officers to develop new ways to address crime and the quality of life issues in your PSA. Those efforts include increased walking, bicycle, and dual purpose motorcycle patrols as well as the deployment of the Crime Reduction Team to address emerging crime trends that have come to you through you evaluation of reports and statistics. Your work on the implementation of a surveillance camera system in your PSA is being hailed as a crime prevention model for other parts of the city.*

Professionalism and Ethics: Maintains high professionalism, ethics, and standards. Develops working relationships based on honesty, trust, and

Exceeds Expectations

Name of member/employee: Lieutenant Ricardo Orozco

7 respect. Establishes credibility with peers, subordinates, and community members.

Standards:

- Takes proper care of Departmental equipment.
- Follows all Departmental rules and regulations.
- Demonstrates police values of fairness, integrity, respect, service, and teamwork.

Comments: *You perform your duties professionally and with regard to the law enforcement code of ethics. You also demand the same of your personnel. As mentioned above, you have demonstrated a commitment to the Negotiated Settlement Agreement and ensure that your team is trained and works to achieve substantial compliance.*

Performance Management: *(Complete for supervisory/management positions)* Sets clear expectations and communicates City mission, goals, and policies; provides appropriate coaching and feedback; completes performance appraisals on time and consistent with the City's performance appraisal system; follows through on staff enhancement plans or corrective action to improve overall employee performance.

Standards:

- Completes all Performance Appraisals within established timelines. Includes all relevant information to support ratings. Conducts appraisals in a fair and unbiased manner.
- Maintains documentation on all staff members and their accomplishments (positive and negative) throughout the year.
- Takes appropriate steps to ensure that all staff under his/her supervision are performing at a fully effective or higher level through feedback, coaching, training, discipline, etc.
- Conducts subordinate meetings in accordance with DGO B-6.

8 **Comments:** *You continue to perform well in this area. You are both a coach and mentor for your personnel. You have held them accountable for their actions and taken the time to praise them publicly with Captain's Commendations. You take the time to address minor shortcomings before they become major performance problems.*

9 **Required Review Comments:**

Check the box and provide comments to

Name of member/employee: Lieutenant Ricardo Orozco

(Complete for all personnel) The following areas have been monitored in order to identify patterns of misconduct or improper behavior.

include patterns and corrective action taken.

Indicate in the Comment boxes if no incidents have occurred during the appraisal period.

- ☒ The nature and progress of all complaints and investigations have been reviewed. **NOTE:** The appraiser shall not comment on, or consider in the appraisal, complaints that the Department has determined to be unfounded, exonerated, or that are still pending.

Comment on sustained and not-sustained complaints only: *You have not been the subject of a personnel complaint during this evaluation period.*

- ☒ Uses of force;

Comment: *You have not had occasion to use force during this evaluation period.*

- ☒ Arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrest for other offenses;

Comment: *You have not had occasion to make an arrest of this nature during this evaluation period.*

- ☒ Arrests involving charges of Penal Code Sections 69, 148 and/or 243(b)(c); and

Comment: *You have not had an occasion to make one of these arrests during the evaluation period.*

- ☒ Vehicle collisions.

Comment: *You have not been involved in a vehicle collision during this evaluation period.*

Supervisor Assessment (Required by Reviewers Only):

Reviewers shall make an assessment about how/whether supervisors acted to identify and address patterns of misconduct, performance deficiencies, improper behavior, use force, sick leave, line-of-duty-injuries, narcotics-related possessory offenses, and on-duty vehicle accidents.

Comment:

SECTION II: PERFORMANCE OBJECTIVES AND STANDARDS

Use the Performance Objectives and Standards Provided by the Personnel Division or as developed in Section VIII, Communicating Expectations agreed upon in the previous Performance Appraisal or revision.

<p>Position Title: <u>Lieutenant of Police – PSA Commander</u></p> <p>PERFORMANCE OBJECTIVES AND STANDARDS</p> <p><u>Standards:</u></p> <ul style="list-style-type: none">• Is aware of and meets the performance objectives and standards of the position of Lieutenant of Police and PSA Commander• Decides the goals and objectives, priorities, strategies and tactics to be employed in the PSA• Assigns work to PSA personnel• Supports the skill and career development of PSA personnel through Department or outside training• Evaluates the effectiveness of PSA personnel. <p><i>This is, again, one of your many strong points. You consistently research and review crimes trends and deploy personnel working for you and for others appropriately to address issues. You manage not only crime, but administrative issues, personnel issues and attend numerous community and City staff meetings. You are always cognizant of the performance or lack of performance of your staff and have attempted to get the few stragglers to raise the bar on their activity levels. This has not changed in the last three months.</i></p>	<p>Exceeds Expectations</p>
<p>2. <u>Performance Objective:</u> Effectively manage resources within scope of responsibilities.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none">• Ensures that appropriate and timely notifications are made to superiors, peers and other entities.• Effectively develops plans for operational contingencies and sustained operations.• Develops strategic action plans to address identified problem areas.• Implements approved action plans and ensures that all staff comply with plan directives.• Identifies and obtains all appropriate resources to meet needs and action plans.• Conducts audits to ensure compliance with Department policies and procedures.• Assures proper scene management of critical incident and special event sites. <p>Comments: <i>You have tremendous experience and the resultant proficiency in developing strategic plans and implementing them in the PSA.</i></p>	<p>Exceeds Expectations</p>

PERFORMANCE OBJECTIVES AND STANDARDS	Fully Effective
<p>3. <u>Performance Objective:</u> Effectively develops and manages PSA expenditures.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Prepares budget requests based on assessment of current and future economic and staffing needs. • Manages expenditures within budget parameters. • Prepares financial reports for review. <p>Comments: <i>As we have discussed, this is an area where you should take the opportunity to learn and improve your skill set. During the next year, you should complete the City's series on budget and Oracle training.</i></p>	

SECTION III: OVERALL EVALUATION

Describe the employee's overall performance. If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this overall evaluation.

Comments: *Your performance has been exemplary and I appreciate your commitment to duty. Once again, Your success as a member of this Department, in all ranks, has been due to your dedication to the community, to the Department, to your fellow members and employees and to your work ethic. You have maintained an even keel in your attitude and your approach to the job that has served you well. You care about performance and hold yourself and the members of your team to a high standard. You treat your staff well taking care of their personal need and recognize their successes; you have always made time for your fellow members.*

Exceeds Expectations

SECTION IV: COMMENDATION RECOMMENDED

If applicable, describe how the employee's performance was truly exceptional and worthy of consideration for commendation.

Pursuant to General Order B-1, Departmental Awards, the member/employee is eligible to receive:
(Check all that apply)

☐ Perfect Attendance Bar

☒ Outstanding Performance Evaluation Bar

☒ Tactical Operations Team Bar

☒ Perfect Driving Bar

☒ Advanced POST Bar

☒ Good Conduct Bar

Comments:

SECTION V: SKILL ENHANCEMENT PLAN

Please describe the mutually agreed upon employee development plan needed to correct deficiencies to bring the employee up to the level of "fully effective." This must be completed for each and every rating that is less than "fully effective."

Comments: **See attached, if applicable**

SECTION VI: EMPLOYEE COMMENTS

Comments:

RATINGS KEY

Exceeds Expectations

The performance of an employee at this level consistently exceeds all of the job standards and performance expectations. The employee is performing at a level well beyond what is normally expected of the majority of employees with similar duties.

Fully Effective

An employee at this level consistently meets the established job standards and performance expectations. The results consistently achieved are those the City would expect of employees in this position level.

Improvement Needed

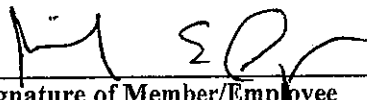
Performance does not consistently meet the essential job standards and performance expectations of the position or is marginally acceptable. Development is needed to reach full effectiveness.


Unacceptable

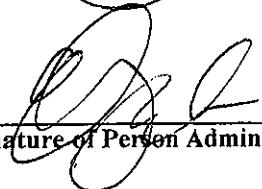
Performance demonstrates an inability or unwillingness to meet job standards and performance expectations of the position. Immediate and sustained improvement is required.

SECTION VII: ADMINISTERING THE APPRAISAL

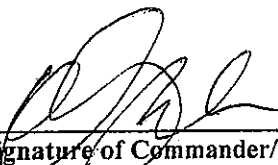
The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. **PLEASE PRINT LEGIBLY.**

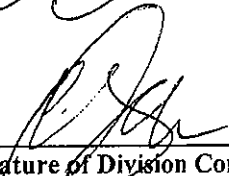
	Lieutenant Ricardo Orozco	7583	29 Aug 06
Signature of Member/Employee	Print Name	Serial #	Date

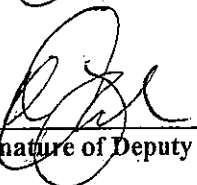
	Captain D. Kozicki	7297	29 Aug 06
Signature of Person Preparing Appraisal	Print Name	Serial #	Date

	Captain D. Kozicki	7297	29 Aug 06
Signature of Person Administering Appraisal	Print Name	Serial #	Date

Signature of Reviewer (if necessary)	Print Name	Serial #	Date
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	Captain D. Kozicki	7297	29 Aug 06
Signature of Commander/Manager	Print Name	Serial #	Date

	Captain D. Kozicki	7297	29 Aug 06
Signature of Division Commander/Manager	Print Name	Serial #	Date

	Not Applicable - SAC is under OCOP		29 Aug 06
Signature of Deputy Chief or Chief of Police	Print Name	Serial #	Date

☐ I wish to discuss this appraisal through my chain-of-command.

SECTION VIII: COMMUNICATING EXPECTATIONS

Establishing or revising a new performance plan for the next cycle:
(Check to indicate completed)

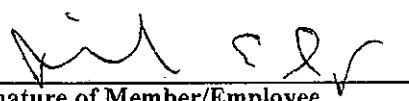
☒ New plan discussed.

☒ Goals are linked to City Council and Department goals.

EXPECTATIONS:

It is expected that you will continue to meet the standards listed above with the same level of performance. It is also expected that you will increase your knowledge and abilities in the area of the budget and finance.

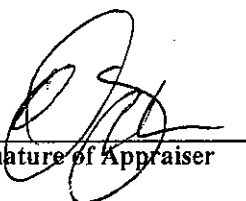
The performance expectations for the upcoming appraisal cycle have been communicated to the member/employee.
PLEASE PRINT LEGIBLY.


Signature of Member/Employee

Lieutenant Ricardo Cruz
Print Name

7583
Serial #

29 Aug 06
Date


Signature of Appraiser

Captain D. Kozicki
Print Name

7297
Serial #

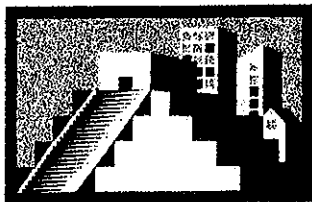
8-29-06
Date

OAKLAND POLICE DEPARTMENT

 AREA 2
 YEAR END 2008 vs. 2009
 Part 1 Crime


Crime	Reports Entered Year-to-Date 2008	Reports Entered Year-to-Date 2009	% Change
HOMICIDE	25	28	12%
ATTEMPT HOMICIDE	2	3	50%
ASSAULT w/ FIREARM	174	106	-39%
ASSAULT OTHER THAN FIREARM	312	281	-10%
SHOOT AT OCC DWELLING	96	61	-36%
SHOOT AT UNOCC DWELLING	53	20	-62%
RAPE	70	77	10%
ROBBERY	1210	952	-21%
ATTEMPT ROBBERY	135	133	-1%
RESIDENTIAL ROBBERY	53	45	-15%
CARJACKING	89	63	-29%
BURGLARY	2419	2615	8%
ARSON	60	43	-28%
LARCENY	2022	1867	-8%
STOLEN VEHICLE	2890	2229	-23%
TOTAL	9610	8523	-11%

These data are drawn from the Oakland Police Department database, and they are unaudited. The numbers do not match the official monthly totals reported to the FBI through the Uniform Crime Reporting (UCR) program. Crime statistics can be affected by late reporting, the reclassification or unbounding of crimes, or the geocoding process. *The only certified statistics are those contained in the UCR.*



THE UNITY COUNCIL

March 4, 2009

Chief Anthony Batts
Oakland Police Department
455 7TH Street
Oakland, CA 94607

Dear Chief Batts,

I want to express my strong support for Area II Captain - Ricardo Orozco. Since 2005, in my capacity as CEO of The Unity Council, I have worked hard to improve the quality of life in the Fruitvale neighborhood. A critical component of this effort has included public safety measures. Captain Orozco consistently has demonstrated his commitment to action by directing resources to effectively address these critical neighborhood issues.

March 21, 2009 was a tragic day for all of Oakland and the law enforcement community. That day, I remained glued to the television for updates on the condition of the officers and related incidents. I also conveyed verbal and written messages of support to Captain Orozco and other senior OPD Command that day and the days following. What transpired on March 21st had nothing to do with Captain Orozco's performance and capabilities as Area II Commander.

As Area II Commander, he has been one of the best leaders we've had in our community. He understands our community, he can effectively communicate with our community, he has worked to improve relationships between OPD and the community, he is extremely responsive, and his presence is felt here in our community and the Area II crime stats show that crime decreased under his command. His absence since the reassignment has caused me and others great concern. We do not want to lose any of the momentum that was launched under Captain Orozco's command.

Along with Fruitvale business owners, residential leaders, and other organizational partners we have built a strong relationship with Captain Orozco. As one of the few Latinos in OPD, he is a role model and leader for our community in a Department otherwise sorely missing Latino cultural representation.

For these reasons, I respectfully request the quick reinstatement of Captain Orozco to Area II Commander.

Sincerely,


Gilda Gonzales
Chief Executive Officer

OAKLAND POLICE DEPARTMENT
PERFORMANCE APPRAISAL FORM
ANNUAL / SUPPLEMENTAL
PERMANENT / PROBATIONARY OPD PERSONNEL

Instructions

Type of Performance Appraisal (Check Box):

- ☐ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.
- ☒ **Supplemental** – In the event you supervised a member/employee for more than 120 days during the appraisal period but are not the regularly assigned supervisor on the last day of the appraisal period, prepare a Supplemental Performance Appraisal Form.
- ☐ **Transfers** – Duration of transfer:
- ☐ **Collateral Duties** – Detail in Section II: Performance Objectives and Standards
 (If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this Performance Appraisal Form.)
- ☐ **Permanent**
- ☐ **Probationary**

Name of Member/Employee: Mufarreh, Chris (7796)

Rank/Position: Lieutenant of Police

Unit of Assignments: Internal Affairs Division

Appraisal Period: From: 01 Jun 06 to: 27 Jan 07

Appraisal Completed by: ☒ **Immediate Supervisor** ☐ **Other: (Describe)**

Indicate the performance appraisal interval:

- ☐ Probationary member/employee following promotion/reemployment:
 End of ☐ 3rd Month ☐ 5th Month
- ☐ Probationary member following field training:
 End of ☐ 5th Month ☐ 8th Month ☐ 11th Month
- ☐ Probationary Police Communications Operator or Dispatcher (following initial employment):
 End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and if applicable
 End of ☐ 14th Month ☐ 17th Month
- ☐ Other probationary employees, following initial employment:
 End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and if applicable
 End of ☐ 11th Month ☐ 14th Month

26-08-07P02:46 RCVD

SECTION I: ORGANIZATIONAL VALUES AND WORK HABITS

Name of member/employee: Mufarreh, Chris (7796)

Attendance: Reports for work regularly with a minimum number of absences (including sick and injured) and tardiness; gives notice when absence or tardiness is unavoidable; receives authorization when time off is needed; observes appropriate lunch and break schedules; submits justification for absences as required and/or requested.

Standards:

- Begins work at start of shift.
- Notifies on duty supervisor or patrol desk of absences at least 3 hours before the normal reporting time if assigned to a 24 hour a day unit or at least 1 hour if assigned to other organizational units.
- No inappropriate use of sick leave or tardiness.
- Does not exceed scheduled time for lunch and breaks.

Comments: While assigned to the Internal Affairs Division you began your shift on time and consistently notified me of any changes to your schedule. I became the Commander of the Internal Affairs Division on 14 Oct 06. Beginning on 04 Dec 06, and continuing beyond your transfer from the IAD, you were ~~off duty~~ *on duty* due to illness.

Fully Effective

Use of Time: Manages own time and uses appropriate work methods, techniques, and equipment to achieve the most effective and efficient result in the time available; is mutually respectful of the time and schedule of others; balances multiple priorities and focuses on desired outcome(s).

Standards:

- Handles work assignments in a timely manner; advises supervisor when and why assignments may require more time.
- Prioritizes multiple tasks to achieve desired results.
- Consistently uses time productively and engages in self-initiated activity.
- Complies with General Orders regarding personal use of departmental phones, computers, or other equipment.

Comments: As the Administrative Section Commander, the handling of assignments in a timely manner is critical. While assigned to the Internal

Exceeds Expectations

Name of member/employee: Mufarreh, Chris (7796)

Affairs Division you never let me down. You showed yourself capable of multi-tasking and were able to prioritize your work load. Your administrative responsibilities included, but were not limited to the review and tracking the following investigations/reports:

- Performance Evaluations
- Pursuit Reports
- Use of Force Reports
- Vehicle Collisions involving on-duty personnel
- Internal Affairs case files

You showed yourself to be capable of ensuring the reports/investigations were complete and that no 3304 CGC dates were exceeded or jeopardized.

Teamwork and Collaboration: Makes and sustains effective and productive relationships with other members of the organization and the public; is respectful of differing viewpoints; meets commitments to co-workers and/or team members.

Standards:

- Meets commitments to co-workers and team members at all times. Does "fair share" of the work within the team. Willingly contributes points to time sensitive group efforts as they arise.
- Treats people with respect at all times. Allows for differing points of view. Is open to feedback and constructive criticism.
- Maintains clean and hazard free work area.
- Keeps supervisor informed of potential problems.

Comments: The Internal Affairs Division relies heavily upon teamwork from all staff members. As the Commander of the Administrative Section, your subordinates looked to you to set the standard. You treated your co-workers and subordinates with respect and were open to feedback and constructive criticism.

The nature of the Internal Affairs Division function requires constant evaluation of incidents and I was always able to count on you and your staff to quickly let me know of potential problems.

Exceeds Expectations

Name of member/employee: Mufarreh, Chris (7796)

Customer Service: Responds effectively, courteously, respectfully, and in a timely manner to the needs of a diverse set of internal and external customers; provides information and services in a clear, concise, thorough, accurate, and timely fashion.

Standards:

- Treats all customers in a respectful and professional manner.
- Listens to all customers' concerns to resolve problems without unnecessary referrals.
- Has a working knowledge of the Department's complaint process and provides information to private persons upon request.
- Responds to customers' needs in a timely manner.

Comments: Customer service is a must for anyone assigned to the Internal Affairs Division. You consistently treated others with respect and exhibited a professional demeanor whenever dealing with the public or personnel from other agencies. You have an above average knowledge of the Department's complaint process.

Exceeds Expectations

Accountability: Follows through on assigned tasks; meets work deadlines or informs others in a timely fashion when/why a deadline cannot be met; makes responsible use of City resources (time and money).

Standards:

- Assumes responsibilities for all equipment, personnel, and situations under his/her control. Wears appropriate safety clothing/equipment at all times.
- Expends Departmental resources in a responsible and efficient manner (e.g., time, supplies, and money).
- Keeps supervisor informed about the status of assignments.
- Handles all assignments according to Departmental policies and procedures.
- Operates and maintains Department equipment (including vehicles) appropriately.
- Qualified with Departmental issued firearms in accordance with DGO B-12.

Fully Effective

Name of member/employee: Mufarreh, Chris (7796)

- Successfully completed all required training in accordance with the DGO B-20 and POST.

Comments: You performed well in all areas addressed in this section. While you had no direct responsibility for the budget, you did maintain an awareness of fiscal responsibility and were not wasteful of resources.

Adaptability and Problem Solving: Adapts to organizational changes (e.g. technology, resources, and personnel); takes initiative in identifying the existence of a problem and takes appropriate steps to resolve it.

Standards:

- Takes advantage of opportunities to continuously improve skills and knowledge through offered training or other sources, including off-duty educational opportunities.
- Successfully undertakes and implements new work assignments as they arise.
- Adapts to organizational changes, which may include learning new skills and adjusting priorities.
- Completes assignments in a timely manner under adverse conditions and maintains an appropriate demeanor.
- Learns and implements new technologies, procedures, equipment etc., to perform work more efficiently, effectively and safely.

Comments: You accepted spur of the moment assignments with a "can do" attitude and showed yourself to be adaptable in the ever-changing work environment of the Internal Affairs Division. You completed all assignments given to you in a timely manner or requested reasonable extensions as necessary.

Exceeds Expectations

Professionalism and Ethics: Maintains high professionalism, ethics, and standards. Develops working relationships based on honesty, trust, and respect. Establishes credibility with peers, subordinates, and community members.

Standards:

- Takes proper care of Departmental equipment.
- Follows all Departmental rules and regulations.

Exceeds Expectations

Name of member/employee: Mufarreh, Chris (7796)

- Demonstrates police values of fairness, integrity, respect, service, and teamwork.

Comments: Adherence to Departmental rules and regulations is a critical attribute required of all staff members of the Internal Affairs Division. Your ability to follow Departmental rules and regulations, as well as your ownership in the Departmental Values, has resulted in a rating in this performance dimension of Exceeds Expectations. Also related to this performance dimension is your courage to speak your mind when you have an opposing viewpoint. This is a valuable attribute which often helped me make sound decisions.

Performance Management: *(Complete for supervisory/management positions)* Sets clear expectations and communicates City mission, goals, and policies; provides appropriate coaching and feedback; completes performance appraisals on time and consistent with the City's performance appraisal system; follows through on staff enhancement plans or corrective action to improve overall employee performance.

Standards:

- Completes all Performance Appraisals within established timelines. Includes all relevant information to support ratings. Conducts appraisals in a fair and unbiased manner.
- Maintains documentation on all staff members and their accomplishments (positive and negative) throughout the year.
- Takes appropriate steps to ensure that all staff under his/her supervision are performing at a fully effective or higher level through feedback, coaching, training, discipline, etc.
- Conducts subordinate meetings in accordance with DGO B-6.

Comments: As the Administrative Section Commander, you were responsible for ensuring performance appraisals were completed within established timelines for a number of staff members. You consistently accomplished this task and ensured personnel assigned to you performed at an acceptable level.

Fully Effective

Name of member/employee: Mufarreh, Chris (7796)

Required Review Comments:

(Complete for all personnel) The following areas have been monitored in order to identify patterns of misconduct or improper behavior.

Indicate in the Comment boxes if no incidents have occurred during the appraisal period.

- ☒ The nature and progress of all complaints and investigations have been reviewed. NOTE: The appraiser shall not comment on, or consider in the appraisal, complaints that the Department has determined to be unfounded, exonerated, or that are still pending.

Comment on sustained and not-sustained complaints only: None.

- ☒ Uses of force;

Comment: None.

- ☒ Arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrest for other offenses;

Comment: None.

- ☒ Arrests involving charges of Penal Code Sections 69, 148 and/or 243(b)(c); and

Comment: None.

- ☒ Vehicle collisions.

Comment: None.

Check the box and provide comments to include patterns and corrective action taken.

Supervisor Assessment (Required by Reviewers Only):

Reviewers shall make an assessment about how/whether supervisors acted to identify and address patterns of misconduct, performance deficiencies, improper behavior, use force, sick leave, line-of-duty-injuries, narcotics-related possessory offenses, and on-duty vehicle accidents.

Comment: During your assignment to the Internal Affairs Division you demonstrated an adeptness at monitoring staff, as well as the identification and correction of behavior early on to ensure no patterns developed.

SECTION II: PERFORMANCE OBJECTIVES AND STANDARDS

Use the Performance Objectives and Standards Provided by the Personnel Division or as developed in Section VIII, Communicating Expectations agreed upon in the previous Performance Appraisal or revision.

<p>Position Title: <u>Administration Section Commander</u></p> <p>1. <u>Performance Objective:</u> Evaluate and coordinate incoming internal investigations</p> <p><u>Standards:</u></p> <ul style="list-style-type: none">• Ensure proper complaint classification and routing to the appropriate Division or Investigations Section of the Internal Affairs Division;• Assess whether or not a complaint allegation meets criteria for Informal Complaint Resolution;• Review recommended administrative dispositions to ensure they are appropriate and complete; and• Review and coordinate overall due date compliance. <p>Comments: The evaluation and coordination of incoming internal investigations is critical to the success of the Internal Affairs Division. While assigned to the Division, you were able to perform this function consistently, with little to no direction from me.</p>	<p>Exceeds Expectations</p>
<p>2. <u>Performance Objective:</u> Provide for additional administrative support, both within the Internal Affairs Division as well as Department.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none">• Ensure Internal Affairs Division Complaint and Use of Force Databases have been reviewed by the Administrative Sergeant;• Assist the Division Commander with evaluation of administrative staffing levels and workload;• Advise the Division Commander of any unusual incidents or other complaints likely to generate unusual public interest; and	<p>Exceeds Expectations</p>

- Perform as the Acting Captain as assigned when the Commander of the Internal Affairs Division is away from the office.

Comments: The review and monitoring of Internal Affairs Division databases to ensure accurate information is being entered is a particularly important task. You showed your ability to monitor these databases and were quick to correct any issues arising from data entry. You were also consistently on target when choosing to advise me of incidents requiring my attention.

SECTION III: OVERALL EVALUATION

Describe the employee's overall performance. If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this overall evaluation.

Comments: During your assignment to the Internal Affairs Division you were a valued and key member of our team. You proved yourself to be self-motivated, adept at critical thinking, and consistently made sound decisions. It is because of these demonstrated abilities you are being rated in your overall evaluation as Exceeds Expectation.

Exceeds Expectations

SECTION IV: COMMENDATION RECOMMENDED

If applicable, describe how the employee's performance was truly exceptional and worthy of consideration for commendation.

Pursuant to General Order B-1, Departmental Awards, the member/employee is eligible to receive:
(Check all that apply)

☐ Perfect Attendance Bar

☐ Outstanding Performance Evaluation Bar

☐ Tactical Operations Team Bar

☐ Perfect Driving Bar

☐ Advanced POST Bar

☐ Good Conduct Bar

Comments: *This is a supplemental evaluation, recommendations for an award(s) will be made by the commander preparing the Annual Evaluation.*

SECTION V: SKILL ENHANCEMENT PLAN

Please describe the mutually agreed upon employee development plan needed to correct deficiencies to bring the employee up to the level of "fully effective." This must be completed for each and every rating that is less than "fully effective."

Comments: See attached, if applicable

SECTION VI: EMPLOYEE COMMENTS

Comments:

RATINGS KEY

Exceeds Expectations

The performance of an employee at this level consistently exceeds all of the job standards and performance expectations. The employee is performing at a level well beyond what is normally expected of the majority of employees with similar duties.

Fully Effective

An employee at this level consistently meets the established job standards and performance expectations. The results consistently achieved are those the City would expect of employees in this position level.

Improvement Needed

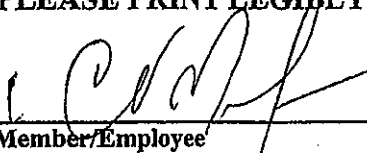
Performance does not consistently meet the essential job standards and performance expectations of the position or is marginally acceptable. Development is needed to reach full effectiveness.

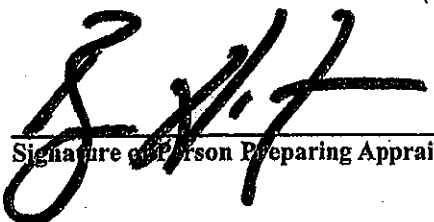
Unacceptable

Performance demonstrates an inability or unwillingness to meet job standards and performance expectations of the position. Immediate and sustained improvement is required.

SECTION VII: ADMINISTERING THE APPRAISAL

The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. **PLEASE PRINT LEGIBLY.**

	Chris Mufarreh	7796	Aug 9 5a/07
Signature of Member/Employee	Print Name	Serial #	Date

	Benson H. Fairrow	7750	3 Aug 07
Signature of Person Preparing Appraisal	Print Name	Serial #	Date

Signature of Person Administering Appraisal	Print Name	Serial #	Date
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Signature of Reviewer (if necessary)	Print Name	Serial #	Date
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Signature of Commander/Manager	Print Name	Serial #	Date
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Signature of Division Commander/Manager	Print Name	Serial #	Date
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	DON W. TUCKER		2/11/07
Signature of Deputy Chief or Chief of Police	Print Name	Serial #	Date

☐ I wish to discuss this appraisal through my chain-of-command.

SECTION VIII: COMMUNICATING EXPECTATIONS

Establishing or revising a new performance plan for the next cycle:
(Check to indicate completed)

- ☐ New plan discussed.
- ☐ Goals are linked to City Council and Department goals.

EXPECTATIONS:

This section will be completed by your current commander.

The performance expectations for the upcoming appraisal cycle have been communicated to the member/employee.
PLEASE PRINT LEGIBLY.


Signature of Member/Employee

Chris Mufarreh

Print Name

7796

Serial #

9 Jun 07

Date


Signature of Appraiser

Benson H. Fairow

Print Name

7750

Serial #

03 Aug 07

Date

OAKLAND POLICE DEPARTMENT

PERFORMANCE APPRAISAL FORM

ANNUAL / SUPPLEMENTAL

PERMANENT / PROBATIONARY OPD PERSONNEL

Instructions

Type of Performance Appraisal (Check Box):

- ☒ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.
- ☐ **Supplemental** – In the event you supervised a member/employee for more than 120 days during the appraisal period but are not the regularly assigned supervisor on the last day of the appraisal period, prepare a Supplemental Performance Appraisal Form.
- ☐ Transfer – Duration of transfer: (# of days)
- ☐ Collateral Duties – Detail in Section II: Performance Objectives and Standards.
- (If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this Performance Appraisal Form.)
- ☒ Permanent
- ☐ Probationary

Name of Member/Employee: Chris Mufarreh 7796

Rank/Position: Lieutenant of Police

Unit of Assignment: Strategic Area Command – Police Service Area 4

Appraisal Period: From: 27 Jan 06 to: 31 May 07

Appraisal Completed by ☒ Immediate Supervisor ☐ Other: (Describe)

Indicate the performance appraisal interval:

- ☐ Probationary member/employee following promotion/reemployment:
End of ☐ 3rd Month ☐ 5th Month
- ☐ Probationary member following field training:
End of ☐ 5th Month ☐ 8th Month ☐ 11th Month
- ☐ Probationary Police Communications Operator or Dispatcher (following initial employment):
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and if applicable
End of ☐ 14th Month ☐ 17th Month
- ☐ Other probationary employees, following initial employment:
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and if applicable
End of ☐ 11th Month ☐ 14th Month

14-08-07P01:10 RCVD

SECTION I: ORGANIZATIONAL VALUES AND WORK HABITS

Name of member/employee: Lieutenant Chris Mufarreh 7796

Attendance: Reports for work regularly with a minimum number of absences (including sick and injured) and tardiness; gives notice when absence or tardiness is unavoidable; receives authorization when time off is needed; observes appropriate lunch and break schedules; submits justification for absences as required and/or requested.

Standards:

- Begins work at start of shift.
- Notifies on duty supervisor or patrol desk of absences at least 3 hours before the normal reporting time if assigned to a 24 hour a day unit or at least 1 hour if assigned to other organizational units.
- No inappropriate use of sick leave or tardiness.
- Does not exceed scheduled time for lunch and breaks.

Comments: You are very dedicated to your assignment. You notify me well in advance of any planned absences and take the time to designate competent people to fill in during your absence. You frequently agree to new duties to expand your level of experience. An example of this has been your willingness to assume command-level assignments associated with major response operations such as Memorial Day Weekend and the 4th of July. Additionally, you have shown a desire to learn about special event management by assisting with operations during the recent NBA playoff series involving the Golden State Warriors.

Exceeds Expectations

Use of Time: Manages own time and uses appropriate work methods, techniques, and equipment to achieve the most effective and efficient result in the time available; is mutually respectful of the time and schedule of others; balances multiple priorities and focuses on desired outcome(s).

Standards:

- Handles work assignments in a timely manner; advises supervisor when and why assignments may require more time.
- Prioritizes multiple tasks to achieve desired results.
- Consistently uses time productively and engages in self-initiated activity.
- Complies with General Orders regarding personal use of departmental phones, computers, or other equipment.

Exceeds Expectations

Name of member/employee: Lieutenant Chris Mufarreh 7796

Comments: You manage your time well. This allows you to attend important community and business group meeting in your PSA. You also frequently work late shifts to provide better leadership for the personnel under your command as well as to learn about problems in your PSA.

Teamwork and Collaboration: Makes and sustains effective and productive relationships with other members of the organization and the public; is respectful of differing viewpoints; meets commitments to co-workers and/or team members.

Standards:

- Meets commitments to co-workers and team members at all times. Does "fair share" of the work within the team. Willingly contributes points to time sensitive group efforts as they arise.
- Treats people with respect at all times. Allows for differing points of view. Is open to feedback and constructive criticism.
- Maintains clean and hazard free work area.
- Keeps supervisor informed of potential problems.

Comments: Over the past months you have been tasked with collateral duties related to the Division's compliance with the Negotiated Settlement Agreement. You have taken this responsibility seriously and helped the Division attain and maintain compliance with these important standards. You also have helped coordinate Division-wide training days which served to improve our operational capabilities.

Customer Service: Responds effectively, courteously, respectfully, and in a timely manner to the needs of a diverse set of internal and external customers; provides information and services in a clear, concise, thorough, accurate, and timely fashion.

Standards:

- Treats all customers in a respectful and professional manner.
- Listens to all customers' concerns to resolve problems without unnecessary referrals.
- Has a working knowledge of the Department's complaint process and provides information to private persons upon request.
- Responds to customers' needs in a timely manner.

Exceeds Expectations

Exceeds Expectations

Name of member/employee: Lieutenant Chris Mufarreh 7796

Comments: The residents of PSA 4 appreciate the service you are delivering. I found that you were well aware of the issues facing the community you serve and that they had confidence in your ability to work with them on both significant and minor challenges. You have begun to establish meaningful relationships with community leaders such as Claudia Jimenez from the Council President's Office, Gilda Gonzalez from the Unity Council and Michele Clark the Youth Employment Partnership. All were consulted in the preparation of this evaluation and spoke positively of their relationship with you. You have enhanced the quality of community contacts in PSA 4. You have worked to ensure that sergeants assigned to your PSA, whether they work for you or not, monitor their beat officers' participation in community activities, thereby forming better relationships with members of the community. An example of this has been Sergeant Vierra's efforts to address the growing ecstasy problem. The end result was the development of a very important relationship with an important partner in our efforts to reduce the reality and fear of crime.

Accountability: Follows through on assigned tasks; meets work deadlines or informs others in a timely fashion when/why a deadline cannot be met; makes responsible use of City resources (time and money).

Standards:

- Assumes responsibilities for all equipment, personnel, and situations under his/her control. Wears appropriate safety clothing/equipment at all times.
- Expends Departmental resources in a responsible and efficient manner (e.g., time, supplies, and money).
- Keeps supervisor informed about the status of assignments.
- Handles all assignments according to Departmental policies and procedures.
- Operates and maintains Department equipment (including vehicles) appropriately.
- Qualified with Departmental issued firearms in accordance with DGO B-12.
- Successfully completed all required training in accordance with the DGO B-20 and POST.

Comments: You have completed all of your training related to the Negotiated Settlement Agreement. Over the past few months you have worked to improve the Division's accountability with the NSA and

Exceeds Expectations

Name of member/employee: Lieutenant Chris Mufarreh 7796

Department training requirements. You have been quick to point out areas where we were falling short such as quarterly community meetings and bi-weekly personnel meetings. You have brought these to the attention of our management team before they became issues of concern to the executive staff or OIG.

Adaptability and Problem Solving: Adapts to organizational changes (e.g. technology, resources, and personnel); takes initiative in identifying the existence of a problem and takes appropriate steps to resolve it.

Standards:

- Takes advantage of opportunities to continuously improve skills and knowledge through offered training or other sources, including off-duty educational opportunities.
- Successfully undertakes and implements new work assignments as they arise.
- Adapts to organizational changes, which may include learning new skills and adjusting priorities.
- Completes assignments in a timely manner under adverse conditions and maintains an appropriate demeanor.
- Learns and implements new technologies, procedures, equipment etc., to perform work more efficiently, effectively and safely.

Comments: In the short time you have been assigned as the commander for PSA 4 you have already been recognized for your efforts to reduce the perception and reality of crime. Your efforts were acknowledged in a letter from the Laurel District Association where they expressed appreciation for the time you spent meeting with them and noted that they has seen " a drastic improvement since (their) first meeting and the crime statistics have dramatically decreased since the robbery suppression began in May."

Professionalism and Ethics: Maintains high professionalism, ethics, and standards. Develops working relationships based on honesty, trust, and respect. Establishes credibility with peers, subordinates, and community members.

Standards:

- Takes proper care of Departmental equipment.
- Follows all Departmental rules and regulations.

Exceeds Expectations

Fully Effective

Name of member/employee: Lieutenant Chris Mufarreh 7796

- Demonstrates police values of fairness, integrity, respect, service, and teamwork.

Comments: You demonstrate a high degree of professionalism and a strong commitment to the law enforcement code of ethics and the Negotiated Settlement Agreement. I have reviewed the Department's iPAS system and noted that there are no events of concern in your profile.

Performance Management: *(Complete for supervisory/management positions)* Sets clear expectations and communicates City mission, goals, and policies; provides appropriate coaching and feedback; completes performance appraisals on time and consistent with the City's performance appraisal system; follows through on staff enhancement plans or corrective action to improve overall employee performance.

Standards:

- Completes all Performance Appraisals within established timelines. Includes all relevant information to support ratings. Conducts appraisals in a fair and unbiased manner.
- Maintains documentation on all staff members and their accomplishments (positive and negative) throughout the year.
- Takes appropriate steps to ensure that all staff under his/her supervision are performing at a fully effective or higher level through feedback, coaching, training, discipline, etc.
- Conducts subordinate meetings in accordance with DGO B-6.

Comments: You monitor the performance of the personnel assigned to your team. Like the rest of the Department, our Section is not fully staffed. You have found creative ways of getting the job done with significant vacancies by reprioritizing work assignments. You have the ability to look at situations and make the appropriate adjustments as necessary. You are encouraged to continue to build an effective team and to retain officers who have demonstrated a commitment to their assignment and the PSA.

Required Review Comments:

(Complete for all personnel) The following areas have been monitored in order to identify patterns of misconduct or improper behavior.

Indicate in the Comment boxes if no incidents have occurred during the appraisal period.

Exceeds Expectations

Check the box and provide comments to include patterns and corrective action taken.

Name of member/employee: Lieutenant Chris Mufarreh 7796

- ☒ The nature and progress of all complaints and investigations have been reviewed. **NOTE:** The appraiser shall not comment on, or consider in the appraisal, complaints that the Department has determined to be unfounded, exonerated, or that are still pending.

Comment on sustained and not-sustained complaints only: No problems noted.

- ☒ Uses of force;

Comment: No problems noted.

- ☒ Arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrest for other offenses;

Comment: No problems noted.

- ☒ Arrests involving charges of Penal Code Sections 69, 148 and/or 243(b)(c); and

Comment: No problems noted.

- ☒ Vehicle collisions.

Comment: No problems noted.

Supervisor Assessment (Required by Reviewers Only):

Reviewers shall make an assessment about how/whether supervisors acted to identify and address patterns of misconduct, performance deficiencies, improper behavior, use force, sick leave, line-of-duty-injuries, narcotics-related possessory offenses, and on-duty vehicle accidents.

Comment:

10

SECTION II: PERFORMANCE OBJECTIVES AND STANDARDS

Use the Performance Objectives and Standards Provided by the Personnel Division or as developed in Section VIII, Communicating Expectations agreed upon in the previous Performance Appraisal or revision.

Position Title: Lieutenant of Police – PSA Commander

Exceeds Expectations

PERFORMANCE OBJECTIVES AND STANDARDS

Standards:

- Is aware of and meets the performance objectives and standards of the position of Lieutenant of Police and PSA Commander
- Decides the goals and objectives, priorities, strategies and tactics to be employed in the PSA

- Assigns work to PSA personnel
- Supports the skill and career development of PSA personnel through Department or outside training
- Evaluates the effectiveness of PSA personnel.

You research and review crime trends and deploy personnel working for you and for others appropriately to address issues. You manage not only crime, but administrative issues, personnel issues and attend community meetings. An example of your performance in this area was your work organizing the City's response to the illegal fireworks problem that occurs around the 4th of July holiday. You effectively built partnerships with the Fire Department and our own investigative staff. Your public education and information campaign was timely and well organized.

2. Performance Objective: Effectively manage resources within scope of responsibilities.

Standards:

- Ensures that appropriate and timely notifications are made to superiors, peers and other entities.
- Effectively develops plans for operational contingencies and sustained operations.
- Develops strategic action plans to address identified problem areas.
- An implement approved action plans and ensures that all staff complies with plan directives.
- Identifies and obtains all appropriate resources to meet needs and action plans.
- Conducts audits to ensure compliance with Department policies and procedures.
- Assures proper scene management of critical incident and special event sites.

Comments: As stated above, you have not only managed the resources of the PSA, but you have also taken on responsibilities related to the operational organization plans for two Major Response Operations.

Fully Effective

<p>PERFORMANCE OBJECTIVES AND STANDARDS</p> <p>3. Performance Objective: Effectively develops and manages PSA expenditures.</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Prepares budget requests based on assessment of current and future economic and staffing needs. • Manages expenditures within budget parameters. • Prepares financial reports for review. <p><i>Comments: Your short time in this assignment has not afforded many opportunities to evaluate your performance in this area. I noticed that you effectively managed the special Violence Suppression Program funds that were given to each PSA. You do not blindly approve overtime, but do creatively seek for resources throughout the City so that overtime, when necessary, can be used. I encourage you to continue to expand you knowledge of the City's budgetary process.</i></p>	<p>Fully Effective</p>
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SECTION III: OVERALL EVALUATION

Describe the employee's overall performance. If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this overall evaluation.

<p><i>Comments: Given that you have only served as a PSA commander since April, 10, 2006, you have exceeded expectations. As mentioned, you have been challenged by limited resources, yet you have found ways to address quality of life issues in your PSA and manage issues related to a city-wide rise in serious crime.</i></p>	<p>Exceeds Expectations</p>
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SECTION IV: COMMENDATION RECOMMENDED

If applicable, describe how the employee's performance was truly exceptional and worthy of consideration for commendation.

Pursuant to General Order B-1, Departmental Awards, the member/employee is eligible to receive:
(Check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Perfect Attendance Bar | <input type="checkbox"/> Perfect Driving Bar |
| <input type="checkbox"/> Outstanding Performance Evaluation Bar | <input type="checkbox"/> Advanced POST Bar |
| <input type="checkbox"/> Tactical Operations Team Bar | <input type="checkbox"/> Good Conduct Bar |

<p>Comments:</p>

SECTION V: SKILL ENHANCEMENT PLAN

Please describe the mutually agreed upon employee development plan needed to correct deficiencies to bring the employee up to the level of "fully effective." This must be completed for each and every rating that is less than "fully effective."

Comments: See attached, if applicable

SECTION VI: EMPLOYEE COMMENTS

Comments:

RATINGS KEY

Exceeds Expectations

The performance of an employee at this level consistently exceeds all of the job standards and performance expectations. The employee is performing at a level well beyond what is normally expected of the majority of employees with similar duties.

Fully Effective

An employee at this level consistently meets the established job standards and performance expectations. The results consistently achieved are those the City would expect of employees in this position level.

Improvement Needed


Performance does not consistently meet the essential job standards and performance expectations of the position or is marginally acceptable. Development is needed to reach full effectiveness.


Unacceptable

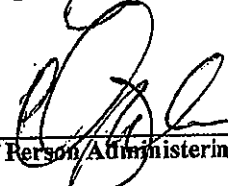
Performance demonstrates an inability or unwillingness to meet job standards and performance expectations of the position. Immediate and sustained improvement is required.

SECTION VII: ADMINISTERING THE APPRAISAL


The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. **PLEASE PRINT LEGIBLY.**

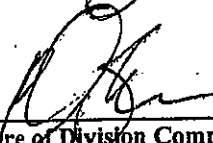

Signature of Member/Employee Chris Mufarreh 7796 9 Aug 07
Print Name Serial # Date

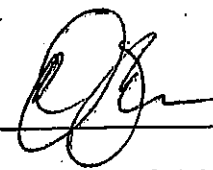

Signature of Person Preparing Appraisal David A. Kozicki 7297 9 Aug 07
Print Name Serial # Date


Signature of Person Administering Appraisal David A. Kozicki 7297 9 Aug 07
Print Name Serial # Date

Signature of Reviewer (if necessary) Print Name Serial # Date


Signature of Commander/Manager David A. Kozicki 7297 9 Aug 07
Print Name Serial # Date


Signature of Division Commander/Manager David A. Kozicki 7297 9 Aug 07
Print Name Serial # Date


Signature of Deputy Chief or Chief of Police David A. Kozicki 7297 9 Aug 07
Print Name Serial # Date

☐ I wish to discuss this appraisal through my chain-of-command.

SECTION VIII: COMMUNICATING EXPECTATIONS

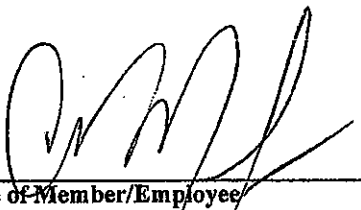
Establishing or revising a new performance plan for the next cycle:
(Check to indicate completed)


- ☒ New plan discussed.
- ☒ Goals are linked to City Council and Department goals.

EXPECTATIONS:

I expect that you will continue to perform in the manner outlined above. I encourage you to continue to learn the job of PSA commander. That learning process should include familiarizing yourself with the Violence Prevention and Public Safety Act- Measure Y and the various programs it funds. You should use these programs to leverage your limited resources in an effort to provide sustainable solutions to the challenges facing the PSA. I encourage you to continue to learn about the City's budget process and the Oracle financial management system. As the Division's new training manager, I encourage you to look for and develop new training opportunities for the people assigned to SAC.

The performance expectations for the upcoming appraisal cycle have been communicated to the member/employee.
PLEASE PRINT LEGIBLY.

	Chris Mufarreh	7796	9 Aug 07
Signature of Member/Employee	Print Name	Serial #	Date

	David A. Kozicki	7297	9 Aug 07
Signature of Appraiser	Print Name	Serial #	Date

RPS

OAKLAND POLICE DEPARTMENT
PERFORMANCE APPRAISAL FORM
ANNUAL / SUPPLEMENTAL
PERMANENT / PROBATIONARY OPD PERSONNEL

Instructions

Type of Performance Appraisal (Check Box):

- ☒ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.
- ☐ **Supplemental** – In the event you supervised a member/employee for more than 120 days during the appraisal period but are not the regularly assigned supervisor on the last day of the appraisal period, prepare a Supplemental Performance Appraisal Form.
- ☐ **Transfer** – Duration of transfer: (# of days)
- ☐ **Collateral Duties** – Detail in Section II: Performance Objectives and Standards
(If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this Performance Appraisal Form.)
- ☒ **Permanent**
- ☐ **Probationary**

Name of Member/Employee: Mufarreh, Chris 7796

Rank/Position: Lieutenant of Police

Unit of Assignment: Area One Patrol Commander

Appraisal Period: From: 01 Jul 07 to: 30 Jun 08

Appraisal Completed by ☒ Immediate Supervisor
consulted for the appraisal

☐ Other: (Describe) Capt. Ed Tracey was

Indicate the performance appraisal interval:

- ☐ Probationary member/employee following promotion/reemployment:
End of ☐ 3rd Month ☐ 5th Month
- ☐ Probationary member following field training:
End of ☐ 5th Month ☐ 8th Month ☐ 11th Month
- ☐ Probationary Police Communications Operator or Dispatcher (following initial employment):
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and if applicable
End of ☐ 14th Month ☐ 17th Month
- ☐ Other probationary employees, following initial employment:
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and if applicable
End of ☐ 11th Month ☐ 14th Month

SECTION I: ORGANIZATIONAL VALUES AND WORK HABIT

Name of member/employee: Mufarreh, Chris

Attendance: Reports for work regularly with a minimum number of absences (including sick and injured) and tardiness; gives notice when absence or tardiness is unavoidable; receives authorization when time off is needed; observes appropriate lunch and break schedules; submits justification for absences as required and/or requested.

Standards:

- Begins work at start of shift.
- Notifies on duty supervisor or patrol desk of absences at least 3 hours before the normal reporting time if assigned to a 24 hour a day unit or at least 1 hour if assigned to other organizational units.
- No inappropriate use of sick leave or tardiness.
- Does not exceed scheduled time for lunch and breaks.

Comments: During this rating period, you used sick leave on one occasion for a total of 10 hours. You start your shift on time and have not been marked tardy for work. You have no inappropriate use of sick leave or tardiness.

Fully Effective

Use of Time: Manages own time and uses appropriate work methods, techniques, and equipment to achieve the most effective and efficient result in the time available; is mutually respectful of the time and schedule of others; balances multiple priorities and focuses on desired outcome(s).

Standards:

- Handles work assignments in a timely manner; advises supervisor when and why assignments may require more time.
- Prioritizes multiple tasks to achieve desired results.
- Consistently uses time productively and engages in self-initiated activity.
- Complies with General Orders regarding personal use of departmental phones, computers, or other equipment.

Comments: You are very efficient in how you manage your time; you effectively prioritize tasks and are organized. For a commander, this is very important. You comply with Departmental policies regarding the use of phones, computers, and other equipment.

Aside from your regular duties (both as a PSA commander and a patrol commander) you have been tasked with other collateral assignments. As a PSA commander, for example, you were responsible for ensuring SAC compliance with the NSA. You also completed the Annual Report for

Exceeds Expectations

Name of member/employee: Mufarreh, Chris

PSA 4. In your current assignment, you have been designated as the training coordinator. You have coordinated Dedicated Arrest Team training for commanders and supervisors, shoot/don't shoot simmunications training, authored BFO policy and training for a Sobering Center, and developed the Area One web site. You have balanced both your collateral and regular duties very well. Because of your efforts, you have been rated Exceeds Expectations in this area.

Teamwork and Collaboration: Makes and sustains effective and productive relationships with other members of the organization and the public; is respectful of differing viewpoints; meets commitments to co-workers and/or team members.

Standards:

- Meets commitments to co-workers and team members at all times. Does "fair share" of the work within the team. Willingly contributes points to time sensitive group efforts as they arise.
- Treats people with respect at all times. Allows for differing points of view. Is open to feedback and constructive criticism.
- Maintains clean and hazard free work area.
- Keeps supervisor informed of potential problems.

Comments: You do your "fair share" of the work and can be counted on to get projects and other tasks completed. As the PSA 4 commander, you built effective and productive partnerships with community members. As a patrol commander, you have developed a strong working relationship with your subordinates. You do a good job of informing me of potential problems and critical incidents. Your office is clean and hazard free. You are respectful to your peers and subordinates.

Fully Effective

Customer Service: Responds effectively, courteously, respectfully, and in a timely manner to the needs of a diverse set of internal and external customers; provides information and services in a clear, concise, thorough, accurate, and timely fashion.

Standards:

- Treats all customers in a respectful and professional manner.
- Listens to all customers' concerns to resolve problems without unnecessary referrals.
- Has a working knowledge of the Department's complaint process and provides information to private persons upon request.
- Responds to customers' needs in a timely manner.

Comments: You treat everyone in a respectful and professional manner.

Fully Effective

Name of member/employee... Mufarreh, Chris

As a PSA commander you actively listened to community concerns and were effective in ensuring neighborhood problems were properly addressed. You have a working knowledge of the Department's complaint process.

Accountability: Follows through on assigned tasks; meets work deadlines or informs others in a timely fashion when/why a deadline cannot be met; makes responsible use of City resources (time and money).

Standards:

- Assumes responsibilities for all equipment, personnel, and situations under his/her control. Wears appropriate safety clothing/equipment at all times.
- Expends Departmental resources in a responsible and efficient manner (e.g., time, supplies, and money).
- Keeps supervisor informed about the status of assignments.
- Handles all assignments according to Departmental policies and procedures.
- Operates and maintains Department equipment (including vehicles) appropriately.
- Qualified with Departmental issued firearms in accordance with DGO B-12.
- Successfully completed all required training in accordance with the DGO B-20 and POST.

Comments: You take care of Departmental equipment and have not been involved in any vehicle collisions. You have completed all required training according to DGO B-20 and POST. You have qualified with your Departmental issue firearm in accordance with DGO B-12.

One of your strongest qualities is your ability to get the job done. This appraisal gives several examples of your efforts in this area. You get all assignments finished in a timely manner. When tasked with labor intensive or complex projects, they are completed thoroughly and by established due dates. Because of your efforts, you have been rated Exceeds Expectations in this area.

Exceeds Expectations

Adaptability and Problem Solving: Adapts to organizational changes (e.g. technology, resources, and personnel); takes initiative in identifying the existence of a problem and takes appropriate steps to resolve it.

Standards:

- Takes advantage of opportunities to continuously improve skills and knowledge through offered training or other sources.

Exceeds Expectations

Name of member/employee: Mufarreh, Chris

including off-duty educational opportunities.

- Successfully undertakes and implements new work assignments as they arise.
- Adapts to organizational changes, which may include learning new skills and adjusting priorities.
- Completes assignments in a timely manner under adverse conditions and maintains an appropriate demeanor.
- Learns and implements new technologies, procedures, equipment etc., to perform work more efficiently, effectively and safely.

Comments: You have performed at an exceptional level in this area. The Department has undergone significant and widespread change during this appraisal period. Most notable is the reorganization to Area Command. This has been challenging and difficult at times. You have adapted to this change and this is reflected in your ability to effectively manage and lead your team.

Capt. Ed Tracey, your previous commander, stated you did an exceptional job coordinating the OPD response to the 2007, 4th of July city-wide celebrations. In August 2007, you prepared and managed a Robbery Suppression Project along the International Blvd corridor along PSA 4. The comprehensive plan involved traditional and modern policing methods in partnership with other city agencies and the community. The results were impressive—there was a drastic crime reduction in the target area and throughout the entire PSA. In fact, under your leadership as the PSA 4 commander, there was an overall decrease in crime of close to three percent, including double digit reductions in most violent crimes. This is outstanding.

Professionalism and Ethics: Maintains high professionalism, ethics, and standards. Develops working relationships based on honesty, trust, and respect. Establishes credibility with peers, subordinates, and community members.

Standards:

- Takes proper care of Departmental equipment.
- Follows all Departmental rules and regulations.
- Demonstrates police values of fairness, integrity, respect, service, and teamwork.

Comments: You take care of Departmental equipment and have a good working knowledge of all Departmental rules and regulations and the Departments FIRST core values. One of your strong points is that you "call it like you see it"—you are direct and up front with your opinions and

Fully Effective

Name of member/employee: Mufarreh, Chris

recommendations for resolving issues or solving problems.

Performance Management: *(Complete for supervisory/management positions)* Sets clear expectations and communicates City mission, goals, and policies; provides appropriate coaching and feedback; completes performance appraisals on time and consistent with the City's performance appraisal system; follows through on staff enhancement plans or corrective action to improve overall employee performance.

Standards:

- Completes all Performance Appraisals within established timelines. Includes all relevant information to support ratings. Conducts appraisals in a fair and unbiased manner.
- Maintains documentation on all staff members and their accomplishments (positive and negative) throughout the year.
- Takes appropriate steps to ensure that all staff under his/her supervision are performing at a fully effective or higher level through feedback, coaching, training, discipline, etc.
- Conducts subordinate meetings in accordance with DGO B-6.

Comments: The supervisors you command are performing effectively. During this appraisal process you have mentored officers appointed to acting supervisor and commander roles; they have all been successful. You conduct subordinate meetings in accordance with DGO B-6. You make time during your shift to be out in the field observing and providing assistance to supervisors and officers. You have responded to several homicide scenes and other critical incidents and provided subordinates training and the value of your experience and expertise. This is important since your supervisory staff is young in terms of experience (one of the supervisors is in acting capacity and two others are relatively new). In addition, 15 officers assigned to your command are on probation. You have ensured your subordinates have received timely Departmental and NSA required training and performance appraisals. Because of your efforts, you have been rated Exceeds Expectations in this area.

Exceeds Expectations

Required Review Comments:

(Complete for all personnel) The following areas have been monitored in order to identify patterns of misconduct or improper behavior.

Indicate in the Comment boxes if no incidents have occurred during the appraisal period.

- ☒ The nature and progress of all complaints and investigations have been reviewed. **NOTE:** The appraiser shall not comment on, or consider in the appraisal, complaints that the Department has determined to be unfounded, exonerated, or that are still pending.

Check the box and provide comments to include patterns and corrective action taken.

Name of member/employee: Mufarreh, Chris

Comment on sustained and not-sustained complaints only: None.

☒ Uses of force;

Comment: None.

☒ Arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrest for other offenses;

Comment: None.

☒ Arrests involving charges of Penal Code Sections 69, 148 and/or 243(b)(c); and

Comment: None.

☒ Vehicle collisions: None.

Supervisor Assessment (Required by Reviewers Only):

10 Reviewers shall make an assessment about how/whether supervisors acted to identify and address patterns of misconduct, performance deficiencies, improper behavior, use force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and on-duty vehicle accidents.

Comment: Lt. Mufarreh reviewed the appropriate Departmental databases and files and did not detect any performance deficiencies or negative patterns. iPAS, LRMS, Personnel Division files, and a supervisory file were reviewed. I am confident that Lt. Mufarreh took the appropriate steps to monitor the performance of his subordinates.

SECTION II: PERFORMANCE OBJECTIVES AND STANDARDS

Use the Performance Objectives and Standards Provided by the Personnel Division or as developed in Section VIII, Communicating Expectations agreed upon in the previous Performance Appraisal or revision.

Position Title: Lieutenant of Police – Patrol Commander

Exceeds Expectations

1. Performance Objective: Provide career management to sergeants, other sworn, and civilian staff.

Standards:

- Provides leadership to Patrol personnel.
- Supports goals, objectives, and strategies of the Patrol Watch or Area Commander.
- Supports skill and career development of Patrol personnel through Departmental or outside training opportunities.
- Requires supervisors to measure effectiveness of Patrol officer

problem-oriented projects.

- Ensures supervisors are directing officers to improve the quality of community contacts.

Comments: You have been supportive and have a good understanding of the goals of the Department and Area Command. You have supported training requests from sergeants who want to attend leadership courses and officers who want to develop their professional skills. As stated above in the Performance Management section, you have provided strong leadership to the supervisors and officers under your command. Because of your efforts, you have been rated Exceeds Expectations in this area.

2. **Performance Objective: Effectively manages resources within scope of responsibilities.**

Standards:

- Ensures 100% of subordinate supervisors' patrol squad complete one to three problem-oriented policing projects (**this standard shall be achieved to receive an overall performance evaluation of "Fully Effective"**).
- Requires 50 % of subordinate supervisors' patrol squads to complete four (4) or more problem-oriented policing projects (**this standard shall be achieved to receive an overall performance evaluation of "Exceeds Expectations"**).
- Ensures that proper and timely notifications are made (to superiors, peers, other agencies).
- Effectively develops plans for scene management of critical incidents, operational contingencies, and sustained operations.
- Develops strategic action plans to address identified problem areas.
- Identifies and obtains or secures all appropriate resources to meet needs and action plans.
- Conducts audits to ensure compliance with Departmental policy and procedures.

Comments: The standard for ensuring patrol officers complete POP projects is relatively new and you are holding both supervisors and officers accountable for managing and completing these projects.

You have done an exceptional job handling critical incidents. For example, on 25 Apr 08, you managed a scene involving a barricaded suspect who had shot at responding officers. Capt. Rick Orozco, who responded as the overall incident commander, advised me you did an outstanding job stabilizing and managing the scene. On 12 Feb 08, OPD responded to assist Berkeley PD with a large protest in their city. A contingency of Area One officers were deployed and you were selected by Captain Ed Tracey to lead this group.

Exceeds Expectations

<p>Capt. Tracey told me you were selected because you are a competent commander with experience in crowd control situations (You received a letter of appreciation from Berkeley PD). On 12 Apr 08, you assisted the Area 2 Acting Lieutenant on a large scene where several robbery suspects were in the yards. You provided sound tactical advice which was recognized by the Area 2 commander. Because of your efforts, you have been rated Exceeds Expectations in this area.</p>	
<p>3. Performance Objective: Responsible for developing and managing budget expenditures to meet the needs of a Division or area command</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Prepares budget requests based on assessment of current and future economic and staffing needs. • Manages expenditures (including overtime, inventory, purchasing) within budget parameters. • Prepares financial reports for review and approval. <p>Comments: As a PSA commander, you managed violent suppression funds (P819). As a Patrol commander, you have not been tasked with preparing budget requests, managing expenditures, or preparing financial reports.</p>	<p>Fully Effective</p>
<p>4. Performance Objective: Represents the Chief or Department at public and legislative meetings (e.g., City Council, NCPC, etc.)</p> <p><u>Standards:</u></p> <ul style="list-style-type: none"> • Thoroughly researches and prepares Council and Committee reports. • Makes effective public presentations and makes persuasive responses (e.g., provides appropriate answers to questions.). • Relates public and legislative concerns back to the Department for appropriate actions or follow-ups. <p>Comments: As a PSA commander, you frequently made public presentations (at community or NCPC meetings) and answered questions from citizens and other community leaders. You also made effective presentations at Crime Stop. As a Patrol commander assigned to the evening shift, you are not required to attend many meetings or research and prepare Council or Committee reports.</p>	<p>Fully Effective</p>

SECTION III: OVERALL EVALUATION

Describe the employee's overall performance. If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall ensure a Supplemental Performance Appraisal Form is prepared by the appropriate supervisor and included as a part of this overall evaluation.

Comments: Your overall rating exceeds Expectations. In making this assessment, I have consulted your previous commander, Capt. Ed Tracey; he concurs with this evaluation. You are a highly competent and well rounded commander and an asset to the Department and community we serve.

Exceeds Expectations

SECTION IV: COMMENDATION RECOMMENDED

If applicable, describe how the employee's performance was truly exceptional and worthy of consideration for commendation.

Pursuant to General Order B-1, Departmental Awards, the member/employee is eligible to receive:
(Check all that apply)

☐ Perfect Attendance Bar

☐ Perfect Driving Bar

☐ Outstanding Performance Evaluation Bar

☐ Advanced POST Bar

☐ Tactical Operations Team Bar

☐ Good Conduct Bar

Comments: Not eligible at this time.

SECTION V: SKILL ENHANCEMENT PLAN

Please describe the mutually agreed upon employee development plan needed to correct deficiencies to bring the employee up to the level of "fully effective." This must be completed for each and every rating that is less than "fully effective."

Comments: N/A

SECTION VI: EMPLOYEE COMMENTS

Comments:

RATINGS KEY

Exceeds Expectations

The performance of an employee at this level consistently exceeds all of the job standards and performance expectations. The employee is performing at a level well beyond what is normally expected of the majority of employees with similar duties.

Fully Effective

An employee at this level consistently meets the established job standards and performance expectations. The results consistently achieved are those the City would expect of employees in this position level.

Improvement Needed

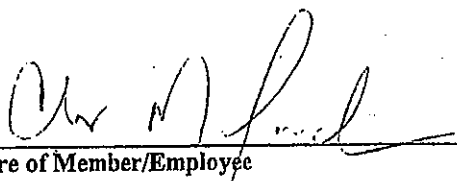
Performance does not consistently meet the essential job standards and performance expectations of the position or is marginally acceptable. Development is needed to reach full effectiveness.


Unacceptable

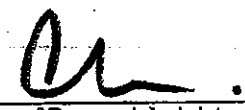
Performance demonstrates an inability or unwillingness to meet job standards and performance expectations of the position. Immediate and sustained improvement is required.

SECTION VII: ADMINISTERING THE APPRAISAL

The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. **PLEASE PRINT LEGIBLY.**



Signature of Member/Employee Chris Mufarreh 7796 05/10/08
Print Name Serial # Date



Signature of Person Preparing Appraisal Anthony G. Toribio 7724
Print Name Serial # Date


Signature of Person Administering Appraisal Anthony G. Toribio 7724
Print Name Serial # Date

Signature of Reviewer (if necessary) Print Name Serial # Date

Signature of Commander/Manager Print Name Serial # Date


Signature of Division Commander/Manager Anthony G. Toribio 7724 10/20/07
Print Name Serial # Date


Signature of Deputy Chief or Chief of Police DAIOKA 787 10/20/07
Print Name Serial # Date

☐ I wish to discuss this appraisal through my chain-of-command.

SECTION VIII: COMMUNICATING EXPECTATIONS

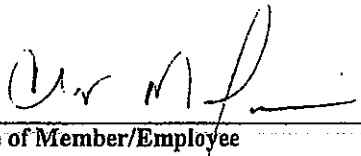
Establishing or revising a new performance plan for the next cycle:
(Check to indicate completed)

- ☒ New plan discussed.
- ☒ Goals are linked to City Council and Department goals.

EXPECTATIONS:

- To meet or exceed the standards set forth in this appraisal.
- Identify training courses to enhance your already strong leadership skills.
- Prepare for the next Captain of Police promotional exam.


The performance expectations for the upcoming appraisal cycle have been communicated to the member/employee.
PLEASE PRINT LEGIBLY.


Signature of Member/Employee

Chris Mufarreh
Print Name

7796
Serial #

11/26/08
Date


Signature of Appraiser

Anthony G. Toribio
Print Name

7724
Serial #

10/26/08
Date

PDB

OAKLAND POLICE DEPARTMENT

PERFORMANCE APPRAISAL FORM

Name of Member/Employee (LAST Name, First) : Chris Mufarreh Serial No.: 7796

Rank/Position: Lieutenant of Police

Unit of Assignment: Area 2 - A Team Day Watch

Appraisal Period: From: 30 Jun 08 to: 30 Jun 09

15-07-09 P04:25 IN *JP*

Appraisal Completed by ☒ Immediate Supervisor ☐ Other: (Describe)

Instructions

Type of Performance Appraisal (Check Box):

☒ **Annual** – If you are the regularly assigned supervisor on the last day of the appraisal period, prepare the Annual Performance Appraisal.

☐ **Probationary**

Indicate the performance appraisal interval:

- ☐ Probationary member/employee following promotion/rehire:
End of ☐ 3rd Month ☐ 5th Month
- ☐ Probationary member including the time spent in field training:
End of ☐ 5th Month ☐ 8th Month ☐ 11th Month
- ☐ Probationary Police Communications Dispatcher and Local 21 employee (following initial hiring):
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month ☐ 11th Month; and
if extended: End of ☐ 14th Month ☐ 17th Month
- ☐ Probationary Local 1021 employees, following initial hiring:
End of ☐ 3rd Month ☐ 5th Month ☐ 8th Month; and
if extended: End of ☐ 11th Month ☐ 14th Month

RATINGS KEY

Exceeds Expectations

The performance of an employee at this level consistently exceeds all of the job standards and performance expectations. The employee is performing at a level well beyond what is normally expected of the majority of employees with similar duties.

Fully Effective

An employee at this level consistently meets the established job standards and performance expectations. The results consistently achieved are those the City would expect of employees in this position level.

Improvement Needed*

Performance does not consistently meet the essential job standards and performance expectations of the position or is marginally acceptable. Development is needed to reach full effectiveness.

Unacceptable*

Performance demonstrates an inability or unwillingness to meet job standards and performance expectations of the position. Immediate and sustained improvement is required.

* Ensure Section V, DEVELOPMENT PLAN is completed and/or attached.

SECTION I: ORGANIZATIONAL VALUES AND WORK HABITS

Name of member/employee: Chris Mufarreh

Attendance: Reports for work regularly with a minimum number of absences (including sick and injured) and tardiness; gives notice when absence or tardiness is unavoidable; receives authorization when time off is needed; observes appropriate lunch and break schedules; submits justification for absences as required and/or requested.

Standards:

- Begins work at start of shift.
- Notifies on duty supervisor or patrol desk of absences at least 3 hours before the normal reporting time if assigned to a 24 hour a day unit or at least 1 hour if assigned to other organizational units.
- No inappropriate use of sick leave or tardiness.
- Does not exceed scheduled time for lunch and breaks.

Number of Hours/Days of Illness/Injury: 12/1 Day

Comments: Chris, you have been a valuable member of Area 2. I can always count on you being on time and ready for duty. You do not abuse sick leave or have any cases of being tardy. You always advise me well in advance of requested time off. You are a hard worker and often I have seen you eat lunch at your desk while working on staff work.

Exceeds Expectations

Use of Time: Manages own time and uses appropriate work methods, techniques, and equipment to achieve the most effective and efficient result in the time available; is mutually respectful of the time and schedule of others; balances multiple priorities and focuses on desired outcome(s).

Standards:

- Handles work assignments in a timely manner; advises supervisor when and why assignments may require more time.
- Prioritizes multiple tasks to achieve desired results.
- Consistently uses time productively and engages in self-initiated activity.
- Complies with General Orders regarding personal use of departmental phones, computers, or other equipment.

Comments: Chris, this is one of your strong points. You handle all your staff work in a timely manner. You have set high standards for yourself and your teams. I can always count on your work being thorough and complete. You have proven to handle a multitude of staff work for example; audits, reviewing crime statistics, fiscal reports and stat sheets.

Exceeds Expectations

Name of member/employee: Chris Mufarreh

Also, you were assigned the task of coordinating the Area's vacation and comp time, which you did with no problems.

During these tough fiscal times you have implemented several strategies that have helped tremendously in our overtime reductions.

Additionally, during this rating period, you came up with a strategy of "Adopt a Restaurant" this was as a result of several "take over" style robberies the Area was experiencing. This was a great idea which had officers meeting with businesses when they were set to close to show a visual presence. This was a tremendous idea which received media attention and was discussed at Crime Stop.

Finally, you have the added responsibility of maintaining the "Equipment Room." You had the task of providing radio's to every patrol officer in Area's 1 & 2, this was an immense assignment, which you accomplished without a problem! Great job!!!

Teamwork and Collaboration: Makes and sustains effective and productive relationships with other members of the organization and the public; is respectful of differing viewpoints; meets commitments to co-workers and/or team members.

Standards:

- Meets commitments to co-workers and team members at all times. Does "fair share" of the work within the team. Willingly contributes points to time sensitive group efforts as they arise.
- Treats people with respect at all times. Allows for differing points of view. Is open to feedback and constructive criticism.
- Maintains clean and hazard free work area.
- Keeps supervisor informed of potential problems.

Comments: Chris, I can always count on you giving honest and straight forward feedback. At times we may not agree but we respect each others position. You do more than your "fair share" of work and you are willing to contribute points to time sensitive group efforts. You treat everyone with respect and maintain a clean and hazard free work area.

You always keep me informed of potential issues and usually you have the matter resolved before it reaches my level. You are not afraid to make decisions and take care of your business.

Customer Service: Responds effectively, courteously, respectfully, and in a timely manner to the needs of a diverse set of internal and external customers; provides information and services in a clear, concise, thorough, accurate, and timely fashion.

Exceeds Expectations

Exceeds Expectations

Name of member/employee: Chris Mufarreh

Standards:

- Treats all customers in a respectful and professional manner.
- Listens to all customers' concerns to resolve problems without unnecessary referrals.
- Has a working knowledge of the Department's complaint process and provides information to private persons upon request.
- Responds to customers' needs in a timely manner.

Comments: Chris, you treat everyone with respect and professional. You handle all concerns without unnecessary referrals. You have a tremendous knowledge of the Department's complaint process and have no problem handling complaints.

Accountability: Follows through on assigned tasks; meets work deadlines or informs others in a timely fashion when/why a deadline cannot be met; makes responsible use of City resources (time and money).

Standards:

- Assumes responsibilities for all equipment, personnel, and situations under his/her control. Wears appropriate safety clothing/equipment at all times.
- Expends Departmental resources in a responsible and efficient manner (e.g., time, supplies, and money).
- Keeps supervisor informed about the status of assignments.
- Handles all assignments according to Departmental policies and procedures.
- Operates and maintains Department equipment (including vehicles) appropriately.
- Qualified with Departmental issued firearms in accordance with DGO B-12.
- Successfully completed all required training in accordance with the DGO B-20 and POST.

Comments: Chris, you are up to date on all your training and firearms qualifications. You have not been involved in on-duty collisions. Your uniform is always neat and clean and you have the same expectations for your teams. You are fiscally responsible. You always keep me informed of your status and you are fully aware of our policies and procedures.

Exceeds Expectations

Name of member/employee: Chris Mufarreh

Adaptability and Problem Solving: Adapts to organizational changes (e.g. technology, resources, and personnel); takes initiative in identifying the existence of a problem and takes appropriate steps to resolve it.

Exceeds Expectations

Standards:

- Takes advantage of opportunities to continuously improve skills and knowledge through offered training or other sources, including off-duty educational opportunities.
- Successfully undertakes and implements new work assignments as they arise.
- Adapts to organizational changes, which may include learning new skills and adjusting priorities.
- Completes assignments in a timely manner under adverse conditions and maintains an appropriate demeanor.
- Learns and implements new technologies, procedures, equipment etc., to perform work more efficiently, effectively and safely.

Comments: You are continually looking to improve your skills and this shows with your recent request to attend the FBI Academy. Additionally, you are always looking for contemporary schools to better yourself and your teams. You are very proactive and like to learn new procedures and technical advances. You are always looking at ways to perform work more efficiently, effectively and safe.

Because of your high standards, I have appointed you Acting Captain for Area 2 during my absence. You have handled this added responsibility without any problem. I can always count on you to work hard and I have no problem adding more to your plate.

Professionalism and Ethics: Maintains high professionalism, ethics, and standards. Develops working relationships based on honesty, trust, and respect. Establishes credibility with peers, subordinates, and community members.

Exceeds Expectations

Standards:

- Takes proper care of Departmental equipment.
- Follows all Departmental rules and regulations.
- Demonstrates police values of fairness, integrity, respect, service, and teamwork.

Comments: Chris, you have set high standars for yourself and your teams. You have high ethical standards. You are one of the most highly

Name of member/employee: Chris Mufarreh

respected command officers on the Department and this is based on your honesty, integrity, trust and respect.

Performance Management: *(Complete for supervisory/management positions)* Sets clear expectations and communicates City mission, goals, and policies; provides appropriate coaching and feedback; completes performance appraisals on time and consistent with the City's performance appraisal system; follows through on staff enhancement plans or corrective action to improve overall employee performance.

Exceeds Expectations

Standards:

- Completes all Performance Appraisals within established timelines. Includes all relevant information to support ratings. Conducts appraisals in a fair and unbiased manner.
- Maintains documentation on all staff members and their accomplishments (positive and negative) throughout the year.
- Takes appropriate steps to ensure that all staff under his/her supervision are performing at a fully effective or higher level through feedback, coaching, training, discipline, etc.
- Conducts subordinate meetings in accordance with DGO B-6.

Comments: Chris, as I have stated previously your attention to detail and staff work is commendable. You are very aware of due dates and timelines. You have set high standards for your subordinates and their staff work is always on time. All your Performance Evaluations have been turned in on time and you have made several Supervisory Notes Files entries, both positive and negative. You are quick to provide feedback both good and constructive. Your supervisors have conducted their meetings within the policy of DGO B-6.

Additionally, as discussed you have been tasked with ensuring that Area 2 is in compliance with all NSA related training, Performance Evaluations and Firearms Qualifications. Your work in this area has been tremendous and much appreciated.

Required Review Comments:

(Complete for all personnel) The following areas have been monitored in order to identify patterns of misconduct or improper behavior.

9 Consulted iPAS on 6 Jul 09 (enter date). If information not obtained through iPAS, document the source in the Comment box.

Indicate in the Comment boxes all incidents which occurred during the appraisal period.

☒ The nature and progress of all complaints and investigations have

Check the box and provide comments to include patterns and corrective action taken.

Name of member/employee: Chris Mufarreh

been reviewed. NOTE: The appraiser shall not comment on, or consider in the appraisal, complaints that the Department has determined to be unfounded, exonerated, or that are still pending.

Comment on sustained and not-sustained complaints only: None

☒ Uses of force (Identify the levels of force reviewed (levels 1-4);

Comment on whether the force was in/out of compliance: None

☒ Arrests for narcotics-related possessory offenses not made as a result of searches conducted pursuant to arrest for other offenses;

Comment: None

☒ Arrests involving charges of Penal Code Sections 69, 148 and/or 243(b)(c); and

Comment: None

☒ Vehicle collisions.

Comment: Indicate whether the incident was preventable or non-preventable.: None

Supervisory Skill Assessment (Complete for Personnel in Supervisory Positions Only):

Appraiser shall assess and comment on whether the supervisor acted to identify and address his/her subordinates' conduct in such areas as: patterns of misconduct, performance deficiencies, improper behavior, use of force, sick leave, line-of-duty-injuries, narcotics-related possessory offenses, and on-duty vehicle accidents

Comment: Lt. Mufarreh reviewed the appropriate Departmental databases and files and did not detect any performance deficiencies or negative patterns. iPAS, LRMS, Personnel Division files, and a supervisory file were reviewed. I am confident that Lt. Mufarreh took the appropriate steps to monitor the performance of his subordinates.

Additionally:

Lt. Mufarreh routinely monitors his squad for patterns pertaining to use of force, line of duty injuries, and narcotics related possessory offenses. I would like Lt. Mufarreh to continue this level of oversight, and to pay particular attention to patterns related to use of force and internal affairs complaints for his squad.

10

Name of member/employee: Chris Mufarreh

Collateral Duties: ☒ Yes ☐ No: If yes, complete below.

List Duties:

Tactical Team Commander

- 11 Document commentary from consultation with the unit supervisor: On 6 Jul 09, I spoke with Deputy Chief David Kozicki who oversees the Bureau of Field Operations and the Tactical Team. Chief Kozicki advised that you are a dedicated member and he appreciates your commitment to the Tactical Team and Police Department. He appreciates the time you have provided and thanks you.

Consultation with Former Supervisor(s):

- 12 ☒ Not Applicable. I was your supervisor for the entire appraisal period.
- ☐ Document commentary from consultation with the previous supervisor: _____

SECTION II: PERFORMANCE OBJECTIVES AND STANDARDS

Use the Performance Objectives and Standards Provided by the Personnel Division or as developed in Section VI, Communicating Expectations agreed upon in the previous Performance Appraisal or revision.

<p>1. <u>Performance Objective:</u> Lieutenant of Police – Patrol Commander</p> <p>1. Performance Objective: Provide career management to sergeants, other sworn, and civilian staff.</p> <p>Standards:</p> <ul style="list-style-type: none">• Provides leadership to Patrol personnel.• Supports goals, objectives, and strategies of the Patrol Watch or Area Commander.• Supports skill and career development of Patrol personnel through Departmental or outside training opportunities.• Requires supervisors to measure effectiveness of Patrol officer problem-oriented policing projects.• Ensures supervisors are directing officers to improve the quality of community contacts. <p><u>Standards:</u></p> <p>•</p> <p>Comments: Chris, you have a tremendous talented group of supervisors. You</p>	<p>Exceeds Expectations</p>
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<p>have developed and placed them in roles to further their careers. You have placed sergeants in positions to be Acting Lieutenant's in preparation in becoming command officers. You monitor your teams performance in regards to projects and after a recent audit you lead the Area 2 teams in total projects completed. Your teams are up to date with meeting the community meetings requirement.</p>	
<p>2. <u>Performance Objective:</u> Effectively manages resources within scope of responsibilities.</p> <p>3. Standards:</p> <p>4. • Ensures 100% of subordinate supervisors' patrol squad completes two to four problem-oriented policing projects (this standard shall be achieved to receive an overall performance evaluation of "Fully Effective").</p> <p>5. • Requires 50 % of subordinate supervisors' patrol squads to complete five or more problem-oriented policing projects (this standard shall be achieved to receive an overall performance evaluation of "Exceeds Expectations").</p> <p>6. • Ensures that proper and timely notifications are made (to superiors, peers, other agencies).</p> <p>7. • Effectively develops plans for scene management of critical incidents, operational contingencies, and sustained operations.</p> <p>8. • Develops strategic action plans to address identified problem areas.</p> <p>9. • Identifies and obtains or secures all appropriate resources to meet needs and action plans.</p> <p>10. • Conducts audits to ensure compliance with Departmental policy and procedures.</p> <p><u>Standards:</u></p> <p>•</p> <p>Comments: Chris, your teams have completed projects and you ensure your subordinates track their compliance with this standard. You are one of the most skilled street commanders regarding scene management. You take control of scenes and make decisions. I have observed you handle several scenes and you make it clear that you are in control.</p>	<p>Exceeds Expectations</p>
<p>3. <u>Performance Objective:</u> 4. Represents the Chief or Department at public and legislative meetings (e.g., City Council, NCPC, etc.)</p> <p>Standards:</p>	<p>Exceeds Expectations</p>

<ul style="list-style-type: none"> • Thoroughly researches and prepares Council and Committee reports. • Makes effective public presentations and makes persuasive responses (e.g., provides appropriate answers to questions.). • Relates public and legislative concerns back to the Department for appropriate actions or follow-ups. <p><u>Standards:</u></p> <p>•</p> <p>Comments: During this rating period you have attended community meetings that I could not attend. You attended a meeting with Deputy Chief Israel that was very "anti-police" and you helped defuse the crowd and calm them down. You are well spoken and have no problem addressing a crowd.</p>	
<p>4. <u>Performance Objective:</u></p> <p><u>Standards:</u></p> <p>•</p> <p>Comments:</p>	<p>Select From the Following:</p>
<p>5. <u>Performance Objective:</u></p> <p><u>Standards:</u></p> <p>•</p> <p>Comments:</p>	<p>Select From the Following:</p>
<p>6. <u>Performance Objective:</u></p> <p><u>Standards:</u></p> <p>•</p> <p>Comments:</p>	<p>Select From the Following:</p>

SECTION III: OVERALL APPRAISAL

Describe the employee's overall performance. If the member/employee was transferred mid-appraisal cycle or had collateral duties, the current supervisor shall consult with the previous supervisor and consider as a part of this **OVERALL** appraisal.

<p>Comments: Chris, it has truly been my pleasure supervising you this past year. You are a valued member of the Area 2 team and I truly respect your abilities. I thoroughly trust your decision making and skills. I know I can trust you with</p>	<p>Exceeds Expectations</p>
---	-----------------------------

any assignment and it will be thoroughly researched and complete. You have a great work ethic and commitment. You demand a lot from your teams and you hold them accountable.

I must commend your dedication and commitment to the Oakland Police Department and community. You have a can do attitude which I admire.

I know that this year has been tough, but you have not let it affect your work. You are a positive influence on your teams.

I want to thank you for all of your hard work and for your commitment. You are my "Right hand man" and I know that you will always do what is right for the citizens and OPD. It has been a pleasure seeing you grow and also learn from you.

SECTION IV: COMMENDATION RECOMMENDED

If applicable, describe how the employee's performance was truly exceptional and worthy of consideration for commendation.

If the member/employee has not received any of the following awards in the past three (3) years, he/she may be eligible pursuant to General Order B-1, Departmental Awards. (Check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Perfect Attendance Bar | <input type="checkbox"/> Perfect Driving Bar |
| <input type="checkbox"/> Outstanding Performance Evaluation Bar | <input type="checkbox"/> Advanced POST Bar |
| <input type="checkbox"/> Tactical Operations Team Bar | <input type="checkbox"/> Good Conduct Bar |

Comments:

SECTION V: DEVELOPMENT PLAN

A development plan shall be completed for each and every appraisal area that is rated as "Needs Improvement" or "Unacceptable." Describe the development plan or attach the Performance Deficiency Notice that addresses and corrects the deficiencies to bring the member/employee up to the level of "Fully Effective."

Comments: See attached, if applicable

SECTION VI: COMMUNICATING GOALS AND EXPECTATIONS

Establishing or revising a new performance plan for the NEXT performance appraisal period:
(Check to indicate completed)

- ☒ New plan discussed.
- ☒ Goals are linked to City Council and Department goals.

GOALS AND EXPECTATIONS:

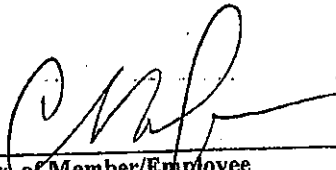
1. Continue to work on projects and ensure your supervisors are meeting the minimum requirement on projects.
2. Ensure that you monitor overtime usage by your teams.
3. Meet all requirements with training and compliance with the NSA.


SECTION VII: EMPLOYEE COMMENTS

Comments:

SECTION VIII: ADMINISTERING THE APPRAISAL

The appraisal has been administered to the member/employee. Signature does not necessarily signify agreement. **PLEASE PRINT LEGIBLY.**

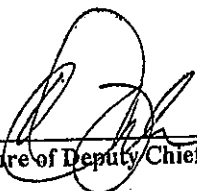
	Chris Mufarreh	7796	8 Jul 09
Signature of Member/Employee	Print Name	Serial #	Date

	Ricardo E. Orozco	7583	8 Jul 09
Signature of Person Preparing Appraisal	Print Name	Serial #	Date

	Ricardo E. Orozco	7583	
Signature of Person Administering Appraisal	Print Name	Serial #	Date

	Ricardo E. Orozco	7583	
Signature of First-Level Commander/Manager	Print Name	Serial #	Date

	Ricardo E. Orozco	7583	
Signature of Division Commander/Manager	Print Name	Serial #	Date

	David A. Kozicki	7297	12 Jul 09
Signature of Deputy Chief or Chief of Police	Print Name	Serial #	Date

☐ I wish to discuss this appraisal through my chain-of-command.

Gents<

This is an e-mail I sent to Dave K about Lt. overtime and issues with reductions. This e-mail was sent on 24 Feb 09, please see below..,

----- Forwarded Message -----

From: "Orozco, Ricardo" <ROrozco@oaklandnet.com>

To: (b)(5)(B)

Sent: Thu, January 21, 2010 2:22:20 PM

Subject: FW: Further overtime reductions

Ricardo E. Orozco
Captain of Police
Oakland Police Department
Bureau of Services
(510) 238-3351 - office

-----Original Message-----

From: Orozco, Ricardo

Sent: Tuesday, February 24, 2009 8:35 PM

To: Kozicki, David

Subject: FW: Further overtime reductions

DC,

Can I just offer this for the Lt OT, just some concerns:

- I believe we have made some great progress with Area command and doing what you have tasked us with. However, I do believe that we are in a serious dilemma when it comes to Lt overtime.

I believe it is too much for one night time Lt to be responsible for all the officers in the City (21 Sgt's plus 150+ R/O's), just to cut corners. We have 7 different line up times on the weekends, with 6 of the line ups going past 1800 hours! Add side show and the downtown, you have chaos.

What I am proposing is the following:

- M - F, Day Shift one Lt is fine as long as the Area Capt's are around. This means a reduction in meetings and other obligations for the Capt's.

- M - F, Night Shift two Lt's with all the supervisors and man power on the street

- S - S, Day Shift two Lt's at any one time for City Wide Coverage.

- S - S, Nigh Shift two Lt's at any one time for City Wide Coverage.

We are a very young Department and we need to ensure there is a command

presence and leadership to make sure everyone goes home safely and also stays out of trouble. I believe this can be a potential issue for the City and we may end up paying more later than now.

I agree with you regarding the backfill, and we in Area 2 have taken your original message on OT very seriously. They are also managing and looking at crime related stat's and responding, we are working our Lt's, this is no time to be on the sidelines. My Lt's would be in Area 1 & 3 with the homicides and violent crime, they would not be able to tend to Area 2 issues; is this geographic policing?

Respectfully submitted,

Capt. Orozco

-----Original Message-----

From: Yelder, Ron

Sent: Tue 2/24/2009 1:06 AM

To: Orozco, Ricardo

Subject: RE: Further overtime reductions

Captain,

Here are my concerns about this citywide commander.

1. I am concern the ability of a single commander to effectively manage 21 Sgt and up to 168 officers at one time. This is a tremendous span of control for one person to have with field units. Keep in mind on the watch system there were only 6 Sgts and about 45 officers per shift.
2. We would need to have one line up if there is one commander to make sure the details and overall instructions are carried out.
3. There would have to be reduced expectation of the commander, since it will be impossible for anyone to manage more than one scene at a time.
4. Weekends would be a nightmare, sideshow, clubs, parties, and homicides.

Ronald A. Yelder Sr.

Lieutenant of Police

Area II Patrol Division

Oakland Police Department

Ph: 510 238-6911

-----Original Message-----

From: Orozco, Ricardo

Sent: Monday, February 23, 2009 5:18 PM

To: Green, Lawrence; Hoppenhauer, Donna C; Joyner, Ersie; Mufarreh, Chris; Yelder, Ron

Subject: Fw: Further overtime reductions

I hate to be the bearer of bad news; see below!!! I guess the word we have to look at is "dire." Comments? Let me hear if you have suggestions.

-----Original Message-----

From: Kozicki, David

To: Orozco, Ricardo; Rachal, Anthony; Toribio, Anthony; Tracey, Edward

CC: Jordan, Howard; Garcia, Gilbert

Sent: Mon Feb 23 17:15:19 2009

Subject: Further overtime reductions

Captains,

We just had a meeting with the Budget Office on the dire fiscal situation. Further overtime reductions have to be made.

* Effective immediately, all overtime special enforcement will stop. All planned operations will be cancelled.

* Furthermore, we will stop the backfill of area lieutenants beyond one per shift city-wide. We will discuss how to best coordinate this. I suggest that we prepare a table on the server where you will input your lieutenant schedule until Telestaff comes on line.

* There will be no backfill overtime to fill vacant beats or assignments.

* There will be no backfill sergeant overtime when an acting-sergeant is available to fill the assignment on regular time.

David A. Kozicki

Deputy Chief of Police

Oakland Police Department

Bureau of Field Operations

Office (510) 238-7237

Orozco, Ricardo

From: Orozco, Ricardo
Sent: Sunday, March 08, 2009 8:13 PM
To: Rachal, Anthony; Toribio, Anthony
Subject: Lieutenants Staffing

Gents,

I believe we have a serious issue with only staffing the City with one lieutenant. I have sent e-mails to the DC regarding the issue and nothing has happened. I keep hearing from my folks that having one lieutenant on is difficult with 12 sgt's plus the radio room supervisor, who calls the Lt on issue. The Lt has no time to work on Admin duties or adequately manage and supervise the City. For example today, Ersie bounced from Area 1 on a perimeter and then back to Area 2 on another. Both of these involved code 7 suspects. Ersie, could not attend the first line up because he was dealing with sideshow at 0500 as well. One Lt on the street with all the resources that are out-are a serious concern!!!

Can we make an argument regarding 1 - 8?

Also, the details are a concern as well. Who signs off?

I am concerned because as we know the DC is quick to discipline and we are setting up our Lt's for failure. I am making to much of this or shall we discuss a group?

Feedback???

Orozco, Ricardo

From: Rachal, Anthony
Sent: Sunday, March 08, 2009 9:26 PM
To: Orozco, Ricardo; Toribio, Anthony
Subject: Re: Lieutenants Staffing

I am fully on board with challenging the Lt staffing issue. It's not effective and the risks involved [some already stated by Rick below] do not justify the nominal fiscal savings. In other words, this is BAD policy!
AKR

-----Original Message-----

From: Orozco, Ricardo
To: Rachal, Anthony; Toribio, Anthony
Sent: Sun Mar 08 20:12:38 2009
Subject: Lieutenants Staffing

Gents,

I believe we have a serious issue with only staffing the City with one lieutenant. I have sent e-mails to the DC regarding the issue and nothing has happened. I keep hearing from my folks that having one lieutenant on is difficult with 12 sgt's plus the radio room supervisor, who calls the Lt on issue. The Lt has no time to work on Admin duties or adequately manage and supervise the City. For example today, Ersie bounced from Area 1 on a perimeter and then back to Area 2 on another. Both of these involved code 7 suspects. Ersie, could not attend the first line up because he was dealing with sideshow at 0500 as well. One Lt on the street with all the resources that are out are a serious concern!!!

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Feedback???

Orozco, Ricardo

From: Toribio, Anthony
Sent: Sunday, March 08, 2009 8:40 PM
To: Orozco, Ricardo; Rachal, Anthony
Subject: Re: Lieutenants Staffing

I agree that each area needs to have a lieut working.
The only other option is that we scrutinize their time off more, and I don't want to go down that road.
Let's talk to the DC on thurs.

Anthony G. Toribio
Captain of Police
Patrol Division, Area One
Oakland Police Department
510.238.3958
Area One - Training the Best Patrol Officers in the City

-----Original Message-----

From: Orozco, Ricardo
To: Rachal, Anthony; Toribio, Anthony
Sent: Sun Mar 08 20:12:38 2009
Subject: Lieutenants Staffing

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Feedback???



=Area 3

[illegible]

Beginning of Annual Patrol Year

M. Torres 4278P

Saturday:

21 Mar 2009

FINAL DETAIL

BUREAU OF FIELD OPERATIONS
Area Command: Area 3
A.M. DETAIL

Patrol Division: B

COMMAND

- 1- Open Beats
- 0- Wagons
- 2- WDOF Sgt(s)
- 0- WDOF Officers
- 1- PST
- 0- K9 on duty
- 1- Evidence Tech's

City Watch Commander: Area 3

UNIT	RANK	LAST	FIRST	SER	RAD	VEH	ASSIGNMENT INFO	NOTES
1L86	LT	LINDSEY	DRENNON	8179	335	1942	A3 LT/B 04/16 G (b)(5)(B)	

Eastmont Patrol Desk

1D1	OFC	QUINTELA	KATHRYN	8760	357		Area 3 TA (Officer) 04/16	
3D3	OFC	FISHER	JAMES	7498	764		Patrol Desk; TFS e/o We	

0500-1700

FINAL DETAIL

(Lt. Lindsey)

UNIT	RANK	LAST	FIRST	SER	RAD	VEH	ASSIGNMENT INFO	NOTES
1L75	SGT	WONG	JIMMY	8048	210	1243	5B; Sgt 05/17; C (b)(5)(B)	Cantonese; Taser; Drive Instr
1L26	OFC	KO	BOBBY	8776	619	1736	5B; Cantonese; Taser	
1L27	OFC	JAIME	ROBERT	8155	501	1727	5B; Spanish	
1L28	OFC	HOUSE	MAISHA	8830	461	1700	5B	
1L29	OFC	IGUALDO	MICHAEL	8210	487	1429	5B; FTO	
1A30	OFC	FACTORA	JAY	8959	455	1736	5B	Split up sitting on 281 house on 73rd
	OFC	SMOAK	JASON	9004	1837	1736	5B	taking calls

0800-2000

FINAL DETAIL

(Lt. Lindsey)

UNIT	RANK	LAST	FIRST	SER	RAD	VEH	ASSIGNMENT INFO	NOTES
2L76	SGT	COVINGTON	DONALD	7180	1730	1244	8B; Sgt C (b)(5)(B)	WDOP 0800-1400 HRS
2X76	SGT	KELLEY	DARRELL	7620	4716	1444	8B; Sgt C (b)(5)(B)	WDOP 1400-2000 HRS
2C56	PST	CROWLEY	CRYSTAL	4641	863	3842	AREA 3 PST 0800-1600/SM	
2A31	OFC	WESTON	PORTER	8698	739	1924	8B; Taser	
	OFC	JAGAR	DINESH	8817	751	1924	8B; Taser	
2A32	OFC	TEDESCO	ANTHONY	8663	796	1909	8B; Taser; ALPR	
	OFC	BRUCE	DANIEL	8729	666	1909	8B; ALPR; Intoxilizer	
2L33		BY 2A34						
2A34	OFC	MELHAM	MICHELLE	8779	209	1789	8B; Desk; Taser; ALPR	perimeter
	OFC	HARGRAVES	JOHN	8756	676	1789	8B; Taser; Intoxilizer	
2A35	OFC	MORRIS	ELTON	8815	651	1908	8B	perimeter
	OFC	ROMERO	JOHN	8927	266	1908	8B	

1100-2300

FINAL DETAIL

(Lt. Lindsey)

UNIT	RANK	LAST	FIRST	SER	RAD	VEH	ASSIGNMENT INFO	NOTES
3L75	SGT	GARMAN	DAVID	7710	765	1443	11B; Sgt 11/23; (b)(5)(B)	COMM MEETING
3C66	PET	BOYLE	PATRICIA	4211	624	3099	PET 1100-1900; (b)(5)(C)SM	
3U26	OFC	JOHNSON	QIANA	8858	672	1723	11B	
3U27		OPEN						
3U28	OFC	BURNS	ANTHONY	8644	1431	1720	11B	
3U29	OFC	TORIBIO	STEVE	8659	794	1712	11B; Intoxilizer; PAS	completed 950
3U30	OFC	BREDEN	JOHN	8966	744	1726	11B	

TRAINING



BULLETIN

Date of Issue / Revision:
11/9/89

Index Number: III - E
Alpha Index: Barricaded Subject/
Hostage Negotiation / High Risk Arrests / Warrants

*Department Training Bulletin shall be used to advise members of current police techniques and procedures
and shall constitute official policy.*

Department General Order A - 70.21, July 1989

Barricaded Subject Incidents

Introduction

Definition

A barricaded subject incident is an incident in which a person armed with a weapon, explosive, or other dangerous device seizes control of a location and refuses to surrender to police custody.

A barricaded subject incident may or may not include the taking of hostages.

In a barricaded subject incident, the primary objective is the safe release of all hostages, if any, and the peaceful surrender of the suspect(s).

Steps in this procedure can be adopted for use during sniper incidents and during crimes in progress in which innocent bystanders are in danger. Also, steps in this procedure can be adopted for use during a high-risk arrest or the high-risk service of a warrant.

Hostage Policy

In a barricaded subject incident, officers should make every reasonable effort and use every verbal and tactical tool at their disposal to secure the arrest of the suspect without harm to the hostages.

Criminals who take hostages are individuals who, if allowed to escape, will pose a continuing danger to the hostages and to the community. Promises from such individuals that hostages will be released unharmed when their conditions are met are generally meaningless.

Because the Department does not have the ability to protect hostages outside police presence, the Department will not—except under exceptional circumstances—enter into any agreement with any hostage taker which provides for the removal of hostages to a new location.



In general, a hostage taker will not be allowed to escape, with or without hostages.

The additional guidelines listed below direct officers' response during a barricaded subject incident involving hostages:

- The Department does not grant immunity in order to neutralize a hostage situation.
- The Department does not exchange volunteer citizens or police officers for hostages.
- The Department does not exchange, surrender, or supply weapons to a hostage taker.

Containment and negotiation are the best methods for obtaining the safe release of hostages.

Although the Department is committed to the minimal use of force to resolve a hostage incident, officers retain, at all times, the right to defend themselves and innocent persons. Furthermore, if or when Department personnel have exhausted all non-force options or if the lives of hostages are in immediate danger, the Department will resolve the incident by the appropriate use of force.

Command During a Barricaded Subject Incident

* During a barricaded subject incident, command of all police personnel is assumed successively by members in the regular command structure of the area in which the incident occurs: i.e., the District Sergeant; the Area Lieutenant; the Area Commander; the Bureau of Field Operations Deputy Chief; and the Chief of Police.

* The ranking member at the scene of a barricaded subject incident will assume command of the incident until the arrival of a higher ranking officer.

The incident commander will notify the Communications Division of his/her arrival at the Command Post and the fact that he/she has assumed command of the operation.

Steps

Responding to a barricaded subject incident requires four sets of steps: Response to the Call, Containment and Stabilization of the Scene, Coordination of Entry and Arrest, and Closure of the Operation.



Procedure for Barricaded Subject Incident

I. Response to the Call

Purpose: Response to the call confirms that a barricaded subject incident is in progress.

A barricaded subject incident usually begins with a call to the Communications Division.

To respond to the call, personnel generally perform the following steps:

1. Dispatch receives a call that a barricaded subject incident is in progress.

The dispatcher maintains telephone contact with the caller to gain as much information as possible. In particular, the dispatcher attempts to determine the type of incident, the number of people involved, the identity of people involved, the specific threats and demands made, and information on any weapons that are involved.

While it is imperative that the dispatcher obtain as much information as possible from the caller, it is equally important that the dispatcher not ask leading questions in a way that could escalate the situation.

2. The dispatcher notifies the Communications Division supervisor of the call.
3. The Communications Division supervisor will direct an officer and a District Sergeant to confirm the initial contact information.

The Communications Division supervisor notifies the Area Commander that a barricaded subject incident may be in progress.

4. The first officer to arrive at the scene confirms by any practical means available that a barricaded subject incident is in progress.

The officer shall take no steps to force the incident to a conclusion.

5. The first officer to arrive at the scene will brief the District Sergeant.
6. If the District Sergeant determines that a hostage incident is in progress, the District Sergeant will summon a command officer.



II. Containment and Stabilization of the Scene

Purpose: Containment and stabilization of the scene helps to control the incident and reduce the number of problems that can interfere with negotiation and resolution.

To contain and stabilize the scene, personnel perform the following steps:

1. The District Sergeant calls for a sufficient number of officers to contain the scene.

Initial containment is a function of Patrol Division units.

2. The District Sergeant will establish a Command Post.

The Command Post is used to assemble essential personnel; establish an inner and outer perimeter; assemble equipment; delegate tasks; start a log; assemble maps, charts, and floor plans; and review records and other pertinent information.

3. Prior to any contact with the suspect, the District Sergeant establishes an inner perimeter.

The inner perimeter is the immediate area of containment for a barricaded subject incident, and its size is dictated by circumstances. It may be as small as a single house or, in the case of a sniper armed with a high-powered rifle, as large as several square blocks.

The District Sergeant directs the officers assigned to the inner perimeter not to attempt to apprehend the hostage taker(s), free the hostages, or act as snipers. The purpose of the officers in the inner perimeter is to contain the incident, observe, and report. However, the Sergeant's directions are not intended to restrict officers' activities so that they do not take the appropriate measures to apprehend a suspect attempting to escape. Nor is it intended that any officer should hesitate to take action to prevent injury to himself or others.

The District Sergeant must make contingency plans and identify personnel to respond to escape attempts or surrender by the suspect before the arrival of specialized teams. The District Sergeant must make a hostage rescue plan in the event the suspect starts killing the hostages before the arrival of specialized teams.

Communications for the inner perimeter is generally conducted using car radios and transceivers on a patrol talk group under Code 33 conditions. To limit radio traffic, officers should use secure telephones whenever possible.

In the inner perimeter, the outside speakers on police vehicles should be kept off, radios on cars and motorcycles turned low, and the display of weapons and the use of red lights and other attention-getting emergency equipment kept at a minimum.

In establishing the inner perimeter, the District Sergeant will ensure that the following tasks are completed:

- Evacuation of all citizens from the inner perimeter. Citizens should be debriefed and identified.
- Establishment of control points to prevent unauthorized persons from entering the inner perimeter. The Sergeant should call for and assign as many officers as necessary to prevent traffic and pedestrian movement within the inner perimeter.



4. The District Sergeant deploys officers as they arrive in order to prevent the suspect from escaping or moving the hostages.

Officers must remember not to expose themselves unnecessarily. When moving from one location to another, officers must not present themselves as targets. Officers must not expose themselves in an effort to get a better view or to satisfy their curiosity.

Once a perimeter is set, officers must remain at their posts until properly relieved.

5. The District Sergeant must constantly monitor the positions taken by officers to ensure that they are not in the suspect's field of fire, that a "crossfire" situation does not exist, and that the measures taken to prevent the escape of the suspect(s) are the best possible under the circumstances.
6. The second sergeant to arrive at the scene will establish an outer perimeter.

As in the inner perimeter, the second sergeant directs the officers assigned to the outer perimeter not to attempt to apprehend the hostage taker(s), free the hostages, or act as snipers. The primary duty of officers on the outer perimeter is **crowd and traffic control**. However, the Sergeant's directions are not intended to restrict officers' activities so that they do not take the appropriate measures to apprehend a suspect attempting to escape. Nor is it intended that any officer should hesitate to take action to prevent injury to himself or others.

In establishing an outer perimeter, the second sergeant to arrive at the scene will ensure that the following tasks are completed:

- Assignment of sufficient officers to establish an outer perimeter.
- Establishment of control points to prevent unauthorized persons from entering the outer perimeter.
- Establishment of traffic control to prevent unauthorized vehicles from entering or leaving the outer perimeter
- Facilitation of the movement of authorized personnel and equipment through the outer perimeter.
- Establishment of a temporary press area outside the perimeter.
- As in the inner perimeter, the outside speakers on police vehicles should be kept off, radios on cars and motorcycles turned low, and the display of weapons and the use of red lights and other attention-getting emergency equipment kept at a minimum.



7. Upon arrival, the incident commander immediately will establish fire control by use of the following terminology:

K-3 Provision: No firing except in immediate defense of life.

Green Light: Fire if presented with a suitable target (This command is given to a designated shooter.).

Red Light: No firing except by designated shooter.

8. The incident commander shall review the disposition made by the sergeants in the inner and outer perimeters and initiate any additional measures he / she feels appropriate.

These measures should include contingency plans to deal with the failure of negotiation, an attempted escape, and conduct of the surrender phase of the negotiations.

9. The incident commander determines what assistance is needed, if any, from outside agencies such as the OFD, CHP, and / or an ambulance service.
10. The incident commander designates a supervisor to act as liaison officer and designates a press relations officer. If the incident is of long duration, the command officer designates a logistics officer.
11. The liaison officer will be stationed at the Command Post and coordinate contact with outside agencies. Specifically, the liaison officer performs the following tasks:
 - Monitor the need for special equipment and, as needed, request special equipment from City, County, and Federal Agencies.
 - As they arrive, brief supervisory personnel of outside agencies on the incident status.
 - Maintain a count of responding officers, note their functions, and keep track of their positions.
 - Keep the Communications Division informed of the location of all personnel.
12. The press relations officer will communicate all information available to the press.

If television and radio reporters are on the scene, the press relations officer will ensure that they do not report a "blow by blow" account, which could compromise the operation if overheard or viewed by the suspect(s).

The press relations officer will designate a place where reporters can work which is out of the line of fire and which does not interfere with police operations.



13. In events of long duration, a logistics officer will assist the incident commander to procure essential equipment and logistical support and to arrange for the resupply of officers to the area.
14. The incident commander determines if a restricted telephone line between the Command Post and the Communications Division is needed and whether technical assistance should be obtained from the telephone company.
15. The incident commander decides whether to call in sniper teams, entry teams, and / or hostage negotiation teams.

Team members must be summoned as soon as the need for their specialized skills becomes apparent.

The makeup and purpose of each team is described below.

Sniper Team

A sniper team consists of two officers: a marksman and an observer. The marksman provides precise, long-range firepower when required by the incident commander. The observer aids the marksman in target identification and acquisition and provides visual intelligence to the Command Post.

More than one sniper team should be deployed at a time in order to provide necessary manpower and adequate relief periods to avoid fatigue.

Marksmen are equipped with Remington Model 700 BDL .308 caliber rifles with Redfield 3 X 9 variable power scopes, Ruger Mini - 14's, and HK 91/93 .223/7.62 rifles. Observers are equipped with 7 X 50 binoculars and other devices to aid in their observation of incident locations.

Sniper team members shall keep their personally assigned equipment in the SWAT van unless carrying it with them while on duty.

Ad-Hoc

Does not
go along
w/ the
perception



*Entry Team**

An entry team performs entries to effect arrests or rescue hostages.

Generally speaking, an entry team is used in the event negotiations fail in a hostage situation or chemical agents are ineffective. In accordance with Department policy on the use of escalating levels of force, less dramatic tactics must have been attempted or ruled inapplicable before a forced entry is ordered.

In a hostage situation, for example, an entry team would not be ordered to effect entry unless the incident commander entertained a reasonable belief that a hostage had been killed, feloniously assaulted, or was about to be killed or receive serious bodily injury. Such an action by a suspect normally would preclude further negotiations and necessitate an immediate forced entry.

Entry teams are deployed at the discretion of the incident commander.

An entry team is composed of lieutenant of police, who serves as the tactical commander; a sergeant of police, who serves as team leader; and a number of trained police officers, who serve as assault / rescue personnel. The number of officers in an entry team varies, depending upon the situation.

The tactical commander is responsible for supervising the team during all operations. If the incident commander gives the order to make an entry, the tactical commander shall be in sole command of the actual entry. The tactical commander also provides tactical advice to the incident commander.

Once entry is made, team members direct and / or complete evacuation, emergency rescue, and arrests with the use of less-than-lethal munitions and chemical agents, as necessary.

Sufficient entry team members shall be deployed to provide for adequate relief and unexpected contingencies.

Entry team members are equipped with MP5 sub-machine guns, Benelli 12 gauge shotguns, .223 caliber rifles, an assortment of chemical agents and less-than-lethal munitions, mirrors for building and area searches, body armor, distraction devices, and forced entry tools.

Entry team members shall keep their personally assigned equipment in the SWAT van unless carrying it with them while on duty.

* The sniper and entry team programs enable the Department to provide protective service to highly visible members of society who may be subject to threats or assaults. The personnel assigned to the programs may also assist the United States Secret Service, the California Highway Patrol, or other agencies called upon to provide protective services within the City of Oakland. With the approval of the Chief of Police, team members may also provide protective services outside the City when requested to do so by other agencies.



Hostage Negotiation Team

A hostage negotiation team consists of four members: the primary hostage negotiator, the backup hostage negotiator, the team liaison member, and the team intelligence officer.

When possible, the Department makes bi-lingual negotiators available. Having bi-lingual negotiators is important for safety and for protecting the City in critical liability issues.

The duties of each negotiation team member are described below.

Primary Hostage Negotiator

When a primary hostage negotiator is called to the scene, he / she reviews the circumstances at the scene to determine whether in his / her judgement negotiation will be effective and / or feasible in obtaining the release of the hostages and the peaceful surrender of the suspect.

The primary negotiator does not begin to negotiate with the suspect until entry team members are in position to provide cover and to respond appropriately in exigent circumstances.

The primary negotiator never communicates face-to-face with the suspect. The primary negotiator clears any action which might have an impact on the tactical situation with the incident commander.

Backup Hostage Negotiator

The backup hostage negotiator's primary function is to aid the primary negotiator in the direct conduct of negotiations. Backup negotiators should have the experience and training to help the primary negotiator evaluate the hostage-taker's responses and should be able to replace the primary negotiator in the event that he / she must withdraw before the incident is over.

The backup negotiator's other duties include keeping a written log of the negotiation and handling the tape recorders, telephones, and other equipment used by the team.

Team Liaison Member

The team liaison member forwards to the Command Post all pertinent communication between the primary negotiator and the suspect. The team liaison member also forwards to the primary negotiator all messages from the Command Post.

Team Intelligence Officer

The team intelligence officer gathers information about the hostage taker and the hostages. Pertinent information obtained at the Command Post is passed directly to the team intelligence officer. The team intelligence officer interviews escaped or released hostages, relatives, witnesses, and other people with relevant information.



III. Coordination of Entry and Arrests

Purpose: Coordination of Entry and Arrests resolves the barricaded subject incident.

The incident commander will direct the resolution of the incident. The employment of entry team personnel and hostage negotiators does not relieve the incident commander of his / her authority or of responsibility for conduct of the operation.

The hostage negotiation team, for example, has no authority to make tactical decisions and must keep the incident commander fully informed of its actions.

To coordinate entry and arrests, personnel perform the following steps:

1. The incident commander briefs all special team members upon their arrival at the Command Post.

Team members will be informed clearly and directly of the operation's command structure and the fire control orders.

Team members will be supplied with all applicable intelligence data.

2. At the direction of the incident commander, sniper and entry team members assume positions which allow for tactical advantage. Team members inform the Command Post when they are in place.
3. Supervisors remind personnel, as necessary, to refrain from unnecessary radio communications. Open radio channels are particularly necessary after the entry team leaves the Command Post.
4. Department policy directs officers to use time to their advantage. Officers should not force a barricaded subject incident to a conclusion. With patience, officers can often "de-escalate" the incident and use the services of specially trained negotiating personnel to take the subject into custody.

Containment and negotiation are the best methods for obtaining the safe release of hostages.

5. Special team leaders shall provide continuous information to the incident commander on the progress of tactical and negotiating efforts. Team leaders will advise the incident commander of current doctrine and procedures to help him / her develop and evaluate available courses of action.



6. If it appears that a traditional guideline or accepted course of action is failing, the incident commander must evaluate the guideline and consider alternatives. The incident commander will evaluate any novel course of action proposed by special team leaders or other personnel in terms of the following considerations:
 - The specific course of action recommended for the situation and its practical or theoretical basis.
 - The expected benefit of an alternative course of action.
 - The risks anticipated from an alternative course of action.
 - The method officers will use to determine the success or failure of an alternative course of action.
 - The steps officers will follow to return to the recommended technique or guideline if an alternative course of action does not work.
7. Using information received from the primary negotiator and other available sources to form an assessment of the suspect's behavior, the incident commander will decide whether to suspend negotiations.

If it becomes necessary to end the negotiations, the incident commander will direct the entry team to apprehend the suspect and / or rescue the hostages.

If there is reasonable cause to believe the suspect is about to inflict death or great bodily injury on hostages, police personnel, or other persons, the incident commander will direct that appropriate action be taken immediately to neutralize the threat.

Negotiators will continue their efforts prior to and in concert with force options. Negotiators will attempt to gather intelligence and to manipulate, deceive, and distract the subject during a tactical resolution.



IV. Closure of the Operation

Purpose: Closure of the Operation completes the barricaded suspect incident.

To close the operation, personnel perform the following steps:

1. All personnel shall wait until the incident commander declares the scene secure before leaving concealed positions.
2. The incident commander and key tactical units will debrief, account for all personnel, and share information while it is fresh.
3. Debris and any obstacles/equipment set up during the incident shall be removed. The environment should be returned to its original condition.

Addendum: Barricaded Suspect without a Criminal Offense

On occasion, officers may be assigned to an incident involving an individual who has not committed a criminal offense but who has taken a barricaded position inside his / her residence.

Personnel will not initiate any action against such an individual providing the following guidelines are met:

- There is no probable cause for arrest.
- There is no necessity to take the individual into temporary custody for psychiatric evaluation pursuant to Section 5150 of the Welfare and Institutions Code.
- The person does not present a danger to his or her family, acquaintances, or the general public.

OPD

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #
09-020462

CRIME § 187 P.C.	SUPPLEMENTAL	INCIDENT # 549	V 1	VICTIM LAST, First, Mid. Dunakin, Mark
SUSPECT LAST, First, Mid Mixon, Lovelle	INCIDENT LOCATION 7400 Macarthur Blvd		DATE OF THIS REPORT 21 Mar 09	ORIGINAL DATE REPORTED 21 Mar 09
ITEM	QNTY	PROPERTY (and/or NARRATIVE) ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC		SERIAL #
				VALUE

Supplemental:

On 21 Mar 09, at approximately 1324 hours, I was assigned as 1L86 as the Area III, Shift B, area commander, operating from semi-marked OPD vehicle 1942, dressed in full police uniform. I was inside the Eastmont substation when I heard on OPD radio that an officer was down at the intersection of 74th Avenue and Macarthur Blvd. OPD radio broadcasted a city wide 940B.

I exited the Eastmont station and drove code 3 to the 7400 block of Macarthur Blvd. OPD radio broadcasted the suspect's description and stated that the suspect was last seen running southbound on foot on 74th Avenue from Macarthur Blvd. The suspect was described as male black, light-complexion, approximately twenty years old, 5'-8" tall, 150 lbs, wearing wire-rim glasses.

Upon arrival, I observed two motor officers, who were later identified as Sergeant Mark Dunakin and Officer John Hege, lying mid-block in the 7400 block of Macarthur Blvd. Officer M. Cooper, 8711P, Officer K. Carter, 8702P, Officer J. Mitchell, 8494P, Officer J. Sanchez, 8723P, Officer J. Factora along with several others officers and citizens were administering CPR to both Dunakin and Hege while waiting for emergency medical units. Because of the time constraints, officers picked up Officer Hege in an attempt to put him inside of a OPD marked unit. Before this could be successfully completed, OFD arrived on scene and began to assist.

MR. arrived on scene and transported both Dunakin and Hege to ACH.

There were over fifty to one hundred people (on lookers) standing on the south curb in the 7400 block of Macarthur, the 2700 and 2800 block of 75th Avenue and the 2700 block of 74th Avenue.

I set up a perimeter in order to contain the scene. I was then flagged down by a witness who identified herself as (b)(5)(B), MB with a date of birth of (b)(5)(B). (b)(5)(B) advised me that there was an involved FB wearing a pink hooded jacket with scars on her face that assisted the suspect after he shot the officers. I was able to detain the FB and turned her over to field units on the scene.

While on scene, I had service run out the plate of the suspect's vehicle. The license plate of the vehicle was (b)(5)(B) which came back to a 95 Buick, 4D, purple, registered to (b)(5)(B) with an address of (b)(5)(B).

Det. Brian Boyle and Technician Haymon were on scene. While on scene, Boyle located a California driver's license on Dunakin's motorcycle. The driver's license was in the name of a person with a last

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OPD

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #
09-020462

CHARGE Per 187 P.C.	SUPPLEMENTAL	INCIDENT # 549	V 1	VICTIM LAST, First, Mid. Dunakin, Mark
SUSPECT LAST, First, Mid. Mixon, Lovelle	INCIDENT LOCATION 7400 Macarthur Blvd		DATE OF THIS REPORT 21 Mar 09	ORIGINAL DATE REPORTED 21 Mar 09

ITEM	QNTY	PROPERTY (and/or NARRATIVE) ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC	SERIAL #	VALUE
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(b)(5)(B) and with a photograph of male black (which was later discovered to be Lovelle Mixon). Boyle also located paperwork inside of the suspect vehicle that had a CDC# written on it with the last name Mixon. The information on the CDC # was followed up on and it was later determined that the CDC number belonged to Lovelle Mixon, male black with a date of birth of 18 Sep 82. Officer Kevin Kaney gave me a CABS photo of Lovelle Mixon, MB; date of birth of 18 Sep 82 with a PFN (b)(5)(C). Officer Kevin Kaney assisted me on scene because he had access to CRIMS. I was able to positively identify Lovelle Mixon from the CABS photos as the same person whom I had seen earlier in the CA-CDL recovered by Tech Boyle that was located on Sgt. Dunakin's motorcycle.

In addition, Tech Haymon recovered a cell phone from the suspect vehicle. Haymon began to do follow up with the cell phone in an effort to further validate the identity of the suspect and/or determine if the cell phone belonged to Mixon.

During the time I was on scene, I had been in constant contact with a witness named (b)(5)(B) (whom I knew as a former neighbor over twenty years ago from Richmond, CA.), who lives at (b)(5)(B). (b)(5)(B) phone # (b)(5)(B). (b)(5)(B) advised me that the suspect who was responsible for shooting Officer Kaney and Hege had fled to the apartment building which was later determined to be 2755 74th Avenue. After he shot both officers, (b)(5)(B) lives next door to this apartment. (b)(5)(B) stated that the suspect, who was later identified as Lovelle Mixon from paperwork that had CDC # written on it with the name Mixon located inside of the suspect vehicle, had been staying with a girl who was also on scene who was wearing a hot pink colored shirt. (b)(5)(B) stated that she had seen Mixon driving the Buick (as pointed to the suspect vehicle with CA-LP # of (b)(5)(B) that was parked on the north side of the street on the 7400 block of Macarthur Blvd). (b)(5)(B) also stated that the FB in the hot pink shirt had also been a passenger in the vehicle on several different occasions but not at the time of the shooting. (b)(5)(B) further stated that the FB in the hot pink shirt lived at 2755 74th Avenue in the bottom/lower unit and that Mixon had been staying with the FB in the hot pink shirt for the past couple of days. (b)(5)(B) stated that the suspect vehicle with the LP# of (b)(5)(B) had been parked right in front of the address for the last few days as well. (b)(5)(B) stated that she was sure that the suspect Mixon was inside of the apartment building. (b)(5)(B) stated that at some point after the shooting, she saw suspect Mixon in her yard.

The scene was triaged by the three area commanders on duty.

Acting Lieutenant Blair Alexander arrived on scene and took control of the outer perimeter and the ingress and egress of vehicle and foot traffic.

OPD

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #
09-020462

INCIDENT # 549	VICTIM LAST, First, Mid Dunakin, Mark
INCIDENT LOCATION 7400 Macarthur Blvd	DATE OF THIS REPORT 21 Mar 09
SUSPECT LAST, First, Mid. Mixon, Lovelle	ORIGINAL DATE REPORTED 21 Mar 09

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L83, Lieutenant Chris Mufarreh, arrived on scene and took control of the search and entry team (tactical operations). Lt. Mufarreh advised radio of a BLUE Alert which activated the SWAT team. IL93, Captain Ricardo Orozco later arrived on scene to assist Lt. Mufarreh in the deployment of the SWAT team. Deputy Chief Kozicki later arrived on scene and assumed command.

L72, Sgt. John Encinias went to ACH as a point of contact for the victim's families and OPD.

gt. Kelley, who was on scene, was sent to pick up the father of Officer Hege and transport him to ACH.

gt. David Carman was in charge of the scene in the 7400 block of Macarthur Blvd. He assigned Officer Teve Toribio to write the crime report. Other field units were designated to complete a chron log, write down the license plate numbers of vehicles parked in the 7400 block of Macarthur Blvd, assist with locating witnesses and canvassing other homes and/or businesses for additional witnesses and information.

cted radio and advised them to call-out Argus.

was advised by dispatch that ALCO would be responding to the scene with two trained tracking dogs. I was also advised that Emeryville P.D. would be responding with one trained tracking dog. The tracking dogs were going to be utilized to get the scent from the suspect's vehicle and followed up on at the residence at 2755 74th Avenue.

gave suspect information to Lt. E. Joyner, who advised me that he had similar information that he had received from his CI. I advised Lt. Mufarreh, Captain Orozco, Captain Rachal and Deputy Chief Kozicki of the information that I had gathered regarding the suspect and possible location.

was contacted again by witness (b)(5)(B) who advised me of additional information regarding a possible video. (b)(5)(B) stated that the men in the barber shop had initially lied to OPD officers when asked if they had video. (b)(5)(B) stated that she saw them with a camcorder and that while we (OPD officers) had been holding the scene that the men in the barber shop had been watching the video. I then advised several Homicide investigators which included Sgt. Sean Fleming, Sgt. John Parkinson and Officer Marcus Midyett of this information and directed them to confirm whether or not this was true. I was later advised that a camcorder had been recovered.

Lt. Mufarreh, Captain Orozco, Deputy Chief Kozicki, and members of the SWAT team met and conferred. The SWAT team made entry into 2755 74th Avenue. I then heard two large "booms". I then heard units

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OPD

ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #
09-020462

SUPPLEMENTAL		INCIDENT # 549	V 1	VICTIM LAST, First, Mid. Dunakin, Mark	
Suspect 187 P.C. Mixon, Lovelle		INCIDENT LOCATION 7400 Macarthur Blvd		DATE OF THIS REPORT 21 Mar 09	ORIGINAL DATE REPORTED 21 Mar 09

ITEM	QNTY	PROPERTY (and/or NARRATIVE) ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC	SERIAL #	VALUE
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ask for a Code 3 for an officer down. I was later advised that Sgt. E. Romans and Sgt. D. Sakai had been transported to ACH because they had been shot. It was later determined that they were both pronounced at ACH. I was also advised that Sgt. Patrick Gonzales had been shot with minor injuries. Sgt. Bassett assumed control of the crime scene at this location. Homicide Sgt. Tony Jones who was on scene advised me to have Officer Steve Toribio to incorporate the report from both locations into one crime report.

Det. Demetrio Lozares arrived on scene after 1500 hours in an effort to transition into the incident commander so that I could be relieved.



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To: File [Orozco | Mufarreh LDF #09-0789]

From: Tom Leary

Subject: **Pre-Disciplinary Letter: LINDSEY & THE DISTRIBUTION OF PHOTOGRAPHS**

Date: March 2, 2010

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- V. MIDYETT IAD AUDIO INTERVIEW
- VI. ERSIE JOYNER INTERVIEW BY LEARY
- VII. KEVIN KANEY INTERVIEW BY LEARY
- VIII. OMEGA CRUM INTERVIEW BY LEARY
- IX. JAKE BASSETT INTERVIEW BY LEARY
- X. DAVE CARMAN IAD AUDIO INTERVIEW
- XI. REILLY HOMICIDE INTERVIEW
- XII. GONZALEZ HOMICIDE INTERVIEW
- XIII. LEITE HOMICIDE INTERVIEW
- XIV. GREG DUTTON IAD INTERVIEW
- XV. SUMMARY/CONCLUSION

I. INTRODUCTION

The following provides insight into Drennon Lindsey's alleged involvement in the distribution of photographs of the suspect, Mixon. I have first provided the relevant information from Lindsey's interviews by both Homicide and IAD, then listed contradictory evidence from other OPD Officers.

II. LINDSEY & THE DISTRIBUTION OF PHOTOGRAPHS

Lindsey claimed to have had the following involvement:

Tech Boyle found paperwork in the suspect vehicle bearing the name "Mixon" and a CDC number. Kevin Kaney "assisted because he had a...computer in his car". The CDC number came back to Lovelle Mixon, and that info was communicated to officers at Eastmont. They printed photos and brought them to the scene. Lindsey said the photo was time stamped 1355, "and that was the time that I actually had" the photo in her hand. She directed that the photos be distributed, and "I wanted to get the info to Blair Alexander". Finally, Lindsey said, "I could've had (b)(5)(B) positively identify Mixon, and I could have the guys in the barbershop identify him, sign the photo."

[Lindsey Proofed Homicide Interview TR 11:10-12:2]

Tech Boyle had the ID from Sgt. Dunakin's motorcycle bearing the name (b)(5)(B). Boyle also found paperwork bearing a CDC number and the last name "Mixon". "...Kevin Kaney...brought out these CABS photos..." Her "original" photo was time stamped 1355 hours.

[Lindsey Proofed IAD Interview TR 28:3-19]

"...when I found out the guy's name was Lovelle Mixon, I know I told people it was Lovelle Mixon. And I know that Kevin Kaney had a stack of CABS photos that we disseminating. And I know if I didn't do it personally, I know it got done, that whatever I had I wanted to make sure that Lieutenant Mufarreh had, Lieutenant Alexander had and everybody that was in command that knew. I wanted to make sure everybody - I said, "Make sure, Kevin Kaney, everybody get a picture of this guy so we'll all be on the same page."

[Lindsey Proofed Homicide Interview TR 36:8-14]

Lindsey had the photo of Mixon, and decided to talk to (b)(5)(B) again, to try to obtain more information from her.

[Lindsey Proofed IAD Interview TR 24:15-21]

The following information, gleaned from a number of different interviews, explains just how the photographs of the suspect (Mixon) came to be, how they arrived at the scene, and who did/did not see the photo of Mixon.

III. TORIBIO IAD AUDIO INTERVIEW

- He saw the CABS photograph of the suspect on a computer at Homicide
 - He did not see a print of the photo of Mixon at the scene

- He would guess that he was still at the scene at 74/Mac at 1355 hours
- He did not hear the name Lovelle Mixon at the scene before he went to CID

IV. ALEXANDER IAD AUDIO INTERVIEW

Floyd: Did you or are you aware of anyone ever receiving a photograph of the suspect, Lovelle Mixon?

- "No". (sounded shocked)

V. MIDYETT IAD AUDIO INTERVIEW

- Ten to fifteen minutes ("maybe a little bit longer") after the 940B came out, he relocated to the Eastmont Mall
 - The CABS system was already up and running—he did not have to log in
 - Midyett used the computer systems at the Eastmont, and talked to Pittsburg PD regarding their prior contact with the suspect vehicle
- Sgt. Hoffman was also at the computers at Eastmont Mall with Midyett at that point
- While he was at the computer, "they (people at the scene) started to come up with different names of a possible suspect"
 - "And I remember the names they were giving weren't matching anything"
 - Either he or Hoffman asked if they had any other names, because they were not coming up with anything
- "Finally they did come up with Mr. Mixon's name and I printed up some pictures. During that time too, I, I had heard, uh, Ersie Joyner, Lt. Joyner at that time, he was getting on the air stating that he had some information from a CI that the suspect was associated to an apartment building just south of MacArthur on the west side"
- Midyett first became aware of the suspect's true identity when he was at the substation
 - Someone transmitted it to someone else at the substation
 - They wanted photos of Mixon at the scene
 - He printed numerous CABS photos of Mixon and gave them to an unknown officer that was going back to the scene
- The CABS photo time stamped 1355 could be the photo he printed, but he is not certain.

VI. ERSIE JOYNER INTERVIEW BY LEARY

PHOTOGRAPHS AT THE SCENE

Ersie did **not** see any photographs of the suspect at the scene on 3/21.

VII. KEVIN KANEY INTERVIEW BY LEARY

Eventually, someone located parole paperwork, from which they obtained the name of the suspect. Kevin was provided that information by a Patrol Sergeant, possibly Sgt. Covington—he is not certain—and he, in turn, provided it to Sean and Omega. The information was provided over the radio, but Kevin does not remember over which channel. It is possible it was over one of the "Tac channels".¹

As a result of the receipt of that information, Sean and Omega were able to locate information relating to Mixon. They then printed color photos of Mixon to distribute to the officers at the scene. At the same time, Kevin was aware of a patrol sergeant, possibly Sgt. Covington, who was printing photos of Mixon himself or was having an officer print photos of Mixon at the Eastmont office.

The GITF Unit's color printer was really slow, so after five or so photos were printed, in the interests of time, Sean gave them to Kevin, who began to distribute them.

Kevin saw a group of command officers standing together on MacArthur at 74th. Included in the group were Lt. Drennon Lindsey, and a Lieutenant that Kevin believes was recently transferred to CID within the last week to week and a half. Kevin does not know for certain if he saw Lieutenant Mufarreh. The group was made up of "brass", but a Sergeant may have been present or nearby—he recalls seeing Sgt. Reilly at the scene.

Kevin walked up to the group. They were engaged with one another, talking; Kevin excused himself, and handed one of the photos to Lt. Lindsey. He did not hear what they were talking about, and he did not talk to Lt. Lindsey. She acknowledged receipt of the photograph. Lt. Lindsey did not tell, instruct or ask Kevin to distribute any photographs. He was doing that at the direction of Sean Knight.

Kevin walked away, and gave the remaining few photos he had in his possession to officers in the area, possibly including officers who were in front of 2755 74th Av. He does not know if any of the entry team members received copies of the photos. Because of the time lapse, Kevin is having difficulty recalling all of the details, but what he remembers, he does remember.

When he gave the photo to Lt. Lindsey, she did not relate to Kevin any information she developed while she was at the scene. Lt. Lindsey did not tell Kevin anything about any information she may have developed on the street at the scene. Kevin was not aware of any information Lt. Lindsey developed relating to the suspect or relating to the suspect's location.

After he ran out of photos, he returned to the van where Sean and Omega were still working, obtained a few more photographs of Mixon, and distributed them. He does

¹ Each primary channel (P1, P2 and P3) has a corresponding "Tac Channel", ie: P1 = Tac1, P2 = Tac2. These are different from P4 and P5 and the Service Channel.

not believe any photos were given to any of the officers on the outer perimeter. Kevin is not even certain that officers were still holding the outer perimeter.

Kevin did not give any photos to anyone else to distribute.

VII. OMEGA CRUM INTERVIEW BY LEARY

Eventually, someone provided the name of Mixon—though Omega does not know where that information came from. Omega was able to locate a photograph of Mixon, and printed “one or two copies, maybe more”. He gave the photos to Knight, and it is possible Knight gave them to Kevin Kaney. He does not actually know what happened to the photographs. The photographs he printed were color photos. They were not time stamped.

Omega did not give any photos to anyone other than to Sean Knight.

IX. JAKE BASSETT INTERVIEW BY LEARY

Jake did not talk to Lt. Lindsey at all. Jake was not aware that a photo of the suspect was being circulated at the scene. He did not see any photo of the suspect at the scene.

X. DAVE CARMAN IAD AUDIO INTERVIEW

- While he was at the scene, trying to talk to the techs and to Homicide, the technician told him there was a drivers license that was on the radio box of one of the motorcycles
 - He wrote down the number
 - Barry Hoffman was at Eastmont with a computer
 - He called Hoffman (his cell to Hoffman’s cell) and asked him to run the number
 - The drivers license came back “not on file”
 - The tech had opened photo albums in the suspect vehicle that had paperwork and a CDC number written on them
 - He had Service run the CDC number and he obtained Lovelle Mixon’s name
 - He then called Hoffman at Eastmont and asked him to try to get a picture of Mixon
 - A short time later, photos of Mixon started arriving at the scene, though he does not recall who actually brought the photos to the

scene

- They compared the photo of Mixon to the photo on the DL
- Lou Cruz also was familiar with Mixon and confirmed the photo on the DL as Mixon

Floyd showed Carman a photo of Mixon time stamped 3/21/2009 1355 hours and Carman confirmed that was the photo that was brought to the scene

- He does not know how long before 1355 hours he made the call to Hoffman
 - He does not know if Hoffman printed the photos or another officer printed them
 - That photo was given to Carman at the scene
 - There was a stack of the photos
 - They were given to Homicide, the techs
 - Later on, Lindsey had a copy of the Mixon photo but he does not know when she obtained it
 - He has no idea if CM was given a copy of the photo of Mixon; same is true for Orozco and Kozicki

XI. REILLY HOMICIDE INTERVIEW

Lt. Medeiros: Are you aware of any plans to obtain intelligence as far as (inaudible). Let me ask, do you know if anyone had intelligence or intel? **How about were (inaudible) you ever given the suspect's name or a photo or what he looked like, or had you ever seen any information on who the suspect probably was?**

Sgt. Reilly: No.

[Reilly Proofed Homicide Interview TR 36:11-15]

XII. GONZALEZ HOMICIDE INTERVIEW

The description provided of the suspect in the Dunakin/Hege shooting was male, black, early 20s. The suspect's name was obtained from his ID card that was on Sgt. Dunakin's motorcycle, and was a Muslim name, something (b)(5)(B) Sgt. Dutton was attempting pull the photos up on, on CABS for us to look at photos but the exact description was a generic male black, early 20s, 5'9", 180 pounds. "Nothing that really would stand out in your mind".

Gonzalez believes Dutton was working on getting a photo in Sgt. Wong's car. He does not know the result of Dutton's attempts to ID the suspect.

[Gonzalez Proofed Homicide Interview (Part two) TR 10:3-22]

XIII. LEITE HOMICIDE INTERVIEW

Leite heard that there was an alias for the suspect—it was believed that the suspect provided a false ID to Sgt. Dunakin or Officer Hege during the car stop. The suspect was described to Leite as “a male black subject”.

[Leite Proofed Homicide Interview TR 16:7-12]

XIV. DUTTON IAD INTERVIEW

- Tony Jones walked up to them and asked if anyone had access to CalPhoto or CRIMS in a vehicle
- Sgt. J. Wong's vehicle was parked in the crime scene
 - Wong did not have a log on for either of the systems
- Dutton jumped in Wong's passenger seat, and Jones provided the name (b)(5)(B) and a birthdate to run
 - DMV, CalPhoto, and CRIMS all came back with nothing
- Jones told him they had information relating to the suspect frequenting 2745 74th Av
 - The suspect was supposedly staying at that address for the previous five days and Jones said it was an address of interest
 - Jones did not say where the info came from
 - Wrote the info on an assignment card
- Went and briefed Erv Romans regarding what Jones had said
- Jones then calls Dutton back over, and provided the name Lovelle Mixon and a birthdate
 - Dutton asked where the info came from, and Jones said the info was located in the suspect vehicle
 - There was some parole paperwork with that name in the vehicle
- He ran Mixon, and came up with a photo
 - Tony Jones wasn't sure if it matched the ID
 - Lou Cruz looked and said the photo of Mixon matched the ID card with the name (b)(5)(B)

Dutton does not know what time that occurred, but it was “less than a minute” before the Entry Team made entry

XV. SUMMARY/CONCLUSION

(b)(5)(B) Of great interest is the fact that Lindsey said, “I could've had (b)(5)(B) positively identify Mixon, and I could have the guys in the barbershop identify him, sign the photo.”

The question to ask, then, is why did she not do so? She said she had the photo in her hand at 1355 hours. She claimed to have had contact with (b)(5)(B) (b)(5)(B) AFTER she had the photo in her hand. Lindsey also said she went to the barbershop AFTER she had the photo in her hand. Why, then, did she not show the photo to (b)(5)(B) or to the guys in the barbershop?

Lindsey said Boyle (a tech) had the identification from Sgt. Dunakin's motorcycle, which bore the last name of (b)(5)(B). Boyle also found paperwork in the car that bore the name Mixon and a CDC number.

Drennon Lindsey claimed to have told others at the scene that the suspect's true name was Lovelle Mixon, and that she made certain that Lt. Mufarreh and A/Lieutenant Alexander knew the true name of the suspect.

Neither one of them were told of the name by Lindsey.

Lindsey said Kevin Kaney "assisted" in determining the relationship between the CDC number and the name Mixon, both of which were found in the suspect vehicle. Kaney "assisted" she said, because "he had a machine, a computer in his car". She also claimed to have instructed Kevin Kaney to "make sure...everybody get a picture of this guy (Mixon)..."

While Kaney was at the scene on 3/21, it would appear that he did not arrive there until 1430 or 1440 hours. He was not in a "car". He took a few photos printed by Omega Crum and gave one of the photos to Lindsey. They did not talk and they had no other interaction the rest of the day. Lt. Lindsey did not tell, instruct or ask Kevin to distribute any photographs. The only photographs he handled that day were printed in his unit's van by Omega Crum. Kaney was also aware that someone else was at Eastmont printing photos of the suspect.

Lindsey's recitation of events relating to the CDC number being relayed to the Eastmont Station smacks of someone providing information learned after the events of the day were completed. She claims someone at Eastmont printed the photographs at Eastmont, brought them to the scene and that the timestamp on the photos was 1355 hours. Lindsey said she had the photo that was time stamped 1355 hours in her hand at 1355 hours. She said she told those who brought the photos to distribute them "...so

they'll know what the suspect looks like".

The reader will see below that none of the people cited saw a photo of Mixon at the scene, including a number of the Entry Team members.

Midyett was one of two officers at the Eastmont station, working on the computer to try to come up with a photograph of the suspect—Barry Hoffman was the other. As late as 1435 hours, Midyett and Hoffman were still working off of the original information from the driver's license found on Sgt. Dunakin's motorcycle. In fact, the radio purge shows that the first time a CDC number is mentioned on the air was at 1457, in a conversation between Sgt. Covington and an unidentified officer on P4.

This is interesting because Midyett said "at about the same time", he heard Ersie Joyner talking about the suspect being associated with an apartment building on 74th, south of MacArthur. Joyner first came on the air at 1345 hours, and there is considerable radio traffic relating to the address for the next half hour.

Midyett learned the suspect's true name "while I was at the substation". He then printed up "numerous" CABS photos of Mixon.

Sometime before 1355 hours—though he does not know exactly when—Carman called and talked to Hoffman at the Eastmont, and gave him Mixon's CDC number and name. Soon thereafter, photos of Mixon began to arrive at the scene. Carman identified a photo of Mixon time stamped 3/21/2009 at 1355 hours as the photo he saw at the scene. Carman does not know if Hoffman printed the photos or someone else did so. Carman saw a "stack" of photos, and received one himself. Others were given to the techs and to Homicide investigators. He does not know if Mufarreh, Orozco or Kozicki received one of the photos.

It sounds as if Midyett is confused as to times he provided. He said Hoffman received information regarding Mixon prior to 1355, but the purge shows he was still working on the false ID of (b)(5)(B)s late as 1435 hours.

Greg Dutton, who was doing research on the suspect, was not provided with the name "Mixon" until a minute or two before the Entry Team made entry.

Finally, Lindsey said she "wanted to get the info to Blair Alexander..."

Not only did Alexander not see a photo of the suspect, but he sounded shocked in his IAD interview to learn there had been a photo at the scene on 3/21.

Toribio did not see a photo of Mixon at the scene, nor did he hear the name Lovelle Mixon at the scene before he transported a witness to CID sometime after 2:00pm.

Ersie Joyner did not see a photo of Mixon at the scene on 3/21.

Jake Bassett did not see a photo of Mixon at the scene on 3/21 and he was not aware of a photo being circulated. Bassett did not talk to Lindsey on 3/21.

Sgt. Mike Beaver never said anything one way or the other about a photo of Mixon.

Sgt. M. Reilly was never provided with a photo of the suspect and was never provided with the name of the suspect.

Sgt. P. Gonzalez was never provided with a photo of the suspect.

Officer M. Leite was never provided with a photo of the suspect.

Lt. Chris Mufarreh was never provided with a photo of the suspect.

Captain Rick Orozco was never provided with a photo of the suspect.

Drennon Lindsey lied about the "efforts" she made to get the photo into the hands of those at the scene.

NFI

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To: File [Orozco | Mufarreh LDF #09-0789]

From: Tom Leary

Subject: **PRE-DISCIPLINARY LETTER: INFORMATION ALLEGEDLY PROVIDED BY LINDSEY**

Date: March 3, 2010

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I. INTRODUCTION

In her interview with Homicide and in her interview with IAD, Lt. Drennon Lindsey declared that she provided information that she developed on the street, relating to the name and location of the suspect, to the other four commanders at the scene. She also said that she provided information specifically to a number of officers, as well as to "everybody that came up to me". Information has been developed that would tend to show that she lied during her interviews, including reviews of the interviews of other officers who were at the scene, as well as the interview I conducted with (b)(5)(B)

II. STATEMENTS BY LT. DRENNON LINDSEY

This section—pages 2 through 8—will lay out the various statements by Lindsey. They have been merged into a more chronological order.

Lindsey heard people in the crowd saying that the suspect ran down 74th, and that he was hiding somewhere in the area. A couple of minutes later, "people were pointing to the apartment complex". [Lindsey Proofed IAD Interview TR 11:1-3]

(b)(5)(B)
Lindsey believes (b)(5)(B) was in the crowd "around 1333 hours" because that is when she remembered going into the crowd and (b)(5)(B) wanted to talk to her. Lindsey decided to hold on to (b)(5)(B) and let Homicide talk to her. Eventually Homicide arrived—Sgt. Jones was first. Lindsey told Jones about (b)(5)(B) and told him he needed to talk to her because she had good information.

Lindsey had known (b)(5)(B) from the time she was 12 years old—(b)(5)(B) lived upstairs from Lindsey with her two children.

[Lindsey Proofed IAD Interview TR 11:16-12:10]

Going into the crowd, Lindsey saw (b)(5)(B) and remembered they had been neighbors at one time years ago. (b)(5)(B) pointed out a female in a hot pink t-shirt, "and she said...that 'she (the female in the pink shirt) had been kicking it with a guy, Lovelle'", and that she had seen the female as a passenger in his car on a previous occasion. (b)(5)(B) told Lindsey that the woman may have information the police could use, "...further information about his whereabouts...where he may have gone, etc."

[Lindsey Proofed IAD Interview TR 8:7-17]

(b)(5)(B) DID NOT KNOW THE NAME OF THE SUSPECT UNTIL SHE HEARD IT ON THE NEWS THE NEXT DAY!!!

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Lindsey said she saw (b)(5)(B) who used to be her neighbor. (b)(5)(B) told her she saw the suspect hiding in her backyard at (b)(5)(B). The suspect's cousin let him in the apartment. (b)(5)(B) knew "for 100% sure that dude had ran in that apartment, but she did not have a visual on the apartment so she did not know if the suspect had left or not. [Lindsey Proofed Homicide Interview TR 6:13-20]

(b)(5)(B) Lindsey had not seen (b)(5)(B) in years—she used to play with (b)(5)(B) daughters. (b)(5)(B) was on the street that day wearing an old pink hat, and unknown officers told Lindsey that (b)(5)(B) wanted to talk to her—that (b)(5)(B) said she would only talk to Drennon. When Lindsey talked to (b)(5)(B) in the 7400 block of MacArthur, she did not record the conversation. (b)(5)(B) told her the suspect was in "those apartments". (b)(5)(B) pointed out the lady in the hot pink shirt. (b)(5)(B) and the woman in the pink shirt are the people "I personally grabbed". Lindsey also sent officers to the barbershop "cause I knew they saw something". She directed the officers to identify witnesses and to hold them for Homicide. Lindsey had multiple conversations with (b)(5)(B). Once she found that (b)(5)(B) had good information about Lovelle Mixon being in the apartment complex, Lindsey tried to turn (b)(5)(B) over to Homicide. (b)(5)(B) told her Mixon had been staying in the apartment and his car had been parked out front. The girl in the pink shirt had been a passenger in Mixon's car previously. Lindsey believed (b)(5)(B) because of the "seriousness on her face".

(b)(5)(B) did not want people to know she was talking to Lindsey, especially the Mixon family—they "was already kind of like threatening her". Lindsey digressed about (b)(5)(B) receiving threats and being put up in a hotel. Lindsey turned her over to Rachel or Tony Jones "because I had a scene to run".

(b)(5)(B) was not cooperative with Tony or Rachel because she only wanted to talk to Lindsey. That is why Lindsey went back a couple more times to talk to (b)(5)(B) to get more information.

(b)(5)(B) told Lindsey about how Mixon shot Dunakin and Hege "minutes before they made entry on 74th Avenue. Lindsey never had the opportunity to go back and brief the Entry Team again. (b)(5)(B) knew how Mixon shot Dunakin and Hege because she heard people in the barbershop talk about it. (b)(5)(B) told Lindsey the people in the barbershop were watching a video of the murders.

(b)(5)(B) told Lindsey that Mixon was in her backyard, but Lindsey does not know during which conversation. Lindsey "really became fixated on" the apartment because (b)(5)(B) said she saw him go in the apartment. (b)(5)(B) told Lindsey she knew for 100% certain that Mixon was in the apartment right after the shooting.

[Lindsey Proofed Homicide Interview TR 18:13-21:21]

Lindsey saw the seriousness on (b)(5)(B) face. (b)(5)(B) did not "want to be

exposed by the Mixon family...she was fearful they might retaliate against her or her daughter...she was like, 'is there somewhere we can go?' (b)(5)(B) was reluctant to provide Lindsey with all of the information she had, but as Lindsey would return to talk to (b)(5)(B) "she was eventually giving me more and more information".

[Lindsey Proofed IAD Interview TR 12:19-13:4]

During Lindsey's first conversation with (b)(5)(B) at 1333 hours, "she told me that the guy who was responsible was associated with that apartment that was next to hers and that he had been driving that purple Buick that was parked in front that they had stopped" and that he was staying with a girlfriend or friends for the last couple of days. (b)(5)(B) told her that the female in the pink shirt had been a passenger in his car on a previous occasion. The suspect's car "had been parked right out front, in front of that location which we later found out was 2755 74th Ave., because she didn't know the address offhand. It was something that, you know, you had to get, have her point out to you." (b)(5)(B) told Lindsey that they stayed in the lower unit.

Lindsey is not sure if that was in the first conversation with (b)(5)(B) "But I know within that first 30 to 40 minutes is what I was able to substantiate with her what I just told you." "From the first initial conversation with her, you know, to about 30 minutes later, I was still developing information from her." Lindsey "shared that information with a lot of people". "Yeah, once I got that information I started telling anybody who made contact with me. So um, yeah I mean it's nothing that I need to hold on to". "So, I began telling everybody, you know, the more information I got, the more information I was giving out".

[Lindsey Proofed IAD Interview TR 13:6-14:22]

At that point in time (1333 hours), Lindsey's understanding of where the suspect was located was, "well, we came to the understanding that 2755 74th Avenue was the target location.

[Lindsey Proofed IAD Interview TR 15:1-5]

Also, "it was a couple of things, I mean besides just her, you know, it was some of his family or cousins out there, I don't know who was who, but I know they had some feelings about us going over to that um, apartment, because people that were in the crowd were like he's in that apartment over here."

[Lindsey Proofed IAD Interview TR 15:7-10]

"And just, you know, people pointing out in a crowd about this apartment, you know, we - it was just obvious that this guy is in there."

[Lindsey Proofed IAD Interview TR 16:1-3]

Lindsey talked to (b)(5)(B) a second time, and that is when (b)(5)(B) told her how Mixon shot the officers and about the video.²

[Lindsey Proofed Homicide Interview TR 37:1-3]

Lindsey went back and talked to (b)(5)(B) again to find out "why is everybody...tripping off of this apartment right here". (b)(5)(B) said to Lindsey, "cause that's where he's at". (b)(5)(B) did not give up the information freely "because Mixon folks were out there". Lindsey returned to talk to (b)(5)(B) over and over, telling her, "hey, I need more information so we can...really get this substantiated".

[Lindsey Proofed IAD Interview TR 15:16-24]

Lindsey does not know during which conversation (b)(5)(B) told her that the suspect was in the backyard. (b)(5)(B) told her the suspect was in the downstairs unit.

[Lindsey Proofed Homicide Interview TR 21:9-14]

Lindsey met with Mufarreh "and I told him everything I had at that point". Orozco arrived and "I briefed him at some point". She briefed Rachal on the phone and Tony Jones when he arrived on everything she had. She briefed Joyner on everything she had. She also briefed Kozicki on everything she had. "And when I say I briefed on everything I have, I'm telling them that, you know, the suspect is possibly inside of this unit 2755 74th Avenue."

[Lindsey Proofed Homicide Interview TR 10:7-17]

Lindsey talked to Dan Sakai and gave him all of her intel. He wrote what she told him down—"I gave him all the information I had at that point".

[Lindsey Proofed Homicide Interview TR 13:3-5]

Joyner "had a CI giving him information that matched up what my witness on the scene was saying". She talked to Joyner on the phone and at the scene, "and the stuff was matching". (b)(5)(B) lived next door to the apartment building, and had been living in the community "so she knew". "She (b)(5)(B) was like, 'If you would've talked to me immediately, I coulda said, 100-percent sure he was there.'" When she briefed Mufarreh, Orozco, Kozicki and Rachal, they wanted to know if Lindsey was one hundred percent sure. "I said, 'But from people are telling me, from people pointing out that apartment, it's a strong possibility he's in there.'"

[Lindsey Proofed Homicide Interview TR 13:11-22]

Lindsey split her time between being the Incident Commander and obtaining

² Probably the only truthful statement in her interviews

information from (b)(5)(B) "really good information". (b)(5)(B) told Lindsey about a camcorder wrapped in a towel at the barbershop. "I found out later that we were able to recover the camcorder inside that barbershop..."

[Lindsey Proofed Homicide Interview TR 14:10-16]

People were talking about a blue Volkswagen, and (b)(5)(B) told Lindsey there was no blue Volkswagen. "...some people, the people that were being honest" told Lindsey there was no blue Volkswagen. [Lindsey Proofed Homicide Interview TR 25:1-7]

Lindsey and Joyner began comparing information "early on, probably between 20 and 25 minutes". After playing phone tag, they spoke and compared notes. "And so what his CI was saying to him, what (b)(5)(B) was saying to me, it was matching up". Joyner told Lindsey his CI was an older guy from the barbershop.

[Lindsey Proofed Homicide Interview TR 26:14-27:2]

Lindsey knew which apartment the suspect was in "because (b)(5)(B) she knew. (b)(5)(B) knew. She said that they lived in the downstairs bottom unit apartment".

"From what she (b)(5)(B) said, she said the lower unit, but like I said, we had that girl, um, in the hot pink shirt. We could've confirmed with her, you know, which unit it was or maybe got some plans or called, you know, the manager or the owner of the building to see, you know, what the layout was. As long as we knew it was like downstairs, we could've confirmed that information in different ways".

[Lindsey Proofed Homicide Interview TR 28:3-12]

Lindsey talked to Mike Beaver. "Pretty much everybody that came up to me I was telling dude is in that apartment, so maybe Beaver 'cause I remember seeing his face...I talked to a lot people that day..." The people she remembers talking to "the most is Erv, Sakai and Beaver". She began talking to Mufarreh "as soon as he got there"; she shared information with him. She told Mufarreh about the suspect and the suspect's location on two occasions. The first was when he arrived, and the second was when she told Mufarreh, Orozco, Kozicki, and Rachal, to bring Kozicki up to speed.

[Lindsey Proofed Homicide Interview TR 30:4-24]

Lindsey told the four of them "pretty much everything (b)(5)(B) told me". "I told them that, um, based on the CI information from Lieutenant Joyner and the witness that I had on the scene that she was 100-percent – well, usually she's 100-percent sure he had ran in there, but had lost sight on the apartment. And I said that, um, it's a strong possibility that he is inside of this apartment, the lower level unit. I also told them that we had a lady downtown – 'cause I thought it was his girlfriend at the time. I don't know if it

was his girlfriend or not but that's what was told to me. But that he had been staying with her. He'd been laying his head there in the lower bottom unit and that his car had been seen parked out front there, and that's where he'd been staying for the week".

[Lindsey Proofed Homicide Interview TR 31:22-32:10]

When asked how Mufarreh responded to the information, Lindsey said, "I mean he kind of like, you know, I don't know. I mean, he was just kind of shrugging. You know, I don't know if he really said anything substantial. Um, we were -- they were trying to talk about how to address the issue.

[Lindsey Proofed Homicide Interview TR 32:23-33:3]

Tech Boyle had the ID from Dunakin's motorcycle, bearing the last name of (b)(5)(B). Boyle also found paperwork in the car bearing a CDC number and the last name Mixon. "I just know I dealt with Kevin Kaney because he was the one that brought out these CABS photos and um, we started passing them around". When Lindsey saw the photo of Mixon and compared it to the (b)(5)(B) ID, "you could clearly see that they match". The photo she had at the scene (and during the interview) was time stamped 1355 hours.

[Lindsey Proofed IAD Interview TR 28:3-19]

Lindsey asked Kevin Kaney to run the Mixon information "because he had...access to CRIMS in his car.

[Lindsey Proofed IAD Interview TR 35:20-22]

When Lindsey learned that the suspect's name was Lovelle Mixon, "I know I told people it was Lovelle Mixon. And I know that Kevin Kaney had a stack of CABS photos that we disseminating. And I know if I didn't do it personally, I know it got done, that whatever I had I wanted to make sure that Lieutenant Mufarreh had, Lieutenant Alexander had and everybody that was in command that knew. I wanted to make sure everybody -- I said, 'Make sure, Kevin Kaney, everybody get a picture of this guy so we'll all be on the same page.'" Mufarreh, Orozco, Kozicki, and Rachal all were close enough to her to have heard what she said. They were looking at her when she spoke.

[Lindsey Proofed Homicide Interview TR 36:4-21]

Kevin Kaney brought the photos of Mixon to Lindsey, "...and I told him disperse this to everybody, so everybody knows who this guy is and what he looks like in case he isn't in there". It had to be before 1355 hours. Lindsey had the suspect identified as Lovelle Mixon before she briefed Kozicki, Mufarreh, Orozco, and Rachal. Lindsey recalls telling Kaney to pass out the "stack of photos" along with one other person.

[Lindsey Proofed IAD Interview TR 33:2-13, 18-21]

Lindsey provided the information to Erv Romans, Dan Sakai, and Greg Dutton, as well as to the Sergeants in the perimeter—Dave Carman, Wong, Covington, and Peterson.
[Lindsey Proofed IAD Interview TR 38:14-21]

(b)(5)(B) was adamant that she last saw the suspect going into the apartment.
[Lindsey Proofed IAD Interview TR 18:2-8]

(b)(5)(B) told Lindsey that he was in there (the apartment). Lindsey believed he was in there because she went back and talked to (b)(5)(B) several times, "and the last thing I remembered her saying to me is that after he shot Hege and Dunakin, he was hiding in her back yard, and because he did not live there, he was just like staying there for a couple of days, he didn't have a key and she said the cousin had to let him in". (b)(5)(B) told Lindsey that one of the suspect's cousins had to let him in the apartment. Lindsey believed (b)(5)(B) "because I'm like why would she lie about something like that?" Lindsey does not know what time she came to the opinion that the suspect was in the apartment. She just knows that when she met with the other command staff (4 of them), they had a discussion, and "I told 'em. I said, 'this guy is in there'". They asked her if she was 100% sure, and Lindsey told them no, she didn't see him run into the apartment. (b)(5)(B) told Lindsey, "If you would have come here like right away and talked to me"—there was a big time gap waiting for medical to get to the scene for Dunakin and Hege.
[Lindsey Proofed IAD Interview TR 16:14-17:21]

Lindsey put information regarding the suspect's location or the suspect's name over the radio.
[Lindsey Proofed Homicide Interview TR 43:8-11]

The following information was gleaned from the noted interviews. This information does not support Lindsey's claim that she shared the information she developed—in fact, this information refutes her claims.

III. RICK ANDREOTTI IAD AUDIO INTERVIEW

Floyd asked, "Did Lt. Lindsey ever indicate to you that she was speaking with a witness who said that she saw the suspect go inside that apartment?" Rick continued:

- "The first time that I had any clue that dude was in there or could possibly be in there was when the gunshots took off"

- Andreotti did not hear anyone—before or after the entry team made entry into the apartment—say anything about Lindsey talking to a witness who actually saw the suspect go into the apartment
- Andreotti did not become aware of the suspect's identity—Lovelie Mixon—until it was all over
- **While at the scene, Andreotti never saw the photo of Mixon time stamped 3/21/2009 at 1355 hours**

IV. JAKE BASSETT IAD INTERVIEW

Never spoke to Lindsey regarding the S's identity or location [Bassett IAD Interview, TR 21:1-3]

V. BEAVER IAD INTERVIEW

Never spoke to Lindsey re the S's identity or location [Beaver IAD Interview, TR 22:15-23:10]

VI. DAVE CARMAN IAD AUDIO INTERVIEW & INTERVIEW BY LEARY

- As he was talking to Lindsey, there was a little old lady on the corner the entire time with a pink hat
 - The lol had given info on family members they had detained that Toribio had in his car
 - She told "Lindsey that, yes, he went into that apartment"
 - Lindsey knew her as she used to be a neighbor of Lindsey's in Richmond
 - "...and yes, we know, she's also telling me the same thing, that she saw him go in"
 - Lindsey gave that info to Carman "...and I have to assume that was also shared at the command post, but I wasn't there"
 - Carman did not hear the lol tell Lindsey that she saw the suspect go into the apartment
 - He came to understand that's what the lol told Lindsey by talking to Lindsey
 - That conversation took place before they had Mixon ID'd and before they had the photo
 - It was after the radio transmission by CM regarding address on 74th Av—"...I'm just guessing, it was so chaotic, 15 minutes maybe"
- **"As we've talked about this incident in debriefings and whatnot, yes", she**

told Carman that she told Kozicki, Orozco, & Mufarreh about the information she received from the witness regarding the suspect going into the building

- "What she had told me is during one of their meetings there was a discussion amongst all the commanders that were there about 'do we believe we have enough to go in, is it fresh pursuit, is it not, do we need a warrant?' According to Lindsey there was a debate going on, 'do we have enough based on all the information that we've got to go in? Or do we wait, get a Search Warrant, or what are we going to do?'"
- She did not tell Carman about telling the other commanders about the information about the suspect from the witness on 3/21/2009

On March 9, 2010, Carman told me the following:

Dave is certain that the information he provided during the interview with IAD—regarding the detention of the alleged family members—was provided to him at the scene on 3/21 by Lt. Lindsey. Otherwise, they would not have detained and held on to the people.

Dave recalled seeing the lady in the pink hat on 3/21 throughout the entire incident. She was mostly standing on the sidewalk IFO the barbershop. He saw Lt. Lindsey talk to the lady a couple of times—"I can't say several" times. "It's hard to say the number of times". Though he did not tell IAD, the lady in the pink hat was a BF.

Finally, with regard to the remainder of the information he provided to IAD—that the suspect went into the apartment, the lady being Lindsey's neighbor at one time, the lady saying she saw the suspect go into the apartment—"makes more sense I got the information after the incident" during their discussions at the station and during the debriefing. He is not positive about that, but he believes he received that information from Lt. Lindsey after the incident was all over.

VII. ANWAWN JONES HOMICIDE INTERVIEW

- No memory of Lindsey being at the scene

VIII. ANTHONY RACHAL IAD AUDIO INTERVIEW

- Rachal did not receive any info regarding the suspect or his location when he arrived

- He does not remember any of the information Lindsey provided to him—"I don't remember anything there specific to the suspect, like where he is, for example".
 - If Rachal had been told about the suspect's location, it is something he would remember—"a strong statement like that, yeah. I think I would. I think, anyway"
- Regarding Lindsey supposedly telling Kozicki, Orozco and Mufarreh about information she developed about the suspect's identity:
 - "I was told, I think I was told she mentioned some things like that after the incident is when I learned that", after the incident, from talking to Lindsey.
- Rachal has had "some conversations" with Lindsey regarding her interaction with the other commanders at the scene on 3/21/2009
 - "She was upset about some of the events that occurred at the scene, and specifically that she felt, and again, this is from her, that her information was kind of blown off or disregarded when she tried to share it with others about what she knew about the suspect or what she had learned about the suspect. She was upset about that".

IX. TORIBIO IAD AUDIO INTERVIEW

- "My interaction with her was limited on scene. She instructed me to look for and detain the first individual that I detained. After that, my only contact with her, and uh, the only time I heard her or saw her after that, I think, was at CID. I think she raised me over the radio and either asked me to call her or I spoke with her on the patrol channel, I don't remember, on patrol 4, I don't remember what, and she just instructed me that, both incidents, the one on Mac and the one on 74th were going to be incorporated together. So, I was to include the incident on 74th with the report on MacArthur. That was really only it".
- He does not remember having any conversation with Lindsey after talking to Neal and Jones
- He did not speak to Lindsey at the scene regarding where she believed the suspect was located
- He did not overhear Lindsey tell anyone at the scene that she was working with a witness who knew where the suspect was located
- He did not see Lindsey talking with any witnesses at the scene
- Aside from the person Lindsey told him to detain, Lindsey did not tell him—at the scene or any time afterward—that she had identified a witness that knew where the suspect was located

X. BLAIR ALEXANDER IAD AUDIO INTERVIEW

Floyd: *Did you ever speak with Lt. Lindsey regarding what she knew about the location or identity of the suspect?*

- "I don't remember that ever happening".

Floyd: *Did you or are you aware of anyone ever receiving a photograph of the suspect, Lovelle Mixon?*

- "No". (Sounded shocked)

Floyd: *Did you or are you aware of anyone ever being given the name Lovelle Mixon or a more thorough suspect description other than just male black with glasses?*

- "Not that, not that I, I can remember. And certainly not the name, never heard that name".

Floyd: *Other than Lt. Joyner, did you have any conversations other than your initial conversation with Lt. Mufarreh about where the other commanders on the scene believed that the suspect was?*

- "No".

XI. MARCUS MIDYETT IAD AUDIO INTERVIEW

Maws: *When did you first become aware of the suspect's identity as Lovelle Mixon?*

- "Uh, when I was at the substation"

Maws: *How?*

- Uh, it was transmitted to another person at the substation. I'm not sure if that was Sgt. Hoffman or not. But they wanted some pictures of that person"

Maws: *And, you said you did not speak with Lt. Lindsey?*

- "No"

XII. ERSIE JOYNER INTERVIEW BY LEARY

1:46pm **Lindsey called Joyner** **One minute**

Right after he hung up with Mufarreh, Lindsey called Ersie. He passed on the information he received from Karla Rush to Lindsey, and said he was meeting his CI at 74th and Hillside shortly.

2:06pm **Lindsey called Joyner** **Three minutes**

At this time, Lindsey provided to Ersie the name on the counterfeit identification located at the scene—the last name of (b)(5)(B). Ersie had Officer Igualdo with him at 74th and Hillside, and Igualdo, using the (b)(5)(B) alias, was diligently working to come up

with a photograph of the individual (a MB) that was known to frequent 2755 74th Av. The reason Ersie wanted to come up with the photograph was to show to (b)(5)(B) in an attempt to properly identify the individual that was known to frequent 2755 74th Av. Iqualdo was running into dead ends.

2:36pm Joyner called Lindsey Three minutes

At this time, Ersie called Lindsey again, and asked if anyone had come up with a different name for the suspect because Iqualdo was not coming up with anything running the name (b)(5)(B). She said "no".

Lindsey did not provide the name "Lovelie Mixon" to Ersie.

2:51pm Joyner called Lindsey Two minutes

Ersie called her again, to see if they had another name for the suspect. He was told "no". Lindsey did not provide the name "Lovelie Mixon" to Ersie.

2:56pm Joyner called Lindsey One minute

Ersie called her again, to see if they had another name for the suspect. He was told "no". Again, Lindsey did not provide the name "Lovelie Mixon" to Ersie.

PHOTOGRAPHS AT THE SCENE

Ersie did not see any photographs of the suspect at the scene on 3/21.

THE "LINDSEY" INFORMATION

I began to ask Ersie if "Lt. Lindsey ever told you...", and he continued:

"At no time did Lt. Lindsey ever tell me that she had a source who said the suspect was at 2755 74th Av".

Ersie has no recollection of Lindsey ever telling him about (b)(5)(B) "even days later". Lindsey never talked to Ersie about (b)(5)(B).

I pointed out in the proofed transcript³ of his interview, page 17, lines 1 through 11, and asked him to read what he said in the interview. That exchange is below for easy reference:

Lt. Medeiros: Do you know Lieutenant Drennon Lindsey? Had you talked to her about any other information she had gathered at the crime scene?

³ "Proofed" Transcript of the interview of Ersie Joyner on March 30, 2009

Lt. Joyner: Well, um, what I remember her saying is that she had called me and was talking about the, uh, suspect ID, uh, later on before they actually made entry. I remember she said something about that she was getting some suspect information about that address and either I said hey, that's the same address or when I told her, she said it was the same address, and we both came to the agreement that we both were thinking the suspect was in the same address, 2755 74th Av.

Lt. Medeiros: Do you know how she came across that info?

Lt. Joyner: No, she just said that she had a lady who told her that. I don't know who it is.

I observed that the above exchange would seem to contradict what he just told me, and he continued:

Ersie is absolutely confident that what he just said about Lindsey not providing the information to him at the scene on 3/21 is the accurate statement.

He does not know in what context he was thinking when responding to Lt. Medeiros' questions in the way he did. He cannot recall the actual context in which the statement was made, that is, just what he was thinking at the time.

Ersie knew the name (b)(5)(B) from his interaction with (b)(5)(B)

XIII. KEVIN KANEY INTERVIEW BY LEARY

When he gave the photo to Lt. Lindsey, she did not relate to Kevin any information she developed while she was at the scene. Lt. Lindsey did not tell Kevin anything about any information she may have developed on the street at the scene. Kevin was not aware of any information Lt. Lindsey developed relating to the suspect or relating to the suspect's location.

XIV. OMEGA CRUM INTERVIEW BY LEARY

INFO ORIGINATING WITH LINDSEY

While at the scene on 3/21, Omega did not come into possession of any information developed by any command officer at the scene. He did not have any knowledge of any information that Lt. Lindsey supposedly developed. He did not hear about any such information while at the

scene.

Again, he did see Lt. Lindsey at the van he was in, but he did not talk to her, and she did not provide any information to him.

XV. DUTTON AUDIO INTERVIEW BY IAD

Floyd: *Did you speak with Lt. Lindsey regarding where she believed the suspect was?*

Dutton: No.

Floyd: *Um, do you have any knowledge of Lt. Lindsey working with a witness on the scene, um, developing information about the suspect's location?*

Dutton: Not at the time at the scene, no.

Floyd: *Um, did you ever hear Lt. Lindsey tell anyone at anytime, um, anything that indicated she was working with a witness on the scene who saw the suspect going into 2755 74th Av?*

Dutton: No.

XVI. SGT. REILLY INTERVIEW BY LEARY

Lt. Medeiros: Are you aware of any plans to obtain intelligence as far as (inaudible). Let me ask, do you know if anyone had intelligence or intel? How about were (inaudible) you ever given the suspect's name or a photo or what he looked like, or had you ever seen any information on who the suspect probably was?

Sgt. Reilly: No. [Reilly Proofed Homicide Interview TR 36:11-15]

XVII. (b)(5)(B) INTERVIEW BY LEARY

"I was trying to tell her (about the suspect) before the film, before I even knew it was a film". "I didn't get to say 'Officer Drennon, he's in that apartment', but I gave her a contact look. She know me. She

been knowing me since she was little girl. She knew I was trying to tell her".

I described for the recording what it was (b)(5)(B) did when she said she gave Officer Drennon a "contact look"—"you moved your head from one side to the other, leaning backwards with your eyes". I said, "And did she pick up on that?" (b)(5)(B) continued:

"Yeah. Cause she like, you know, you know, seem like I wanna say she had like you know, 'who drive that car' and I'm like hmm-hmm (in the affirmative). If it weren't for her and I woulda left, I don't think they'd have that much information".

I asked (b)(5)(B) if she told Officer Drennon about where she thought the guy was before or after the Asian lady arrived. She continued:

When (b)(5)(B) first arrived at the scene, she saw Officer Drennon, and greeted her, asking about her family. "It's so many people. His sister was standing next to me. The cousin was next to me. The people in (unintelligible) was next to me. Like I said, Officer Drennon know me. I gave her enough contact to let her know, 'Drennon, I know who it is'".

I asked: "but you didn't say anything, no words, you just made the motion with your head?" (b)(5)(B) continued:

"My words was, 'call me Drennon. Here go my number'. She couldn't, she couldn't, like I say, it was only four officers on the set now, so she still trying to move these people and keep them from these officers cause everybody still trying to walk up and look at 'em. You know, she was like, this (indicating all over the scene)".

Officer Drennon "actually did better than some of the young mens that was out there", using sounds to describe the men as being in a panicky state. "When they first came, she was the strong link. She was keeping the other officers, trying to calm 'em down, calm 'em down. Help is on the way, help is on the way. But, she knew, when I said 'here's my number. Call me'. I'm trying to pass her the number. I'm still, I'm giving her the looks". This occurred as the other officers were arriving at the scene, and (b)(5)(B) was still "very bloody".

Regarding the next time she talked to Officer Drennon, "seem like I called her on her phone cause now it's a family thing, I'm trying to get with the mama now who I haven't seen. Anyway, we was still being harassed. So, I actually was calling her to see 'what do I do?' I mean, we're getting stuff throwed at the house".

(b)(5)(B) did not talk to Officer Drennon anymore that day, "cause I was at the police department the rest of the night, till one o'clock". (b)(5)(B) only talked to Officer Drennon one time "face to face".

(b)(5)(B) I confirmed that (b)(5)(B) talked to Officer Drennon only one time, and she repeated "face to face". I said, "and that one time was when she first got there?" and (b)(5)(B) continued: "Right". (b)(5)(B) did not tell Officer Drennon that she knew where the suspect was. She just made the motion with her head, "and my phone number. 'Call me Drennon, call me! Call me right now!'"

"After that day, I called her number the next day, cause now we dealing with..." (b)(5)(B) had Officer Drennon's number because "I saved it. I saved the number when she called me after work, after work".⁴

(b)(5)(B) talked to Office Drennon one time when Officer Drennon first arrived, asked how her folks were, said she did not know she was a police officer, and "that's that". (b)(5)(B) told Officer Drennon to call her "right after that. Cause I'm trying to let her know that I know where he went". (b)(5)(B) was trying to let Officer Drennon know where the suspect went, but she did not have those words with her—"no, not those words".

After that, "I didn't see her anymore. They kept me in. They kept me, they just kept me separated from everybody. I mean, I seen her the whole time cause we was in the barbershop, and it's a big one".

(b)(5)(B) only talked to Officer Drennon the one time when she first got to the scene. "You talking 'bout that day—yes".

⁴ I actually missed this comment—I called (b)(5)(B) on 2/01/2010 at 11:55am, to try to obtain an understanding of just when it was that Lt. Lindsey called (b)(5)(B). She remembered making the statement during my interview with her, but could not pin down exactly when the call came in because so much time had elapsed since the incident.

Those were the only two times she talked to Officer Drennon that day at the scene—when she first saw Lindsey arrive at the scene, and when she told Lindsey about the video at the barbershop. (b)(5)(B) is sure about that—“yes”.

(b)(5)(B) did not tell Officer Lindsey verbally that she knew where the suspect was located—“not verbally, like ‘I know where he at, he right there’”.

She did not tell any officers—other than the one she told about someone being in her backyard—where the suspect was located. “Just on the phone. (b)(5)(B) on the police phone. That’s the only one I said I know where the boy was”.

“That’s the only time I really described where this boy...” but (b)(5)(B) did give the description to Officer Drennon Lindsey—“not verbally”.

(b)(5)(B) did not tell Officer Drennon Lindsey where she believed the suspect was located on the phone that night when she got home from the Police Department.

I pointed out that (b)(5)(B) was saying “probably”, and emphasized the need to tell me what she remembered. (b)(5)(B) continued:

“I wanna talk about that car. I wanna say Officer Lindsey ask me if I knew who drive that car. Or did I ask her ‘that the car he’s driving?’”

“Whatever way, this is how I get to let her know. ‘I know who that is’ (motioning with her head). I think she ask me if I know who is drove that car. I’m like, yeah. And I let her know (by motioning with her head). And if I ain’t mistaken, I told her ‘he only be havin it for two weeks’”.

Because she did not learn the suspect’s name until she heard it on the news, she would not have been able to call him by name—“no, the sister either. The sister. I wouldn’t a been able to call her name by name either cause they had been, been there only like three months. And they was standing right there”.

(b)(5)(B) recalls scolding Officer Lindsey for not calling her sooner—“but it have

nothing to do with that incident". What it had to do with was "I was being harassed now. We're the snitches...

NFI

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To: File [Orozco | Mufarreh-LDF #09-0789]
From: Tom Leary
Subject: **RE-CONTACT WITH ERSIE JOYNER BY LEARY**
Date: March 8, 2010

RE-CONTACT WITH ERSIE JOYNER

MARCH 8, 2010 [MONDAY]

At **12:21pm**, I received a return call from Ersie Joyner. I did not record the interview. In response to my questions, Ersie provided the following information:

Ersie did not learn about any information on 3/21 from Tony Jones or Rachel Van Sloten relating to Drennon Lindsey and **(b)(5)(B)**

Ersie did not see any photograph of Lovelle Mixon on 3/21. He did not see any photograph in the possession of Marcus Midyett.

Ersie opined that by the time Midyett arrived with a photograph, he was probably down at 2755 74th Av, after the Entry Team had gone inside the building.

As he had no further information relating to my area of inquiry, I terminated the interview at **12:24pm**.

NFI

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To: File [Orozco | Mufarreh LDF #09-0789]

From: Tom Leary

Subject: TONY JONES INTERVIEW BY LEARY

Date: March 8, 2010

INTERVIEW OF TONY JONES

WITNESS

Jones, Tony Sergeant of Police
Oakland Police Department

510-773-2806 (w)

MARCH 7, 2010 [SUNDAY]

At 2:20pm, I called and talked to Homicide Sgt. Tony Jones. I did not record the interview. In response to my questions, Tony provided the following information:

3/21—ARRIVAL AT THE SCENE

Tony arrived at the scene, and “a ballpark estimate, 20 to 30 minutes after I got there—maybe longer”—Lt. Lindsey pointed out a BF wearing a pink hat, and asked him to talk to her. Though Tony is not certain of the timing, he does recall Lindsey pointed out the woman “not long” before the Entry Team made entry at the location. It was probably about ten minutes before they heard on the air that “the suspect was dead”. Tony was on the phone with Lt. Ersie Joyner when they heard the shots being fired when the Entry Team made entry.

Tony cannot recall the lady’s name. Lindsey told Tony that the “lady seen him go into the house. He frequented the location. Lindsey knew her from before”, but Tony did not know if it was from a prior

case or just how Lindsey knew her.

He talked to the lady and she was very nervous because of the hundreds of people standing around. Tony turned her over to Rachel Van Sloten. He does not know what the lady told Van Sloten.

Tony also recalled that when he arrived at the scene,¹ people were talking about "Mixon". Tony saw a photo of Mixon on a computer screen in a patrol car.

As he had no further information relating to my area of inquiry, I terminated the interview at 2:30pm.

NFI

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¹ According to the purge, an officer commented on the air that Jones was arriving in his POV (personally owned vehicle) at 1:54pm.



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To: File [Orozco | Mufarreh LDF #09-0789]

From: Tom Leary

Subject: SUMMARY OF INFORMATION FROM JONES AND VAN SLOTEN

Date: March 8, 2010

It is clear that the contact by Jones and Van Sloten with the lady in the pink hat (b)(5)(B) occurred very shortly before the Entry Team made entry at 2755 74th Av at 3:02pm, *likely around 2:52pm*. This would have been right after (b)(5)(B) told Lindsey about the video in the barbershop. The second time Van Sloten contacted (b)(5)(B) was at 3:02pm, as they watched the Entry Team make entry.

After talking to Tony Jones and Rachel Van Sloten, it would appear that the following took place:

- Rachel arrived at the scene between 1:20 and 1:30pm, by her estimation
- Tony arrived at the scene at 1:54pm (per the radio purge)
- Twenty to thirty minutes—"maybe longer"—after Tony arrived at the scene, Lindsey asked Tony to talk to a BF in a pink hat
 - This occurred approximately ten minutes before they heard on the air that the suspect was dead (which was between 3:07pm to 3:12pm)
- Lindsey told Tony that the lady said she saw the suspect go into the house, and that he frequented the building.
- Tony turned the lady over to Rachel
- Rachel talked to the lady twice
 - The first time was shortly before the second time
 - The second time was at the corner of 74th and MacArthur, at the time the Entry Team made entry into the building

Interestingly, (b)(5)(B) told me about talking to someone at the corner of 74th and MacArthur, memorialized on pages 15-16 of my report, quoted here:

"Now you know what, it's another young lady came. She look alike a Asian. She look like a boss. They move away from her. She is her, cause she come and get me and we walk to the corner and she asked me similar questions to you. And I'm pointing and showing her. She's asking me where I stay and then she asked me which one the boy's in".

(b)(5)(B)
For the record, I noted that (b)(5)(B) was pointing to the diagram, where her house was located and where the apartment is located. (b)(5)(B) continued:

"Yes, to a lady that very important. Cause the officers had to move, I mean, she was important". She was "small frame, I wanna say bob hairstyle, short hair style, see, I can't tell the difference outta, she's not Mexican, I wanna say Vietnamese, she's not Chinese, Cambodian" (b)(5)(B) was not certain about the lady's heritage other than Asian. "Whoever she was, she had pull, cause she walked through the tapes, and she do this and she do that. And she took me to this corner, which is tape. And she take me to the corner (pointing to the southeast corner), cause I'm crying so bad, cause I'm thinking he's in my house". The lady asked her which house was hers, and she pointed it out to her. "Cause I'm in tears and I'm all hysterical cause I'm thinking he's in there, cause my daughter haven't stepped out this house yet and it'd been like four hours. And so when I tell her this, she say 'now which one is he there'. So I tell her and I tell her cause, I'm describing it to the T. I can give them everything but the address. The first apartment, if you're looking at the apartment, it's on your right hand side. First apartment, downstairs, right hand side, burgundy curtains. (Unintelligible) this right here, it was good enough for her". The Asian lady "have on clothes" as opposed to wearing a uniform. "She was dressed and she moved all around". "Everybody lift up the tape for her. They lift the tape up for her".

I do not know what Rachel Van Sloten looks like, but it is possible that this exchange between (b)(5)(B) and the other woman was with Van Sloten.

NFI

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Sarah Swearengin

From: Thomas Leary (b)(5)(B)
Sent: Monday, March 08, 2010 2:08 PM
To: Mike Rains
Subject: Orozco/Mufarreh: Pre-Disciplinary Letter Interviews
Attachments: Rachel Van Sloten Interview by Leary.pdf; Re-Contact with Ersie Joyner by Leary.pdf; Tony Jones Interview by Leary.pdf; Summary of Info from Jones and Van Sloten.pdf

Importance: High

Mike:

Attached are my interviews of Tony Jones, Rachel Van Sloten and Ersie Joyner.

I also compiled a summary of the information from Jones and Van Sloten for your review.

Tom

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(b)(5)(B)

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To: File [Orozco | Mufarreh LDF #09-0789]
From: Tom Leary
Subject: **RACHEL VAN SLOTEN INTERVIEW BY LEARY**
Date: March 8, 2010

INTERVIEW OF RACHEL VAN SLOTEN

WITNESS

Van Sloten, Rachel Sergeant of Police
Oakland Police Department **(b)(5)(B)(c)**

MARCH 8, 2010 [MONDAY]

At **10:03am**, I received a return call from Rachel Van Sloten. I did not record the interview. In response to my questions, Rachel provided the following information:

3/21—ARRIVAL AT THE SCENE

Rachel, a fourteen-year veteran of the Oakland Police Department, was assigned to Homicide on 3/21/2009. The weekend of 3/21, she was on call.

At 1:15 or so, she was in her office in Homicide, because she had been called in to work a homicide case. She had been working all night and had not had any sleep. Rachel heard the 940B and responded to the scene immediately. She arrived between 1:20 and 1:30pm—she is not certain of the time because of the fact that the events took place nearly a year ago. Her notes are locked up with the rest of the case file, and it would take some time to retrieve them to refresh her recollection.

ACTIVITY AT THE SCENE

Rachel talked to a number of people when she arrived at the scene, including Sgt. Tony Jones and Lt. Ersie Joyner. She also talked to Lt. Drennon Lindsey about a BF at the scene who was wearing a pink hat.

Tony Jones handed off the BF with the pink hat to her ("the lady"). Rachel talked to the lady at least twice. The first time was shortly before the second time.

The second time she talked to the lady, she was standing at the corner of 74th and MacArthur with the lady, who was pointing out the building located at 2755 74th Av. It was at that moment that the Entry Team made entry at that location.

As she had no further information relating to my area of inquiry, I terminated the interview at 10:10am.

NFI

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RLS

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To: File [Orozco | Mufarreh LDF #09-0789]

From: Tom Leary

Subject: (b)(5)(B) INTERVIEW BY LEARY

Date: January 30, 2010

COMPREHENSIVE REPORT OF INTERVIEW OF

(b)(5)(B)

WITNESS

(b)(5)(B)

DOB (b)(5)(B) 1959

(b)(5)(B)

(b)(5)(B) (cell)

JANUARY 29, 2010 [FRIDAY]

At 11:42am, Bob McFarlane and I arrived at (b)(5)(B) There, we were met by (b)(5)(B), as had been previously arranged by telephone. He said (b)(5)(B) was still getting ready, so we stood outside for a while, waiting for her. When (b)(5)(B) emerged from her residence, I introduced Bob and myself to her. The four of us then got into my vehicle and drove to Denny's on Hegenberger Road in Oakland. Denny's had been chosen by (b)(5)(B) at my request, so as to be able to do the interviews "out of the neighborhood".

(b)(5)(B) took a seat at the counter, while Bob, (b)(5)(B) and I sat in booth away from the other customers. I explained to (b)(5)(B) that I would like to record our conversation, and she agreed. I started the digital audio recorder, placed it on the table in front of her, and at 12:15pm I began the interview of (b)(5)(B)

I repeated the admonishment I had given her prior to starting the recorder, telling her

OROZCO | MUFARREH: (b)(5)(B) INTERVIEW BY LEARY

"almost a year has passed and so I don't want you to guess at any of the questions that I ask. Please, if you don't know, tell me you don't know. If you don't remember, tell me 'I don't remember'. There's nothing wrong with that. There's no right or wrong answers. We're going through this, because, like I explained, the City of Oakland is trying to discipline a couple of officers behind what happened on March 21st, and there's some questions that didn't get asked at the time that we do need to ask. And so, that's why we're sitting here today, and I really appreciate you taking the time to meet with us. It means a lot".

In response to my questions, she provided the following information:

(b)(5)(B) address is (b)(5)(B) The cell number she has now will be a good number for her for a while.

(b)(5)(B) became aware something was happening on March 21, 2009, when "I heard the first two gunshots". She was in her house, in the kitchen. "When I heard the shots, I could tell they were very close, cause I could hear the ringing of the gunshots. So me, my daughter, (b)(5)(B) my son, (b)(5)(B) we ran outside. We can actually see the pharmacy from our porch". The pharmacy is on MacArthur at 74th.

They ran to 74th and MacArthur. "We runs up to the corner, and when we get there, we found the officers still moving, but not doing to good". The officers "were, I'm gonna say maybe three inches from the curb".

We were interrupted by the waitress, who took our orders; (b)(5)(B) continued:

"When we got to the corner, the two officers were laying in the street, maybe two or three feet from the curb, and there was (b)(5)(B) my friend for over thirty years. And he was terrified. He was over at one of the officers and he was calling me 'come help, come help', but

(b)(5)(B) "was trying to save" the officer he was near. "He was trying to save him".

(b)(5)(B) saw the officer's motorcycles.

I said I was going to draw a diagram, and did so, depicting the intersection of MacArthur and 74th Av. We used the diagram throughout the remainder of the interview, and I did my best to make reference to it for the recording when (b)(5)(B) referred to it.

(b)(5)(B) identified the location of the pharmacy ("Pharmacy"), her house ("E"), each of the motorcycles ("M"), each of the officers (stick figures), the barbershop ("Barber"), and the suspect vehicle ("Mixon").

We were interrupted by the waitress; (b)(5)(B) continued:

"When he took his license, he walked back to his motorcycle. Mixon shot him as he...you could see that he made it, to, he made it almost to that motorcycle".¹

I interrupted (b)(5)(B) and told her to "let me ask the questions, please. I know there are things that you know now. I want to get inside your head at that moment on that day".

(b)(5)(B) continued:

(b)(5)(B) "knew" that one of the officers had moved back to his motorcycle.

The suspect vehicle (referred to as Mixon's car) was IFO the pharmacy (drawn in by me and labeled "Mixon").

¹ At this point, I mistakenly thought (b)(5)(B) was surmising what took place, when in reality, she was relating what she saw on the video in the barbershop, an event she described later.

(b)(5)(B) identified the corner she initially ran to, which was the southeast corner (labeled "1"). (b)(5)(B) was trying to help the officer closest to the Mixon vehicle (labeled "2"). (b)(5)(B) was there by himself for a minute". No other police officers were arriving. Once she got to position #1, "I couldn't move. I just was startled by what I see. Now, after 10-15 minutes, a guy come out the barbershop to handle this other officer"—not the officer (b)(5)(B) was with, but the other officer.

"It was a long time" before the Fire Department arrived.

I explained that I was not going to ask a lot of questions about what transpired at the location after that, because it was all covered in the prior interview. I said, "What I'm curious about is did you see any officers there that you knew (b)(5)(B) continued:

"Once they finally came, Officer Drennon Lindsey. I hadn't seen her in over twenty-some years". (b)(5)(B) knew Lindsey when they lived in the same building in Richmond.

At this point, the hostess was attempting to seat a party of four at a booth near us. Because I had requested a booth away from the rest of the customers, I could tell she was attempting to seat that party a little further away from us, as a courtesy. One of the black males in that party said, "what that got to do with us?" in a rather loud tone, and can be heard on the recording. The other male in the party said "let them go about their business", kindly being willing to sit elsewhere. But the first BMA insisted on sitting near us, and they did so. They were far enough away that they could not hear our discussion, and I say that because we could not hear their conversation.

They lived near one another on Espee Street [which is actually Espee Avenue, and is so called because it runs along the SP (Southern Pacific) Railroad tracks] in Richmond.

The kindly BMA then walked to the restroom, and both Bob and I thanked him for his consideration. A little later (b)(5)(B) was walking past that party, and recognized the kindly BMA—they embraced and sat in another booth to talk for a while. (b)(5)(B) was aware of the disturbance behind her. She said she was okay sitting where we were, and said she could keep her voice down. I told her to tell me if she was uncomfortable, and we continued. I said “in your interview, you said you were trying to give an officer your name and number to give to her (Lindsey). Is that accurate?” and (b)(5)(B) continued:

“Yes, sir”. (b)(5)(B) was attempting to give her name and number to a police officer—“another young lady. A young lady”. That female officer was possibly Mexican, “but I’m not for sure”. (b)(5)(B) wanted that female officer to give her name and number to Officer Lindsey. She took (b)(5)(B) name and number. (b)(5)(B) received a call from (b)(5)(B) who was on a police phone”. (b)(5)(B) assumed (b)(5)(B) was using a “police phone” because she had been in contact with him, and he did not have his phone with him.

(b)(5)(B) first saw (b)(5)(B) “as soon as I got to the corner”. She talked to (b)(5)(B) “from hollerin from cross the street”. “I was just telling him ‘you doin good’, he was telling me to ‘come here’, and I couldn’t, I couldn’t. He was saying ‘help! Help! (b)(5)(B) come and help me!’ (b)(5)(B) did not cross the street to talk to (b)(5)(B) (b)(5)(B) “was trying to do that, and he was crying and he was scared”. (b)(5)(B) asked (b)(5)(B) to “let them know I ain’t the one cause I got all this blood on me!”

(b)(5)(B) did not talk to any police officers and did not tell them what (b)(5)(B) asked her to tell them, “because the family was there. The Mixon family, they was all there”. (b)(5)(B) did not know at the time they were the Mixon family—“they only been there like three months. They live in that apartment”. She did not go to help (b)(5)(B)

because they were standing "next to me. Standing (emphasis hers) next to me". One of the females living in that apartment is named "Anjoli".

When they were standing next to her, "I wasn't in fear of them, but I knew how we was gonna have to live as 'snitchers'". When (b)(5)(B) first got to the corner, she did not know Mixon was involved. "I didn't know him. I knew the car. I didn't know him. Didn't even know his name".

She and (b)(5)(B) did not talk anymore hollering across the street.

(b)(5)(B) did call "9-1-1" from the scene.

"The officer have arrive now. (b)(5)(B) they finally let him up. They makin sure he ain't the one did it. So they finally let (b)(5)(B) come right here (indicating a point on the south sidewalk) between the barbershop and the corner" (labeled #3). That was the first location they talked, where "we getting to touch, and I'm getting to wipe some of the blood off him, helping him pull off his coat. He is so nervous. He is fuckin scared. And it was like 'don't leave me'. I said 'I ain't goin no where, I ain't goin no where'".

(b)(5)(B) told (b)(5)(B) "I know where he at". (b)(5)(B) believed she knew where the suspect was because of "the car. The car been parked in front of my house for like two weeks (the car labeled "Mixon"). When she saw the car, it was parked "in front of my house. (Unintelligible) this incident. It would park in front of my window".

(b)(5)(B) came over to position #3, and (b)(5)(B) told him "I know where he went—the guy". (b)(5)(B) thought she knew where the suspect went because "they was in that car. The car that's in front of

here (the pharmacy), once they came, once the officers did come, it was that car that they was—and I'm goin 'oh my God'". She put two and two together "when I see them go in that car". (b)(5)(B) saw the officers that responded to the scene going through the car that was in front of the pharmacy, so she realized that was the car that was involved, and that caused her to respond "oh my God".

(b)(5)(B) did not tell anyone else what she saw—"just (b)(5)(B) After all the polices got there, yeah, I talked with a few of them. And those news people just everywhere. You don't know really who you talking to until the next day".

"Now when (b)(5)(B) come here to talk with me, now its kind a like getting stable. Everybody is moved, the police got everybody back, so now all this is just clear. Me and (b)(5)(B) there two officer, it's all clear now. Now I can talk kinda freely. I'm trying to tell one of the police officers that 'the boy is in my backyard'. But he have such a bad attitude". She does not know which police officer she was talking to. "Oh, I wish I did". The officer had "blue eyes", "but I kinda don't want him to get in trouble cause I just had an incident at my house that he came. It was some difference".

I told (b)(5)(B) was not looking to get him into trouble, and she continued:

The officer she was talking to was "tall, blue eyes, white". She continued to "try to tell him, 'somebody's in the back yard, my dog is barking". That is what made her think the guy was in her backyard—"Oh, I know he was in the backyard. He was in the backyard". "I didn't see him. I left my daughter law in my house. He was trying to get in the back door. She was in the house by herself. So now we're trying to get in the house cause it's been hours, so we like trying to get back to the house, they done roped it off. So I'm trying to tell

them, 'my daughter is in there. She haven't stepped out in four hours. Maybe he done ran in my house cause when I ran out, I left my doors open. Wide open. I hear my dog barking. I'm standing on this corner. I hear my dog barking". Her dog was in her backyard and "he don't bark for ice cream trucks, he don't bark for sirens, he don't bark for helicopters. He bark when you're in the backyard". (b)(5)(B) owns a "blue nosed pit bull".

"Now that's another little apartment next to me, he try to get in their door first. Aluminum door was all messed up. It was all 'disembobbleatted'. The next door neighbor, all tore up. He couldn't get in there, so he come, cause he gotta go up my driveway".

I explained to (b)(5)(B) that at this point, we were going through what she thought happened. She continued:

"He was in the backyard. I tried to tell officers he's back there. The officer said 'how you know? He could be barking at anything. I just said 'okay'". "I kept saying" the guy was back there because the dog was barking, "I kept saying it, and this is the whole time he was in the backyard. He haven't made it to the apartment yet".

In relation to her house, the apartment (where the suspect hid) is (referring to the diagram) two buildings north of her house, on the same side of 74th Av. (Apartment labeled "APT") She also identified the location of the pawnshop ("Pawn").

The apartment where (b)(5)(B) believes the suspect tried to break in is just south of her residence, next door, same side of the street, set back from the street (labeled "X screen"). "That's the screen that he shook off, the metal, I mean, aluminum door". (b)(5)(B) did not see the suspect damage the aluminum door, "but it wasn't like that when I

left”.

(b)(5)(B) was trying to get to her house, “because we don’t know if he done made it in my house. It was just strange that my daughter in law haven’t looked out the door in over three hours now. We’re thinking ‘he’s in the house’. So I’m telling the officer, ‘y’all gotta check my house. He gotta be in, cause I say ‘my daughter is not looking out the door, she haven’t stepped out. At this time, we can’t go through because they taped it off”.

Back to the beginning (b)(5)(B) told (b)(5)(B) “I know where he at”. She knew that apartment “was his sister house. Cause at the time, when I see who, the car, I know who he is, I know that his sister house. But he wasn’t in there yet. He walked down with other people. See, once he got in here, and he couldn’t get in my house or their house, it’s so many people now walking up 74th the way we”—people were walking up 74th from below her house. She believes the suspect walked up 74th (north) with the crowd, and into the apartment. “My daughter, she scare for her life in the house—my step, my daughter in law” who has children with (b)(5)(B) son. She locked her self in the house and ran out of the kitchen and into (b)(5)(B) bedroom, “which is the front of the house and locks herself in there”. She told (b)(5)(B) on the phone “that motherfucker at the back door! Motherfucker at the back door!” Her daughter in law’s name is (b)(5)(B) was “scared for her life in there because we been outside already for a while”.

(b)(5)(B) was in the area of 74th and MacArthur “until nine o’clock that night when they took us to the police department”. “We was there for a minute” because the police “putting me and (b)(5)(B) inside the barbershop after they got (b)(5)(B) coat standing here (indicating #3). They took his coat, and they ended up having me and (b)(5)(B)

go inside the barbershop until they come back and talk with us. (b)(5)(B) did not stay in the barbershop. They came back and got out the barbershop but they left me". She does not know who came and got (b)(5)(B) from the barbershop. "I was in the barbershop for a minute. (b)(5)(B) wasn't in there that long like I was. I was in there for a minute".

It was dark when she left the barbershop, "but it get dark at five o'clock".

While (b)(5)(B) was in the barbershop, something happened that upset her—"lookin at the damn film". "I don't know who took it (the video), but I'm so terrified and cryin and scared in the barbershop. Now these people see me walking every day right there. But I'm cry—the guys was like, 'you wanna see it?', everybody in the barbershop. Honest to God, (b)(5)(B) began to cry). Once the officer walk back, when I seen the first shoot, I couldn't look at it no more (crying). I was screaming in that barbershop I couldn't look at them do (unintelligible). He shot 'em. I couldn't look at him do the second one. I seen him do the first, and I tell (b)(5)(B) I turned and said (unintelligible). They was saying 'look at this'. There was a few other clients in there. I think one of 'em was undercover officer. I think that who helped this man here, I'm not for sure".

(b)(5)(B) food arrived, but she did not eat at the restaurant. She took the food home with her. She continued:

"He really filmed that and they (the police) didn't know it was a film until I told. They didn't even know it was a film. Nobody knew because" the people in the barbershop lied when the police went into the shop the first time inquiring about a video. "They don't know I told. When they finally took me out, I tell one the officers". She

thinks she told "Officer Drennon"—"I sneak to tell. They got a film". She thinks she told "Officer Drennon" because "at the time, that's the only one that I trust. Yes, that's the only person that I'm trusting at the time".

"When I see this film, I want to get out" of the barbershop. All she was thinking was she wanted to go home, and that the suspect was at her house. "So I step outside, and they like (b)(5)(B) go back in. I'm like, trying tell Officer Drennon with my eye contact, I'm like (demonstrating, with her head moving back and her eyes really big) and I'm telling her (Officer Drennon and another officer) 'they filmed it'. She like 'who?' So the other officer, I guess he like the one in charge, cause he tells, he tells the other officers 'hold her right here. Hold (b)(5)(B) right here' cause the barbershop had lied, cause they be seeing it. So I come out and say this, thank God they waited, got a Warrant and they got it.

(b)(5)(B) believes the officer she contacted to ask to give her name and number to "Officer Drennon" succeeded in providing that information to "Officer Drennon". "She did, cause she called me". "Cause we had to continue to call the police officers every day cause we was going through it

(b)(5)(B) approached our table and interrupted, asking (b)(5)(B) if he could use her phone. She said she left it at home. She asked "what was that question again?" and I replied "when did Officer Drennon call you?" (b)(5)(B) continued:

"While I'm standing, we still, we still here (indicating on the diagram the #1 position). I start get calls from (b)(5)(B) from the officer phone and Officer Drennon phone". Officer Drennon called her "while I'm standing here. I'm still on the street. I don't know which one the officer's (b)(5)(B) used their phone but he ended up being on the

phone also".

"Officer Drennon call, I don't know if it was her phone that (b)(5)(B) use cause (b)(5)(B) didn't have the number. He didn't have my number. When I gave the other officer my number to get Officer Drennon, that gotta be the way (b)(5)(B) call me. Cause he didn't have a phone on him that day. And he didn't have my number."

"Officer Drennon" called (b)(5)(B) the first time, it was "before" the other officers went into the apartment. "They wouldn't a known what apartment to go in if they didn't talk to me. Before".

"Like I said. Whoever phone (b)(5)(B) use, that's the officer phone. This the only time I had any contact with the police while I'm standing here is through this phone that (b)(5)(B) used". (b)(5)(B) was not with her—"No. He not even telling me he using a police phone. I'm looking at the number—I recognize it being a police number". She recognized it was a police phone by "the number. The 2-7-3 I guess, 2-6-8, whatever".

(b)(5)(B) believed (b)(5)(B) was on a police officer's phone, but he was not with her. He was calling her on her phone. "I'm looking at it. He's with an officer, probably the Sergeant. Say he's standing here (indicating the middle of the roadway on MacArthur, at the west side of 74th), I'm talking to (b)(5)(B) on the phone, I guess with the Sergeant". While (b)(5)(B) was standing at position #1, standing at position #4. "They're talking to me on the phone across the street. Not in my house. I'm still across the street talking".

At that time, (b)(5)(B) phone number was (b)(5)(B) and her carrier was Metro PCS.

When (b)(5)(B) ran to the corner of 74th and MacArthur after hearing the shots, she saw the officers lying in the street "for a good 20 minutes". Officer Drennon was one of "the first four" officers to arrive on the scene. She saw Officer Drennon in the middle of MacArthur, and called to her. She said "Drennon, I didn't know you was a police officer or how your mother doing and your dad" but stopped herself because "it wasn't a time to ask" such questions. The spot where (b)(5)(B) first saw Officer Drennon was marked with a "5".

"She (Officer Drennon) cussing out all the people who done walked up. They's just everywhere. She and the other young lady—who I gave the number to—they're moving everybody. Everybody. Even me. They're moving, telling everybody to go. Until, I contacted Drennon, like, he's back there. As they moving everybody away, I pulled down, cause I wanna go back to my house. But once I made a contact to let Drennon know, I know where he at".

Drennon was still moving people, but she had allowed (b)(5)(B) to stay where she was. "In other words, she let an officer know 'she know something. So let her stay there'".

"And if it wasn't for her, I don't think they even knew it was a damn film because by her letting me stay here, again, by putting us in the barbershop, and I seen the undercover film. So when I come back out, I tells Officer Drennon it's a film. It's a film." (b)(5)(B) watched the first two minutes of the video.

I asked (b)(5)(B) "Did you tell her what you thought about that guy, and I'm purposely not using his name because people are sitting close, did you tell her about that guy before or after you told her about the film? If you remember". (b)(5)(B) continued:

"I was trying to tell her (about the suspect) before the film, before I even knew it was a film". "I didn't get to say 'Officer Drennon, he's in that apartment', but I gave her a contact look. She know me. She been knowing me since she was little girl. She knew I was trying to tell her".

I described for the recording what it was (b)(5)(B) did when she said she gave Officer Drennon a "contact look"—"you moved your head from one side to the other, leaning backwards with your eyes". I said, "And did she pick up on that?" (b)(5)(B) continued:

"Yeah. Cause she like, you know, you know, seem like I wanna say she had like you know, 'who drive that car' and I'm like hmm-hmm (in the affirmative). If it weren't for her and I woulda left, I don't think they'd have that much information".

When (b)(5)(B) was talking to (b)(5)(B) and he was not with her, but he was on what she thought was a police phone, (b)(5)(B) called her "I'm gonna say at least three times we hung up. While I'm still standing here, I'm gonna say at least three times". (b)(5)(B) would tell her "I'll call you back", and she would tell him okay, "cause I'm still here by myself now I'm crying". When he called her, (b)(5)(B) asked her questions. "Before the officers came, before anybody came"—when they stood at position number 3, "this is where we're talking. Me and him is talking a lot. When I first came we was hollerin across the street. He already know I knew who it was and everything". "You did good. It's okay cause he was in shock too. I said, 'don't worry about it'. I say 'the information they's gonna ask you, if you don't know it, I know, I know who it is, I know where it's at. So, that gave him a, he was, he was messed up too, though. He was messed up. He remember me saying (b)(5)(B) I know where he at, I know what house he in".

When (b)(5)(B) was not with her, and he was calling her on the police phone, before the officers went into the apartment, (b)(5)(B) called her "three" times. "I was telling him" things, that is, providing information. (b)(5)(B) remembers what it was she told (b)(5)(B) "Where that boy sister stays, where he went into, describing, cause you have to be like, A-1 right. It was like, downstairs, the left hand apartment, the first one downstairs with the burgundy curtains. I described it just as good".

"Now you know what, it's another young lady came. She look alike a Asian. She look like a boss. They move away from her. She is her, cause she come and get me and we walk to the corner and she asked me similar questions to you. And I'm pointing and showing her. She's asking me where I stay and then she asked me which one the boy's in".

For the record, I noted that (b)(5)(B) was pointing to the diagram, where her house was located and where the apartment is located. (b)(5)(B) continued:

"Yes, to a lady that very important. Cause the officers had to move, I mean, she was important". She was "small frame, I wanna say bob hairstyle, short hair style, see, I can't tell the difference outta, she's not Mexican, I wanna say Vietnamese, she's not Chinese, Cambodian". (b)(5)(B) was not certain about the lady's heritage other than Asian. "Whoever she was, she had pull, cause she walked through the tapes, and she do this and she do that. And she took me to this corner, which is tape. And she take me to the corner (pointing to the southeast corner), cause I'm crying so bad, cause I'm thinking he's in my house". The lady asked her which house was hers, and she pointed it out to her. "Cause I'm in tears and I'm all hysterical cause I'm thinking he's in there, cause my daughter haven't stepped out this house yet and it'd been like four hours. And so when I tell

her this, she say 'now which one is he there'. So I tell her and I tell her cause, I'm describing it to the T. I can give them everything but the address. The first apartment, if you're looking at the apartment, it's on your right hand side. First apartment, downstairs, right hand side, burgundy curtains. (Unintelligible) this right here, it was good enough for her".

The Asian lady "have on clothes" as opposed to wearing a uniform. "She was dressed and she moved all around". "Everybody lift up the tape for her. They lift the tape up for her".

I asked (b)(5)(B) if she told Officer Drennon about where she thought the guy was before or after the Asian lady arrived. She continued:

When (b)(5)(B) first arrived at the scene, she saw Officer Drennon, and greeted her, asking about her family. "It's so many people. His sister was standing next to me. The cousin was next to me. The people in (unintelligible) was next to me. Like I said, Officer Drennon know me. I gave her enough contact to let her know, 'Drennon, I know who it is'".

I asked: "but you didn't say anything, no words, you just made the motion with your head?" (b)(5)(B) continued:

"My words was, 'call me Drennon. Here go my number'. She couldn't, she couldn't, like I say, it was only four officers on the set now, so she still trying to move these people and keep them from these officers cause everybody still trying to walk up and look at 'em. You know, she was like, this (indicating all over the scene)".

Officer Drennon "actually did better than some of the young mens that was out there", using sounds to describe the men as being in a

panicky state. "When they first came, she was the strong link. She was keeping the other officers, trying to calm 'em down, calm 'em down. Help is on the way, help is on the way. But, she knew, when I said 'here's my number. Call me'. I'm trying to pass her the number. I'm still, I'm giving her the looks". This occurred as the other officers were arriving at the scene, and (b)(5)(B) was still "very bloody".

Regarding the next time she talked to Officer Drennon, "seem like I called her on her phone cause now it's a family thing, I'm trying to get with the mama now who I haven't seen. Anyway, we was still being harassed. So, I actually was calling her to see 'what do I do?' I mean, we're getting stuff throwed at the house".

(b)(5)(B) did not talk to Officer Drennon anymore that day, "cause I was at the police department the rest of the night, till one o'clock". (b)(5)(B) only talked to Officer Drennon one time "face to face".

I confirmed that (b)(5)(B) talked to Officer Drennon only one time, and she repeated "face to face". I said, "and that one time was when she first got there?" and (b)(5)(B) continued:

"Right". (b)(5)(B) did not tell Officer Drennon that she knew where the suspect was. She just made the motion with her head, "and my phone number. 'Call me Drennon, call me! Call me right now!'"

"After that day, I called her number the next day, cause now we dealing with..." (b)(5)(B) had Officer Drennon's number because "I saved it. I saved the number when she called me after work, after work".²

² I actually missed this comment—I called (b)(5)(B) on 2/01/2010 at 11:55am, to try to obtain an understanding of just when it was that Lt. Linsey called (b)(5)(B). She remembered making the statement during my interview with her, but could not pin down exactly when the call came in because so much time had elapsed since the incident.

(b)(5)(B) talked to Officer Drennon one time when Officer Drennon first arrived, asked how her folks were, said she did not know she was a police officer, and "that's that". (b)(5)(B) told Officer Drennon to call her "right after that. Cause I'm trying to let her know that I know where he went". (b)(5)(B) was trying to let Officer Drennon know where the suspect went, but she did not have those words with her—"no, not those words".

After that, "I didn't see her anymore. They kept me in. They kept me, they just kept me separated from everybody. I mean, I seen her the whole time cause we was in the barbershop, and it's a big one".

(b)(5)(B) only talked to Officer Drennon the one time when she first got to the scene. "You talking 'bout that day—yes".

She told Officer Drennon about the video "when me and (b)(5)(B) is standing here, cause I wanna go home. So they (the police, specifically the officer that told her her dog wasn't barking at anyone) told us to stay in the barbershop. Well, after a hour, I'm not, I'm going home".

"Anyway, I'm in the barbershop. I'm tired of being in the barbershop, so I walk out. Now I'm in between the tapes, so you know they gonna stop my anyway. I walk out the barbershop, and, she come, I'm so hysterical. I telled her, right here, I'm like, 'it's a tape, it's a film, it's a film' right here where me and (b)(5)(B) at". (b)(5)(B) was not there at that point.

I noted for the record that when I previously said northwest corner, it was actually the southeast corner I was referring to. (b)(5)(B) continued:

When (b)(5)(B) came out of the barbershop and talked to Officer

Drennon about the video, "at that time" that was all she talked about to Officer Drennon.

(b)(5)(B) digressed about the camera, and how the police were lied to at first by the people in the barbershop, she told Officer Drennon about it, and how the police recovered it. (b)(5)(B) told Officer Drennon, "it's a film, it's a film, Drennon".

Those were the only two times she talked to Officer Drennon that day at the scene. (b)(5)(B) is sure about that—"yes".

When (b)(5)(B) arrived home that night—"it was like one-two o'clock, I let her (Officer Drennon) know I was all right". Officer Drennon did not ask her any questions—"not about this, nothing about this".

As far as volunteering any information about the shootings, "I probably says something like, 'you know you the only one I trust. Me and (b)(5)(B) gotta live here'. I'm trying to see what do I do now in case something happen cause, I been to jail on gun charges. You know what the judge told me? I didn't have a phone to call the police when the guys come to my house with a gun. So I ended up retaliating with my gun, at my house. I went to jail for that. I lived within the City limit. I didn't have a phone to call, so I had to go out an walk. Never had been to jail, still mad that I'm a felon". That occurred in 1993. "Wouldn't have never had a record for this. But the law change, the Brady bill change, and I went to jail. Judge tell me 'next time, call, you call the police, you call. At that time, I didn't have a phone, so I would have to come out, walk through the peoples at my house, that's all I could think about. So every time these family came, I called. Every time they came, I called. And you know what they said on the 14th time? One the officers? In other word, we tired you callin us about this family right here...you done called 13

times. You know how that make me feel? I couldn't believe he said that to me. All the shit me and my daughter went through. They told me 'this the 13th time you done call about this/that'. Well, hell, that's what the judge told me to do instead of re—cause I woulda did something myself. I wasn't trying do the same thing twice.

(b)(5)(B) talked to Officer Drennon the next day. They did "not really" talk about what happened that day. "I was just telling her the things—cause I know she can't talk about none a that. She can't—I know that, my cousin a police officer. But I was telling her all the things that we were goin through. How every morning we can't step out get our paper...for a whole month. The City had to place me in a room near my child for us to get sleep for a whole month. It was terrible". (b)(5)(B) was moved out of her place for a while because "the street was a circus. It was a circus, for a whole month". The City paid for that. Desiree Brooks arranged that for her.

"When she (Brooks) made it to my house, I was tore up. I was probably 'bout to lose my mind when she made it. She went from door to door letting everybody know that it's some help, we have therapists and all that cause we ended up with..."

(b)(5)(B) did not tell Officer Lindsey verbally that she knew where the suspect was located—"not verbally, like 'I know where he at, he right there'".

"I called, whoever phone it was, I was talking to (b)(5)(B) That is when I told 'em where the person was". She did not tell any officers—other that the one she told about someone being in her backyard—where the suspect was located. "Just on the phone, (b)(5)(B) on the police phone. That's the only one I said I know where the boy was".

(b)(5)(B) recalled being interviewed by the police in the interview room, and recalled that they brought her water to drink. "After the interview room", (b)(5)(B) did not talk to any other police officers about what happened. She recalled coming out of the interview room and being given a ride home by the police. She recalled seeing "Jordan, the ex-chief" before leaving for home.

The only interview she participated in was that night in "the interview room". She was not interviewed by Sgt. Floyd.

"Them damn news people. Never talk to news people 'bout something like this. I'm really serious. You don't".

(b)(5)(B) talked to Officer Lindsey "maybe twice" after the events of March 21, 2009. "I called her" on the phone, "let her know we okay. Nothing 'bout this here situation".

I asked (b)(5)(B) where she was when the officers went into the apartment, and she replied:

"Oh, my God. If I coulda stopped them, if they woulda listen. If I coulda stop them, them three officer wouldn't be dead". (b)(5)(B) explained her comment—"if they would have listened"—"because, (unintelligible) this was the SWAT that went into the apartment. Before they even got there, you know how long it took before the SWAT came? The SWAT didn't come till I came out the barbershop. That was hours later. I think that if you, the officers, (unintelligible) they coulda caught him in the backyard, instead a in the apartment. The apartment was a trap to me. They need start listen to the people in the community. Now, why not take a chance, checking to see if that's why her dog barking. You know I was saying that at one o'clock in the afternoon? One o'clock. For hours. 'He's in the

backyard'. Somebody's in my backyard because the dog, 'well, how you know' (quoting the officer). 'He could be barking at the sirens' (again quoting the officer). I let it alone. I walked away from that officer. He shoulda took that into consideration. They probably woulda got him back there".

When the officers went into the apartment, she was "still at (b)(5)(B) (indicating on the diagram). There are apartments over "the place of business" (barbershop). There is a doorway that opens to a stairwell that goes to the apartments over the barbershop. (b)(5)(B) pointed to where she actually was when the officers went into the apartment (labeled "E"). "When I heard the shots", (b)(5)(B) did not know what building the officers went in. She thought they might be in her house—"all the time I'm thinking it's my house", but she could not see what the officers were doing. "I'm on the sidewalk, I could hear it over the speaker. All the time, all through the shots and everything, I'm thinking they're in my house, the whole time. So now the man, I hear him saying, 'we got', whatever they said over the thing, I'm like 'oh, my God, they done messed up my house'. I'm still thinking they're in my house the whole time. I'm hearing it come over the radio that they got him. You see what I'm saying? So I'm thinking my house all shot up cause we could hear the shots, we could hear 'em".

"I didn't get to talk to Officer Lindsey no more because now they fixin shoot me from the barbershop" downtown, "till one something in the morning".

I said "I hate to keep asking the same question, but I want to make sure I understand. So forgive me for asking the same question". (b)(5)(B) said, "that's okay, that's okay". I said, "that night, you called Officer Lindsey and told her you were home and you were okay. Did you tell her anything else about what happened there? Did you tell—let me

ask you this. Did you tell her you knew where the guy was?" (b)(5)(B) continued:

"Yeah".

I said, "Okay. And did you tell her, what did you tell her about that? If you can remember". (b)(5)(B) continued:

"Officer Drennon Lindsey".

I said, "uh-huh".

"The young lady who I gave my number to it's the only person I gave my number to. So for (b)(5)(B) to call me, on that phone, that number already been passed". "That's the only time I really described where this boy..." but (b)(5)(B) did give the description to Officer Drennon Lindsey—"not verbally".

(b)(5)(B) did not tell Officer Drennon Lindsey where she believed the suspect was located on the phone that night when she got home from the Police Department.

I asked, "did you tell her the next day?" and (b)(5)(B) continued:

"Well, she already know cause they got him already".

I asked, (b)(5)(B) if you can remember, did you tell her the next day where you thought he was? (b)(5)(B) thought about it, and she continued:

"The next day? Coulda been that night. I don't, I can't remember. Cause she the only one I trust and I know that a be the only person I would say 'it's who' besides whoever phone (b)(5)(B) use". She does not remember if she told Officer Lindsey on the phone, that

night, "after the incident was over".

"The next day, I don't think we even talk about the situation".

(b)(5)(B) learned that the suspect was named "Mixon" "way after" the incident through the newscasts—"the first TV flash".

(b)(5)(B) told Officer Lindsey she had seen the guy later identified as Mixon driving the suspect vehicle—"it had to be that day, then because that how I know who it was. And she could of, it's possible that while we're standing there, before any officers came, when there were just four officers that...Now, the eye contact, if I ain't mistaken, Officer Drennon probably asked me if I know who drove that car, and I nodded. That's how we contact. She probably asked, I think she asked—the sister and them (friends/relatives of Mixon) hadn't made it up to me then. I gotta run by their house to get to that corner. And if I ain't mistaken, Officer Drennon, I probably asked her 'that the car he was in?' And she probably s—"

I pointed out that (b)(5)(B) was saying "probably", and emphasized the need to tell me what she remembered. (b)(5)(B) continued:

"I wanna talk about that car. I wanna say Officer Lindsey ask me if I knew who drive that car. Or did I ask her 'that the car he's driving?'"

"Whatever way, this is how I get to let her know. 'I know who that is' (motioning with her head). I think she ask me if I know who is drove that car. I'm like, yeah. And I let her know (by motioning with her head). And if I ain't mistaken, I told her 'he only be havin it for two weeks'".

Because she did not learn the suspect's name until she heard it on

(b)(5)(B)

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the news, she would not have been able to call him by name—"no, the sister either. The sister. I wouldn't a been able to call her name by name either cause they had been, been there only like three months. And they was standing right there".

(b)(5)(B) recalls scolding Officer Lindsey for not calling her sooner—"but it have nothing to do with that incident". What it had to do with was "I was being harassed now. We're the snitches. So I'm kinda like I say, in '93, I reacted. I got my gun and shot at people. This time I'm not trying to do that. I had never been to jail. What was going on was the family. We was being tortured. So, I did, probably on her voice mail, I did". (b)(5)(B) scolded Officer Lindsey on her voice mail for not calling her sooner, because of the harassment to which she was being subjected. "Because I didn't know what to do, I'm a ended up killing the motherfucker. Cause this is what I'm saying, to the crowd, even when them vigil—we have to go through the whole process. The vigil, when they get through the vigil".

(b)(5)(B) had to go through "things being throwed at the house". It got pretty bad for her.

I asked, "did you ever tell Officer Lindsey that you had seen Mixon that day?" and (b)(5)(B) continued:

"He had parked in front of the house. He had parked in front of the house. Cause I don't know who he is, I just know the car. You see how the parking is? In front of my house was always vacant. That's how I know he had just bought the car cause he's parking in front of my big picture window".

I asked again, "but that day, did you tell, in words, did you tell Officer Lindsey that you had seen the bad guy?" and (b)(5)(B) continued:

"That day? I seen him that day?"

I said, "see, because, you told the investigators in the interview room that you did not, but that you did not see him that day. Did you tell Officer Lindsey that you saw him?" and (b)(5)(B) continued:

"I don't remember. I don't remember. Not that day, cause this was like twelve o'clock when this happen. But he was in and out. He'll be there one minute, then he come back".

(b)(5)(B) does not know anyone named Damon.

She did not know the two officers that had been on the motorcycles who were shot. No one told her their names. When told she called out "Officer Heckie" (*sic* from the video taped interview), she said "learn it by news. You get to see. I don't know Heckie". "I did?" She repeated, "I don't know". I don't know how I knew his name, unless maybe I heard one the other officers".

When she was in the interview room alone, and said "them alls a cold family, Lord", "I had to be talking 'bout them damn Mixons", but she did not know their name at the time.

(b)(5)(B) acknowledged that she prayed for the officers and their families while alone in the interview room.

She also walked among "all the people" and put a banner/sign up at the apartment that said "good work" or something to that effect, "I took a chance on that. The next day, they tore it down". "Since they took the police stuff down, I moved everything and they end up back there so I called the City. So the City had 'em, they moved everything".

While in the interview room alone, prior to the entrance of the officers that interviewed her, she repeatedly said, "he shot them officers. He shot them officers". When she saw the car, she believed she knew who was responsible. "When I seen that car, I knew who the hell he was".

(b)(5)(B) recalled describing the car as a "root beer brown". "That was my description. On the day he bought it, when I first seen him, I said, "that's a nice root beer brown on that car".

On March 21st, no one told (b)(5)(B) which way the suspect ran from the scene. "When I was leaving out my house, he was probably already in my backyard".

I told (b)(5)(B) that she had just told us that she did not tell Officer Drennon, with words, where Mixon lived. But she told the officers in the interview that—(she began talking):

"The only way they know where that boy was is have to be through Officer Drennon, cause I ain't trusted no other police officer. No other police, I would only say that kind of stuff to Officer Drennon".

I read from the interview transcript: "It's gotta be someone at this house on the ground floor in this apartment", and said that she told that to Officer Drennon. I asked, "did you mean that you made the motion with your head? Is that what you meant? (b)(5)(B) continued:

"Well cause the sister and them is there at the time, that's my motion. Now see remember, they moved everybody. Now I could talk to you and I could talk to him with no problem cause nobody can see us".

I pointed out that she told me she only talked to Drennon twice. She continued:

"But like I said, for them to know, which one he in, they had to get it from Officer Drennon cause I'm only gonna say it to her and whoever phone (b)(5)(B)."

She also told (b)(5)(B) on the phone. "He the first one".

I continued to review the notes I had with me regarding the interview with OPD Homicide.

When (b)(5)(B) was shown the photographs to see if she could identify anyone, "I picked out two it probably could be, here, and here" (demonstrating).

When asked if she told the officers showing her the photos the truth, "or did you recognize a photograph", she continued:

"Oh, I...I...like I said, they only stayed there three months so I didn't get to see 'em enough to where the photo would look like him or what, cause you should see the other picture I picked. Look nothing like him, look nothing like him". She was being truthful with those officers—"yes. Oh, yes!" "I ain't gonna lie. I want them get his ass! I wanted them to get him. I was feelin bad. I was feelin bad".

(b)(5)(B) remembers at the very end of the interview, after the officers showed her the photos that she talked about getting good communication skills on the street. I read to her from the transcript: "Would you please just give it to Miss Lindsey, my number and my name". I told her "just before they closed your street off", she said, "can you please give her my number?" I asked, "is that the same time you were talking about when you told that officer you wanted her to have your name and number?" **(b)(5)(B)** answered:

"Now that's after the interview, right? What you're talking about?"

I said, "this is at the end of the interview". (b)(5)(B) continued:

No, the number and stuff was passed to the lady before the other twenty and the SWAT team came".

I told her I understood that, but that she said that at the end of the interview. I said "but you were trying to get your name and number to Officer Lindsey while you were out there on the street". She continued:

"Yes", before others responded to the scene—"when there was only five officers".

Bob McFarlane inquired about the Asian lady, and (b)(5)(B) elaborated:

"After the barbershop. Everybody's moved now. And the yellow tape is all around. The lady had clout cause she got outta her car, they raised up the tape for her", and (b)(5)(B) was at the barbershop. The woman contacted (b)(5)(B) and they walked to the corner of MacArthur and 74th. "Before SWAT. This before SWAT". "She come and she see me hysterical, crying, most likely I already told her who I was. She take me from here, we walk to the corner, right here, and we look out, like this the corner, I gotta look around show her my house. Cause I'm still thinking he's still in my house". (b)(5)(B) did not notice the kind of car the lady was driving when she arrived at the scene. "She was dressed like a Captain or something. They knew who she was, all the regular police officers, they knew who she was, cause they had to raise the tape up. She ain't gotta touch the tape. They raised it up for her. And I never forget. She had on a beautiful red coat and a short bob hairstyle, I say like, an Asian type".

They walked to the corner, "and she had me to show her my house and then where the Mixon guy was. She had pull. She had pull and

at this time, I'm telling her straight. I'm pointing out, that's where he was, that's where he is, in that bottom one".

(b)(5)(B) agreed to call me if her number changed. As she had nothing further to add, I terminated the interview at 1:35pm.

I would note that during my contact with (b)(5)(B), I did not detect any odor of alcoholic beverages, nor did I observe any signs of drug use.

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