



Technical Proposal:

Madison Police Department
Policy and Procedure Review

RFP # 8504-0-2-16-BP

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Submitted to:
City of Madison Purchasing Services
City County Building, Room 407
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

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Section 1 – General Information Forms

[See Forms A, B, and C enclosed]

Section 2 –

- 1) Michael J. Gennaco dba OIR Group (hereinafter OIR Group) has engaged in no contracts for the City of Madison.
- 2) Reference form E enclosed.
- 3) OIR has no alleged significant prior or ongoing contract failures, contract breaches, or civil or criminal litigation or investigation pending which involves the consultant or in which the consultant has been judged guilty or liable.

Section 3 – Technical Questions and Team Qualifications

OIR Group has the ability and experience needed to perform an effective and efficient review of the policies, procedure, and culture of the Madison Police Department (MPD) as called for in RFP #8504-0-2016-BP. Since 2001, OIR Group has been engaging with law enforcement agencies to effect change in various and meaningful ways. We are confident that we can contribute to MPD's evolution as an agency reflective of the City's needs and aspirations.

OIR Group's principal members have each specialized in the civilian oversight of law enforcement for several years, and have worked with numerous departments in response to a wide range of issues and challenges. For this project, OIR Group will also affiliate with a talented cadre of police and subject matter experts skilled in evaluating and reforming police practices, identifying training needs, developing innovative approaches to addressing challenges presented by mental health and substance abuse issues, reviewing force and suggesting alternate approaches, addressing racially disparate impacts in policing, building bridges with diverse communities, and using data analysis to identify problems and shape reform.

Our team is uniquely qualified to perform the review called for in the RFP and to ensure that its objectives are met through attainable and constructive reforms. The required tasks align closely with our own longstanding emphasis on and promotion of progressive and community-oriented policing.

1) Proposed Plan of Work

1A) Review and Assessment of Current Police Department Policies and Practices

OIR Group team members, affiliates, and advisors have extensive experience evaluating and assessing law enforcement agencies, including all of the specific

components listed in Section 2.5.2 of the RFP. We are well-equipped to accomplish the review and assessment of the MPD relating to the following specific tasks:

2.5.2.1 – Standard Operating Procedures and Code of Conduct

For well over a decade, OIR Group has specialized in recommending and working to implement systemic improvements in law enforcement agencies, including the development of policies, procedures, and conduct standards. OIR Group has also been involved in auditing policies and procedures to determine the degree to which current policies are being enforced.

OIR Group's policy experience includes reforming policies on use of force, internal investigative and review protocols for force and allegations of misconduct, shooting at vehicles, foot pursuits, vehicle pursuits, development of disciplinary matrices, and use of body-worn cameras. OIR Group continually researches, learns, and develops best practices in tactics and accountability and exports those policies to agencies it monitors and reviews.

2.5.2.2 – Training Curricula and Procedures of Training

OIR Group principal members are well versed in law enforcement training from a range of perspectives, including evaluation, issue spotting, and recommendations for reform. Most recently, OIR Group has been engaged to evaluate training materials and classes for new and current officers and supervisors regarding new policies designed to curb illegal stops and searches in New York City. OIR Group members have assisted law enforcement agencies on training designed to reorient officers to use "force prevention" techniques to avoid preventable uses of force. OIR Group members have also developed training intended to improve investigative skill sets for supervisors assigned to conduct force investigations. OIR Group has also provided training to command staff on more holistic and intensive methodologies with regard to review of force incidents.

Our affiliated team members also have extensive relevant background and involvement in law enforcement training. Their credentials include the following:

Dr. Gerritsen worked as a supervisor for a mobile mental health crisis team that created community-police partnerships to improve police response to calls involving individuals in mental health crisis. She currently works for the Portland Police Bureau's Training Division in an innovative partnership to bring advanced Crisis Intervention Training to officers and improve the Bureau's relationships with mental health advocacy groups and community members.

Dr. Fridell has developed and presented training on recognizing implicit biases and activating controlled responses to overcome them both for officers and supervisors. She and her colleagues provide "train-the-trainer" programs so that trainers from around the country can learn to implement the programs in their own

agencies. She has worked with a large number of law enforcement agencies, from some of the largest in the country to smaller or mid-sized agencies, including the MPD.

Among other relevant experience gained during his long tenure with the Orange County Sheriff's Department, Mr. Billings served as the Commander of his agency's Regional Training Academy, overseeing all aspects of training, including pre-service, in-service, and specialized training.

Mr. Jurado also worked as a trainer, in the Los Angeles County Sheriff's Department's Training Bureau, and has extensive experience training officers in the appropriate use of force and ethics-based policing.

Mr. Stoughton, a former police officer, has experience reviewing training curricula and, to assist in that assessment, has performed semi-structured interviews with officers to assess how training – particularly de-escalation training – translates into practice.

2.5.2.3 – Recruitment, Hiring, Promotion, and Retention Processes

The RFP provides a useful roadmap for assessing MPD's personnel functions and decisions, including an evaluation of screening instruments and safeguards to ensure that improper criteria are not being used either to penalize or incentivize officers in the promotional process. OIR Group principal members have substantial experience performing these types of evaluations as reflected in two recent examples.

After the L.A. County Sheriff's Department made an unprecedented effort to hire 1,000 deputies in one year, there were significant concerns about how its hiring standards had been compromised. At the request of the County Board of Supervisors, Mr. Gennaco led the effort to evaluate the Department's hiring practices and to oversee the implementation of significant reforms. The evaluation involved reviewing numerous applications, background investigations, polygraph tests, and psychological screening tools both for applicants who were and those who were not hired. For those who were hired, we assessed their performance in their initial time with the Department and compared that to any concerns identified during a review of their hiring packets. This allowed us to effectively assess the tools used in hiring as well as the decision-making process.

Additionally, when the Westminster Police Department was successfully sued by four of its own officers with a resulting multi-million dollar verdict for racial discrimination and retaliation, OIR Group was asked to review the hiring, promotional, and special assignment selection processes. We produced findings that helped explain reasons for the adverse verdict, as well as recommendations designed to make those processes more objective, fair, and transparent in the future.

These and other experiences have given us ample familiarity with the substantive elements involved in this component of the project.

2.5.2.4 – Internal Culture of MPD

Police culture is both multi-faceted and highly influential in shaping an agency's operations and relationships. While our experiences have collectively left OIR Group's principal members with a strong sense of the tangible and intangible factors that contribute to police culture, we are also fortunate to be affiliated for this project by Dr. Paoline, a respected scholar for whom police culture is his chief research interest.

Dr. Paoline is experienced and skilled in the use of surveys, interviews, and other research methodologies to examine the internal culture of a police agency. He has published extensively on the subject of police culture and his book, *Police Culture: Adapting to the Strains of the Job*, is a comprehensive empirical examination on the topic. His expertise will guide the OIR Group team's assessment of MPD culture.

2.5.2.5 – Field Practices

OIR Group has on its project team a number of experienced, highly respected law enforcement executives, all of whom are or were seen as change agents in their respective organizations. Their deep knowledge of police systems will guide our examination of MPD field practices. We will use initial interviews with Department and community members to identify areas of greatest concern and will follow up with more directed surveys and interviews, ride-alongs with officers, review of internal documents, and observations of training. We will recognize exemplary work at the same time we identify areas of potential improvement and will make recommendations in those areas.

2.5.2.6 – Community Policing and Problem-Oriented Policing

OIR Group's assessment of policies and procedures, training, culture, and field practices will all intersect with community policing and problem-oriented policing issues.

In all of their work with various agencies, OIR Group members have championed these strategies as a backdrop to specific recommendations for systemic and philosophic change. We are also pleased to be joined for this project by Ms. Connie Rice, who brings direct expertise and accomplishment to our qualifications in these areas.

Through her work with the Los Angeles Police Department – first as an adversary suing the Department and then as a partner helping it build bridges to minority communities – Ms. Rice has spearheaded and seen firsthand the success of efforts to promote community and problem-oriented policing, or what she terms “public trust policing.” She understands how to gain the trust of a law enforcement agency and how to help community members learn to trust the police – even under the starkest conditions of past conflict. She has trained LAPD officers on the principles of public trust policing, teaching them to help a community solve its problems. Accordingly, she will be a

valuable resource in analyzing MPD's current efforts and in developing new strategies for building trust-based relationships with the Madison community.

2.5.2.7 – Accountability Mechanisms

OIR Group was initially created to ensure that investigations alleging misconduct within the Los Angeles County Sheriff's Department were thorough and unbiased and that the investigative outcomes were evidence based. With the recognition that weakness, bias, or inadequacy at any point during an agency's handling of an investigation taints the entire accountability system, our "cradle to grave" approach ensured that no aspect of a case went unmonitored. That foundation continues to inform our wide-ranging practice today.

- As part of its regular oversight roles, OIR Group frequently receives and responds to citizen complaints, reviewing the departments' own internal investigations and communicating with complainants regarding process and outcomes.
- For over a decade, OIR Group has monitored numerous force events to assess whether they are thoroughly and fairly investigated. As a result of these repeated analyses, OIR Group members can easily distinguish between robust investigations and those that are inadequate and/or biased. OIR has also evaluated numerous agencies' force review systems. It has worked to move individual agencies beyond narrow and perfunctory assessments, and toward more holistic consideration of officer accountability, remedial action, meaningful feedback, and systemic reform.
- Similarly, OIR Group has monitored and reviewed many hundreds of misconduct investigations not involving uses of force. This involvement has been multi-faceted and often has occurred in "real time," thereby influencing the strength and legitimacy of cases before their conclusion. OIR has assisted in ensuring that news cases have the proper scope, that effective investigative techniques are used, that additional work is undertaken where appropriate, and that case outcomes are reasonable, fair, and evidence-based. In addition, OIR Group has developed investigative quality control checklists designed to improve the internal review processes within law enforcement agencies.
- Uniquely, in our oversight role for Los Angeles County, OIR Group members were able to offer independent recommendations on outcomes on discipline in scores of internal investigations. In that role, OIR Group attorneys frequently encountered the conscious and unconscious bias that can impact internal decision-makers' objectivity and worked to find ways to insulate the decision from those influences. We have a similar role with other police departments, including the Fullerton Police Department.
- Recognizing that an officer's conduct in a particular incident may tell only a part of the story, OIR Group regularly looks to supervisory influences to assess their impact

on both the underlying event and – potentially – the subsequent evaluation or investigation. On those occasions when first-level supervisors are on scene prior to a force event and either deploy force themselves or direct force, OIR Group has recommended that an uninvolved supervisor handle any subsequent evaluation, in keeping with best practices and principles of objectivity. We have also been involved in working with agencies to better define, through policy and practice, supervisors' roles in responding to force events, and to promote the inclusion of their individual presence in multiple events as a trend factor worth monitoring.

- OIR Group has worked with numerous agencies in assessing their early identification systems for potentially problematic officers and has offered recommendations designed to improve data collection and retrieval. More importantly, OIR Group has recommended more effective ways in which agencies can make use of the data collected so that supervisors can identify at-risk officers and create meaningful remedial plans.

Finally, we are fortunate to have Dr. Walker as a resource for this aspect of the project. He is a recognized scholar on policing issues who recently has written a book providing a comprehensive analysis on the history and recent developments of various accountability mechanisms – *The New World of Police Accountability*. In his role as an advisor to the OIR Group team, he will provide additional perspective and expertise in evaluating the independence and efficacy of existing accountability systems as well as recommending needed reforms.

2.5.2.8 – MPD Data Collection and Usage; Communications Systems

OIR Group members have significant experience working with data and outcome measurements utilized by a large number of agencies of varying sizes. When reviewing information systems, we have often been frustrated by the unreliability of data entered into the systems and the resulting compromise in the ability to conduct meaningful analyses. This experience leaves us well-equipped to assess MPD's data systems.

Our affiliated team members also possess extensive backgrounds in these areas. In particular, Mr. De Angelis is an accomplished researcher and scholar whose work focuses on law enforcement data analysis. Mr. James is a retired chief who had responsibility directing and overseeing a large Sheriff's Department's communications center; he can bring his experience to bear in our assessment and review of MPD's communications systems.

2.5.2.9 – Equipment and Technology

OIR Group's affiliated law enforcement executives have guided their respective agencies in the use of new and developing technology and equipment. They are well-

versed in the ways that these tools relate to core law enforcement functions and the enhancement of safety for both officers and the public.

OIR Group principal members have also worked with its monitored agencies to instill the principle that every force event should be reviewed through multiple prisms, including an examination of the equipment available to officers at the time, decision making regarding how that equipment was deployed, and the existence of new technology that might have affected the outcome of the incident. Reviewers should assess whether the involved officers suffered from inadequate preparation, guidance, or support in any of these areas.

Further, whenever an agency introduces new technology, it must develop policy and training to adequately convey its expectations to officers. With regard to Taser, video cameras, and body worn cameras, OIR Group has worked on developing policies designed to provide clear guidance to officers on their use and deployment, considering best investigative practices, data storage issues, and privacy concerns. OIR Group is already considering what guiding principles may be needed with regard to the use of emerging technologies in policing such as drones and robots.

2.5.2.10.1 – MPD's Engagement with Diverse Communities

OIR Group's assessment of MPD's community and problem-oriented strategies and efforts will necessarily intersect with an assessment of the agency's level of engagement with all the diverse communities listed in the RFP. Likewise, surveys of community members regarding police culture will guide this assessment. Numerous members of the OIR Group team have particular experience related to this task. Ms. Rice bring her vast experience on community policing issues. Dr. Gerritsen has decades of experience working with homeless and drug involved individuals as well as those with mental health issues. And Dr. Paoline's expertise in using surveys and interviews to assess community attitudes will also help shape these efforts.

2.5.2.10.2 – Trust Based Policing Initiatives, Racial Disparity Workgroup, and Diversity Inclusion Team

Reviewing the work of MPD's prior initiatives, workgroups, and teams will be a critical piece of OIR Group's assessment of ongoing efforts to establish community trust, eliminate racial disparities, and maximize diversity. OIR Group's ability to handle this task with experience and sensitivity is evident.

2.5.2.10.3 – Programming for Mental Health and/or Drug Abuse Issues

We anticipate that our affiliated team member Dr. Gerritsen will play a leading role in our response to these issues. Dr. Gerritsen has been at the forefront of the Portland Police Bureau's innovative efforts to address significant concerns raised about the Bureau's interaction with people in crisis. As a psychologist with significant clinical

experience as part of a mobile mental health crisis team, she recognized the importance of training police officers on how to respond to such situations. Following a tragic in-custody death, she went to work for the police bureau's training division, developing and delivering crisis intervention training while collaborating with the City's mental health agencies to identify ongoing needs and creative ways to address those needs. Her role in an agency similar to the MPD makes her uniquely qualified to review and assess MPD programming and to suggest ways to improve interactions with people who have mental health and/or drug abuse issues.

OIR Group's prior force review experience has also encompassed numerous incidents involving individuals who are in mental health crises, and has involved devising strategies, policies, training and tactics designed to provide officers with the optimal framework and orientation for this unique context. For example, after the in-custody death of a homeless and mentally ill man in Fullerton, CA, OIR Group conducted a systemic assessment of the way in which the Department responded to those in mental crisis and offered numerous recommendations for improving those responses.

1B) Policy Review Criteria

OIR Group team members and advisors have a deep understanding of and appreciation for the outcomes and objectives detailed in Section 2.5.1 of the RFP. We have extensive experience evaluating law enforcement agencies using similar criteria, and have made numerous practical recommendations aimed at helping agencies achieve comparable goals. Our work reviewing the MPD would incorporate the specific objectives and criteria delineated in the RFP:

2.5.1.1 – Best Practices for Policing

OIR Group continually researches, learns, and develops best practices in tactics and accountability and exports those policies to agencies it monitors and reviews. Our team is comprised of lawyers, oversight professionals, social scientists, scholars, and law enforcement officers, all of whom work hard to stay current in their respective fields. We are familiar with the Police Executive Research Forum's *Guiding Principles* on use of force, the *Special Community/Police Task Force Recommendations Regarding "Use of Force,"* and the *Report of the President's Task Force on 21st Century Policing*. In fact, three of our team members were involved in the development of that Report: Connie Rice was appointed by President Obama to the Task Force itself, Brian Buchner presented live testimony to the Task Force, and Michael Gennaco submitted testimony for the Task Force's consideration upon its request.

2.5.1.2 – Use of Force Prevention

OIR Group has reviewed over 500 officer-involved shootings and scores of incidents involving head strikes with impact weapons. As a result, our members have developed

a particular understanding of the activities and commonalities that result in the use of deadly force and have the ability to identify and help remediate contributing factors that lead to unnecessary and excessive force.

Because of its expertise, city and county leaders repeatedly have engaged OIR Group to review deadly force incidents involving their law enforcement agencies (e.g. San Diego County; Portland, Oregon; Santa Maria, California; Burbank, California; Fullerton, California; Anaheim, California; Pasadena, California; Oxnard, California; Orange County, California) and to offer recommendations for systemic reform. The recommendations range from improvements in tactical policy and training to improvements in the investigative and review processes.

Poor tactical decisions that are inconsistent with principles of officer safety often lead to deadly force incidents. For years and in countless cases, OIR Group has worked to identify such tactics in officer-involved shooting incidents and worked with agencies to ensure that remedial action plans – including discipline, training, policy development, and supervisory issues – are devised to address them.

OIR Group also recognizes the need for police agencies to thoroughly and objectively investigate and review less lethal force incidents. As the monitor for Los Angeles County, OIR Group reviewed scores of force incidents involving the use of electronic control weapons, chemical agents, and personal weapons, identifying tactical issues and determining whether the force was justified and in policy. In addition, OIR Group has reviewed numerous force incidents for other law enforcement agencies and made recommendations for changes in policy and training as well as the development of systems for review, accountability, and remedial actions. OIR Group also has developed measures that address agencies' mindset and culture regarding the use of force, and helped devise policy and training intended to inculcate principles and strategies of de-escalation and force prevention.

Mr. Stoughton is a former police officer and recognized scholar on policing practices and legal issues who will perform quantitative and qualitative analyses to identify how force is being used and what systemic factors are contributing to the use of force.

OIR Group's project team also includes retired law enforcement officers who have overseen training and reviewed force incidents and tactical decision-making to identify gaps in officer performance, training, and supervision.

2.5.1.3 – Racial Equity

OIR Group will consult with national expert Dr. Fridell and her colleagues to address the racial equity objectives stated in the RFP. The importance of these issues cannot be understated in the current environment, where the tension between communities of color and the police has manifested itself in troubling individual incidents and wider

patterns of distrust and disconnection. The prevalence of video evidence and ongoing media coverage has finally helped to increase recognition of systemic inequities underlying police contacts with racial minorities – some of which transcend law enforcement and speak to larger issues of historical discrimination. We are aware that many of these issues and disparities are germane to the current environment in Madison. Accordingly, this review of the MPD could not be more timely or opportune, given the heightened incentives and opportunities for change.

2.5.1.4 – Dealing with Mental Health and Alcohol/Drug Abuse Issues

OIR Group’s understanding of the challenges presented when police are called to a situation involving someone in crisis due to mental health or alcohol/drug abuse issues has been shaped by countless force incidents we have reviewed. Two incidents in particular – in Portland, Oregon and Fullerton, California – involved tragic deaths of mentally ill individuals in complex encounters with police. OIR Group was engaged in both cases to perform in-depth reviews of those encounters, resulting in detailed public reports.

Our involvement in responding to these incidents solidified our commitment to promote de-escalation techniques and crisis intervention training. In Portland, Dr. Gerritsen bridges the divide between the police and mental health providers as she works to develop ways to structure police responses away from arrest and incarceration and toward treatment models.

2.5.1.5 – Community-Oriented and Neighborhood Policing

Law enforcement agencies cannot shift from a “warrior” to a “guardian” approach to policing without improving the ways in which their officers engage with communities and neighborhoods. The ideal of the officer who gets to know the people who live in the area he or she polices, interacts with them in constructive ways, and becomes invested in their lives and well-being is a concept that OIR Group has supported throughout its many years of working with law enforcement. We would look forward to the opportunity to support Madison in its efforts to achieve this ideal.

2.5.1.6 – Problem-Oriented Policing

Like community-oriented and neighborhood policing initiatives, problem-oriented policing is a necessary piece of the “guardian” approach. In order to win the trust of the community – and communities of color in particular – the police need to understand their role as helping a community solve its problems. Law enforcement cannot solve a neighborhood’s problems on its own, and community members need the support of police to address crime. Working together, they can begin to address particular problems and, in the process, build trust that leads to greater cooperation, decreased tension, and fewer uses of force.

In Fullerton, we used our Report and relationship with the Department to assist in reshaping the “policing” of the homeless population. As a result of our dialogue with advocates for the homeless, the Department shifted its complaint-driven approach to one of problem-solving and providing resources in dealing with the special needs of that population. Similarly, we are working with the plaintiffs and monitor of the New York Police Department to help move the Department from the “stop and frisk” mentality to a more problem-solving approach.

2.5.1.7 – Evidence-Based Practices

OIR Group has always relied on evidence-based practices. We do not rely on hunches or conjecture when making recommendations to the agencies we monitor, but look to the best available evidence and proven standards before deciding on a particular approach to a given challenge. In fact, it was such an approach to our real-time monitoring responsibilities that made our findings and recommendations persuasive. We use specific examples from case analyses as the foundation for systemic reforms, and have shifted agencies such as the Los Angeles Sheriff’s Department away from accountability decisions that were too often based on personal preferences or gut feelings.

Likewise, we encourage and expect the agencies we work with to utilize data-driven research when developing policing strategies and looking for ways to reduce negative outcomes.

2.5.1.8 – Avoidance of Overly-Aggressive Policing

Policing strategies that emphasize community partnerships and building public trust also need to stress the importance of officer decision-making that recognizes the negative impacts of police contacts that seem inflexible, unreasonable, or even belligerent. In assessing hundreds of citizen complaints across a range of agencies and jurisdictions, we have been struck by the frustration that stems just as frequently from officer-demeanor and exercise of discretion as from the ultimate result of the encounter. When we identify such cases, we have pushed the departments to focus on concepts of procedural justice and to recognize the factors – beyond the bottom line question of legal justification – that influence perceptions of legitimacy.

Officers need to be trained to use their discretion wisely and consider possible alternatives to arrest and incarceration. At the same time, line level officers are often representatives of larger policies and approaches that also merit attention and consideration. The creation of diversionary alternatives, for example, and the development of constructive and coherent philosophies of enforcement are policy matters for which agency executives and community leaders share responsibility. We look forward to evaluating and promoting an integrated approach in light of the precepts.

2.5.1.9 – Rights of Civilian Witnesses

When reviewing a critical incident or any use of force, OIR Group has always promoted the thoughtful consideration of all issues surrounding an incident, even when they are tangential to the use of force itself. In countless cases, we have advocated for the rights of civilian witnesses, both in particular situations and more broadly through the development of new policy.

Often at the scene of a critical incident, law enforcement is understandably focused on securing the scene and then processing it and gathering evidence. Neighborhood streets can be blocked off for hours, and civilian witnesses are asked to wait long periods of time in uncomfortable settings. Increasingly, we see witnesses who have video evidence of the incident on their phones, and that video needs to become part of the investigation. Agencies need to have protocols for these inevitabilities, and officers need to be reminded regularly to treat civilian witnesses with courtesy and respect and ensure that evidence-gathering is consistent with the Fourth Amendment.

In Los Angeles County and elsewhere, we saw repeatedly where witnesses to critical incidents, such as officer-involved shootings or in-custody deaths, were transported in patrol cars to the station for questioning – often without deference to their rights or preferences. In those instances, we dialogued with the law enforcement agencies about the relevant Fourth Amendment principles, the need to document consent as a tool for risk management and evidence preservation, and the importance of clear communication and empathy in building public trust.

2.5.1.10 – Minimizing Criminalization of the Homeless

One clear marker of an agency's guardian vs. warrior philosophy is its approach to homeless populations. OIR Group has seen firsthand how an agency can transform its policing strategy to more humanely and respectfully deal with homeless individuals. Following the brutal death of a mentally ill homeless man at the hands of police in Fullerton, the police department engaged in major reform efforts. Among those efforts was a commitment to dramatically increase funding for its Homeless Liaison Officer program. In addition, pursuant to recommendations made by OIR Group, all officers and command staff are periodically required to ride with the Homeless Liaison Officers so that all are regularly reminded of the challenges endured by that population.

Rather than arresting people or simply moving them along, officers with the Fullerton liaison program have the tools and resources to connect them with basic goods and services, such as bus passes, water, food gift cards, clothing, or motel vouchers. The Department is understandably proud of the fact that over 170 previously homeless individuals have been reunited with family members or placed in housing due to this outreach program.

2.5.1.11 – Complaint Handling and Investigation

The way in which an agency handles complaints from citizens says much about how it engages with the community it serves. OIR Group has extensive experience reviewing and evaluating agencies' complaint intake, investigation, and disposition processes. We have seen a wide range of practices and levels of professionalism with which these complaints are handled. We have been effective in convincing agencies to develop standards and expectations for communicating with complainants and thoroughly investigating all allegations, despite the temptation to dismiss complaints as being the mere product of the citizens' disgruntlement or lack of understanding.

We often hear complaints from citizens who do not trust that a law enforcement agency has fairly investigated their complaint. This mistrust frequently stems from the lack of information that accompanies the notification regarding outcomes. Disappointment in a negative result becomes compounded by uncertainty and skepticism about the rigor and legitimacy of the underlying investigation. For this reason, we have consistently promoted more effective communication with complainants regarding investigative outcomes and made numerous recommendations for improving complaint handling and investigative processes in the Cities of Burbank, Anaheim, and Palo Alto.

2.5.1.12 – Treatment of Family Members Following Lethal Force

In deadly force incidents we have reviewed for various agencies, we too often have seen long delays in notification of family members that their loved one is injured or deceased. In a more recent case, we were alarmed to learn that the efforts of family members who wanted to see their comatose son had initially been thwarted by law enforcement because he was technically in "custody" after the use of force that led to his hospitalization. These situations sometimes present a seeming conflict between compassion and sensitivity on one hand and police investigative work on the other. OIR Group has worked closely with agencies we monitor to ensure that common sense protocols are devised that ensure that family members' needs are compassionately considered and respected.

2.5.1.13 – Training Initiatives to Foster Equitable and Minimally Coercive Approaches

As we set forth in response to question 1A: 2.5.2.2, OIR Group's team of social scientists, law enforcement executives, and lawyers is uniquely well-suited to guide MPD's training efforts – in particular with respect to implicit bias, de-escalation, conflict resolution, working with people from diverse and marginalized communities, and force prevention efforts – to meet the goal of reducing adverse outcomes.

2.5.1.14 – Training to Promote Sensitivity to Culturally-Related Behavioral Variations

Well-trained police officers have cultural awareness that helps them better understand the community's needs and take into account the cultural context of their interactions with citizens. Too often, both police and citizens make assumptions about the other's actions and motivations that can lead to tragic outcomes. Education can counter this tendency, and law enforcement agencies need to develop and enforce policies that promote culturally sensitive behaviors and attitudes. OIR Group's extensive experience in dealing with demographically diverse populations (as detailed further below) leaves us well situated to assess MPD's strengths and weaknesses in this regard.

2.5.1.15 – Strengthening the Community's Capacity to Reduce Violence and Crime

Problem-oriented policing strategies are effective only when there is a partnership with the community. The goal of these strategies is not for the police to solve a neighborhood's problems, but for law enforcement to support and empower residents to address crime and violence in their communities. Critical to any such success is for there to be community trust and confidence in its police. OIR Group's engagement with the community, and its commitment to meaningful dialogue between police agencies and the public, have been multi-faceted and critical to its approach in various monitoring projects.

2.5.1.16 – Accountability to the Community

The work of the Special Community/Police Task Force and the commissioning of the review that is the subject of this RFP is testament to the community's level of concern about policing issues in Madison. Both are an excellent foundation for moving toward the goal of increased accountability of the MPD to the community it serves. Should we receive this assignment, we will gauge the current degree to which MPD is accountable to the community and devise recommendations intended to increase that level of accountability. Our experience in promoting transparency through public reporting, for example, has been a key feature of our operating philosophy. We have pushed various agencies past their traditional "default" setting of insularity and secrecy when it comes to issues of misconduct, critical incidents, internal accountability and reform.

2.5.1.17 – Principles of Procedural Justice

The term "procedural justice" is gaining in national prominence as a goal and a paradigm for police-community relations. For communities to have trust in the legitimacy of law enforcement power, there must be trust in the process. Too often

police agencies have felt dismissive of the need to explain, clarify, educate, and adapt in response to community concerns or perceptions.

The underlying principles of procedural justice are ones with which we have considerable familiarity; this is an outgrowth both of our extensive work history and our operational philosophy. While the police are only one component of the criminal justice process, they are a critical one: they are the first responders and make influential decisions about how to perform their duties, whom to detain, whom to search, and whom to arrest. As we review how MPD has carried out these responsibilities we will adhere to the principles of procedural justice that are at the advent of present police practices.

2.5.1.18 – Effective Policing and Officer Safety

All of the outcomes addressed above have the potential, if implemented properly, to increase MPD's effectiveness in reducing crime, while also serving to improve officer safety. Particularly with respect to training that focuses on de-escalation, force prevention, communication, and sound tactical decision making, these efforts make officers' jobs less dangerous. When we assess deadly force scenarios, we often find reckless tactics, poor supervision, and neglect of basic officer safety principles contributed directly or indirectly to the officers' perceived need to use deadly force.

In short, if officers use tactics consistent with officer safety, they are less likely to get injured or hurt during the course of their duties. They are also less likely to place or find themselves in a situation where they are so vulnerable and feel so threatened that they perceive the need to use deadly force, and the frequency of officer-involved shootings decreases.

To keep its officers safe while also working toward the goals set out in the RFP, MPD must instill tactical principles through clear policy, effective training, and a willingness to hold officers accountable when their performance is inconsistent with its expectations. As part of our assessment, we will gauge the degree to which MPD is currently implementing these principles and offer recommendations designed to make officers safe, reduce their perceived threat level, and minimize their perceived need to use deadly force.

1C) Methodological Requirements

2.5.3.1 – Analysis of MPD Data and Records

(A) Police Data (Deployments, Contacts, Diversions, Citations, Arrests, Uses of Force, Civilian Injuries, Investigative Methods): OIR Group will examine this MPD data as set out in the RFP, and we recognize the value of such analysis in terms of trend identification, comparison, and resource allocation. The focal points of our review will

be dependent in part on the technological capabilities of MPD's data bases, and the extent to which the Department is committed to and skilled in the meaningful analysis of the data it collects.

In our past experiences with reviewing police data, we've encountered a wide spectrum of effectiveness in terms of how information is collected, processed, and utilized. In a recent review of one law enforcement agency, for example, we saw that representatives were required to hand search reports to retrieve information because the data system was so inherently unreliable. Meanwhile, the Los Angeles County Sheriff's Department has one of the nation's most advanced and comprehensive employee databases in the country, but its ability and commitment to making effective use of the information it gathered was not always commensurate with the computer capability.

For that reason, part of any data assessment performed by OIR Group will be to review and critique current MPD data collection and devise recommendations intended to improve such data systems – and monitor their “real world” applicability to the Department's mission. In addition to an assessment of the reliability, timeliness, and robustness of the data to be reviewed will be a review and analysis of the data in each of the fields requested by the RFP. Moreover, beyond simply counting occurrences, the analysis will contain a qualitative component designed to ensure that the essence of the incident is captured by the data system. OIR Group's research and attorney components are uniquely situated to conduct such an analysis.

(B) Officer-initiated activities or civilian calls for service. Analysis of this data will be instructive to learn to what degree MPD officer activity is self-initiated. It will be insightful to compare such data from shift to shift and in relation to the neighborhood being served.

(C) Training records, complaints, and discipline. As part of any police agency assessment, OIR Group regularly reviews such information. Training records must be reviewed to determine whether they are current and that each officer is compliant with both external requirements and internal expectations. Complaints are particularly insightful to learn what inspires civilians to make a complaint and how the Department addresses them. Often, a meaningful analysis needs to go beyond the documents to have a deeper understanding of the quality of investigation and response. Discipline records provide a window on the efficaciousness of MPD's accountability processes and should be reviewed for consistency and to gauge the degree to which any disciplinary decision is principled and evidence-based. OIR Group has spent countless hours reviewing these type of records for scores of police agencies.

(D) Data on officer-involved shootings: While officer-involved shootings tend to be infrequent events, their obvious impact on individuals and the larger community makes it imperative to collect and gain insight from the available information. As part of its

regular oversight responsibilities, OIR Group reviews officer-involved shooting data and to identify common themes and promote reforms as needed through the prisms of accountability, training, supervision, equipment, and policy.

(E) Potential racial disparities regarding police activities: The efficacy of such an analysis is significantly dependent on the data collected and available within the police agency. If such information is not readily accessible, OIR Group will advance recommendations on improving data collection with this goal in mind. To the extent that such data already exists, the OIR Group project team has the requisite systems expertise to perform an assessment of the statistics and their potential significance.

(F) Surveys, Field Observations, and Interviews: As noted elsewhere, Dr. Paoline and Dr. De Angelis are well versed in designing instruments designed to assess police culture and practices.

(G) OIR Group has the ability to analyze any data relevant to the evaluation of MPD components listed elsewhere in this response and other phenomena not listed. For example, critical to any comprehensive analysis is a data review and analysis of what is commonly referred to as “contempt of cop” arrests, when an individual is alleged to have obstructed or interfered with the duties of police officers. Oftentimes, this type of arrest has been used to deflect attention away from inappropriate police conduct or unnecessary force. Accordingly, any comprehensive review should ascertain the frequency of such arrests, the number of such cases prosecuted or dismissed, and whether any resulting liability accrues as a result of civil actions.

Another potential area worthy of data analysis is claims, lawsuits, and judgments lodged as a result of MPD activity. Should OIR Group receive this assignment, we would encourage that the scope of analysis be enlarged to include such data.

2.5.3.2 – Information Gathered from Madison Residents

As noted elsewhere, Drs. Paoline and DeAngelis are well versed in devising instruments designed to obtain input from Madison residents on their views and opinions about their police department. Such input is helpful to gain insight into the degree to which all of the Madison community views their police department and the level of trust therein.

2.5.3.3 – Systems Analysis

As noted above, any systems analysis must also consider the strength of the data system. If data is unreliable, untimely, or difficult to retrieve, any data analysis will necessarily be compromised. It is important for this assessment that the health of MPD’s current data systems be gauged on each of these components.

2.5.3.4 – Mixed Methodologies

Too often data analysis results in little more than pie charts and graphs with little analysis into “root cause”. For that reason and as explained elsewhere, OIR Group will use mixed methodologies such as surveys and qualitative assessments to provide real insight on what works at the Madison Police Department and what activities have room for improvement.

2.5.3.5 – Evidence-Based Approaches

As noted elsewhere, a major tenet of OIR Group is to have all findings and recommendations based on evidence. For that reason, our report will “show our work” and provide examples, illustrations, and evidence supporting our findings and recommendations.

1D) Deliverables

Reports

Public confidence and transparency are important components of improved policing. To that end, OIR Group views issuing reports as a vital part of the work we do. Throughout our history, we have emphasized public reporting that is clear, thorough, meaningful and accessible to all relevant stakeholders, including government leaders, police officers and executives, community stakeholder groups, and citizens.

2.5.4.1: If we are selected to perform this review, our report on the MPD will follow the road map set forth in the RFP, focusing on the components and criteria of greatest importance to the Madison community. We will provide a view of the Department relative to other police agencies and will identify areas of strength and potential avenues for improvement.

2.5.4.2: We have produced numerous reports for a wide variety of clients. While the final form of the report varies depending on the assignment, all of our reports include recommendations intended to improve the agency in question. Our recommendations are tailored to the realities of the agency and municipality, and our goal is to suggest the most effective ways to accomplish attainable outcomes.

Presentations and Meeting Attendance

We will provide status reports to the MPD Policy and Procedure Review Ad Hoc Committee as needed, and will welcome the opportunity to make presentations as requested to the Committee, the Mayor, City Council, and other stakeholder groups. As we stated in response to question 11, above, we believe such meetings and presentations are central to our objective to serve as an independent liaison between the public and the agencies we monitor.

2) Proposed Project Schedule

December 2016	Upon award of the contract, plan first trip to Madison to meet with Ad Hoc Committee and other stakeholders, which we would expect to make before the end of the year.
January – June 2017	Meetings/interviews with MPD personnel; Meetings/interviews with community stakeholders. Review written policies. Review investigative files on use of force incidents, including use of deadly force and in-custody deaths; review citizen complaints and associated investigations, particular complaints involving allegations of racial bias; review training records and personnel complaints associated with these investigations. Review and analyze internal MPD data. Review relevant training curricula and observe training. Ride-alongs with MPD officers. Review recruitment, hiring and promotion processes – document review and interviews. Review crisis intervention training; review programs to address mental health and substance abuse issues; meetings with community mental health providers; review programs for MPD members with mental health or substance abuse issues. Review accountability mechanisms, including all review processes for critical incidents and oversight practices intended to identify and remediate at-risk officers. Review MPD data collection and usage; review dispatch and communication systems. Review and assess MPD equipment and technology. Review MPD Trust-Based Policing Initiatives and the work of the Racial Disparity Workgroup and the Diversity Inclusion Team.

April – June 2017	Conduct surveys of MPD and community members. Conduct interviews of MPD and community members.
June – July 2017	Quantitative and qualitative analysis of data gathered in surveys and interviews.
August – October 2017	Report writing; follow-up interviews and document review.
October – November 2017	MPD Policy and Procedure Review, Meetings with Ad Hoc Committee, City officials, MPD executives, , community stakeholder groups to discuss findings and recommendations.
December 2017	Final Report issued; associated presentations.

3) Project management Methodology

OIR Group's principal members have extensive experience in working together on large and multi-faceted projects. We envision Mr. Gennaco serving as the "clearing house" for all aspects of the process, as supported by the three deputy project managers with whom he has closely collaborated for several years each. The proposed and layered levels of respective involvement by the other team members will provide us with the ability to tailor our efforts as the project unfolds, and to ensure that the goals of the review are achieved in a timely and cost-effective manner. Our centralized and coordinated approach will facilitate all necessary communications with the Ad Hoc Committee and other key stakeholders.

As with its other projects, OIR Group will allow the assessment process – and what we learn along the way – to play a role in our resource allocation, points of emphasis, decisions about further inquiry, and ultimate findings. OIR Group's past experience will allow it to adapt as needed during the pendency of the project, and to provide clear and practical updates throughout the review.

4) Team Experience

4A) Experience and Expertise

OIR Group has been a leader in law enforcement analyses of the type called for in this RFP. For example, no independent law enforcement assessment group has reviewed the sheer number of critical incidents; as a group we have reviewed over 700 officer-involved shootings and in-custody deaths for at least twenty law enforcement agencies. It is often after a controversial officer-involved shooting or in-custody death that we have been called upon to independently review not only that particular incident but to provide a more global assessment of how the police agency interacts with its community.

For example, when a homeless man died at the hands of a police officer, we were asked by the City of Fullerton, California to first conduct the internal affairs investigation into the matter, examining involved-officer conduct and potential violations of the police department's force policy. We also conducted a separate systemic assessment of the police department focusing on accountability, the way in which the police department investigated and reviewed uses of force, the department's interactions with the homeless community and the department's police culture, providing a number of recommendations. We are currently completing an updated audit of the police department focusing on the degree to which our recommendations have been implemented. Report attached.

In Portland, Oregon, our working relationship commenced with the City when we were asked to review an in-custody death of a homeless man. Since that time, the City has engaged us to prepare a series of reports examining and critiquing the way in which the Portland Police Bureau investigates and reviews critical incidents, including officer-involved shootings and in-custody deaths. The reports we have prepared have explored issues of bias-based policing, dealing with individuals in mental or drug-influenced crisis, providing prompt medical treatment to persons downed by police bullets, and our concern about the overuse of the term "suicide by cop." Sample Report attached.

In Los Angeles County, we provided independent oversight to all allegations of police misconduct and officer-involved shootings. As part of that responsibility, we also provided annual reports that informed the public of systemic issues that we tackled during the preceding year. Included in those reviews were topics such as a review of the training academy, the Department's hiring process, the complaint process, the promotional process, and dealing with the mentally ill. The reports also included all changes in policy and practices that we had recommended the year previous and the status of any implementation. Sample Report attached.

After several high profile in-custody deaths and significant uses of force, the City of Denver asked us to review the use of force functions and the internal affairs functions of its Sheriff's Department. That review culminated in a public report in which we explored the Department's early identification system, data bases, crisis intervention training, supervisory responsibility, and discipline consistency. Report attached.

After the City of Westminster was found liable for several million dollars stemming from a racial discrimination and retaliation lawsuit against its Police Chiefs, we were asked to assess the Police Department. Our assessment focused on internal investigations, employee evaluations, accountability, use of force, the promotional process, background investigations, and leadership. Report attached.

We have also been involved in the following reviews, audits, and assessments:

- San Diego Sheriff's Department: Use of force and officer-involved shooting review
- Orange County Sheriff's Department: Independent monitor and developer of oversight
- Torrance Police Department, Santa Maria, Oxnard and Pasadena Police Departments: Officer-involved shooting and in-custody death reviews
- New York Police Department: Expert reviewing remedial policies and training stemming from stop and frisk law suit
- Burbank, Anaheim, Hermosa Beach, and Palo Alto Police Departments: Monitor officer-involved shootings, use of force, citizen complaints, and internal affairs
- California Department of Corrections and Rehabilitation: Worked as expert for the federal court in designing oversight, reforming use of force policy, and improving internal investigations
- King County Sheriff's Department: Reviewed oversight entity and currently reviewing employee intervention system
- California Department of Juvenile Justice: Worked with special master to review how use of force against wards were investigated and reviewed
- Santa Monica Police Department: Reviewed criminal investigation for potential bias and defects
- Oakland Police Department: Reviewed internal affairs function and designed plan to address uninvestigated complaints, conducted internal affairs investigations involving allegations against command staff, conducted review of criminal investigation for potential bias

- Glendale Police Department: Reviewed remedial measures designed to ensure that juvenile information not inappropriately collected

As oversight practitioners and police practices experts, we regularly provide training to law enforcement, civilian investigators, and oversight entities on best practices. As a group, we have developed and reviewed training curricula for officers in the areas of Fourth Amendment, use of force, internal investigations, accountability, community policing, problem-solving policing, and crisis intervention training.

Members of our team have also served on President Obama's 21st Century Policing Task Force, testified on behalf of police reform legislation, conducted surveys of police and the public to gain insight into police community relationships, provided presentations and designed programs intended to advance concepts of procedural and restorative justice, police militarization, and the warrior/guardian dynamic. We also have team members that have performed data analysis and reviewed police data bases in order to help design better information sources for police executives, researchers, and the public.

4B) Past Reports

As requested, we have attached five reports showing work equivalent to the tasks of the current project.

5) Individual Staff Qualifications

The OIR Group Madison PD Assessment Team consists of OIR Group principals, affiliates, and advisors:

OIR GROUP PRINCIPALS

Michael Gennaco served from 2001 to 2014 as the Chief Attorney of Los Angeles County's Office of Independent Review and is a founding member of OIR Group. He graduated from Dartmouth College and Stanford Law School. Before joining OIR, Mr. Gennaco was Chief of the Civil Rights Section at the United States Attorney's Office for the Central District of California. He also served for ten years as a trial attorney with the Civil Rights Division at the Justice Department in Washington, D.C., first with the Voting Section and then with the Criminal Section.

While at the Civil Rights Division and the United States Attorney's Office, Mr. Gennaco supervised over 20 federal grand jury investigations into police misconduct, most of them involving force and in-custody death investigations. He also conducted a number of successful civil rights prosecutions against police officers for excessive force, including officers of the Los Angeles Police Department, the Los Angeles Sheriff's Department, and federal immigration detention officers. In addition, Mr. Gennaco conducted hate crime prosecutions, including the prosecution of Buford Furrow, a white

supremacist who killed a Filipino-American postal carrier and grievously shot children at the Jewish Community Center in Los Angeles, and prosecuted human traffickers, such as the eight individuals responsible for enslaving seventy Thai workers for years in El Monte, California. Mr. Gennaco received high recognition for his work including the esteemed Attorney General's award.

As an oversight practitioner, Mr. Gennaco has performed, with the assistance of OIR Group attorneys, a number of monitoring tasks, audits and reviews for a federal judge, special masters, and other governmental entities. He is a recognized expert in law enforcement reform and accountability systems and regularly teaches Constitutional policing classes sponsored by the State of California's Peace Officers and Standards Training and recently facilitated an officer-involved shooting symposium for the National Association of Attorneys General. With other OIR Group members, Mr. Gennaco currently monitors the Burbank, Anaheim, Fullerton, and Palo Alto Police Departments' internal affairs and force investigations. In addition, Mr. Gennaco worked with the monitors of the Oakland Police Department reviewing and determining how best to proceed when scores of uninvestigated complaints were discovered in a file cabinet at Internal Affairs. Mr. Gennaco is currently serving as an expert for the Center for Constitutional Rights as they work with NYPD and the Monitor to improve policies, training, and accountability pursuant to the Court Order entered after the CCR's successful "stop and frisk" litigation. Under Mr. Gennaco's leadership, OIR Group has become a valuable resource for numerous California cities grappling with officer-involved shootings and other critical incidents in an effort to bridge the gap between the police and the communities they serve and to utilize those incidents as learning tools. Upon request, Mr. Gennaco submitted testimony to the President's 21st Century Task Force on Policing.

Julie Ruhlin is a Principal of OIR Group. From 2011 to 2014, Ms. Ruhlin served as Deputy Chief for the Office of Independent Review in Los Angeles County. In addition to her regular responsibilities monitoring internal affairs and critical incident investigations at the Sheriff's Department and making independent recommendations regarding disciplinary determinations, she worked closely with the Training Bureau, preparing a special report to the Board on issues surrounding the Department's Training Academy. She also focused on issues within the County's jails, including the investigation and review of inmate suicides and other deaths in custody, and worked with Department leaders to develop a mechanism for executive-level review of uses of force within the jails. Ms. Ruhlin recently worked with Mr. Gennaco to prepare a report examining the Internal Affairs functions of the Denver Sheriff's Department.

Ms. Ruhlin joined OIR in 2006 after working with Merrick Bobb at the Police Assessment Resource Center in Los Angeles, where she was responsible for

investigating and drafting special reports to the County Board of Supervisors regarding policy and training deficiencies within the Sheriff's Department. Prior to working with PARC, her private law practice focused on civil rights and criminal defense. She graduated from American University and the University of Southern California School of Law.

Walter Katz is currently serving as the Independent Police Auditor for the City of San Jose Police Department. He was also recently invited to speak on police issues at the Democratic National Convention and has consulted with jurisdictions, ad hoc committees, and task forces throughout the United States on police reform issues and accountability design. Mr. Katz recently wrote for the Harvard Law Review Forum the article: "Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force. He previously served with the Office of Inspector General and the Office of Independent Review providing oversight for the Los Angeles Sheriff's Department, ensuring that internal investigations were thorough and objective and that internal dispositions were consistent and fair. In addition, Mr. Katz was involved in a systemic review of the Santa Maria Police Department. He graduated from University of Reno and McGeorge School of Law.

Ilana Rosenzweig is also a Principal of OIR Group. Most recently, she served as Chief Administrator of the City of Chicago's Independent Police Review Authority, where she led an agency that had exclusive jurisdiction to investigate all officer-involved shootings, in-custody deaths, and allegations of excessive force and domestic violence made against Chicago Police Officers for either administrative discipline or criminal prosecution. As part of her duties, she set investigative policies and procedures, trained and supervised investigators, and partnered with state and federal prosecutors and the FBI. She worked with the Chicago Police Department to design and implement a Force Analysis Panel to review all officer-involved shootings and other significant force incidents for systemic reforms, and recommended changes to training and policy based on reviews of policies and individual incidents. She regularly engaged an extremely diverse group of stakeholders including community and religious organizations, law enforcement unions, politicians, and the legal community. She participated on an annual basis in the City of Chicago budget process, learning the mechanics of municipal budgeting in order to best advocate for necessary resources in times of fiscal austerity, and managed a budget of over eight million dollars with 99 budgeted personnel.

Prior to her work in Chicago, Ms. Rosenzweig was a founding member of the Los Angeles County Office of Independent Review, providing independent oversight of the County's Sheriff's Department, including its internal affairs functions and disciplinary determinations. Ms. Rosenzweig is an experienced attorney and member of the California and Illinois Bars. She currently serves as the Past President of the National

Association for Civilian Oversight of Law Enforcement, and has been a member of its Board since 2009. She graduated from the College of William and Mary and the University of Michigan Law School.

Cynthia Hernandez also is a Principal of OIR Group and has performed police oversight for over six years, closely reviewing internal affairs investigations and disciplinary decisions. Most recently, Ms. Hernandez was appointed to head the County of Los Angeles' independent oversight of the Los Angeles County Probation Department where she similarly reviews internal investigations and decisions on discipline. Ms. Hernandez joined OIR after practicing law at a union-side law firm in Los Angeles. She began her law career as a trial attorney at the National Labor Relations Board (NLRB) where she investigated unfair labor practices committed by employers and labor organizations. After her tenure at the NLRB, she was appointed by the United Nations International Criminal Tribunal for Rwanda to defend Rwandan detainees who were charged with genocide, crimes against humanity and war crimes for the atrocities that occurred in Rwanda in 1994. Ms. Hernandez graduated from USC Law School after attending UC San Diego, Universidad de Guadalajara, Mexico and the University of Nairobi, Kenya, East Africa as an undergraduate. She also holds an M.A. in Education from Claremont Graduate School. She was a bilingual educator before becoming an attorney and speaks Spanish and Swahili.

Stephen Connolly is a Principal of OIR Group and until recently served as the Executive Director of the Orange County Office of Independent Review. From 2001 to 2008, he served as an original member of the Los Angeles County's Office of Independent Review, overseeing internal investigations and disciplinary determinations. Prior to his work with OIR, Mr. Connolly was an attorney in private practice and served as pro bono counsel to the Rampart Independent Review Panel, formed to assess misuse of force and corruption at the Los Angeles Police Department. Mr. Connolly has worked on numerous projects as a principal of OIR Group. He graduated from Holy Cross College and Loyola Law School.

Robert Miller is a Principal of OIR Group and until recently served as a supervisor in the Office of Inspector General, responsible for providing oversight of the Los Angeles County Sheriff's Department. Prior to that assignment, Mr. Miller worked as head of the OIR for the Los Angeles County Probation Department and as Deputy Chief for the OIR for LASD. Mr. Miller has reviewed and weighed in on scores of internal affairs investigations and disciplinary determinations and worked on numerous projects as a principal of OIR Group.

Mr. Miller is a graduate of Stanford University and holds a law degree from University of California at Los Angeles.

OIR GROUP AFFILIATES

Dr. Eugene Paoline is a Professor for the Department of Criminal Justice for the University of Central Florida. He also served as a field supervisor for the “Project on Policing Neighborhoods”, developing extensive surveys of police officers and communities. Dr. Paoline is an accomplished researcher and prolific writer on police culture, use of force, and accountability. Dr. Paoline has written two books on the culture of policing, Police Culture: Adapting to the Strains of the Job, and Rethinking Police Culture: Officers’ Occupational Attitudes. Among his extensive journal articles are: “Citizen Complaints as Threats to Police Legitimacy: The Role of Officers’ Occupational Attitudes”; “Higher Education, College Degree Major, and Police Occupational Attitudes”; “Supervisory Influences on Officers’ Perceptions of Less Lethal Force Policy: A Multilevel Analysis”; “A Multilevel Framework for Understanding Police Culture: The Role of the Workgroup”; “Less Lethal Force Policy and Police Officer Perceptions: A Multisite Examination”; “Examining Less Lethal Force Policy and the Force Continuum: Results from a National Use of Force Study” and “Looking Up: Explaining Police Promotional Aspirations.”

Dr. Paoline has also been deeply involved in investigation and research as a result of significant grants being awarded by the National Institute of Justice on both Police Early Intervention Systems and Assessing Police Use of Force Policy and Outcomes.

Dr. Paoline is a graduate of Florida State University and received his Ph.D in Criminal Justice from the University at Albany, State University of New York.

Dr. Lorie Fridell is an Associate Professor at the University of South Florida and the co-developer of the Fair and Impartial Policing Program. She also served as the Director of Research at the Police Executive Research Forum and is a national expert on biased policing. She has authored a number of books on the topic, including the recently released, Producing Bias-Free Policing, A Science-Based Approach. After being educated by the social psychologists who study human biases, Dr. Fridell developed the “Fair & Impartial Policing” perspective based on that science. She has trained for and/or consulted with a number of agencies/entities including the Chicago PD, San Francisco PD, Los Angeles PD, Toronto Police Services, Austin PD, Seattle PD, Massachusetts Chiefs Association, Piedmont PD, Oakland PD, Berkeley PD, La Crosse PD, Madison PD, Prince William County PD, Kansas Racial Profiling Task Force, Wisconsin Bureau of Justice Assistance, Institute for Law and Justice, Rhode Island Chiefs’ Association, Wisconsin Chiefs’ Association, and RAND Inc., to name a few.

With funding from the U.S. Department of Justice, Dr. Fridell has produced science-based Fair & Impartial Policing curriculums for both recruits/patrol officers and first-line supervisors. She and her colleagues provide “train-the-trainer” programs so that

trainers from around the country can learn to implement the recruit/patrol and supervisor programs in their own agencies and/or academies.

Dr. Fridell is a graduate of Linfield College and has a Ph.D in Social Ecology from the University of California Irvine.

Dr. Liesbeth Gerritsen is a mental health practitioner and works for the City of Portland's Police Bureau as a civilian responsible for developing and implementing the Bureau's new Behavioral Health Unit, designed to provide a clinical response to individuals experiencing mental health crises. In addition, Dr. Gerritsen led the design, development, and delivery of the Bureau's enhanced Enhanced Crisis Intervention Training. Dr. Gerritsen also provides mental health and crisis communication consultation on the Bureau's Crisis Negotiation Team.

Dr. Gerritsen is a graduate of the University of California at Berkeley and received her doctorate in organizational Psychology at Tilburg University, The Netherlands.

Dr. Joseph DeAngelis is an Assistant Professor at the University of Idaho, Department of Sociology and Anthropology. In addition to his work as an academic, Dr. DeAngelis has also worked as an oversight practitioner including serving as Policy Director for the Office of the Independent Monitor in Denver, Colorado. Dr. DeAngelis has researched, investigated, and wrote on police accountability topics such as use of force, the citizen complaint process, and procedural justice. Publications include: "Perceived Police Accountability and Attitudes toward Local Police."; "What do Citizens Think About Police Accountability Measures? Lessons from Community Attitudinal Surveys"; "Denver's Citizen/Police Complaint Mediation Program: Evaluating Officer and Complainant Satisfaction"; "Tasers and Community Controversy: Investigating Training Officer Perceptions of Public Concern over Conducted Energy Weapons"; "Order in the Court: Using Ethnomethodology in Juvenile Justice Settings"; "Citizen Willingness to Participate in Police- Community Partnerships: Exploring the Influence of Race and Neighborhood Context."; "Ethnicity, Trust, and Acceptance of Authority among Police Officers." and "Assessing the Impact of Police Oversight and Procedural Fairness on the Attitudes of Citizens who File Police Complaints."

Dr. DeAngelis is a graduate of Boise State University and received his doctorate from New York University.

Seth Stoughten is an Assistant Professor at the University of South Carolina School of Law. As an academic and former police officer, he has reviewed use of force policies and training. He has also conducted quantitative and qualitative analyses to identify how force is being used and systemic factors that contribute to the use of force. He has also conducted semi-structured interviews with officers to determine the degree to which training such as de-escalation training is translating into practice.

Professor Stoughten has written extensively on issues germane to the RFP. Those include articles on policing's "warrior culture", public trust, and use of force issues. Professor Stoughten is a graduate of Florida State University and holds a law degree from the University of Virginia.

Johnny Gil Jurado is a retired Commander with the Los Angeles County Sheriff's Department. As Chair of the Department's Executive Force Review Committee, he reviewed countless force investigations to assess the quality of the investigations and, ultimately, whether the force used was consistent with the Constitution and the expectations of the law enforcement agency. Commander Jurado also has extensive experience training officers in the appropriate use of force and ethics-based policing, and with the process and outcomes of imposing discipline and other corrective actions. His established commitment to critical and constructive scrutiny of force events will fortify OIR Group's ability to qualitatively assess and conduct internal affairs investigations.

Mr. Jurado is a graduate of California State University Long Beach and holds a Masters of Public Administration degree from CSULB.

OIR GROUP ADVISORS

Connie Rice is a long-time civil rights attorney who served as a member of President Obama's Task Force on 21st Century policing. Ms. Rice worked for years reforming the Los Angeles Police Department, first through litigation and then through a more collaborative approach. She co-founded the Advancement Project, dedicated to the protection of civil rights and worked for the NAACP Legal Defense Fund. She recently completed her autobiography of her life's work focusing on her evolving relationship with the LAPD, *Power Concedes Nothing*. Ms. Rice is a graduate of Harvard College and New York University Law School.

Dr. Sam Walker is Professor Emeritus at the University of Nebraska at Omaha and a leading academic in the areas of police accountability and oversight. His book, *The New World of Police Accountability*, is one of the seminal publications relating to law enforcement oversight. Dr. Walker continues to write on accountability and is a particular luminary in the review and assessment of early identification systems for police and data collection.

Dr. Walker is a graduate of the University of Michigan and holds a PhD from Ohio State University.

Brian Buchner is currently the Policy Director for Public Safety for Los Angeles Mayor Eric Garcetti. In that position, Mr. Buchner spearheaded efforts to improve outcomes for the homeless and enhance public health and safety by developing homelessness policies for LAPD, facilitated the expansion of LAPD's mental health co-response

model. Mr. Buchner also currently serves as the President of NACOLE, the national civilian oversight organization, where he spearheads cultivating strategic partnerships, including with prominent academic institutions, policing organizations, and funders; leads the training and certification of oversight agencies and practitioners; regularly advises national government entities regarding best practices in oversight, including the White House; and developed the most comprehensive national survey of police oversight models for the United States Department of Justice. Mr. Buchner regularly testifies before official task forces and commissions, including the President's Task Force on 21st Century Policing.

Mr. Buchner is a graduate of Bowling Green University and has a Master's Degree in Criminology from the University of Missouri.

Michael James is a retired Assistant Sheriff of the Orange County Sheriff's Department. As part of his myriad responsibilities over the years as a respected member of the OCSD command staff, Mr. James had responsibility directing and overseeing the Department's communications center.

Mark Billings is a retired Commander from the Orange County Sheriff's Department. Among his many responsibilities was deep involvement with the training provided at OCSD, a regional training academy, where he served as Commander of the Training Academy and devised a patrol training curricula.

Specific Expertise

5A) Policing Best Practices and Law

As oversight practitioners and attorneys, all OIR Group principals are well-versed in police best practices and law. As explained in detail above, all have reviewed policies, examined community policing, made recommendations designed to shift agencies to problem oriented or problem solving policing, have reviewed use of force policies and training, have reviewed and made recommendations relating to de-escalation training, recognized the need for different policing strategies in interacting with people with mental health or substance abuse issues, are aware of diversion mechanisms, have recognized the reality of racially disparate impacts in policing outcomes, have deeply involved themselves in police accountability systems and recognize the expanding initiatives in restorative justice. Moreover, as explained in detail above, OIR Group's expertise is amplified and rounded out by the academic and prior law enforcement expertise from its OIR Group Affiliates and Advisors.

5B) Qualitative and Quantitative Research Methods

As explained in detail above, Drs. Paoline, DeAngelis and Mr. Stoughten are all well-versed in qualitative and quantitative research methods, including data analysis,

statistical modeling, and systems analysis. Moreover, all OIR Group Principals have engaged in countless qualitative analyses of force incidents, officer-involved shootings, misconduct investigations, and other police activity in order to assess the adequacy of training, investigation, policy, and review by police agencies. While any statistician can count incidents and dissect them, it is the police oversight practitioner's ability to provide qualitative review that distinguishes it, and leaves OIR's acumen and experience unparalleled.

5C) Psychiatry/Mental Health

While all OIR Group Principals are well-versed in "best practices" being developed to improve police officers' interaction with those in mental health crisis, or alcohol or drug related impairments, Dr. Gerritsen is our resident expert as a clinician and practitioner who has actually worked in assessing and devising training curricula for police officers.

5D) Social Science

As explained in detail above, Drs. Paoline and DeAngelis are the social science researchers that have been added to OIR Group to round out our expertise in these areas and are well-versed in each of them. With particular regard to implicit bias, Dr. Fridell is one of the leading progressive voices on this issue and has effectively brought the concept to hundreds of officers and first level supervisors.

Miscellaneous

6) Have you worked with any moderately-sized urban police departments similar to the City of Madison?

OIR Group has worked with departments of varying sizes – some much larger than Madison and some considerably smaller. The most similar experience is perhaps with the City of Anaheim, CA. It has approximately 340,000 residents, and its police department has approximately 400 officers.

In its fifteen years of oversight work, OIR Group has shown the capacity to tailor its analysis and recommendations to the distinct circumstances of different-sized agencies. We recognize, for example, how the need for and design of an "early intervention system" are different for an agency with fewer than 100 officers (such as the Palo Alto Police Department) than for one with 1800 (Orange County Sheriff's Department) or 10,000 (Los Angeles Sheriff's Department). We understand how demographics and crime statistics vary, and how agencies can differ in their responsibilities, budgets, and historical backgrounds.

Accordingly, we are confident in our ability to perform a useful and site-specific evaluation of the Madison Police Department.

7) Have you done a previous analysis of a police department's culture?

OIR Group has had monitoring relationships with numerous law enforcement agencies at various stages of their own evolutions and relationships with the community. Some of that work has been long-term and has included input on virtually every component of an agency's operations, from hiring and training to risk management and discipline, from critical incident review to community engagement, from policy development to public reporting. Other projects have been shorter in duration, and arisen in response to a particular crisis that created its own unique challenges.

We have worked extensively with all ranks of officers, union leadership, politicians, community activists, the media, and other participants whose perspective contributes to the "culture" of a given organization. Taken as a whole, these experiences have familiarized us with all the factors that must be understood and accounted for in promoting positive change.

After the in-custody death of a homeless man in Fullerton, we were asked to consider the role that the Department's culture may have played in the police officer's response to that incident and others. As a result, we pored over relevant historical incidents and spoke to prior officers and supervisors of the Department. While that review found little evidence of a "culture of corruption" as had been voiced by some, we did find that the Department had developed a "culture of complacency" that impacted the way it carried out its responsibilities. For example, auditing controls such as keeping the combination to the safe strictly held were not followed, force incidents were not carefully scrutinized, and what was being taught at officer training was not regularly assessed. Our review of the Department's culture was instrumental in helping us shape recommendations for systemic reform.

Additionally, our extensive interactions with agencies and numerous recommendations for reform have directly or indirectly required engagement with – and influence on – the distinctive cultural factors that shape a particular agency's philosophy and relationships.

8) Have you previously used statistical modeling and systems analysis to determine the causal relationships between departmental factors and specific outcomes?

In our work with the Sheriff's Department in Los Angeles County, we participated as an independent voice in the Department's review of numbers of uses of force, complaints, officer-involved shootings, and other relevant indicia compared across patrol stations. For outlying stations, we worked with the Department to attempt to identify the "root cause" of the spikes and develop particular training, briefing, and other remedial measures targeting those stations.

In Portland, we review each officer-involved shooting with the eye toward identifying trends and common themes. We then focus on those common themes when

presenting our analysis and recommendations. For example, we noted that in Portland as opposed to other jurisdictions we have reviewed, a very high percentage of those shot are people in mental health crises. We also noted as a common theme an apparent insufficient focus on providing prompt medical attention to individuals who had been shot by police. In part as a result of OIR Group identifying these issues, the Portland Police Bureau devised remedial measures intended to address them.

9) From among your prior projects, if possible, please describe examples of recommendations involving innovative reforms.

OIR Group has published numerous public reports that feature hundreds of individual reform recommendations for specific law enforcement agencies. Examples include the following:

- Los Angeles County Sheriff's Department: Consulted with LASD on its development of its "alternatives to discipline" program, an innovative approach to more constructive and meaningful remediation that includes tailored classes and concrete accountability measures such as apologies to affected parties, preparation of first-person briefing training based on "lessons learned," etc.
- Orange County Sheriff's Department: Helped overhaul the citizen complaint process to make it more accessible and to expand the range of potential interventions so that documented counseling or training could and would be utilized, even in the absence of a formal policy violation; helped develop the S.A.F.E. (Strategy, Accountability, Focus, and Evaluation) Division which brought new levels of risk management, critical incident review, and policy development to OCSD.
- Anaheim Police Department: Helped APD expand its protocols for officer-involved shootings to ensure holistic evaluation of such events and promote reforms and performance accountability as needed.
- Fullerton Police Department: Devised recommendations designed to ensure more interaction with the homeless community including ensuring that command staff go on regular ride alongs with the homeless liaison officers and ensuring that a homeless liaison officer was designated for all shifts.
- Portland Police Bureau: Encouraged command staff to abandon characterizing shootings as "suicide by cop" and to eliminate 48 hour rule that prohibited the Bureau from being able to interview involved officers until at least two days after the shooting incident.
- Burbank Police Department: Helped BPD develop new policy for vehicle pursuits and a more consistent and comprehensive review process for uses of force.

- Palo Alto Police Department: Advised PAPD on issues with its citizen complaint intake process, to facilitate more objective and receptive interview techniques by first-level supervisors.

10) Describe your previous experience working with the following communities of people: African American, Asian, Latino, Native American, immigrant, LGBTQ, homeless, drug involved people, people with mental health issues, people under Department of Corrections community supervision.

OIR Group has vast experience with some of the largest law local law enforcement agencies in the country. These agencies, in turn, serve communities that are some of the nation's most diverse; they regularly encounter issues that are on the forefront of social change and progressive policing. Inevitably, our work has brought us into contact with, and heightened our understanding of, each of the distinctive communities as detailed below.

African American Communities: OIR Group has a longstanding relationship with African American communities and has received awards and recognition from them for its oversight and independent review work. For example, after a review of a controversial officer-involved shooting of Leroy Barnes, an African-American man, OIR Group's report was praised publicly by the President of the NAACP Pasadena Chapter. When OIR Group attorneys were overseeing the Los Angeles County Sheriff's Department, an African American-based OIR Advisory Group was formed by Dr. Sandra Moore (the OIR Citizen's Advisory Board) to work closely with us and convened regular town halls in South Central Los Angeles. Following controversial shootings in Los Angeles County involving African-Americans, OIR Group would participate in town halls designed to explain the independent review process and provide transparency at the end of the review. OIR Group has a longstanding relationship with the City of Compton and, while serving as the oversight entity for LASD, presented monthly at the National Association for Equal Justice in America on oversight and police accountability issues.

Asian American Communities: OIR Group has worked closely with Asian American communities explaining our role in oversight and police accountability at town halls and community events. With particular regard to the Muslim communities, OIR Group was instrumental in ensuring thorough investigations into allegations of inappropriate treatment and appearing before community representatives to provide the results of internal investigations. For example, when it was alleged that a deputy sheriff had disrespected a Muslim inmate in the County jail by defacing his copy of the Koran, OIR Group ensured that there was a thorough investigation into the matter and relayed the outcome of that investigation to Muslim community organizations. Similarly, when OIR Group learned that there was a lack of Muslim religious services being provided at the jails, it worked with community groups to remedy the situation. After the September 11,

2001 attacks, OIR Group appeared at numerous town halls and meetings with law enforcement leaders to assist with the healing process and ensure that law enforcement reactions did not unfairly target Muslim-Americans in the tense days that ensued.

Mr. Gennaco's prior work as a federal hate crimes prosecutor also included close ties with the Asian American community. In that role, Mr. Gennaco prosecuted a human slavery operation in which seventy Thai workers were held against their will. He also handled the first internet hate-crime case, the victims of which had been forty Asian American students at the University of California, Irvine. As a result of those cases and others, Mr. Gennaco received recognition and awards from Asian American groups, including Asian Americans Advancing Justice in celebration of twenty years of freedom for the Thai workers. Mr. Gennaco has also traveled to Thailand to advise government officials and non-governmental stakeholders regarding principles of oversight and "best practices" for its national police.

Latino Communities: As with other communities of color, OIR Group regularly presents to Latino advocacy groups at town halls to speak to oversight, constitutional policing, and other outreach. In cases in which Latinos have been shot and killed as a result of officer-involved shootings, OIR Group meets with stakeholder and community representatives to explain the process and to provide transparency when the incident has been fully reviewed.

Our work in Anaheim is instructive in this regard. In the summer of 2012, there was civil unhappiness and demonstrations in the aftermath of controversial shooting cases involving Latinos. As a result, OIR Group worked with the City in developing increased transparency and a larger role for oversight. Anaheim allowed our previously confidential reports to become public, and created a Public Safety Board for additional community-based participation. Perhaps most importantly, following our review of the controversial officer-involved shootings, OIR Group met with the mothers and other family members of those who had died, in an effort to personally explain the results of our review and provide aggrieved individuals a forum to be heard.

Native American Communities: When working as an attorney for the Voting Section, Civil Rights Division, Mr. Gennaco worked with Native Americans extensively as a result of Voting Rights investigations in northern New Mexico. Mr. Gennaco worked with aggrieved Native Americans of the Navajo and Pueblo tribes and worked to provide convenient polling places and resulted in redistricting intended to afford Native Americans the ability to elect people of their choice to office.

Immigrant Communities: While overseeing the LA County Sheriff's Department, OIR Group worked with the Mexican consulate to ensure that allegations of misconduct by Mexican nationals were effectively investigated and that notification provisions were

provided. Mr. Gennaco and Ms. Hernandez also traveled to Mexico City to counsel the State Police Internal Affairs entity on oversight issues and accountability.

LGBTQ Community: While overseeing the LA County Sheriff's Department, an allegation arose concerning misconduct by deputies of gay inmates housed in the jails. OIR Group met with advocacy groups at both the inception and the conclusion of the internal investigation to explain the process and the results of the investigation.

West Hollywood is home to a significant percentage of individuals from the LGBTQ community. OIR Group worked with the Sheriff's Department to ensure that any particular concerns that were raised by individuals and stakeholders were addressed.

Homeless Community: OIR Group was closely involved in the investigation of an in-custody death of a homeless individual in Fullerton and the review of an in-custody death of a homeless individual in Portland. In both cases, OIR Group met with representatives of the homeless community to learn about concerns, provide transparency on the results of our review, and to help craft recommendations intended to create systems improvements in policing in those cities.

Drug-Involved People/Mental Health Issues: As noted elsewhere, OIR Group has worked closely with law enforcement devising better ways for police officers to be trained and guided in dealing with those under the influence of drugs or in mental health crisis. Team member Dr. Gerritsen is challenged daily to improve the way in which members of the Portland Police Bureau responds to such individuals.

People under DOC community supervision: As a result of our oversight work in the jails, prisons, juvenile facilities, and probation departments, OIR Group is uniquely experienced with insight into how law enforcement deals with individuals in custody or under court supervision. There is likely no other team that recognizes the special concerns and challenges presented by the dynamic between law enforcement and this population or has devised recommendations and best practices designed to improve that relationship.

11) Do you foresee any issues with having to make numerous presentations to different City of Madison personnel, agencies, and the public? Will there be any issues with having to field questions and answers, including those from the media?

We welcome the opportunity to interact with a range of stakeholders during the review process and at the conclusion of our work. OIR Group has extensive experience with public reporting, and we consider it to be not only a prominent feature of our collective resume but also a centerpiece of our operational philosophy. Serving as an independent liaison between the public and the law enforcement agencies we monitor has been a component of virtually every project we have undertaken. Our goal is to use

our combination of subject matter expertise and critical distance as a way of bridging gaps in communication and understanding.

In addition to our written reports, we have logged countless hours speaking to members of the public at community meetings and town halls. Moreover, we regularly speak before City Councils, task forces, and other stakeholders to amplify the messages in our reports. We have been frequent participants at press conferences and regularly make ourselves available to print and electronic media outlets upon completion of our reports or to explain current projects.



Form A: Signature Affidavit

**RFP #: 8504-0-2016-BP Madison Police Department
Policy and Procedure Review**

This form must be returned with your response.

In signing Proposals, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise take any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit Proposals, that Proposals have been independently arrived at, without collusion with any other Proposers, competitor or potential competitor; that Proposals have not been knowingly disclosed prior to the opening of Proposals to any other Proposers or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this Proposals, hereby agrees with all the terms, conditions, and specifications required by the City in this Request for Proposals, declares that the attached Proposals and pricing are in conformity therewith, and attests to the truthfulness of all submissions in response to this solicitation.

Proposers shall provide the information requested below. Include the legal name of the Proposers and signature of the person(s) legally authorized to bind the Proposers to a contract.

MICHAEL GENNACO dba as OIR GROUP
COMPANY NAME

Michael J. Gennaco
SIGNATURE

August 3, 2016
DATE

MICHAEL J. GENNACO
PRINT NAME OF PERSON SIGNING



Form B: Receipt of Forms and Submittal Checklist

**RFP #: 8504-0-2016-BP Madison Police Department
Policy and Procedure Review**

This form must be returned with your response.

Proposers hereby acknowledge the receipt and/or submittal of the following forms:

Forms	Initial to Acknowledge SUBMITTAL	Initial to Acknowledge RECEIPT
Description of Services/Commodities	N/A	
Form A: Signature Affidavit	MG	
Form B: Receipt of Forms and Submittal Checklist	MG	
Form C: Vendor Profile	MG	
Form D: Fee Proposal	MG	
Form E: References	MG	
Appendix A: Standard Terms & Conditions	N/A	
Appendix B: Contract for Purchase of Services	N/A	
Addendum #		
Addendum #		
Addendum #		
Addendum #		

MICHAEL J. GENNACO
VENDOR NAME

MICHAEL GENNACO dba as OIR GROUP
COMPANY NAME



Form C: Vendor Profile

RFP #: 8504-0-2016-BP Madison Police Department
Policy and Procedure Review

This form must be returned with your response.

COMPANY INFORMATION

COMPANY NAME (Make sure to use your complete, legal company name.) MICHAEL J. GENNACO DBA as OIR GROUP			
FEIN 32-0031424		(If FEIN is not applicable, SSN collected upon award)	
CONTACT NAME (Able to answer questions about proposal.) MICHAEL J. GENNACO		TITLE PRINCIPAL, OIR GROUP	
TELEPHONE NUMBER 323 821-0586		FAX NUMBER	
EMAIL michael.gennaco@oirgroup.com			
ADDRESS 7142 TRASK AVENUE		CITY PLAYA DEL REY	STATE CA
		ZIP 90293	

AFFIRMATIVE ACTION CONTACT

The successful Contractor, who employs more than 15 employees and whose aggregate annual business with the City for the calendar year, in which the contract takes effect, is more than twenty-five thousand dollars (\$25,000), will be required to comply with the City of Madison Affirmative Action Ordinance, Section 39.02(9) within thirty (30) days of award of contract.

CONTACT NAME N/A		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS		CITY	STATE
			ZIP

ORDERS/BILLING CONTACT

Address where City purchase orders/contracts are to be mailed and person the department contacts concerning orders and billing.

CONTACT NAME MICHAEL J. GENNACO		TITLE PRINCIPAL, OIR GROUP	
TELEPHONE NUMBER 323 821-0586		FAX NUMBER	
EMAIL michael.gennaco@oirgroup.com			
ADDRESS 7142 TRASK AVENUE		CITY PLAYA DEL REY	STATE CA
		ZIP 90293	

LOCAL VENDOR STATUS

The City of Madison has adopted a local preference purchasing policy granting a scoring preference to local suppliers. Only suppliers registered as of the bid's due date will receive preference. Learn more and register at the City of Madison website.

CHECK ONLY ONE:

- ☐ Yes, we are a local vendor **and** have registered on the City of Madison website under the following category: www.cityofmadison.com/business/localPurchasing
- ☒ No, we are not a local vendor or have not registered.



Form E: References

RFP #: 8504-0-2016-BP Madison Police Department
Policy and Procedure Review

This form must be returned with your response.

REFERENCE #1 - CLIENT INFORMATION			
COMPANY NAME OFFICE OF INDEPENDENT MONITOR: DENVER		CONTACT NAME NICK MITCHELL, DIRECTOR	
ADDRESS 101 W. COLFAX AVENUE, SUITE 100	CITY DENVER	STATE CO	ZIP 80202
TELEPHONE NUMBER 720 913 3306	FAX NUMBER 720 913 3305		
EMAIL nicholas.mitchell@denvergov.org			
CONTRACT PERIOD 2/15 - 5/15		YEAR COMPLETED 2015	TOTAL COST \$172,000 (approx)
DESCRIPTION OF THE PERFORMED WORK INDEPENDENT REVIEW AND ASSESSMENT OF DENVER SHERIFF'S DEPARTMENT RE USE OF FORCE AND INTERNAL AFFAIRS			

REFERENCE #2 - CLIENT INFORMATION			
COMPANY NAME INDEPENDENT POLICE REVIEW		CONTACT NAME CONSTANTIN SEVERE, DIRECTOR	
ADDRESS 1221 SW 4th AVENUE, ROOM 140	CITY PORTLAND	STATE OR	ZIP 97204
TELEPHONE NUMBER 503 823-2815	FAX NUMBER		
EMAIL constantin.severe@portlandoregon.gov			
CONTRACT PERIOD 2010 - 2016		YEAR COMPLETED 2016	TOTAL COST \$450,000 (approx)
DESCRIPTION OF THE PERFORMED WORK INDEPENDENT REVIEW OF OFFICER-INVOLVED SHOOTINGS AND IN CUSTODY DEATHS			

REFERENCE #3 - CLIENT INFORMATION			
COMPANY NAME CITY OF BURBANK		CONTACT NAME RON DAVIS, CITY MANAGER	
ADDRESS 275 EAST OLIVE AVENUE	CITY BURBANK	STATE CA	ZIP 91502
TELEPHONE NUMBER 818 238-5800	FAX NUMBER		
EMAIL RDavis@burbankca.gov			
CONTRACT PERIOD 2012 - PRESENT		YEAR COMPLETED ONGOING	TOTAL COST \$200,000 (approx)
DESCRIPTION OF THE PERFORMED WORK ANNUAL AUDITS OF USE OF FORCE, INTERNAL AFFAIRS, IN-CUSTODY DEATHS, OFFICER-INVOLVED SHOOTINGS AND VEHICLE PURSUITS			

COMPANY NAME



Form E: References

RFP #: 8504-0-2016-BP Madison Police Department
Policy and Procedure Review

REFERENCE #4 - CLIENT INFORMATION			
COMPANY NAME CITY OF FULLERTON		CONTACT NAME DAN HUGHES, CHIEF OF POLICE	
ADDRESS 237 W. COMMONWEALTH AVE.	CITY FULLERTON	STATE CA	ZIP 92832
TELEPHONE NUMBER 714 738-6840	FAX NUMBER		
EMAIL DHUGHES@FULLERTONPD.ORG			
CONTRACT PERIOD 2011 - PRESENT	YEAR COMPLETED ONGOING	TOTAL COST \$250,000 (APPROX)	
DESCRIPTION OF THE PERFORMED WORK INTERNAL AFFAIRS INVESTIGATION OF KELLY THOMAS DEATH, SYSTEMIC REVIEW OF FULLERTON POLICE DEPARTMENT			

COMPANY NAME

Report on the

Use of Force & Internal Affairs Operations
in the Denver Sheriff Department

May 2015



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Summary & Findings

In the past two years, concerns about how the Denver Sheriff Department (DSD) manages its jails have rocked the community of Denver. Media accounts and reports from independent sources such as the Office of the Independent Monitor (OIM) have focused more attention on the Department than it has likely seen in its 110-year history. Many of the reports raised concern about the use of force by DSD deputies, the lack of investigative response and accountability with regard to that force, the inability of the internal investigative system to investigate allegations of misconduct effectively, the civil litigation payouts from alleged civil rights violations, and cautions raised by outside stakeholders, including a federal judge, about potential patterns of force. During this time, DSD – an institution that previously had conducted its business largely out of the public view – became a fixture in the daily headlines. The tumult resulted in numerous changes in DSD leadership; meanwhile the Department soldiered on in the face of continuing public criticism.

To their credit, the Mayor, City Council, the Department of Public Safety, DSD leadership, and other stakeholders quickly responded to

and began to address this crescendo of strife. Four working groups were formed to look into various aspects of DSD operations, including policy, discipline, employee wellness, and training. The working groups were comprised of DSD members interested in improving processes and, more remarkably, outside entities who gained a seat at the reform tables to offer their perspectives. The Mayor created an Executive Steering Committee to help coordinate reform initiatives, and organized town hall meetings to listen to the community's concerns. Leadership also solicited views from inside the organization as part of the reform piece, and advocacy groups presented recommendations intended to improve the way in which the jails function.

As part of this full-scale assessment of DSD operations, the Mayor's Office and the Department of Public Safety issued a request for proposal for a wide-ranging independent review of Sheriff Department operations. The City engaged Hillard Heintze to perform this comprehensive review and requested that OIR Group be tasked to perform an analysis of use of force and Internal Affairs operations. This report is the culmination of OIR Group's assignment.

The fact that Denver's leadership commissioned this independent review, allowed us to go wherever our review took us, and committed to making public the report of our findings and recommendations is evidence of leadership committed to real reform.

In our review, we found significant shortcomings in the way the Sheriff Department investigates and reviews most force incidents. While force that is investigated by the Internal Affairs Bureau (IA or IAB) meets minimal industry standards, aided by the oversight of the Independent Monitor, the "investigation" of all other force incidents amounts to merely collecting written accounts of the incident provided by the involved and witness deputies. Basic steps such as obtaining an account from the inmate upon whom force was used, interviewing any witness inmates, and reviewing video evidence of the force incidents are neither required nor expected of the first-level supervisor entrusted to review the incident. As a result, in Denver's jails, most force

“investigations” primarily consist of the sergeant reading deputy accounts and then signing off on the force as justified.

For most force incidents, there is also no meaningful holistic assessment through the prisms of training, briefing, supervision, and equipment. Beyond the “bottom line” issue of legal justification for force, each incident offers a potential opportunity for an agency to reinforce effective practices and identify shortcomings. At DSD, this type of comprehensive evaluation was almost never done. Instead, use of force reports were simply collected, checked off as in-policy, and filed away. To date, this wholly inadequate force investigation and review protocol is standard business in the Denver jails.

In addition to the Department’s need to improve the way it investigates and learns from force incidents, our review determined it is imperative that the Department reorient the culture of force in the jails. It is encouraging that Department leadership has accepted the notion that better strategies and tactics for interacting with inmates can enable deputies to enforce jail rules and maintain order without having to resort to force. This concept, though, has not been sufficiently inculcated in deputies. This report suggests how development of “force prevention” policies and training can contribute to this smarter way of jailing so that potential force – and the resulting injuries to deputies and inmates alike – can be avoided.

Additionally, we note that the Department’s ability to determine, assess, learn about and analyze force incidents collectively is severely hampered by the wholly unreliable electronic data currently existing on DSD’s databases. Because anyone familiar with the system has an appropriate distrust of its reliability, staff responds to requests for information with painstaking hand searches of reports. This practice obviously interferes with the regular and timely collection of data that might be used for trend identification and other useful insights. In this age of near universal technology, the deficiency seems as striking as it is avoidable.

With regard to the Internal Affairs function, the unit suffered from inattention and insufficient resource dedication, and accordingly experienced the expected results – delinquent investigations with

inadequate quality control and supervision. However, in contrast to some of the more persistent issues, DSD has moved quickly to address these deficiencies by, among other things, hiring an Interim Director and giving him the authority to acquire additional resources. While the case delinquency rate is down and the quality of cases is up, more needs to be done to improve Internal Affairs' ability to resolve matters efficiently and thoroughly, and we set out a number of recommendations intended to assist in that effort.

We also have suggested improvements to current force policy and related matters and have endorsed a number of recommendations put forward by the various working groups and others that we were fortunate to meet.

We are encouraged to note that DSD is not an agency that suffers from a lack of interest in reform. On the contrary, we found in DSD – from its command staff to its deputies and professional staff – a high level of concern about the organization and a genuine interest in responding constructively to public criticism and identified shortcomings. Indeed, we encountered people at every level of the Department who were eager to see progress, and received cooperative, thoughtful, and professional responses to our many requests. DSD command staff took time out of their busy schedules to provide helpful and candid information and perspectives about how the jails functioned and where they did not function so well. Often when we evaluate law enforcement agencies, our presence is met with skepticism and worry. In Denver, however, we did not see this same fear, but rather hope for meaningful change.

Any insight we provide in this report could not have been achieved without the level of cooperation, insight, and perspective provided by DSD employees, other stakeholders that regularly interface with the institution, and interested community representatives. In fact, our review had a leg up as a result of the work, thought, and reflection that the Denver community and its representatives had already dedicated to the reform effort.

The fact that Denver's leadership commissioned this independent review, allowed us to go wherever our review took us, and committed

to making public the report of our findings and recommendations is evidence of leadership committed to real reform. If the Department accepts our recommendations, the Office of the Independent Monitor is already well-positioned to monitor implementation efforts and report to the community about the status of reform measures; it is imperative that OIM be given the support and authority to perform this function. Perhaps most significantly, Denver's unconditional commitment to transparency by releasing these independent assessments is a testament to the courage of Denver leadership, and its willingness to confront challenges directly. The controversy of the past year has been painful for the Department, but out of controversy comes the opportunity for reform. It gives us confidence that there is a will and intent to continue to push the reform measures offered here and to make Denver's jails a high functioning environment that the community and its employees can be proud of. We feel privileged that we were able to contribute to this assessment and reform effort. We welcome further dialogue about these matters.

Scope of Review

Denver engaged OIR Group to perform an independent, comprehensive review of the procedures and practices of the Denver Sheriff Department with regard to the use of force and the operations of the Internal Affairs Bureau. Our task was not just to complete a paper review of policies, procedures, and investigations, but to learn about the Department – its strengths and weaknesses, its culture, and its history – to inform our understanding of the depth of its problems and its best path to reform.

To that end, members of OIR Group visited Denver three times for a total of 11 very busy days, conducting interviews of personnel at every rank and various assignments, from deputies to the Sheriff himself; touring the jail facilities; meeting with Department and City executives, the Independent Monitor, interested community members, and outside stakeholders; and observing force training. We also spoke at a public meeting of the Citizen's Oversight Board meeting in December, engaging with numerous Denver community members

deeply concerned about the operation of the jails, and met twice with the Denver Sheriff Department Executive Steering Committee.

Apart from our visits to Denver, we did a detailed review of all the Department's use of force policies, its Internal Affairs Procedures manual, and various other policies impacting on areas within the scope of our review. We also obtained and reviewed numerous use of force incident reports and all of the material that comprised a number of complete Internal Affairs investigations, including documentation of the disciplinary process.

Our analysis centers on the Department's current policy, procedure, and practices, though we make reference to historical changes where relevant. At times it felt as though the Department was a moving target, particularly in Internal Affairs, where the bureau was forging ahead with meaningful reform on its own initiative. Throughout the report, we make numerous recommendations for ways to improve the Department's operations regarding the use of force and Internal Affairs operations.

This report has three sections. In the first, we examine use of force policies as well as the way the Department investigates and reviews force. The second section discusses Internal Affairs, crediting much of the good work that has been accomplished in the past several months but nonetheless offering suggestions for further improvement. The third section is a list of all recommendations otherwise dispersed throughout the report.

Findings

- 1 DSD needs to change its culture regarding the use of force by emphasizing in its policy, training, and overall Department orientation the principle that not all legally justifiable force is necessary or appropriate, and that force should be avoided when de-escalation tactics make that possible.
- 2 DSD needs to dramatically alter the way it investigates and reviews force incidents that are not referred to Internal Affairs.
- 3 DSD's policies governing the use of force need to be amended to more precisely define important terms, to give greater guidance to deputies regarding the Department's expectations, and to better demonstrate the Department's philosophy and values.
- 4 DSD needs to work toward providing more ongoing, regular training on force tactics and other skills most relevant to deputies in a jail setting, to involve more deputies in CIT training, and to ensure that deputies' demonstrated skills are factored into their job assignments.
- 5 DSD needs to find better ways to collect reliable data and to use that data to analyze and audit uses of force and other issues.
- 6 DSD could make better use of its valuable video evidence in the investigation and review of force incidents as well as in training scenarios.

- 7 The Internal Affairs Bureau has made substantial progress toward improving the quality and timeliness of its investigations, and the changes of the past year should be maintained.
- 8 DSD needs to establish guidelines and a process for the selection and training of new Internal Affairs investigators.
- 9 The current structure and staffing of the Internal Affairs Bureau does not provide for optimal supervision and leadership.
- 10 The criteria for which allegations and types of force incidents should be investigated by Internal Affairs is not clearly defined, and the Department's expectations regarding those incidents handled at the division level are similarly unclear.
- 11 Internal Affairs uses considerable resources to investigate matters that could effectively be handled in other ways.
- 12 The ways in which Internal Affairs investigators gather and use video evidence are inefficient and inconsistent.
- 13 The Procedures Manual for Internal Affairs is out of date and does not clearly define all of the Bureau's expectations for its investigators.
- 14 DSD could become more transparent by providing employees, stakeholders, and the public at large with more information about its force incidents and internal investigations.
- 15 The Office of Independent Monitor is a valuable resource that DSD should consult when considering or implementing the recommendations proposed in the consultants' report, as well as other systemic reforms, policy initiatives, or new training curricula impacting on accountability, force, and deputy performance.

Use of Force

Our review of DSD's use of force policies and practices included an assessment of the way in which the Department investigates and evaluates deputies' uses of force, a look at the Department's force training as well as the way it gathers and utilizes data on uses of force, and an appraisal of its force policies. We found room for improvement in all of these areas, but particularly significant shortcomings in the way the Department investigates and reviews most force incidents.

Any discussion about force issues should begin by addressing the need to eliminate those incidents in which deputies might have been authorized or legally justified in using force, but in which it was not necessary to use that force to complete their responsibilities.

Certainly, deputies must have authority to use force to protect themselves or others from harm. However, the goal of any progressive law enforcement agency should be to eliminate uses of discretionary force to handle situations that could have been resolved peacefully if other tactics and skills had been employed. To reach the goal of eliminating force that may be defensible but avoidable requires a reorientation and culture change. Most uses of force that fall within

this category involve interactions prior to the force that could and should have been handled differently by the deputy. Some of these de-escalation tactics are as simple as the officers' ability to maintain a respectful, non-challenging and non-threatening demeanor.

To aid in pushing this culture change and to reinforce the idea that the Department's interest is to reduce incidents of force to a minimum, we recommend that DSD structure its use of force policy to emphasize the importance of these principles. For example, the policy could include language such as the following:

When time, circumstances, and safety permit, there may be alternatives to using force. When reasonable and safe under the totality of the circumstances, members should consider such alternatives as advisements, warning, verbal persuasion, and other tactics.

In addition to developing a "force prevention" policy, the Department's force training should also be modified to address this reorientation both for new deputies and during in-service training. Instead of solely brushing up on force techniques, training should include discussion about rethinking the role of force in the jail and how different strategies, problem solving, and techniques can be deployed to resolve situations without force. Training for supervisors needs to emphasize their role in preventing avoidable uses of force – from the obvious ways in which they direct and guide deputies to use force in particular instances to the more subtle influence they can have in setting the right tone and enforcing the Department's standards and expectations.

RECOMMENDATION 1: DSD should inculcate principles of force prevention in its culture, policy, training, and overall Department orientation.

Another way to push culture change within the Department is to positively reinforce conflict resolution skills and affirm officers who have the capability and temperament to handle difficult situations without resorting to force. While it is necessary to have systems in place to identify and remediate personnel who may be using a disproportionate amount of force, it is equally important to recognize those individuals who find ways to perform their duties and defuse situations peacefully. DSD should recognize those deputies in their regular performance evaluations and through “commendable restraint” citations. The Department should also acknowledge those deputies as peer role models and draft them for training and briefing assignments, to reinforce the value the Department places on their acumen, skill, and approach to their work.

RECOMMENDATION 2: DSD should demonstrate how much it values deputies’ abilities to resolve confrontations without resorting to force by issuing commendable restraint citations, considering the amount of force an officer uses in assessing the officer’s annual performance, recognizing those deputies as peer role models, and by highlighting those deputies’ skill in briefing and training scenarios.

Investigating and Reviewing Uses of Force

A deputy’s authority to use force comes with a significant responsibility to use it judiciously and only when reasonably necessary. It is essential that a law enforcement agency critically review and evaluate each force incident in order to determine whether the use of force complies with Departmental expectations as set out by policy and reinforced in training. An effective inquiry, however, does not end there. In addition, the Department should assess force incidents for potential issues with performance, training, tactics, equipment, policy, or supervision. This requires a commitment to

comprehensive fact-gathering and dispassionate review. But the effort is worthwhile. The holistic review of force incidents will increase the tactical and decision-making capabilities of deputies, promote accountability, and leave the Department with better options to address tomorrow's challenges – a goal of any progressive law enforcement organization.

Unfortunately, as detailed below, current DSD policy, culture, and training fails to facilitate the achievement of this goal. As a result, force incidents that are not sent to Internal Affairs are not fully investigated or critically reviewed.

When a deputy uses force, policy requires the involved deputy and all deputy witnesses to write a narrative report of the incident in the Department's Jail Management System prior to the end of the involved deputies' shift. The policy further requires that the sergeant and/or captain of the facility review the report and indicate whether the force used complied with Colorado law and Department policy. Finally, the policy requires that if the force used was "inappropriate," the Captain will contact Internal Affairs, address any equipment concerns, recommend policy modifications, or order remedial training.

In some cases, often based on a review of the video of the force event, jail supervision will refer the incident to Internal Affairs for an investigation.¹ IA is also charged with investigating all force incidents that are the subject of inmate complaints regarding excessive force.² Still, for the large majority of force incidents, the force investigation and review is the responsibility of jail supervisors.

In the terse policy regarding force review, the Department provides almost no guidance to supervisors regarding the type of fact collection

¹ Please see Section Two of this report, on Internal Affairs, with regard to issues surrounding the handling of force cases that receive a formal administrative investigation.

² As the Independent Monitor reported in his 2013 Semiannual Report, however, inmate grievances alleging inappropriate force (and other serious misconduct) have not always been referred to IA as required. This was a serious failing that deserved the negative attention it received. Following the OIM Report, the Department made a renewed commitment to initiating IA investigations on inmate complaints of inappropriate force.

necessary to fully investigate a force incident. As noted above, involved deputies and witness deputies are required to document their actions and observations. However, the policy does not require additional evidence collection that one would expect to see in a thorough force investigation. For example, the policy does not require that the sergeant responsible for reviewing the force event interview the inmate upon whom force was used. Nor does the policy require that inmate witnesses to the event be interviewed. In cases where non-deputy jail staff such as nurses, doctors, maintenance workers, or chaplains are witnesses to the force incident, there is no requirement that they prepare a report of their observations or be interviewed about the incident. While our review found times in which photographs were taken of inmate injuries, the policy does not require it. The policy likewise does not require that medical records of inmate or deputy injuries be obtained and appended to the report. There is no requirement of collection or analysis of forensic evidence relating to the force incident such as the weapons used. And most strikingly, even if a force event is caught on the jail cameras, sergeants are not only not required to view the video of the event, they are prohibited from doing so.

DSD's use of force policy requires that the use of force reports prepared by involved or witness deputies contain a "detailed chronological description of the incident to include who, what, where, when, how, why (if possible), any injuries and medical treatment provided."³ The policy requires that the report must also be "accurate and limited to factual events free from opinion or prejudice and detail all of the necessary information to provide a complete depiction of the incident, to include actions both taken and observed."⁴ Our review of a significant sample of use of force reports found that, contrary to these requirements, the information contained in the deputy reports are a minimal recitation of some of the observations and actions taken or observed by deputies. Information

³ Department Order 1115.1A, Reporting System, 5(C)(1).

⁴ Department Order 1115.1A, Reporting System, 5(C)(2).

about the events preceding the force was not included with any significant detail. The deputy reports generally did not provide a detailed description of specific inmate actions or deputy observations that formed the basis for the use of force, making it difficult to evaluate the appropriateness of the deputy's actions. Instead, conclusory terms such as "resistive behavior" or "defiance" were used to justify the force as if they were self-explanatory. Moreover, the reports were entered into the JMS system in no particular order, resulting in any reviewer having a difficult time figuring out the chronology and each deputy's role in the event.

It is clear from a review of the reports that deputies have received little training on how to satisfy the dictates of the use of force policy and that sergeants have not been expected to review and return reports that do not satisfy those policy requirements.⁵ As a result, the use of force reports prepared by deputies leave the Department with a record through which no fair conclusions can be reached about the appropriateness or legitimacy of the force used.

Further compounding the problem of conclusory, insufficiently detailed reports by deputies is the fact that sergeants tasked with reviewing force incidents and determining whether deputy performance was consistent with legal and policy guidelines must do so based almost entirely on these reports. Such a factual review is woefully deficient and fails to meet law enforcement industry standards for any investigation, let alone one in which a deputy has invoked his or her authority to use force. An investigative process that only includes deputies' version of events cannot be considered objective and neutral. Some sergeants we spoke to recognized this, and some actually declined to approve the force they were charged with reviewing because they did not have sufficient information to fairly evaluate the incident.⁶ However, most use of force reviews

⁵ One of the innate difficulties of the JMS system that contribute to this phenomenon is the clunky, non-user friendly way by which reports can be edited and revised.

⁶ The OIM identified similar deficiencies in the use of force reporting and review process in its September 10, 2014 letter to Councilman Paul Lopez, also the Chair of the Safety and Wellbeing Committee.

contain cover letters composed by the reviewing sergeant conveying a finding that the force was justified.

In addition to the lack of policy direction provided by Department policy to sergeants about what they should do in order to conduct an investigation that would meet minimal investigative standards, sergeants are provided no formal training on how to conduct such an investigation or review. As a result, sergeants are not equipped with basic investigative or reviewing skills to investigate and offer an opinion regarding the propriety of the force even were they intent on attempting to conduct a more complete investigation or review.

Consequently, the review of any force incident that is not referred to Internal Affairs for a formal investigation has little chance for a meaningful review in the Denver Sheriff Department. Unless an inmate complains or the event otherwise finds its way to Internal Affairs, there is virtually no likelihood that the force will be carefully and holistically reviewed for purposes of personal accountability, training or tactical issues, equipment issues, or issues of supervision. Accordingly, the Department loses countless opportunities to monitor and correct behavior in this critical arena.

Standards for Force Investigations

In order for force incidents in the jail to receive the attention they require, the Department needs to restructure its internal investigative and review process. First, it must adopt minimal investigative standards and require sergeants assigned to investigate force to do the following, in addition to gathering and reviewing the deputies' narrative reports:

- Interview inmates that had force used on them.
- Interview inmates who witnessed the force and the events leading up to it.
- Interview non-deputy jail staff, including medical or mental health staff, chaplains, and others.
- Obtain medical records of any injuries or treatment to involved staff and/or inmates.
- Secure photographs documenting any injuries.

- Secure photographs of inmates documenting the absence of injuries, where relevant.
- Photograph any relevant areas of the jail where the use of force occurred.
- Collect and analyze any forensic evidence, including clothing and deputy weapons.
- Download and attach any video footage of the incident.

In addition to significantly increasing the amount of information gathered, the force investigator must ensure that the deputies' written reports are detailed enough for a comprehensive review. Those reports must contain thorough narratives of the events leading up to the force, the observations and actions that formed the basis for the use of force, and what happened after the force application, when the inmate was secured. If a deputy report does not contain sufficient detail, investigators should return the report to its author with instruction to provide the additional information.

DSD should consider whether to continue to assign the initial force investigation to the sergeant supervising the involved deputies.⁷ There are advantages to this approach in that all first level supervisors will be empowered and entrusted with the responsibility of conducting a thorough and objective investigation of any force incident occurring within their unit. The investigative experience gained from this responsibility will improve every supervisor's interviewing and analytical skills. The robust review process detailed below would hold supervisor's accountable for force investigations that did not meet the Department's elevated expectations. If the Department continues with this approach, it should train every sergeant on the more demanding expectations and how to meet them.

⁷ In some cases, the sergeant is either involved in using the force, directing the force or present as a witness during some of the force event, and thus has personal observations of the incident from which to base his or her evaluation of the incident. In those circumstances, the sergeant's involvement creates an obvious obstacle to objectivity. Accordingly, these incidents should be assigned to an uninvolved sergeant for investigation and review.

An alternative approach would be for DSD to designate a cadre of sergeants assigned to conduct force investigations for any force event that occurs in the facility. Immediately after a use of force, an on-duty force review sergeant would be summoned to initiate an investigation. The advantage of this approach is that it requires training fewer individuals in the new protocols and increases consistency in quality of investigations. The tradeoff is that fewer sergeants will benefit from the increased responsibility and investigative skill growth that will come to those assigned this duty. A hybrid arrangement would be to continue to have the supervising sergeant conduct the force investigation, but to designate a team of experienced, specially-trained sergeants to serve as mentors or advisors who would assist the investigative sergeant – in real time – in ensuring compliance with the new investigative protocols.

Mechanisms for Reviewing Force

Supervisory Review Documents

In addition to ensuring a much more robust collection of facts, DSD must change its policies and protocols to require a more exacting review of force incidents. One device that we have seen effectively used to ensure that there is a meaningful force investigation and review are a set of extensive and detailed checklists that specifically detail the Department's expectations. Separate checklists created for the force investigator and those entrusted with reviewing the force investigation at each level helps ensure uniform and thorough coverage of the fact collection and review process for every force event, prompting supervisors to ask the right questions and confirm that the final force package provides an answer at each level of investigation and review. We have attached as an Appendix sample checklists that OIR Group members helped develop with the Los Angeles County Sheriff's Department for that agency's use.

Force Review Panel

In addition to the more exacting paper review the checklists guide supervisors to conduct, we also recommend that a significant percentage of force incidents be directed to a panel of jail command staff for review.⁸ While we leave it to the Department to determine the best structure and title for its “Force Review” panel, there are some basic features we believe are crucial. The investigative report should be forwarded to the panel ahead of the meeting so that they have command of the facts contained in the report. At the panel meeting, the supervisor responsible for conducting the investigation should present a narrative of the evidence and identify any issues emanating from the investigation. The panel should determine whether the force was consistent with policy and, if not, refer the matter for an Internal Affairs investigation. As importantly, the panel should consider the force incident and identify ways in which the tactics, force application, and post-incident handling could be improved. The panel should develop an action plan in which post-review remedial measures are identified and personnel are assigned to implement them. The action plan should consider what and how information will be conveyed to the involved deputies about the panel’s assessment and what information should be communicated to deputies Department-wide so that lessons from the incident can be effectively disseminated. Finally, the panel should critique and review the thoroughness and objectivity of the force investigation and, if need be, return the investigation for necessary follow up.

To assist in identifying issues and developing remedial plans, training division staff should attend the Force Review panel meetings to opine about the force application and any pre-event tactics. In addition, OIM representatives should attend and have access to the reports prior to the panel’s meeting so that they can independently identify issues and actively participate in the panel discussion. If this additional responsibility creates a resource challenge to either OIM or the

⁸ Again, OIR Group members helped the Los Angeles County Sheriff’s Department develop such a panel and have seen it work effectively to engage jail managers in successful efforts to reduce the number of troubling force incidents.

training unit, those responsible for resource allocation in Denver should be amenable to requests for additional resources to perform these functions.

Cases that involve use of force and are assigned to Internal Affairs for investigation should go through the disciplinary process that IA cases normally follow. However, because the IA process is primarily focused on discipline, upon conclusion of the disciplinary determination the case should be presented to the Force Review panel to determine whether additional remedial action should be taken, including, for example, briefings, training, training bulletins, mentoring or counseling for involved deputies, policy and equipment review, and review of any matters not covered by the disciplinary proceedings such as communication, tactics, supervision, and report writing. This approach will ensure that the more significant and concerning cases are also reviewed not merely for purposes of accountability and discipline but to ensure that the Department makes full use of the incident as a learning tool.⁹

Directing IA force cases through the Force Review panel process will also ensure the implementation of a key recommendation of the Training Task Force: the requirement that remedial training be included as part of the disciplinary decision. While training can be integrated into a disciplinary penalty, DSD has the discretion to design specialized training for deputies. Even in cases where the force incident does not rise to the level of a policy violation, training can and should be a frequently used part of any remedial action plan designed by the Force Review panel.

The creation of a Force Review panel or committee with a coordinator could also fill a role that is currently lacking in the Denver Sheriff Department, namely tracking for compliance with all non-

⁹ Additional DSD functions could and should benefit from this type of review. For example, the Department could more holistically review all deaths that occur in custody and any deadly force events that involve DSD units that function outside of the jail environment. A command-level review of these incidents is important to ensure accountability, but also to promote communication among various involved entities and to help the Department gain a perspective on how it can improve and possibly prevent future critical events.

disciplinary action or requirements coming out of alleged misconduct cases, such as training, counseling, and briefings. Our review found in the few occasions in which deputies were ordered to attend training following an investigation, there was no established means for ensuring that remedial measures were implemented. The Force Review committee coordinator could be responsible for this follow-up effort and for communicating back to the standing committee.

RECOMMENDATIONS 3 through 12: The Department should dramatically alter the way it investigates and reviews force incidents that are not referred to Internal Affairs, including the following:

(3) DSD should develop standards for investigating all uses of force that go beyond collecting involved and witness deputies' narrative reports and meet minimal investigative standards for thoroughness and objectivity.

(4) DSD should provide regular training to deputies on how to prepare use of force reports and to sergeants on how to review them to ensure compliance with current DSD use of force reporting policy.

(5) DSD should consider creating a cadre of sergeants at each jail facility specifically trained to conduct force investigations and reviews.

(6) In cases where a sergeant was involved in a use of force, directed the force, or was a witness to the force, DSD should assign the force investigation to a non-involved sergeant or a captain of the facility.

(7) DSD should create detailed checklists setting out the Department's expectations for investigation and review of force incidents to guide investigating sergeants and supervisors at each level to ensure a uniform and thorough coverage of the fact collection and review process.

(8) DSD should consider designing protocols whereby a Force Review committee reviews significant force incidents and a sampling of less significant force incidents. The committee should develop a written action plan for each force incident reviewed and ensure an effective feedback loop to present the results of any action plan back to the committee at a later time.

(9) DSD should improve its force review process to ensure that not only is the incident centrally reviewed to determine whether the force used was in policy but also to examine whether there was tactical decision making that was inconsistent with Department policy and expectations.

(10) At the end of the Force Review, officers involved in every force incident should be debriefed regarding how the Department considered the handling of the incident including the tactical decision making.

(11) In addition to deciding whether the force was in policy, DSD should examine force incidents to determine whether there were issues of supervision, policy, or training that it should address.

(12) DSD should use learning domains, such as training bulletins or briefings to ensure that information learned from force incidents is exported back to the line officers and first level supervisors in a meaningful way.

Use of Force Policies

Much of the policy governing use of force for DSD is consistent with industry standards. However, we offer for consideration the following concepts designed to provide additional guidance and standards for DSD employees.

Preamble: Guiding Principles Surrounding Use of Force

The Denver Sheriff Department's Use of Force Policy should set out straightforward and clear guidance to deputies about the expectations of the law and Department leaders with regard to the deployment of force. This critical message would benefit from a preamble setting out some overarching principles for deputies to consider. In drafting such a preamble, the Department should consider language such as the following, adopted by another law enforcement agency:

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

Any preamble intended to set out the principles of DSD's Use of Force Policy should similarly recognize how the ability to use force against incarcerated individuals should be deployed in light of deputies' overarching responsibility to keep inmates safe from harm. Because the philosophical framework and orientation of the use of force in a jail setting has crucial impact on the experience of all who work and live in that environment as well as stakeholders concerned about how that community functions, we recommend that DSD seek input from command staff, deputies, professional staff, inmates and their families, city officials, and community advocates in devising this preamble.

We recommend the Department consider additional language such as:

It is the Sheriff Department's responsibility to provide a safe environment for the inmates and a safe working environment for Sheriff Personnel. All employees shall view their

professional duties, first and foremost, in the context of safety for themselves, other employees and inmates.

All jail personnel shall maintain a professional demeanor, according to each situation, keeping in mind the Department's values. All employees shall focus on upholding safety, respect and professionalism, even in situations where force is required. Our goal is to prevent force where possible through effective communication emphasizing safety, respect, and professionalism.

RECOMMENDATION 13: DSD should add a preamble to its use of force policy that sets out the overarching principles and philosophy by which the use of force should be considered.

Providing Clarity in Definitions and Expectations

Defining Excessive Force

In current policy, excessive force is defined by simply referring the reader to the Colorado Revised Statutes, which defines excessive force as force that exceeds the degree of physical force authorized by law. A more helpful definition of excessive force that has general acceptance is: “The use of more force than is objectively reasonable to accomplish a lawful purpose.”

RECOMMENDATION 14: DSD should set out a more precise definition of “excessive force” in its use of force policy.

Defining Objectively Reasonable

In current policy, there is reference to the need that any force used must be objectively reasonable, yet the term is never defined. One generally accepted definition is: “The force that an objective, trained

and competent peace officer, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.”

RECOMMENDATION 15: DSD should set out a more precise definition of “objectively reasonable” in its use of force policy.

Distinguishing Between “Immediate” and “Controlled” Force

Unique to controlled environments such as jails or prison, personnel are faced daily with situations where decisions must be made whether a threat requires an immediate response of force or whether there is time to plan or calculate a response to resolve a threat. In situations in which deputies have time to address a situation, their decision-making should be governed by a different force philosophy than in situations requiring immediate intervention. The force policy can help explain this distinction by providing guidance to deputies regarding the different types of force events.

The DSD policy and procedure should provide examples of “immediate” or emergent force such as a force response to break up a fight between inmates or a force response to an inmate physically attacking a deputy. In these instances the threat is such that the deputy must immediately respond with force as there is no time to plan a more calculated response.

On the other hand, an inmate may, while locked in his cell, refuse to comply with an order to submit to handcuffs for removal from the cell for a housing assignment change. In this instance, there is time to plan a force response that may be necessary to affect the cell reassignment. This is a “controlled” use of force situation in which time is on the side of the officers to plan the most effective and safest force response in order to limit the possibility of injury to the inmate and the staff. We suggest the following definitions and requirements:

- **Immediate Force:** Employees may use immediate force without prior authorization from a higher official when the behavior of an inmate constitutes an immediate threat to facility security or the safety of persons which demands action without delay. The nature of the immediate force precludes an approval process due to the necessity to use force without delay.
- **Controlled Force:** A controlled use of force is appropriate in an institutional/facility setting, when an inmate's presence or conduct poses a threat to facility safety or security and the inmate is located in an area that can be controlled or isolated. These situations do not normally involve the immediate threat to loss of life or immediate threat to institution security. All controlled use of force situations require prior supervisory approval. Staff shall make every effort to identify physical disabilities and mental health issues and note any accommodations that may need to be considered before force is applied.

The concept of controlled force should also be integrated into additional policies, such as those governing cell extractions or dealing with a recalcitrant but not assaultive inmate.

RECOMMENDATION 16: DSD's Use of Force policy should set out a distinction between "immediate force" and "controlled force."

Duty to Intervene

One of the core responsibilities of deputies assigned to the jails is to keep those housed there free from harm. The most frequent potential source of harm is from inmate-on-inmate conflicts, and deputies regularly intervene to stop assaultive behavior. However, unfortunately, there are times in which deputies may use force that is either unnecessary or excessive. When fellow deputies observe such conduct and are in a position to intervene, they should do so. While

this requirement is consistent with the overarching responsibilities of deputies to keep inmates free from harm, the responsibility is not explicitly defined in DSD's force policy. We recommend that the policy do so.

RECOMMENDATION 17: DSD's force policy should expressly advise deputies of their responsibility to intervene when they observe excessive or unnecessary force by fellow deputies and are in a position to do so.

Removal of Dangerous or Belligerent Inmates from a Cell

When inmates display an unwillingness to follow deputy orders to leave their cells – to attend court, a medical appointment or to facilitate jail movement, for example – any immediate unplanned attempt to extract the inmate creates a high risk of a use of force with resulting injuries to the inmate and staff. For that reason, jail facilities have developed special policies to guide staff in resolving these situations. Recognizing that jails present a controlled environment and that time is usually on the side of jail staff, more deliberate strategies can be deployed to satisfy the objective sought while reducing the likelihood of using force.

To its credit, DSD has a policy regarding removal of “dangerous or belligerent” inmates that sets out some principles and procedures intended to deploy smarter strategies that could lessen the likelihood of force or injury. Those include requiring deputies to notify a supervisor prior to attempting to remove the inmate from the cell and requiring the supervisor to respond to the location and take over command of the operation, ensure that there are sufficient personnel to perform the cell extraction, and videotape the incident. While the current policy has some good features, it could and should go further to provide guidance and direction to deputies and supervisors in the following areas:

- **Broaden the definition of a belligerent or dangerous inmate.** In addition to inmates who are belligerent or who have a history of being assaultive with staff, the inmate who is simply refusing to follow orders or who may have mental health issues preventing understanding of orders should also be defined as coming within the dictates of this policy. Other behaviors that should come within the breadth of the policy would include continually exhibiting verbally defiant behavior; resisting or being uncooperative to any verbal commands given by jail personnel; displaying aggressive, assaultive, hostile or violent behavior toward personnel or other inmates; or passively resisting the efforts of personnel by ignoring commands or not acknowledging the presence of jail staff. Some agencies define inmates who are “recalcitrant” or “nonresponsive” to instruction as being covered by the policy.
- **Require video recording.** The current policy states that the supervisor “should” ensure that the handling of belligerent prisoners¹⁰ and cell extractions are videotaped. We recommend that the policy indicate that the supervisor “shall” ensure that the handling of belligerent prisoners and cell extractions are videotaped except in circumstances where the emergent nature of the incident demands action before videotaping can be conducted.
- **Consider the exigency.** The recognition that in most instances time is on the side of the facility is a key consideration in determining whether and when to initiate a cell extraction. Supervisors must consider the exigency and importance of the desired inmate movement. In order to incorporate this concept, the policy should require the supervisor to set out a reasonable

¹⁰ For an unexplained reason, this policy, unlike other DSD policies refers to prisoners rather than inmates. For purposes of precision and uniformity, we recommend that the policy use the term inmates.

time period to allow the inmate an opportunity to comply with instructions.

- **Do not restrict necessary immediate action.** In the instance of an immediate threat of physical harm or other situations in which there is a need for immediate intervention, the policy should note that custody personnel shall not be restricted from taking appropriate action, including the use of force. The policy should also indicate that should the need arise to take action immediately, all personnel shall contact a supervisor as soon as the exigency to take immediate action ends.
- **Require high level approval.** Because of the high risk potential of these types of operation, some policies require that first level supervisors notify and/or obtain approval, when practicable, from the on duty facility commander before proceeding with the cell extraction. Advantages of such a procedure are that it provides more consistency on how the procedures are to be executed and results in more deliberation being brought into the process.¹¹
- **Formulate a plan.** The policy should also require that the supervisor formulate a plan for the operation, assign duties to each member of the extraction team, and announce each member of the extraction team on video. The inmate should be advised on video tape of what he is being ordered to comply with and the consequences of his continued refusal.
- **Summon appropriate professionals.** For those inmates who have a history of mental illness or appear to be acting irrationally, mental health professionals should be summoned and asked to interact with the inmate to determine whether

¹¹ We were informed that as a result of recent changes in practice, supervisors were instructed to seek captain or major approval when practicable before executing a cell extraction. While this practice is admirable, written policy should reflect that practice.

they might be able to successfully counsel the inmate to voluntarily comply.

Likewise, if a chaplain is on site that has a history of dealing with the inmate in question or the inmate has been working with a teacher or other facilitators of jail programs, staff should request that they talk with the inmate in an effort to gain voluntary compliance.

Finally, medical personnel should be called to the location so that they can provide immediate assessment and treatment of any injuries that may result from the cell extraction process.

RECOMMENDATION 18: In an effort to reduce the need to resort to force, DSD policy should provide additional specific guidance to deputies and supervisors with regard to dealing with inmates who refuse to follow jail movement orders or come out of their cells.

Taser Use

The DSD Taser policy was revised in July 2014 to require a higher threat level prior to deployment and to restrict use of the Taser in stun mode. However, the written vehicle used to revise the policy was a memorandum circulated to jail staff by the then-Sheriff. As a result, deputies cannot rely on the current “policy” for their guidance on Taser use but must be aware of the “memorandum” that substantively alters the policy.

Moreover, the Policies and Procedures Committee worked for a number of weeks in 2014 to propose additional reforms to the Taser policy. Our review of the proposed changes by the Task Force finds them well-founded, and we recommend they be implemented.

In addition, we found the following additional concerns with the policy:

- **Warnings.** The current Taser policy says that deputies shall communicate warning of use, when possible, to other deputies but does not direct deputies to provide a warning to inmates. DSD has found that a simple warning to inmates that a Taser is about to be deployed can cause the inmate to comply with dictates, eliminating the necessity to deploy the weapon. The Taser policy should include a requirement that inmates be warned whenever practicable.
- **Removal of Darts.** The current Taser policy allows for the removal of darts by “authorized Taser officers” but the policy later states that medical staff will evaluate, clean and treat Taser wounds “as appropriate per medical protocol” and then says elsewhere that probes/darts that have penetrated the skin will ONLY be removed by officers trained in the use of the Taser or by medical personnel consistent with their professional standards and training. The Department should address this ambiguous and potentially conflicting guidance with regard to the removal of darts.

RECOMMENDATION 19: The policy governing use of the Taser should be modified to include the recommendations of the Policies and Procedure Committee, as well as to require a warning to inmates prior to use of the Taser when practicable and to clarify the requirements regarding removal of Taser darts.

Tracking Taser Usage

The Taser is equipped to collect data that can be downloaded after every use. The available information provides the time of day and the number and length of every Taser activation. The data can be helpful to assess the appropriateness of the use of the Taser and whether that use complies with Department policy and training. As noted in the

Auditor's March 2015 Performance Audit of jail operations, the Department's compliance with its policy requiring Taser data to be downloaded has been uneven.

In addition, DSD policy requires that a Taser usage form be completed every time that a Taser is deployed. Again, the Auditor's report noted that the usage forms were not always submitted and when they were, not all data fields within the form had been completed.

Unlike most weapons, Tasers are unique in that there is a readily retrievable data source that can inform supervisory staff when a Taser is deployed. By not enforcing its download policy, however, DSD is forfeiting its ability to effectively track Taser use and determine whether deputies are deploying the device in a manner consistent with Department expectations. For the same reason, the Taser usage report should match up with the number of Taser deployments reported by deputies.

Whenever the Taser is used intentionally (as opposed to accidental discharges), that use should be recorded in the Jail Management System. The Taser usage report should be more seamlessly integrated with the JMS report requirements so that a deputy and the responsible supervisor will recognize the need to complete that form as well whenever the Taser is deployed.

Moreover, other than reports on the frequency of use, there is no evidence that DSD is using the information available from Taser use to determine trends and frequencies of use among deputies or within areas of the two jails. Because of limited resources and authority, training staff have not been deployed to examine the data to provide insight on Taser use throughout the Department.

RECOMMENDATION 20: The Department should more rigorously enforce its existing requirements regarding the collection of data and information about Taser deployments and should regularly examine this information to determine trends among deputies or within areas of the jails.

Chemical Agents: Decontamination Requirement

Pepper spray is one of the force options available to deputies for use in the jail. The spray consists of a chemical compound that irritates the eyes to cause tears and pain. With the temporary loss of vision, deputies are able to more easily restrain inmates without a significant risk of permanent injury.

Because the introduction of this chemical agent continues to be painful, it is important that the inmate's eyes are decontaminated with water or saline flush once deputies have secured the inmate. Because DSD policy has no specific policies relating to chemical agents, there is no decontamination procedure in its policy. While the Department's policy has a general requirement that deputies notify medical staff and escort the involved inmate to the medical unit for screening after a force incident, we recommend that the policy include a specific provision requiring decontamination following the use of chemical agents. A straightforward procedure used by many jails is to require that after the situation is stabilized and the inmate is secure, he or she be immediately escorted to medical for a decontamination procedure or alternatively, that medical be immediately summoned for treatment.

RECOMMENDATION 21: The Department should develop a policy specifically requiring deputies to get medical assistance for inmates who have been subjected to chemical agents so that their eyes can be decontaminated immediately after stabilizing the situation and securing the inmate.

Escorting Inmates to Medical Unit Following a Use of Force

The Department's use of force policy properly requires that any person on whom physical force has been applied, regardless of type or amount, be screened by medical personnel. The policy further requires that the deputy who used force has the apparent

responsibility to escort the inmate to the medical unit for the screening. Given the inherent tensions between the participants in a force incident, we recommend that the Department shift the decision on who escorts the inmate to the sergeant. The policy should further guide the sergeant to assign the escorting responsibility to an uninvolved deputy to reduce the likelihood of additional force or conflict.

RECOMMENDATION 22: The Department should modify its policy to require sergeants to direct which deputy is to escort an inmate who has been involved in a force incident to the medical unit. Unless there are no other options, a deputy who used force should not be assigned to do the escort.

Training Issues

CIT Training

Crisis Intervention Team (CIT) training provides deputies strategies to defuse conflict situations and reduce the likelihood of needing to resort to force. The training educates deputies on dealing with inmates who may have a history of mental health issues and instructs on how different strategies may be more effective in interacting with them.

DSD's CIT training and curriculum is consistent with industry standards. Indeed, the coordinator of the training has received recognition for his program and been requested to train other law enforcement agencies with custodial functions. DSD reported that last year 31 deputies received CIT certification, that 55 percent of deputies were currently certified in CIT training, and that the goal was to certify 120 additional deputies by 2016. The Training Committee recommended that all deputies employed by the Sheriff's Department received CIT certification.

We agree and endorse the Training Committee's recommendation. We are also supportive of DSD's intent to substantially increase the pace of certification. While we commend the Department for the number of deputies who have already been certified, we note that, according to DSD, over twice as many deputies received certification in the use of the Taser and nunchakus over the same period of time. If training priorities need to be set, CIT training should be at or near the top of that list.

DSD and those responsible for budget allocation should also consider ways to ensure that those responsible for the CIT program receive sufficient resources and training to expand and improve the program. We have seen in other agencies how the ability to effectively deal with inmates in mental health or behavioral crises can be improved by involving stakeholders such as mental health and medical professionals in refining and presenting the training curriculum. DSD should find ways to ensure that its CIT coordinator has the authority, the flexibility, and the time to continue to improve upon CIT training in Denver and incorporate the input of other important voices into the design and delivery of the program.

Even with a stepped up CIT training program, it will still take several years to attain the goals of certifying every deputy who has a jail assignment. And even if every deputy is certified, it is clear in our experience that some individuals are better suited than others to absorb and embrace the techniques and methods taught in CIT. More care should be taken toward assigning those deputies who have excelled in the CIT program to the Special Housing areas where inmates who have a history of mental illness reside, and to Intake, where these inmates may not yet have been identified. Our review of duty rosters indicated that there was not a sufficiently concerted effort to consider that factor in determining deputy assignments.

RECOMMENDATION 23: DSD should continue to work toward providing CIT training to each of its deputies assigned to a jail facility. DSD should also ensure that the CIT training coordinator has the time and ability to incorporate outside stakeholders such as mental health professionals into the CIT curriculum and training development. When considering deputy work assignments, DSD should make a concerted effort toward assigning deputies who have excelled in CIT training to areas where they are most likely to encounter inmates with a history of mental illness.

Training on Perishable Skills for the Jail Setting

We have observed in other agencies that the more confidence officers have in their ability to control resistive or aggressive inmates through the use of chemical agents, control holds, and takedowns, the less likely they are to use punches, strikes to the face, chokeholds, or other force options more likely to cause injury to themselves and inmates. Yet these skills are highly perishable and require regular practice to maintain at a proficient level. Deputies have 40 hours of in-service training every year, during which they spend roughly half a day on defensive tactics and other force issues.¹²

We have seen other agencies successfully create small blocks of training that can be provided at a jail facility, so that deputies do not need to take a full day away from their posts in order to train. Instead, supervisors find ways to carve out an hour or two of time during which a small group of deputies can receive training to learn new techniques and maintain their skills. We understand that DSD is

¹² By contrast, deputies are required to qualify with their firearms four times per year, despite the fact that only those relatively few deputies assigned to work inside courtrooms regularly carry their guns on duty.

stretched thin in its staffing models, and deputies frequently work overtime to fill needed posts. As the Department reexamines its staffing models, it should consider ways to create enough flexibility in scheduling to allow deputies to more regularly train on force tactics targeted to the jail setting.

RECOMMENDATION 24: The Department should consider ways to allow more regular ongoing training on force tactics targeted to the jail setting, including the possibility of providing training at the jail facilities.

Using Data to Develop Force Training Curriculum

During our review, we were able to review force training and talk on several occasions with DSD's force training team. We found the training effective and the instructors engaged. However, the force training team is largely divorced from other force data sources within the Department and historically, has not been empowered to more readily engage with these data points.

We recommend that DSD work to empower the force training unit to become more integrated with other force investigative and review functions. As examples of this integration, elsewhere in this chapter we recommend that the training unit have access to video of force incidents that occur in the jails to use in their training curriculum. We also recommend an active role for the training unit in reviewing actual force incidents at the use of force panel reviews we discussed above.

In addition, the training unit should have unfettered access to force reports to enable them to identify trends and adapt their training accordingly. DSD should also provide the training unit with any results of audits that assess numbers and types of force incidents or provide any other breakdown and analysis of force data.

Complying with these recommendations will require an increase in the current resource allocation to training. We recommend that there be increased dedication to the training mission at DSD in order that

training staff have a more measurable and meaningful footprint in the Department as it relates to force.

RECOMMENDATION 25: The Department should increase the profile of its training unit to allow training staff access to force reports and any force data or analysis the Department generates as well as to encourage its participation in the review of force incidents.

Force Data Issues

Unreliability

Currently, DSD policy requires any deputy who uses force or witnesses force to enter a narrative of the incident into the Department's Jail Management System (JMS) and fill out data fields that describe, among other things, the types of force used and injuries sustained, along with a narrative description of their own actions and observations. Despite a significant amount of training for personnel on using the JMS system, there is lack of uniformity in deputy and sergeant data entry. Because there is little quality control over data entry, deputies inconsistently fill out the force data fields while leaving many fields empty,¹³ and these deficiencies are remedied rarely, if ever.

As a consequence, any attempt to use the JMS system to aggregate force data results in unreliable and inaccurate information. For example, a search for jail suicides indicated that there were 31 suicides in 2014 when in fact there were none. A JMS search indicated that a new deputy was involved in twelve uses of force in one month, when in reality he was not involved in any.¹⁴ Considering the multitude of

¹³ DSD continues to try to address this inconsistency by revising its use of force reporting policy to provide further clarification and direction on JMS data entry. Another proposed revision is in the works and working its way through the Department's approval mechanism.

¹⁴ In this case, a new deputy apparently thought that he needed to check the "force" box whenever he handcuffed an inmate. But this phenomenon is not

“false positive” information, there is most likely a similarly high frequency of force incidents that are not effectively captured by the JMS system. The aggregate data from JMS for force and suicides is so unreliable that DSD data analysts asked to provide information about force or other critical incidents must physically pull and read scores of actual incident reports to obtain the requisite data.

The lack of reliability of the Department’s data results in a wholesale lack of confidence in any conclusions to be drawn from it. For example, DSD reported in its most recent Annual Report that suicide attempts had decreased by 15 percent. However, because of the uncertainty that the data is accurate, one cannot know whether the decrease was real or simply a function of differences in data entry or reporting of the suicide attempts. This means that any attempt to draw conclusions about the data is necessarily compromised, and any reports that rely on the data, such as OIM’s Annual Reports, must include appropriate disclaimers.

Because jail commanders know they cannot trust the aggregate data in the JMS system, many have developed their own independent tracking systems. For example, rather than use the JMS system to track force incidents, jail commanders have created independent Excel sheets to track the incidents that are not integrated into the JMS system. This is an admirable “workaround” on the one hand, but no real substitute for a functioning and integrated system.

One alternative approach to consider would be to restrict the entry of data to fewer jail staff. Clearly, the narrative reports need to be completed by the involved and witness deputies, but some agencies then have specially trained staff review those narratives and other data to ensure that the classification and data field entry are consistent with the narrative. In any event, until the Department is able to populate a system that can provide a level of confidence in its data, it will be significantly compromised in its ability to conduct data analysis, audits, tracking of deputy performance, and perform many

limited to one misinformed outlier, the same study found that JMS showed that eight deputies had three or more uses of force whereas the incident reports did not indicate that any force was used in any of those incidents.

other functions essential to an advanced law enforcement agency. This data deficit is a leading weakness of the Denver Sheriff Department and is one of the largest challenges facing DSD today.

RECOMMENDATION 26: DSD should devise a remedy to ensure that its aggregate force data is reliable.

Data Analysis and Auditing

DSD currently devotes two individuals to analyzing data and performing similar functions.¹⁵ This unit has provided a high quality and quantity of analytic work despite the need to conduct much of the data collection through onerous and time consuming review of report narratives. In order for any law enforcement department the size of DSD to truly understand the nature of force used in its jails and the extent to which it is problematic, it must have and regularly analyze significant amounts of data – the number of force incidents, types of force used, injuries to inmates and deputies, the inmate population that is the subject of force, where in each facility force is used most frequently, on which shifts force is most often used, supervisors on duty at the time of each incident, and many others.

In addition, DSD needs to strengthen its ability to conduct audits to ensure that there is policy compliance in the areas of force reporting, training, remedial plans, and performance evaluations, among others. The important risk management functions that robust data analysis and internal audits can provide are critical features of any progressive law enforcement agency.

¹⁵ We understand that this allocation will be decreased to one individual as of June 2015. We have been informed that the Denver Police Department has seven employees dedicated to this assignment.

RECOMMENDATION 27: DSD and those responsible for resource allocation should devote sufficient resources to support a robust data analysis and internal auditing function.

Tracking Deputy Force

To date, the Department has not tracked force used by individual deputies in any systemic way. To its credit, DSD has recently recognized the value of a timely tracking function. As a result of a different data analysis project, the Department learned that deputies had repeatedly Tasered a handcuffed, deaf female inmate with mental health problems during her various stays in jail. During one 75-day period, she was tased a total of 12 times; with nine separate Taser applications in one incident, six of them by the same deputy.¹⁶ Unfortunately, the Department's embryonic effort to track force is severely disadvantaged by the data reliability issue discussed above.

Furthermore, DSD has not sufficiently considered how the force data should be used, how to factor deputy assignments in making force comparisons, and most importantly and challenging, the remedial response when deputies' force use diverges from similarly situated employees. The propriety of each use of force is addressed by internal administrative investigations. The effort to address deputies' force history, however, requires a careful, thoughtful approach. It is not enough to simply note that a deputy has used a disproportionate amount of force – that he or she has hit a “trip wire” or reached an arbitrary “quota.” Rather, if a deputy's force history raises concerns, the Department should develop a carefully tailored remedial program. DSD has work to do in this area to ensure that the response to deputies involved in greater than average numbers of force incidents is intended to address the issue in a holistic, non-punitive way.

¹⁶ As a result of unrelated misconduct, that deputy is no longer employed by DSD.

RECOMMENDATION 28: Prior to launching a deputy force tracking program, DSD should ensure the force data is reliable, that there is an accounting for jail assignment in the analysis, and that the Department is committed to devising a non-punitive remedial action plan that is tailored to address concerning deputy performance.

Jail Video Cameras

Denver's Downtown Detention Center has banks of video cameras that provide comprehensive coverage of jail activity. In contrast, the County Jail has few cameras. We have been informed that current plans call for installation of a number of additional cameras in the County Jail. The cameras in the downtown facility have already proven their worth in assisting with the assessment of the propriety of force used in the jail. In addition, the cameras can and do assist in providing a video record of inmate on inmate assaults, helping supervisors track whether deputies are performing their assigned rounds, evaluating allegations of other personnel misconduct, and providing an evidentiary record that assists in establishing violations of jail rules. We understand that the Department plans to install significantly more video cameras in the County facility and urge that these plans be expedited so that the County Jail can also benefit from a full coverage of cameras.

Until very recently, the short retention time in which video could be retrieved from the cameras was a significant limitation of DSD's video camera system. After approximately 30 days, the video system taped over existing footage, making any retrieval of video beyond that time impossible. We learned of at least one instance where an Internal Affairs investigator was attempting to download video for evidentiary use while the footage was at that moment being taped over. The investigator described watching the footage he wanted to download pixelating away. The Department has been aware of this limitation on retrieving video for quite some time, but it was only brought to public

attention last year by the OIM in a letter to City Council. Recently, the Department of Public Safety announced new policy with regard to the retention of video. The most significant modification requires that Internal Affairs be informed of all use of force incidents that have been captured on camera and that IA then immediately download any footage of the incident. Under the new policy, this information will be retained for at least five years. In addition, the City announced it will hire a video retention specialist to assist IA with the video downloading process.

While the new policy and commitment of additional resources to capturing video is a significant step in the right direction, the new revised policy is dependent on a number of communications effectively happening in a timely way for all force incidents caught on video to be retrieved – deputies must immediately report force, the facility must notify IA, and IA must respond in a timely fashion in order to capture the video. Because this policy has a number of moving parts and new reporting, review, and downloading responsibilities, it should be subject to auditing and review to ensure that it provides an effective mechanism for capturing video of critical incidents.¹⁷

RECOMMENDATION 29: The Department’s internal auditing function should regularly review the Department’s compliance with the new video downloading and retention policy.

Access to Video Camera Footage

As noted above, when a force event is captured on video, the recording can be of immeasurable value in evaluating the force. However, current DSD protocols limit retrieval and viewing of video to the Internal Affairs Bureau and the highest levels of command staff.

¹⁷ As noted above, the OIM first raised this issue to the public’s attention, and will likely follow up on this issue with audits of the effectiveness of the new retention policy. DSD should facilitate these audits.

As a result, the first level supervisors tasked with collecting the preliminary information documenting a force event are prohibited from viewing the video footage of that incident. Instead, a captain or major is supposed to view the video and then compare it with the reports that have been submitted by the involved and witness deputies and the sergeant. The extremely limited access to video events is largely the result of concerns that jail staff may have improperly leaked downloaded recordings to the media.

In our view, the blanket restriction of videos from first level supervisors is an overreaction to the concern about inappropriate transmittal of evidence to unauthorized individuals. Instead of restricting access because of a few potential bad actors, DSD should have focused efforts on making the system more immune from anonymous, inappropriate downloads and identifying and holding accountable any violators of the Department's trust.

RECOMMENDATION 30: Sergeants should be afforded the opportunity to view video evidence so they can adequately conduct an initial force investigation and review.

In addition to being of important evidentiary value for evaluating force and other actions in the jail, the video footage can be a powerful tool for training purposes. In our experience, using actual footage of force events in a training setting provides the potential for a more powerful and impactful message to deputies. However, because of the blanket restriction on access, DSD's trainers have not been able to either access or use actual video incidents of force in a classroom setting.

RECOMMENDATION 31: The Department should develop protocols that would allow its force experts to use video of actual force incidents as teaching tools.

Transparency

Law enforcement organizations have a history and culture of secrecy, confidentiality, and insularity. The development of that longstanding culture can be attributed to the very nature of law enforcement; many law enforcement activities are subject to confidentiality rules designed to protect the privacy rights of those that come into contact with the criminal justice system. In a jail setting, the rights of employees and those housed there not to be subjected to unnecessary intrusions are important considerations that have shaped the way in which those institutions guard information and interact with public requests for transparency.

This tradition of guarded, “need to know” information sharing has also applied internally, to a variety of functions within the organization. Some of this emphasis on confidentiality is, of course, legitimate in terms of protecting investigative integrity and individual privacy rights. However, in many law enforcement organizations, this shroud of secrecy has extended to other functions and decision-making within the organization such as the evaluation, job assignment and promotion process, policy development, and use of force assessment.

Consistent with the “closed society” tradition of law enforcement, the Denver Sheriff Department does not have a long history of making internal information accessible to the community. To its credit, DSD has recently made significant strides to increase its level of transparency, particularly since the recent attention drawn to its activities. As an example, DSD has for the past two years released a substantial annual report that communicates a significant amount of information about jail workings and statistical comparisons to years past with regard to inmate count, inmate stay, and other important information. The annual report also provides information about the various units that comprise DSD and is a helpful primer for its public in that regard. In an effort primarily to promulgate information and feedback from within the organization, the Sheriff has recently engaged more publicly with Department employees, as evidenced by his Sheriff’s Forum interactions. Finally, the City and the Department

have led an open and transparent process with regard to the work and recommendations of the four committees that were tasked to study and develop recommendations in the subjects of policy, training, staff wellbeing, and discipline. This is a welcome approach toward shining light on issues surrounding these topics.

Despite these admirable developments, there still remains a lack of transparency in DSD's use of force in the jails and its internal investigative processes.¹⁸ Important stakeholders such as advocacy groups, civic leaders, and the residents of Denver know and learn little from the Department about use of force cases or allegations of misconduct involving DSD personnel. For example, neither the annual report nor DSD's website has any information about the number of force incidents nor any breakdown or analysis of that data. Similarly, DSD does not promulgate any information about the number or type of misconduct allegations received, the disposition rate or trend analysis. As a result, the Denver community has relied for virtually all of its information about use of force, internal investigations, and accountability from outside sources. With particular regard to the Internal Affairs function, the information vacuum has been filled to some degree by the robust and independent public reporting of the Office of the Independent Monitor. Apart from the OIM however, DSD should recognize it has its own responsibility to communicate with the public about these critical incidents and how the Department is addressing them.

Similarly, our review found that systemic issues surrounding force and misconduct investigations rarely found their way to Department members at large. As a result, use of force and the IA system is shrouded in mystery. Department members have little clue about the workings of the process and the types of cases and misconduct they address. What little information Department members do learn comes largely from the rumor mill and is inaccurate as often as it is correct.

¹⁸ To its credit, in response to media reports, the City has recently publicly reported on its recent achievements in reducing Internal Affairs case timelines.

It is incumbent upon DSD, while balancing the privacy rights of employees and inmates, to continue its recent move toward more transparency and to publicly inform its employees and the people of Denver about the frequency and type of force incidents in the jail and allegations of misconduct, along with the Department's efforts to ensure robust and timely responses to these events.

RECOMMENDATION 32: DSD should use its website and other social media to provide employees, stakeholders, and the public at large with more information about the number and type of force events occurring in the jails, the number and nature of internal investigations, and systemic analysis of this data.

Internal Affairs

Investigating its members and holding them accountable for potential violations of policy, allegations of misconduct, and other transgressions is a key function of any law enforcement agency. Credibility inside the agency – and with the public – depends on it.

In the DSD, as in most agencies, the Internal Affairs Bureau is responsible for investigating complaints and allegations of misconduct by DSD employees, including allegations of unnecessary force, discrimination, harassment, or any conduct that threatens the integrity of the Department. In a December, 2013 report, the Independent Monitor noted that DSD had violated its own policy by failing to refer or have IA investigate 45 of the 54 inmate grievances alleging serious misconduct filed in a two and a half year period from 2011 to 2013. That report contained a number of important recommendations to ensure that inmates have greater access to the grievance system, and that complaints are appropriately routed to Internal Affairs. As DSD implemented those recommendations, and sought to handle the 45 old grievances that had not been properly investigated or reviewed, the caseload at IA grew, contributing to an already existing backlog of overdue cases that was the result of years of

inadequate resources, internal leadership failures, and the lack of an effective system for monitoring investigations.

As concerns about the use of force in the jails and other structural issues within the Department prompted increased public scrutiny of the DSD, the Mayor and Director of Safety sought to address the problem of overdue cases and other concerns regarding IA by hiring a retired Sheriff of an adjacent county to serve as Interim Director of the Internal Affairs Bureau, providing him additional resources, and empowering him to implement reforms within the Bureau. During his short tenure with the Department, the Bureau significantly reduced the backlog of cases and instituted a number of policy and protocol changes aimed at improving the quality of investigations and the efficiency with which they are handled.

It was within this context that we conducted our review of DSD's Internal Affairs Bureau. Because the Department – commendably – was not waiting for this report before moving forward with some important reforms, the IAB we saw as we began our work in November 2014 looked different from the IAB that exists today. Some obvious and glaring deficiencies we saw initially have been addressed. For example, the Bureau now has an established format for its investigative reports that all investigators use, whereas earlier IA reports may or may not have contained certain information and were often disorganized and, as most recently reported by the Auditor, incomplete. Investigative reports also will now contain transcripts of subject employee interviews, at a minimum, thanks to the decision to assign a transcriptionist to IA. The backlog of past-due IA cases has been largely eliminated, and we anticipate that new investigations will be completed within the 90-day goal the Interim Director set.¹⁹ There is a new system for triaging cases that come into IA, to help investigators prioritize their activities. Finally, when we first met IA

¹⁹ Unlike many jurisdictions, there is no statutory deadline for the completion of Internal Affairs cases. As a result, cases were sometimes allowed to languish for years at the Denver Sheriff Department, in defiance of universal principles that case resolution and discipline should be timely, and much to the understandable consternation of the subjects of the tardy investigations.

leaders at the end of 2014, the Bureau still had significant infrastructure problems, ranging from only one interview room to inadequate space and equipment for all investigators. While construction on additional interview rooms is still ongoing, currently all investigators at least have their own desks and cubicle space.

One significant deficiency that is not easily remedied is the lack of meaningful data relating to Internal Affairs investigations. As with the use of force issues we discussed above, the inability to accurately quantify the number and types of misconduct allegations the Department confronts hampers the ability to recognize problems and identify solutions. The Department introduced a new database in 2013 – IA Pro – that has the capacity to gather for analysis a great deal of useful information. Unfortunately, IA personnel had not received sufficient training on how to use the database until this year, so that it is not being utilized to its fullest potential. Investigators were frequently leaving data fields empty, and the Department was not using what information can be gleaned from the database to help improve its operations. We agree with the statement in the Auditor’s recent Performance Audit that highlighted this lost potential: “Without conducting data analysis, IAB has been unable to identify important trends within the discipline and internal investigation process that may have increased efficiency, improved operations, and proactively reduced risk by implementing corrective actions in a timely manner.”²⁰

In response to the Auditor’s report, the Director of Safety noted the steps already underway to improve the quality and consistency of IA data – IA Pro training and a plan to delegate data entry to a limited number of individuals. We are hopeful that the right tool, with the right training, will give Department managers reliable information they can use to more effectively track misconduct, identify trends, and manage investigative caseloads.

Recognizing the advances that have already been made, in the following sections, we set forth our recommendations for ways to

²⁰ Denver Sheriff Department Performance Audit, Office of the Auditor, March 2015, pp.35–36.

improve DSD's processes for investigating and resolving allegations of misconduct by its employees. The purpose of an internal investigative and disciplinary system is not just to punish egregious wrongdoing. Certainly, the Department has an obligation to root out deputies incapable of performing their duties in a lawful and respectful manner. But the vast majority of misconduct cases do not involve the type of conduct that leads to termination. In most cases, when DSD employees violate policy, the Department's goal should be to promote constructive improvement as well as accountability. To accomplish that end, investigations must be initiated and completed quickly, with consistent and proportional outcomes that change future behavior for the better instead of driving a wedge between Department and employee. Though we see many positive recent developments in the quality and timeliness of investigations, there remains room for improvement in the Department's efforts to resolve matters efficiently and constructively.

Management and Staffing

The Internal Affairs Bureau is currently staffed with six DSD sergeants and four senior investigators²¹ who recently were hired from outside the Department. This represents a significant increase in the number of personnel assigned to the Bureau, up from seven investigators a year ago. Collectively, they report to a Captain, who reports directly to the Sheriff. Law enforcement agencies typically staff their Internal Affairs units with officers who have significant investigative experience. The Denver Police Department, for example, assigns officers to IA from its Detectives, Domestic Violence, or Narcotics branches. Because the DSD has no patrol functions and its deputies are not certified peace officers with the authority to investigate crimes, there are no such assignments within the Department. As a result, there is no pool of sergeants with proven investigative skills from which IA can draw.

Our comments regarding the dearth of proven investigative skills are directed not at the IA staff members we met, whom we found to be

²¹ The hiring process for a fifth senior investigator is underway.

smart and talented. Instead, we mean to point out the organizational limitations of DSD. The Interim Director recognized fairly quickly last fall that training and mentorship could not provide the type of expertise that years of working as a detective bring, and sought and obtained Denver's approval to hire a cadre of retired law enforcement officials from other agencies to work with the existing IA sergeants. These "senior investigators" were hired in the fall of 2014 on a contract basis and have recently been retained as permanent Denver employees. They brought with them decades of relevant experience from their respective agencies.

Initially, each senior investigator was paired with a DSD sergeant so they could teach each other – the senior investigators had much to learn about the workings of the DSD, and the IA sergeants benefitted from the insights of the experienced detectives. The teams recently have been separated, with each investigator carrying his or her own caseload.

We strongly support the Department's use of outside investigators to staff Internal Affairs. In addition to filling the gap in investigative expertise created by DSD's organizational structure, having individuals from outside the Department's hierarchy as part of the IA mission brings other benefits. Internal Affairs investigations are sensitive, and sometimes involve higher ranking officials accused of misconduct. It can be unfair to burden a sergeant with the duty to conduct a thorough investigation of those matters. The DSD sergeant likely has an interest in promotion or at least one day moving on to other assignments, and may therefore either succumb to subtle pressure to go easy in a sensitive interview, or may later feel like he was retaliated against in movement or promotional decisions because he too rigorously pursued a matter. A senior investigator has no promotional opportunities and is therefore relatively immune from these types of influences. We have seen other agencies successfully use retired detectives to staff their Internal Affairs units and have no reason to believe the hybrid model will not continue to work well in DSD.

RECOMMENDATION 33: The City/County should maintain its commitment to staffing Internal Affairs, at least in part, with senior investigators hired from outside the Department to bring necessary investigative expertise to the Bureau and to help insulate investigators from internal pressures.

Selection Process

Because of the lack of personnel with proven investigative skills, the selection process for assignment to IA has been a mystery. Current or former IA investigators repeatedly told us about how they were working as a sergeant in another position and had no inkling they were being considered for an IA assignment, but simply received a call or summons from DSD command staff informing them to report for their new IA assignment the next day. There is no application process for the position nor any formal way to express interest in the assignment. The process is arbitrary and without any fixed guidelines. We were also informed that unit commanders of IA had relatively little influence regarding the sergeants who were selected for the unit. At the same time, and to DSD's credit, experience at IA seems to be a path to promotion.

Particularly because an IA assignment can serve as a stepping stone toward future desirable assignments, the selection process should not be shrouded in secrecy. The Department should develop written protocols and an application process. Disqualifiers such as being the subject of a pending IA investigation or having significant and/or recent disciplinary history should also be set out in writing. The unit commander should interview qualified candidates, and the Department should consider developing an evaluative test as part of the process. If the application process produces a paucity of qualified candidates, the unit commander should retain the authority to solicit sergeants for the position. The IA assignment should continue to be a

coveted assignment within the organization with an open and transparent selection process.

RECOMMENDATION 34: The Department should regularize the application and selection process for IA investigators so that the process is more transparent.

RECOMMENDATION 35: The Department should develop a set of guidelines stating the general qualities necessary to be an IA investigator as well as those traits that would disqualify a sergeant from assignment to IA.

RECOMMENDATION 36: The Department should give deference to the IA unit commander to choose for IA assignment the most capable sergeants within DSD.

Training

The IA investigators we met described the training they received when first assigned to the Bureau as “on the job training,” or “learn as you go” – basically arriving at the unit and being handed a stack of cases to work. The formal training the Bureau generally provided consisted of attending a class that is supposed to help investigators determine through observation of body language in an interview whether a person is telling the truth. The other class that investigators were sent to consisted of developing interview techniques designed to extract the truth from interviewees.

Particularly in an organization that does not have deputies with any history of investigative assignments, this training was largely inapplicable and woefully inadequate. The Department recognizes

this deficiency and is in the process of implementing some basic training curricula for new IA investigators that includes training in IA Pro, report writing, interviews and interrogation, and leadership skills.

The new requirement is a step in the right direction, but not a basis for complacency. The training that investigative sergeants need but still do not receive involves subject matters such as interviewing techniques designed to avoid the use of leading questions and the complexities added to the interview when an employee representative is present at an interview. A more sustained search for relevant training and/or a greater effort to design in-house training would assist in the development of the critical skill sets for sergeants beginning their IA assignments.

RECOMMENDATION 37: The Department should develop a written policy setting forth a minimum amount of training a new IA investigator must receive at the beginning of his or her assignment. This training should include instruction more closely tailored and relevant to the unique functions of Internal Affairs.

Command Structure

IAB has had a number of leadership changes in the past year. It was once commanded by a Major, and also had an assigned Captain. The Major was moved to another assignment in early 2014 and was never replaced. In the middle of 2014, the Captain was removed from his assignment and for two months, a Sergeant became the acting unit commander before the Interim Director arrived in the fall. The Interim Director left at the end of February 2015, and a Captain now is the head of the Bureau.

We are optimistic that IAB has been re-stabilized following the disruption of the past year. However, we have concerns about the propriety of IA being commanded by the rank of captain. In DSD,

captains are members of the same bargaining unit as deputies. This creates a potential conflict, in that those being investigated most often are represented by the same entity that represents the individual directly responsible for the investigation. Ideally, there should be a rank between the sergeants who do the investigative work and the commander of the unit to directly supervise the sergeants, and to give sergeants a buffer between them and the unit commander to raise their concerns. Moreover, as noted elsewhere, having only one supervisor Captain at Internal Affairs to review sergeant investigations and serve as basic quality control for the work is insufficient considering the current case load. Accordingly, we recommend the Department re-assign a Major to serve as the commander of IAB.

RECOMMENDATION 38: The Department should assign a Major to oversee the Internal Affairs Bureau.

Case Intake and Referral

IAB is tasked with investigating complaints against DSD personnel (made by inmates, other members of the public, or DSD staff), any alleged violations of law, or other allegations of misconduct, committed either on or off duty. Incidents can become IA cases in several different ways. Inmate complaints go directly to IA. Likewise, the Office of Independent Monitor refers to IA all complaints it receives. Other incidents are referred for investigation by Department Chiefs who learn of alleged misconduct. For example, if there is a force incident in a jail facility and the Chief learns that the involved deputy's reported actions are inconsistent with the video recording of the event, he or she likely will refer the matter to IA.

Criteria for Internal Affairs Investigations

IA is responsible for the initial screening of all complaints the Department receives, either directly or through the OIM. After an initial review, the Captain of IA determines whether a complaint

warrants a “formal” investigation conducted by his unit because it alleges misconduct that could lead to discipline and therefore must be fully investigated. “Informal” complaints are those that, even if true, do not allege a policy violation worthy of discipline. IA returns informal complaints to the facility from which they originated to be investigated by division staff. Besides these two possibilities, complaints may also be deemed “resolved” if they involved a request that already had been satisfied by the time the complaint reached IA – such as a request to see a medical professional framed as a complaint that the inmate has had to wait too long without care. Finally, complaints can be “declined” if initial review of the complaint reveals the facts alleged could not possibly be true.

Unfortunately, the Department lacks clear written guidelines on which matters IA will investigate and, as importantly, those that should be handled in other ways. The Internal Affairs Procedures manual lists those matters that IA must investigate as formal complaints: “all cases that would constitute a law violation, unnecessary/excessive force, sexual harassment, racial or ethnic intimidation, improper conduct and improper procedure or a breach of integrity or circumstances where the allegation(s) may require an in-depth investigation.”²² This may seem, on its face, a comprehensive list, but it is flawed, particularly with regard to use of force cases, in its almost complete reliance on a complaint as the initiating event. For example, if an inmate files a grievance alleging that a deputy used excessive force, it is clear that the matter will be deemed a “formal” complaint and be investigated by IA. Absent an inmate’s complaint, however, IA investigates a deputy’s use of force only when DSD command staff refers a matter to the unit; most frequently when a supervisor identifies a potential discrepancy between deputy reporting and an event captured on video.

For example, in one IA case we reviewed, a deputy received a 10-day suspension for using inappropriate force after the involved inmate filed a grievance regarding the incident. The deputy had reported the use of force, the sergeant reviewing it concluded the force was

²² IAB Procedures, Revised May 2013, 301.1, Formal Complaints.

appropriate, and jail command staff had signed off on the sergeant's conclusion.²³ Had the inmate not filed a complaint, triggering an IA investigation, the Department would have taken no further action. As we discuss in greater detail above, a law enforcement agency must scrupulously review its own uses of force and hold its officers accountable for violating the agency's standards. It should do so on its own initiative, and not just when someone outside the agency raises a complaint. Some agencies have certain categories of force or force outcomes – hospitalizations, chokeholds, or broken bones, for example – that trigger an automatic IA review by virtue of their seriousness, even if there is no apparent misconduct involved. In the DSD, these cases might sometimes – even usually – be referred to IA. Absent clear, written criteria, however, it is impossible to know with any confidence that the right cases are being subjected to this higher level review.

RECOMMENDATION 39: DSD should develop criteria that require certain categories of force or force outcomes to trigger an automatic review by Internal Affairs.

The same is true for cases other than those involving the use of force. There are no clear guidelines for when a Chief should direct to IA a misconduct allegation that did not originate as a complaint, or what other information will be forwarded to IA. If a deputy is suspected of fraternizing or developing too close a relationship with an inmate, should that warrant a referral to IA? If a deputy is arrested in connection with an off-duty bar fight, will the Department learn about that arrest?²⁴ These are the types of questions that a

²³ As we noted above, sergeants and command staff often assess uses of force and make judgments regarding its appropriateness based on incomplete and limited information.

²⁴ Department policy requires deputies to report to IA any off-duty contacts with law enforcement, but it is not clear how or if this requirement is enforced or to what degree deputies comply with the mandate.

comprehensive policy setting out the criteria for IA cases should more clearly answer.

At the same time, guidelines need to speak to the issue of which types of cases IA should not automatically handle. When the public and media scrutiny of the Department intensified in 2014, one reaction by Majors and Chiefs was to send even the most minor inmate grievances and other infractions to IA for review. Of the 25 IA investigations we originally asked to review, seven (nearly 30 percent) involved deputies who took unauthorized time off, by, for example, improper coding on a timecard, reporting late to work, or in one case, calling in sick for a day when the deputy was literally minutes shy of having a full day of leave remaining. We do not diminish the importance of an agency's need to closely regulate timekeeping issues and potential fraud, but do question the need to have these straightforward administrative matters handled by the Internal Affairs Bureau. While none of these cases was particularly time-consuming for the assigned IA investigator, they likely could have been handled more expeditiously in a less formal way. The same is true for some other cases we reviewed, such as a preventable traffic collision and the failure to complete a quarterly qualification with a Department-authorized firearm.

RECOMMENDATION 40: The Department should develop a comprehensive and detailed set of guidelines for which categories of allegations commanding officers must refer to Internal Affairs as well as which should be handled in a less formal way.

Informal Investigations

For those matters deemed informal complaints and returned to a facility for investigation, IA nonetheless will create case numbers and will track their progress and outcome. After the complaint has been investigated and reviewed, the division is required to return the case

to IA, where the Captain will review the facility's handling of the matter and determine whether it has been investigated properly. If not, he will again return the case with instructions for further work. Otherwise, he will send the case on to the OIM to begin the process of review and disposition.

Having a mechanism for returning some matters to be handled at the facility or division level is important to the efficient functioning of the organization. For reasons that go beyond the unnecessary drain of IA resources, not every complaint or suspicion of wrongdoing needs to be investigated by Internal Affairs, either because it is a minor or procedural violation, or an administrative issue best addressed outside of the disciplinary system. How well the Department differentiates between those matters that should be handled by IA and what should be returned as an informal complaint is a judgment that is difficult to make because, again, we were frustrated here by the Department's lack of reliable data.

Nonetheless, the requirement that informal complaints be completed quickly and returned to IA is an important check of the division-level investigation and review process, to ensure that facilities are taking seriously their responsibility to investigate complaints in a timely and thorough way. Likewise, it is critical that the OIM monitors informal complaints sufficiently to provide confidence that IA is appropriately categorizing complaints as "informal" and that division leaders are handling them properly.

We found two main issues of concern in our review of the process for handling informal complaints: 1) There is a lack of standards and training for those at the facilities designated to handle informal complaints; and 2) Internal Affairs needs a formal system for tracking overdue complaints and following up with facilities that have fallen short.

Generally, it is a sergeant's role to conduct facility-level investigations of informal complaints. Because deputies are not called upon to conduct investigations in the normal course of their duties (as we discuss more fully above), there is no base of investigative experience or expertise among these sergeants. While an informal complaint, by

its nature, should be simple and straightforward, it takes some basic skills to thoroughly examine. In addition, because these inquiries may divulge potential misconduct committed by fellow Department members, they have to be handled with a sensitivity that may not come automatically to every first level supervisor. Sergeants should be trained both to provide them with the necessary background knowledge they need and to allow IA and the division to feel confident that these cases are being assigned to the right people.

RECOMMENDATION 41: Internal Affairs should coordinate training sessions with division staff that will be responsible for investigating and reviewing informal complaints to make clear the Department's expectations and to instruct on the basic skills necessary to meet those expectations. Only personnel who have completed this training should be eligible to complete informal investigations.

In 2014, Internal Affairs discovered over 100 informal complaints that had been languishing at the division level well past the 180-day deadline set by Department policy, and then learned that these investigations had been incorrectly assigned, so that some did not even know they were supposed to be working on them and they were essentially lost in the system. While the Department is working to remedy this particular situation, a systemic fix is required to prevent a recurrence. IA should develop and regularly monitor a tracking system for informal investigations so that it knows to whom a particular complaint has been assigned and when it is due to be completed and returned to IA.

RECOMMENDATION 42: IA should create and maintain a system for tracking informal complaints, to include information about where the case is assigned and an alert when cases become overdue. It should be clear who at IA is responsible for maintaining this system and following up on delinquencies.

Diverting Cases from Internal Affairs

Many of the IA cases we reviewed involved relatively low-level offenses, such as traffic collisions and unauthorized leave. Others involved disputes between co-workers. Some involved offenses that, while serious, were undisputedly committed. The Department should consider alternative ways to handle each of these three types of cases.

The Department currently gives personnel involved in workplace disputes the option of resolving the matter through a County-supported mediation program. The program is voluntary, and both sides must agree to mediate. When it works correctly, and everyone involved makes an honest effort to address the conflict, mediation can be a better tool for resolving workplace disputes involving personality conflicts or misunderstandings caused by poor communication than the IA investigation and disciplinary process. Unfortunately, while we do not have any reliable statistics, it was reported to us anecdotally that deputies confronting these types of workplace disputes seldom use the County's mediation program. The Department clearly cannot force its personnel into mediation, but should examine ways to more effectively encourage people to participate. Diverting these cases not only would conserve IA's resources but also would facilitate communication between distressed colleagues and ideally improve working environments. To the extent these workplace equity cases do need to be fully investigated, IA is currently working with the Office of Human Resources to have the investigations completed by an individual who specializes in such interpersonal employee issues.

RECOMMENDATION 43: The Department should develop ways to encourage its personnel to choose to utilize the County-supported mediation program to resolve complaints involving workplace disputes.

The Department should explore alternatives for handling other types of cases currently being routed to IA as well. The numerous unauthorized leave cases we reviewed are the clearest example of low-

level cases that could be handled outside of the regular investigation and discipline process. The proof in those cases is straightforward and generally beyond dispute. Discipline may very well be warranted but need not take an investigation routed through a multi-step disciplinary process to impose. Rather, these cases potentially could be resolved through an agreement reached with the employee prior to commencing an investigation.

Other agencies we have worked with have effectively used pre-investigative resolutions in some very straightforward minor misconduct cases. The key to their success is in ensuring that potentially significant transgressions are not inappropriately handled through this process and that there is consistency among outcomes in harmony with the Department's disciplinary matrix. Deputies with similar disciplinary histories who call in sick so that they can go skiing should receive the same punishment whether they are assigned to the Downtown Detention Center or work at the Court. Therefore, the decision about which kinds of cases could qualify for this treatment should be reduced to writing and developed after input from the OIM and the Conduct Review Office (CRO). Moreover, the decision about whether to offer a pre-investigative resolution should be reached only after people who have an eye on the entire system – the OIM and the CRO, for example – have thoroughly reviewed it.

Other potentially more significant cases could likewise be resolved through a pre-investigative disposition mechanism if the facts are certain and the employee has indicated acceptance of responsibility. In one case we reviewed, for example, a deputy left her post to assist another deputy, leaving an inmate unattended. The incident was clearly captured on video and the deputy freely admitted her error, expressing remorse and acknowledging her mistake at the same time she offered a plausible explanation for her actions. She was interviewed by IA, as were other deputies tangentially involved. IA prepared a complete investigative packet, and the case went to a pre-disciplinary meeting and, ultimately, to the imposition of suspension days by the Executive Director of Safety just over eight months after the incident. While it is impossible to know for certain, the acceptance of responsibility the deputy displayed during her interview

suggests that she would have been amenable to quickly putting the whole incident behind her in the days after it occurred by consenting to a suspension rather than all involved having to go through a lengthy and time consuming process to reach the same outcome.

Our recommendation regarding a pre-investigative resolution mechanism is not simply an effort to divert work from Internal Affairs, though it may have that ameliorative result. Rather, our experience tells us that the most effective discipline comes very soon after the conduct at issue, and is tailored to the offending deputy and his or her offense. The standard discipline process generally has no alternatives beyond verbal or written reprimands, suspension days, or termination. In negotiating an agreement, however, the Department has other options. For example, a deputy who is rude to a visitor coming to see a loved one at the jail could be asked to deliver an apology to the aggrieved visitor, an exercise that is more likely to be meaningful to both the deputy and the visitor than would be a suspension day. Or a deputy who fails to perform required security checks in the jail could be required to deliver a briefing to fellow deputies on the importance of making all the required rounds.

Such a pre-investigative disposition mechanism needs to be implemented carefully and thoughtfully, with sufficient checks and balances built into the process to prevent favoritism, inconsistency, and the possibility that cases are resolved too hastily and without a full understanding of all the underlying facts. Certain categories of offenses – use of force and dishonesty, for example – should not be eligible for pre-investigative disposition. In the DSD, the structure for these checks and balances already exists in the OIM and the CRO. Requiring these entities to sign off on any proposed resolution before it is formally offered to the employee will do much to ensure the integrity of the system.

RECOMMENDATION 44: The Department should develop a streamlined mechanism for resolving straightforward cases with undisputed facts.

Referral Process

As with the need for clarity as to *what* should go to IA, there is also a need for the Department to more clearly state *how* it should get there. Complaints forwarded from the OIM and inmate grievances have their own paper trail, but cases referred from the division are generally sent via phone call or email. Many agencies have some type of “Request of Internal Affairs Investigation” form containing some minimal amount of information the referring party must provide to IA in order to begin an investigation.²⁵ This requirement has several benefits. It gives IA a concrete start to its investigation and forces the facility or division to gather and document some basic facts and background information. It also provides a mechanism by which the IA Captain can better evaluate whether the matter belongs at IA or would more appropriately be handled at the division level or through some diversionary process.

RECOMMENDATION 45: The Department should develop a formal process for division staff to request Internal Affairs to initiate an investigation that should require the division to provide some basic background information regarding the referral.

Investigations

Timeliness

As noted above, unlike many jurisdictions, Denver does not have a statute setting a limitations period on disciplinary actions against peace officers. As a result, there is no external deadline on when an investigation must be completed or discipline imposed. Nonetheless,

²⁵ For example, in a force case we reviewed, it was only at the end of the process when OIM was reviewing the case and at their urging when the initial deputy reports of the incident were collected and added to the investigation. That type of information should be provided to IA investigators at the outset of an investigation.

the Department's policy recognizes the importance of completing timely investigations, both for the integrity of the disciplinary process and the well being of the employee who should not have the threat of suspension or termination hanging over his or her head for an extended time. The IAB Procedures Manual requires all complaint investigations to be completed within 180 days. According to the Independent Monitor's 2014 and 2013 Annual Reports, the Department is adhering to this mandate, on average, with the median case processing time in 2014 reported to be 145 days, up from 78 days in 2013. The averages may indicate compliance, but anecdotally, we heard about cases languishing months and years with no work being done toward completion as investigators got overburdened and fell behind on their cases. For example, one case had been open for 30 months, and the subject had not even been made aware of the allegations until 18 months after it had been opened.

These sorts of delays undermine the purpose of a disciplinary system – to maintain the integrity of the agency while holding people accountable for their actions. They likewise erode the public's trust in the Department's ability to police itself and weaken deputies' confidence in their leaders. When an agency imposes discipline years after an incident, it leaves one to question how seriously the agency takes the misconduct and diminishes the importance of the disciplinary action, in that the lessons that should be learned from the incident have long since faded in memories.

Currently, IA is operating at a much more efficient level than it had been. It is fully staffed and is largely caught up on its caseload. In contrast and in marked improvement to the 180 day guideline in the IAB Procedures Manual, new internal guidelines establish a triage system where the most straightforward cases are to be completed within 30 days, investigators have 60 days to complete a somewhat more complicated case, and the most complex cases are to be done in 90 days. We are hopeful that the Bureau will maintain its commitment to these internal deadlines, and that the Department will continue to provide the resources it needs to do so. As we discuss further below, one effective way that DSD can hold its own feet to the fire regarding

this commitment is to regularly report to the public on its case completion rate.

Investigative Reports

Many of the investigative reports we reviewed were inconsistent, disorganized, and lacked some basic information we expect to see in a comprehensive report, such as photographs and summaries written by the investigator. The Interim Director noted the same deficiencies when he started work last fall, and the Bureau has recently adopted a standard format for its investigative case books. The new format will help IA produce a consistent work product that will make it easier for reviewers to evaluate the case and make determinations and findings. As importantly, it will be a quality control tool for IA staff, triggering investigators to include key information and making it easier to assess the sufficiency and thoroughness of the content.

The evidence developed in the cases we reviewed was generally sufficient to answer the basic question posed by the complaint – whether the allegations can be sustained. We nonetheless found numerous examples where the investigations could have been more thorough. In some cases, we found that additional or more probing interview questions would have made the investigation more complete, better able to support the ultimate finding, and easier to defend on appeal. In others, we found that investigations could have been more broadly scoped, to address not just the narrow question presented by the allegation but also the peripheral issues that can sometimes have great importance. For example, in one use of force case we reviewed, the investigation and the review by the CRO focused almost exclusively on the deputy's actions at the time he used force. Our review of the video and documentation, however, raised significant questions about why the deputy ever put himself in the position to confront the inmate. A more thorough interview of the deputy would have addressed these questions.

Internal Review Process and Case Flow

Establishing a standard reporting format will bring consistency and hopefully will eliminate some of the notable missing pieces from

investigations. With additional resources to IA and the change in staffing model discussed below, it is fair to anticipate that the quality of investigations will improve along with the timeliness of their completion. We also learned of a new peer review process, where non-involved investigators review the completed file to ensure the report meets the new investigative protocol requirements. Nonetheless, to address questions regarding thoroughness, objectivity, and scoping of investigations, the Bureau should consider staffing IA in a way that will allow substantive review of investigators' work by a higher ranking officer who can address these issues in an authoritative way with the investigator. Currently, all investigations are routed through the Captain, who is also the commander of the Bureau, responsible for personnel and numerous other issues. While he no doubt reviews each investigative case book that crosses his desk, it may be unrealistic to expect him to critically review each one before it is completed and sent on to the OIM. At other agencies we have reviewed, this work is typically done by a lieutenant, a rank missing from the DSD hierarchy. Until last year, the Internal Affairs Bureau was headed by a Major. The Department took that position from IA last year and has not replaced it, causing a significant dearth of command level supervision. Replacing the Major position that was taken from IA to help review cases could be a solution to this case review deficit.

Last fall, prior to significant changes to IA made when the Interim Director began work, the OIM returned a high percentage of DSD cases to IAB for further work or investigation. More importantly, the DSD investigations were often returned because the most basic of information was not included in the investigation, such as prior deputy reports or photographs. While it is certainly appropriate for the Monitor to return cases that are not complete or comprehensive, a high rate of incomplete cases signals a problem within DSD. IA staff should be catching the basic types of deficiencies identified by the OIM prior to the case being released for review. This would result in greater efficiency and free up the OIM to review the investigations' more subtle issues.

RECOMMENDATION 46: DSD should consider enhancing the supervisory structure at IAB to assist the Captain in ensuring a meaningful, critical review of investigative case books by someone at a higher rank than the investigating sergeants.

Video Review

Many incidents occurring at the DDC are captured on video. IA investigators have access to these recordings at their offices, located miles away from the downtown facility, and can view and download video for use in their investigations without having to leave the building. Currently, there are fewer cameras at the County Jail, so incidents at that facility are less likely to be recorded. When they are, however, the IA investigator assigned to the case must travel to the jail and sit, often for hours, in the facility's main control center to view and download video, often from multiple cameras. This is not just inconvenient and an inefficient use of a sergeant's time, it potentially compromises sensitive investigations because the control center necessarily remains staffed by civilian employees throughout the time the IA investigator is reviewing the video. The situation is worse when an incident allegedly occurs in the kitchen areas. Then the investigator is required to sit in the kitchen steward's office to view and download video from a computer located there.

We understand that reconfiguring camera and computer systems is seldom a simple or inexpensive venture. Nonetheless, we recommend that the Department find a way to remedy this situation to provide investigators with easier, more secure access to video recorded at the County Jail, particularly as the Department expands its video capability at that facility.

RECOMMENDATION 47: The DSD should ensure that IA investigators have easier, more secure access to video recorded at the County Jail, particularly when it expands video capability at that facility.

Because many incidents are captured on video, IA investigators frequently refer to video recordings during the course of their interviews with subject or witness deputies or other staff. In the cases we reviewed, investigators often used the video effectively, to clarify deputies' written reports, further illuminate or add details to a deputy's recollection of an incident, or confront him or her on inconsistencies between their written or verbal account and the video evidence. However, we found little consistency in the way in which the video was introduced or how and when it was shown to interviewees.

In our work with other agencies, we have found the best practice is to question the deputy first, to get his or her purest recollection of the incident, then to read a standard statement that sets forth the agency's position on video and reminds the interviewee that the recording captures just one view of the incident that may be different from the one he or she had and that human memory functions differently than a video camera. The interviewer should then play the video in its entirety before asking any questions or providing the opportunity to view any portion of it again. Some DSD IAB investigators employ a similar practice when showing video during an interview. However, there is no written protocol governing how and when video should be introduced. The resulting inconsistency diminishes the value of the video evidence and creates uncertainty for subject and witness deputies.

RECOMMENDATION 48: IAB should implement a policy that will bring consistency to the way investigators use video during interviews. The policy should require the witness or employee to give a statement about the incident prior to viewing the video.

Distinguishing Between Interviews and Interrogations

The IAB Procedures Manual distinguishes between interviews and interrogations. Interviews are defined as processes by which an investigator seeks, obtains and evaluates information given “willingly” while interrogations involve seeking to obtain information from an individual “unwilling” to provide such information. While the dictionary definition defines “interrogation” as thorough questioning, often in a more aggressive manner than the standard interview, the distinction has significant implications for IA investigators because the IAB Procedures Manual requires approval of the Bureau Commander before interviewers can employ “interrogation techniques.”

This requirement for supervisor approval apparently derived from a complaint that an IA investigator was questioning a subject employee too severely and determinedly about a matter when the subject was being evasive and not answering the questions posed to him. The subject employee complained about the investigator’s manner during the interview, and DSD leadership determined that IA investigators needed to be cabined and seek supervisor approval before they could use interrogation techniques during an interview.

This approval provision presumably comes from a legitimate concern about employee rights. However, it could easily result in a lack of rigor that pushes the dynamic too far in the other direction. The task of interviewing fellow employees is difficult enough for internal investigators without having to worry about possibly violating a policy by asking hard but important questions, or by conducting necessary follow-up when the subject employee does not directly answer the question or is otherwise being evasive.

The provision is also unnecessary. Certainly, as set out elsewhere in the Manual, investigators should be professional and courteous and should not deploy threatening, belittling, or other abusive conduct. We have seen no evidence of anything approaching such conduct in our review of IA interviews. In addition, the right to have a representative present affords subject employees additional protections from inappropriate tactics by investigators.

To his credit, when the Interim Director assumed command of IA, he advised the investigators they did not need to seek his approval to employ “interrogation techniques” on individual cases but had pre-approval to proceed on all interviews as they saw appropriate. While this approach limited the potential harm of the provision, the Interim Director has now left and future IA commanders may revert to a more literal reading. To avoid that potential, the provision should be removed from the Manual.

RECOMMENDATION 49: The requirement that investigators need Bureau commander approval before engaging in “interrogation techniques” should be removed from the IA Procedures Manual.

IAB “Roll Out” Functions

The current IA Procedures Manual notes that sergeants and command staff assigned to the unit must be on call 24 hours a day, seven days a week for any necessary immediate response. As with other agencies, IA is expected to respond to critical incidents such as suicides, homicides, and force events involving hospitalization. IA supervisors informed us that they have an internal understanding of events that they should immediately respond to, but that guidance is not set out in the IA Procedures Manual. Many law enforcement agencies provide written categories of events for which IAB should be called so that there is more uniform understanding on when the watch commander should call IA and when they should respond to an event. We were informed that, in part because of a lack of understanding about when IAB should be called, there have been times when the Bureau was not informed about events that should have triggered an immediate response until hours or sometimes days after the event. In order to help avoid future misunderstandings, the categories of events should be set out with specificity in the IA Procedures Manual and

promulgated to DSD supervisors at the units who are responsible for making notification.

RECOMMENDATION 50: DSD should include in its IA Procedures Manual the types of events that IA is expected to immediately respond to and ensure that supervisors responsible for making notification to IA are aware of their responsibilities.

Description of Incident Prior to IA Interviews

The IA Procedures Manual instructs investigators that DSD employees should be allowed to read the “incident description” of the matter under investigation prior to being interviewed by IA, but it is unclear what “incident description” is intended to mean. While witness and subject employees should be provided some basic information about the subject matter of the investigation, it should be a brief statement that avoids any information about the complainant’s or other witnesses’ version of the incident, a narrative of what the video of the incident depicts, or information identifying the complainant or witnesses. Providing any more than a brief description may color, taint, or allow the interviewee to either consciously or subconsciously shape his or her responses.

RECOMMENDATION 51: The IA Procedures Manual should clarify the meaning of “incident statement” and inform investigators that interviewees should be provided only with a brief description of the nature of the matter under investigation.

Prison Rape Elimination Act Guidelines

The Prison Rape Elimination Act is federal legislation designed to promote practices intended to reduce the likelihood of persons in custody being subjected to sexual assault or battery. The legislation resulted in the promulgation of guidelines intended to ensure that allegations of sexual assault are timely and objectively investigated.

Over the past few years, Denver has struggled with efforts to comply with the letter and the spirit of the federal legislation. As noted elsewhere, because DSD deputies do not have the ability to investigate criminal matters, the protocol has been to call the Denver Police Department (DPD) to respond to and investigate all PREA allegations. During the course of our interviews, we heard repeatedly about the uncertainty and inconsistency associated with this referral process. Apparently, sometimes jail personnel call a DPD patrol station and a patrol officer responds to the jails to investigate the complaint. Some jail personnel call DSD Internal Affairs for guidance. More recently, jail personnel have been advised to contact DPD Internal Affairs, which has resulted in more consistency to the referral and response system. However, in part because of the wide-ranging nature of PREA allegations – from inappropriate body searches to sexually-charged offensive comments to outright sexual assault – Denver has yet to develop an effective and efficient protocol on how these allegations are best handled. The Policy and Procedure Committee recognized as much when one of their featured recommendations was to form a PREA task force to establish investigatory protocols, determine training needs, and establish curriculum. We agree that more needs to be done in this area.

RECOMMENDATION 52: DSD and outside stakeholders need to continue to meet and develop PREA protocols that are effective, efficient, and responsive to the goals of the federal legislation.

IAB Procedures Manual

Internal Affairs has a Procedures Manual that is intended as a “how to” for IA investigators with regard to matters such as investigation formatting; the varying responsibilities of Bureau members, including supervisors; and how investigations are processed through the unit. Because the Manual was last updated in May 2013, many of the reforms described above, including case formatting and the new internal timelines, are not reflected in the Manual. Other provisions are also out of date such as the failure to reference the role of the Conduct Review Office in the Manual. Procedural Manuals must reflect the current procedures of any unit. When they are out of date, they create the possibility of confusion or unreliability as a Department resource. The IA Procedures Manual should be revised and updated as soon as possible. Going forward, DSD should ensure that any changes to the unit’s procedures and practices are reflected in the Manual.

RECOMMENDATION 53: DSD should revise and update its IAB Procedures Manual and ensure that future changes to the unit’s procedures and practices are incorporated in a timely manner.

Retaining Use of Force and Internal Affairs Investigations

DSD current policy provides for various levels of retention for records that largely tracks Denver’s retention policy. However, at least for records involving investigations and reviews of use of force events and Internal Affairs investigations, we recommend a modification of current retention policies. When a deputy uses force, that incident should be subjected to rigorous scrutiny and potential remedial action ranging from discipline, training, and counseling. The same is true when a deputy becomes the subject of an IA investigation. Even in cases in which the ultimate finding is that the actions did not indicate a violation of policy, the frequency and type of allegations can end up

demonstrating a pattern of conduct (or not) worthy of additional intervention. If records that could be used to develop that pattern are purged, the law enforcement agency is hampered in fully identifying patterns and trends. The theory behind deputy intervention systems is that when deputies have force or discipline histories that are markedly different than similarly situated peers, some type of further study and potential action is required. If records that could help in that further inquiry are no longer available, the Department limits its ability to conduct such a study.

For that reason, many law enforcement agencies permanently retain any use of force and Internal Affairs investigations. We recommend that DSD retain such records at least during the law enforcement career of any deputy who is the subject of these internal investigations.

RECOMMENDATION 54: DSD should retain all use of force and Internal Affairs investigations indefinitely, or at least during the law enforcement career of the subject deputy.

Transparency

The past year has provided DSD ample reminders of the public's interest in the operation of the jails and its concern about potential misconduct by Department members. As Internal Affairs moves forward with implementing reform, it should consider ways to provide the public with information about its process and case load. The OIM's regular reports provide a good window into Department misconduct allegations and outcomes, but the Department should consider directly communicating with the community through its own public reports. We are not suggesting the Bureau divulge details of its investigations, but more general information regarding its procedures and statistical information regarding the types of cases it handles and their outcomes. Some agencies we have reviewed, for

example, make public a quarterly discipline report providing some rudimentary case summaries for all cases closed in the prior quarter. Making this type of information available on the DSD website would help bolster the public's confidence in the Department's ability to police itself. In addition, particularly given recent concerns and media coverage regarding IA's backlogs, the Department should publicly report on the length of its internal investigations and the degree to which it is complying with its internal deadlines.

RECOMMENDATION 55: Internal Affairs should make public some type of report containing general information regarding its processes, caseload, disciplinary outcomes, and the degree to which it is complying with its internal deadlines for completing investigations in an effort to become more transparent to the public.

Office of Independent Monitor

For years, the Office of the Independent Monitor has been a meaningful player in providing oversight and ensuring principled investigations and accountability for both the Police and Sheriff Departments in Denver. More recently, as a result of issues it has identified through its public reporting, the OIM has been a catalyst for the recent attention and concern surrounding the Sheriff Department. The outside and independent perspective provided by the OIM is law enforcement oversight in its best tradition. To the degree that the people of Denver believe that local governmental entities have the capacity to correct issues identified by the Monitor, the community's confidence is buttressed by the expectation that the OIM will continue to be part of any solution to the issues it has often identified.

Considering the benefits that OIM's meaningful independent oversight continues to provide to the residents of Denver, it is surprising that any have questioned the access and breadth of the Monitor's

responsibilities or attempted to interpret its authority narrowly. While the City Council should be commended for recently expanding that access and breadth, as well as allocating additional resources for it to better fulfill its mission, we recommend that OIM's responsibilities be read broadly and that its involvement be actively sought out by the law enforcement entities it is entrusted to oversee.²⁶

It is axiomatic that in order for oversight to be effective, the monitoring entity must have unfettered access to any documents and records that it requests to review. Moreover, in addition to its case specific involvement in investigations and the disciplinary process, the Department should solicit OIM's perspective on systemic issues impacting deputy performance. When the Department reforms policies, particularly those undertaken in response to issues identified by the OIM, those tasked with making changes should seek input from the OIM. When the training unit produces videos or briefings to provide guidance on the use of force, accountability, discipline, risk management or related matters, OIM should be part of the development and review of those training materials. In short, the Department should value OIM as an institutional yet independent resource, and should proactively seek its perspective with regard to Departmental reform in these areas.

The recommendations we make here for systemic change should be considered by DSD leadership, the Department of Public Safety, the Office of the Mayor and other relevant stakeholders. To the degree that they are embraced and accepted, there will be a need for an independent entity to audit and publicly report on DSD's progress in implementing those recommendations. The OIM is well situated to perform that function.

²⁶ As a discrete recommendation, the Policy and Procedures Committee recommended that OIM be notified whenever DSD became aware of any force incident resulting in significant bodily injury. We agree with the implementation of that Recommendation.

RECOMMENDATION 56: The OIM should be involved in any DSD systemic reforms, policy developments, and training curricula initiatives impacting on accountability, force, and deputy performance.

RECOMMENDATION 57: The OIM should be entrusted with the responsibility to audit and publicly report on the Department's compliance with those recommendations from this report that stakeholders embrace and accept, so that the public can know from an independent source the degree to which systemic change has been accomplished.

Recommendations

Use of Force

- 1 DSD should inculcate principles of force prevention in its culture, policy, training, and overall orientation.
- 2 DSD should demonstrate how much it values deputies' abilities to resolve confrontations without resorting to force by issuing commendable restraint citations, considering the amount of force an officer uses in assessing the officer's annual performance, recognizing those deputies as peer role models, and by highlighting those deputies' skill in briefing and training scenarios.

The Department should consider dramatically altering the way it investigates and reviews force incidents that are not referred to Internal Affairs, including the following:

- 3 DSD should develop standards for investigating all uses of force that go beyond collecting involved and witness deputies' narrative reports and meet minimal investigative standards for thoroughness and objectivity.
- 4 DSD should provide regular training to deputies on how to prepare use of force reports and to sergeants on how to review them to ensure compliance with current DSD use of force reporting policy.

- 5 DSD should consider creating a cadre of sergeants at each jail facility specifically trained to conduct force investigations and reviews.
- 6 In cases where a sergeant was involved in a use of force, directed the force, or was a witness to the force, DSD should assign the force investigation to a non-involved sergeant or a captain of the facility.
- 7 DSD should create detailed checklists setting out the Department's expectations for investigation and review of force incidents to guide investigating sergeants and supervisors at each level to ensure a uniform and thorough coverage of the fact collection and review process.
- 8 DSD should consider designing protocols whereby a force review committee reviews significant force incidents and a sampling of less significant force incidents. The force review committee should develop a written action plan for each force incident reviewed and ensure an effective feedback loop to present the results of any action plan back to the committee at a later time.
- 9 DSD should improve its force review process to ensure that not only is the incident centrally reviewed to determine whether the force used was in policy but also to examine whether there was tactical decision making that was consistent with Department policy and expectations.
- 10 At the end of the force review, officers involved in every force incident should be debriefed regarding how the Department considered the handling of the incident including the tactical decision making.
- 11 In addition to deciding whether the force was in policy, DSD should examine force incidents to determine whether there were issues of supervision, policy, or training that it should address.

- 12 DSD should use learning domains, such as training bulletins or briefings to ensure that information learned is exported back to the line officers and first level supervisors in a meaningful way.
- 13 DSD should add a preamble to its use of force policy that sets out the overarching principles and philosophy by which the use of force should be considered.
- 14 DSD should set out a more precise definition of “excessive force” in its use of force policy.
- 15 DSD should set out a more precise definition of “objectively reasonable” in its use of force policy.
- 16 DSD’s Use of Force policy should set out a distinction between “immediate force” and “controlled force.”
- 17 DSD’s force policy should expressly advise deputies of their responsibility to intervene when they observe excessive or unnecessary force by fellow deputies and are in a position to do so.
- 18 In an effort to reduce the need to resort to force, DSD policy should provide additional specific guidance to deputies and supervisors with regard to dealing with inmates who refuse to follow jail movement orders or come out of their cells.
- 19 The policy governing use of the Taser should be modified to include the recommendations of the Policies and Procedure Committee, to require a warning to inmates prior to use of the Taser when practicable, and to clarify the requirements regarding removal of Taser darts.
- 20 The Department should more rigorously enforce its existing requirements regarding the collection of data and information about Taser deployments and should regularly examine this information to determine trends among deputies or within areas of the jails.

- 21 The Department should develop a policy specifically requiring deputies to get medical assistance for inmates who have been subjected to chemical agents so that their eyes can be decontaminated immediately after stabilizing the situation and securing the inmate.
- 22 The Department should modify its policy to require sergeants to direct which deputy is to escort an inmate who has been involved in a force incident to the medical unit. Unless there are no other options, a deputy who used force should not be assigned to do the escort.
- 23 DSD should continue to work toward providing CIT training to each of its deputies assigned to a jail facility. DSD should also ensure that the CIT training coordinator has the time and ability to incorporate outside stakeholders such as mental health professionals into the CIT curriculum and training development. When considering deputy work assignments, DSD should make a concerted effort toward assigning deputies who have excelled in CIT training to areas where they are most likely to encounter inmates with a history of mental illness.
- 24 The Department should consider ways to allow more regular ongoing training on force tactics targeted to the jail setting, including the possibility of providing training at the jail facilities.
- 25 The Department should increase the profile of its training unit to allow training staff access to force reports and any force data or analysis the Department generates as well as to encourage its participation in the review of force incidents.
- 26 DSD should devise a remedy to ensure that its aggregate force data is reliable.
- 27 DSD and those responsible for resource allocation should devote sufficient resources to support a robust data analysis and internal auditing function.

- 28 Prior to launching a deputy force tracking program, DSD should ensure the force data is reliable, that there is an accounting for jail assignment in the analysis, and that the Department is committed to devising a non-punitive remedial action plan that is tailored to address concerning deputy performance.
- 29 The Department's internal auditing function should regularly review the Department's compliance with the new video downloading and retention policy.
- 30 Sergeants should be afforded the opportunity to view video evidence so they can adequately conduct an initial force investigation and review.
- 31 The Department should develop protocols that would allow its force experts to use video of actual force incidents as teaching tools.
- 32 DSD should use its website and other social media to provide employees, stakeholders, and the public at large with more information about the number and type of force events occurring in the jails, the number and nature of internal investigations, and systemic analysis of this data.

Internal Affairs

- 33 The City/County should maintain its commitment to staffing Internal Affairs, at least in part, with senior investigators hired from outside the Department to bring necessary investigative expertise to the Bureau and to help insulate investigators from internal pressures.
- 34 The Department should regularize the application and selection process for IA investigators so that the process is more transparent.
- 35 The Department should develop a set of guidelines stating the general qualities necessary to be an IA investigator as well as those traits that would disqualify a sergeant from assignment to IA.

- 36 The Department should give deference to the IA unit commander to choose for IA assignment the most capable sergeants within DSD.
- 37 The Department should develop a written policy setting forth a minimum amount of training a new IA investigator must receive at the beginning of his or her assignment. This training should include instruction more closely tailored and relevant to the unique functions of Internal Affairs.
- 38 The Department should assign a Major to oversee the Internal Affairs Bureau.
- 39 DSD should develop criteria that require certain categories of force or force outcomes to trigger an automatic review by Internal Affairs.
- 40 The Department should develop a comprehensive and detailed set of guidelines for which categories of allegations commanding officers must refer to Internal Affairs as well as which should be handled in a less formal way.
- 41 Internal Affairs should coordinate training sessions with division staff that will be responsible for investigating and reviewing informal complaints to make clear the Department's expectations and to instruct on the basic skills necessary to meet those expectations. Only personnel who have completed this training should be eligible to complete informal investigations.
- 42 IA should create and maintain a system for tracking informal complaints, to include information about where the case is assigned and an alert when cases become overdue. It should be clear who at IA is responsible for maintaining this system and following up on delinquencies.
- 43 The Department should develop ways to encourage its personnel to choose to utilize the County-supported mediation program to resolve complaints involving workplace disputes.
- 44 The Department should develop a streamlined mechanism for resolving straightforward cases with undisputed facts.

- 45 The Department should develop a formal process for division staff to request Internal Affairs to initiate an investigation that should require the division to provide some basic background information regarding the referral.
- 46 DSD should consider enhancing the supervisory structure at IAB to assist the Captain in ensuring a meaningful, critical review of investigative case books by someone at a higher rank than the investigating sergeants.
- 47 DSD should ensure that IA investigators have easier, more secure access to video recorded at the County Jail, particularly when it expands video capability at that facility.
- 48 IAB should implement a policy that will bring consistency to the way investigators use video during interviews. The policy should require the witness or employee to give a statement about the incident prior to viewing the video.
- 49 The requirement that investigators need Bureau commander approval before engaging in “interrogation techniques” should be removed from the IA Procedures Manual.
- 50 DSD should include in its IA Procedures Manual the types of events that IA is expected to immediately respond to and ensure that supervisors responsible for making notification to IA are aware of their responsibilities.
- 51 The IA Procedures Manual should clarify the meaning of “incident statement” and inform investigators that interviewees should be provided only with a brief description of the nature of the matter under investigation.
- 52 DSD and outside stakeholders need to continue to meet and develop PREA protocols that are effective, efficient, and responsive to the goals of the federal legislation.

- 53 DSD should revise and update its IAB Procedures Manual and ensure that future changes to the unit's procedures and practices are incorporated in a timely manner.
- 54 DSD should retain all use of force and Internal Affairs investigations indefinitely, or at least during the law enforcement career of the subject deputy.
- 55 Internal Affairs should make public some type of report containing general information regarding its processes, caseload, disciplinary outcomes, and the degree to which it is complying with its internal deadlines for completing investigations in an effort to become more transparent to the public.
- 56 The OIM should be involved in any DSD systemic reforms, policy developments, and training curricula initiatives impacting on accountability, force, and deputy performance.
- 57 The OIM should be entrusted with the responsibility to audit and publicly report on the Department's compliance with those recommendations from this report that stakeholders embrace and accept, so that the public can know from an independent source the degree to which systemic change has been accomplished.

Appendix

Sample Forms:

- Supervisor's Report on Use of Force
- Watch Commander's Use of Force Review and Incident Analysis Memo
- Unit Commander's Use of Force Review and Incident Analysis Memo
- Commander's Use of Force Review and Incident Analysis

Supervisor's Report on Use of Force

000-00000-0000-000

INCIDENT OVERVIEW

SCENE DESCRIPTION/LEGAL STANDING

[Click here to enter text.](#)

THREAT, PERCEIVED THREAT, OR SITUATION LEADING TO USE OF FORCE

(Check all that apply)

- ☐ Medical order
- ☐ Court order
- ☐ Passive resistance (refusal to comply)
- ☐ Active resistance (verbal threats/physical resistance)
- ☐ Assaultive behavior toward law enforcement or custody personnel
- ☐ Assaultive behavior with threat of serious bodily injury/death toward law enforcement or custody personnel
- ☐ Assaultive behavior toward others
- ☐ Assaultive behavior with threat of serious bodily injury/death toward others
- ☐ Other: [Click here to enter text.](#)

Describe the threat, perceived threat, or situation as reported by personnel:

[Click here to enter text.](#)

RESPONSE BY PERSONNEL TO SUSPECT'S ACTIONS

(Check all that apply)

- | | |
|---|---|
| ☐ Chemical Agent | ☐ Impact Weapon (Baton/Sap) |
| ☐ Pepperball | ☐ Stunbag/Arwen/40MM |
| ☐ Personal Weapon(s) | ☐ Carotid Restraint |
| ☐ Taser Application | ☐ K-9 |
| ☐ Control Techniques | ☐ Firearm (no hit) |
| ☐ Takedown/Team Takedown | ☐ Other: Click here to enter text. |

Describe the type and amount of force applied and by whom:

[Click here to enter text.](#)

Was force used on a suspect in mechanical restraints? (if yes, check appropriate type)

- | | |
|---|---|
| ☐ No | |
| ☐ Handcuffs | ☐ Waist Chain |
| ☐ Hobble Restraint | ☐ TARP |
| ☐ Safety Chair | ☐ Wheelchair/Gurney |
| ☐ Fixed Object | ☐ Other: Click here to enter text. |

FORCE MITIGATION and PREVENTION EFFORTS

[Click here to enter text.](#)

REPORTED USE OF FORCE BY INVOLVED and WITNESS EMPLOYEE(S)

Supervisor's Report on Use of Force

000-00000-0000-000

Were force reporting procedures adhered to?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

Did all involved employees and witness employees complete a written report prior to viewing any video?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

Were there any inconsistencies, conflicts, or issues in documentation (including video) requiring clarification?

- ☐ No
☐ Yes (If yes, explain)

[Click here to enter text.](#)

Was the video admonishment given prior to viewing any video?

- ☐ Yes
☐ N/A – video not reviewed
☐ No (If no, explain)

[Click here to enter text.](#)

NOTIFICATION PROCEDURES

Were required notifications made to IAB (e.g. met criteria, timely, etc.)?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

[Click here to enter text.](#)

Were required notifications made to CFRT (e.g. met criteria, timely, etc.)?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

[Click here to enter text.](#)

WITNESS INTERVIEW(S)

[Click here to enter text.](#)

WATCH COMMANDER'S POST FORCE SUSPECT INTERVIEW(S)

Were personnel involved in the use of force present during the interview?

- ☐ No
☐ Yes (If yes, explain)

[Click here to enter text.](#)

Supervisor's Report on Use of Force

000-00000-0000-000

Suspect(s) statement:

Click here to enter text.

MEDICAL REVIEW

Was the suspect(s) injured as a result of the use of force?

- ☐ No
☐ Yes (If yes, describe)

Click here to enter text.

Did the suspect(s) allege any additional injuries?

- ☐ No
☐ Yes (If yes, describe the injury and indicate whether or not documentation/medical evaluation supports the description of the injury)

Click here to enter text.

Did the suspect(s) receive a medical evaluation following the incident?

- ☐ Yes
☐ No (If no, explain)

Click here to enter text.

Was medical treatment rendered following the evaluation?

- ☐ Yes
☐ No (If no, explain)

Click here to enter text.

If the suspect(s) was transported to a medical facility or required further medical evaluation/treatment, was a diagnosis received?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

Click here to enter text.

Were all of the suspect's injuries or alleged injuries documented by medical personnel during the medical evaluation?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

Click here to enter text.

After consulting with medical personnel, did the injuries (including discomfort from chemical agents) sustained by the suspect(s) appear to be consistent with the reported force?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

Click here to enter text.

Did the suspect(s) have any known or self-identified pre-existing injuries or conditions?

- ☐ No
☐ Unknown
☐ Yes (If yes, describe and indicate if documentation exists)

Click here to enter text.

Supervisor's Report on Use of Force

000-00000-0000-000

Were the injuries to involved employees consistent with the reported force?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

[Click here to enter text.](#)

If any injuries to involved employees and/or the suspect(s) were not believed to be caused by the force, did the force investigation identify the possible or probable cause?

- ☐ No – unable to determine cause
☐ N/A
☐ Yes (If yes, explain and indicate if documentation exists)

[Click here to enter text.](#)

TRAINING/TACTICS/EQUIPMENT REVIEW

FORCE OPTIONS

Were other force options considered?

[Click here to enter text.](#)

Was there a reassessment during the application of force to determine if the type and amount of force was having the desired effect on the suspect's actions?

[Click here to enter text.](#)

List any training and/or tactical recommendations and actions taken.

[Click here to enter text.](#)

EQUIPMENT ISSUES IDENTIFIED

(Safety Chair, Hobble, Special Weapons, etc.)

If weapons or other equipment were used, were they used properly and did they function as designed?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

[Click here to enter text.](#)

Was the equipment approved by the Department?

- ☐ Yes
☐ N/A
☐ No (If no, explain)

[Click here to enter text.](#)

Were personnel trained and qualified to use the equipment?

- ☐ Yes
☐ N/A

Supervisor's Report on Use of Force

000-00000-0000-000

☐ **No (If no, explain)**

[Click here to enter text.](#)

List any equipment recommendations and actions taken.

[Click here to enter text.](#)

DEBRIEFING

Was an incident debriefing conducted?

☐ **Yes (Indicate what was discussed, recommendations made, and/or actions taken if any)**

☐ **No (If no, explain)**

[Click here to enter text.](#)

OTHER TOPICS / DISCUSSION ITEMS

[Click here to enter text.](#)

CASE STATUS

Was a case submitted to the District Attorney for filing consideration?

☐ **Yes** **Case#** [Click here to enter text.](#) **Charge(s):** [Click here to enter text.](#)

☐ **No (If no, explain)**

[Click here to enter text.](#)

Watch Commander's
Use of Force Review and Incident Analysis

Incident Date/Time: Enter text.
URN#: Enter text.

Facility: Enter text.
REF#: Enter text.

During my review of this incident, I have read all written reports and viewed all available video and audio recordings (including facility CCTV, handheld camera footage of the incident, interviews, and photographs) that document any aspect of this force incident. The scope of my review also included the following:

1. **Was the initial contact within the scope of the Department member's duties and responsibilities? (Consider legal standing, Dept. members assignment, activity preceding incident, etc.)**
☐ **Yes**
☐ **No (If no, explain)**
Click here to enter text.
2. **Was the perception of the threat reasonable?**
☐ **Yes (Explain)**
☐ **No (Explain)**
☐ **N/A (Explain)**
Click here to enter text.
3. **Did the application of force fall within the Situational Use of Force Options chart?**
☐ **Yes (Indicate Force Options category)**
☐ **No (If no, explain)**
Click here to enter text.
4. **Were there pre-force efforts to de-escalate the situation and prevent the use of force?**
☐ **Yes**
☐ **No (If no, explain)**
Click here to enter text.
5. **If the force was directed, was the supervisor's decision to use force appropriate and reasonable for the situation?**
☐ **Yes**
☐ **N/A**
☐ **No (If no, explain)**
Click here to enter text.
6. **Was the type and amount of force reasonable?**
☐ **Yes**
☐ **No (If no, explain)**
Click here to enter text.
7. **Was a supervisor notified of the use of force as required by Department policy?**
☐ **Yes**
☐ **No (If no, explain)**
Click here to enter text.

8. Did a supervisor use force?

- ☐ No
☐ Yes (If yes, answer 8a and 8b)

8a. Was the supervisor's direct involvement appropriate?

- ☐ Yes (Explain)
☐ No (Explain)

[Click here to enter text.](#)

8b. Was the supervisor's use of force instrumental in ending the force?

- ☐ Yes (Explain)
☐ No (Explain)

[Click here to enter text.](#)

9. Were there any discrepancies identified in the reporting or documentation that were *not* addressed during the Supervisor's Report on Use of Force (SH-R-438P)?

- ☐ No
☐ Yes (If yes, explain)

[Click here to enter text.](#)

10. Were all known witnesses identified?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

11. Were all identified witnesses interviewed and their statements documented in the Supervisor's Report on Use of Force (SH-R-438P)?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

12. Was the suspect(s) interviewed and their statement(s) documented in the Supervisor's Report on Use of Force (SH-R-438P)?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

13. Were the suspect and witness statements consistent with the reported use of force?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

14. Were there any allegations of misconduct?

- ☐ No
☐ Yes (Explain and indicate if further investigation is required)

[Click here to enter text.](#)

15. Were there injuries to department members?

Watch Commander's Use of Force Review and Incident Analysis – Cont.

- ☐ No
☐ Yes (If yes, answer 15a and 15b)

15a. Was relevant/necessary medical attention provided to Department member(s)?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

15b. Was appropriate paperwork completed for employees who were injured during the use of force?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

16. Were there injuries to the suspect(s)?

- ☐ No
☐ Yes (If yes, answer 16a and 16b)

16a. Was relevant/necessary medical attention provided to the suspect(s)?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

16b. After reviewing the medical documentation, are the injuries sustained consistent with the force reported?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

17. Were the force options or weapons effective during the incident?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

18. Could officer safety, tactical communication, or de-escalation techniques been improved?

- ☐ No
☐ Yes (If yes, explain)

[Click here to enter text.](#)

19. Was video and/or audio recording technology used in accordance with Department policy?

- ☐ Yes
☐ No (If no, explain)

[Click here to enter text.](#)

20. Does the Supervisor's Report on Use of Force Report (SH-R-438P) identify any issues related to policy, training, equipment or other risk factors that require further action?

- ☐ No
☐ Yes (If yes, explain)

[Click here to enter text.](#)

21. Are there any additional policy, training, equipment or other risk factors *not* identified in the Supervisor's Report on Use of Force Report (SH-R-438P)?

☐ No

☐ Yes (If yes, explain)

Click here to enter text.

22. Assess Department member's actions throughout the force incident:

a. Were Department member's actions *prior* to the use of force in compliance with policy, procedures and training?

☐ Yes

☐ No (If no, explain)

Click here to enter text.

b. Were Department member's actions *during* the use of force in compliance with policy, procedures and training?

☐ Yes

☐ No (If no, explain)

Click here to enter text.

c. Were Department member's actions *following* the use of force in compliance with policy, procedures and training?

☐ Yes

☐ No (If no, explain)

Click here to enter text.

Recommendations:

Click here to enter text.

Corrective actions taken:

☐ None required

☐ Admin / IAB investigation

IAB# Click here to enter text.

☐ Training

☐ Informal Corrective Action (PLE)

☐ Other:

Click here to enter text.

Conclusions:

Click here to enter text.

Reviewed by: Enter text.

Employee#: Enter text.

Watch Commander's Use of Force Review and Incident Analysis – Cont.

Signature: _____

Date:

Enter text.

Unit Commander's
Use of Force Review and Incident Analysis

Incident Date/Time: Enter text.
URN#: Enter text.

Facility: Enter text.
REF#: Enter text.

During my review of this incident, I examined the following:

- 1. Does the Supervisor's Report on Use of Force Report (SH-R-438P) package meet expected standards for overall quality (e.g., complete, clear, concise, timeliness, discrepancies addressed, etc.)?**
☐ **Yes**
☐ **No (If no, explain)**
Click here to enter text.
- 2. Was all applicable documentation completed and received within the time limits established by policy?**
☐ **Yes**
☐ **No (if no, explain)**
Click here to enter text.
- 3. Were requests for additional information and/or clarification completed within the time limits established by policy?**
☐ **Yes**
☐ **No (if no, explain)**
Click here to enter text.
- 4. Were submitted reports consistent regarding the need for force and the description of force used?**
☐ **Yes**
☐ **No (If no, explain)**
Click here to enter text.
- 5. If the force resulted in mandatory notifications (i.e. CFRT, IAB, etc.) were they made within the time limits established by policy?**
☐ **Yes**
☐ **No (If no, explain)**
Click here to enter text.
- 6. Assess Department member's actions throughout the force incident:**
 - a. Were Department member's actions *prior to* the use of force in compliance with policy, procedures and training?**

☐ **Yes**

☐ **No (If no, explain)**

Click here to enter text.

b. Were Department member's actions *during* the use of force in compliance with policy, procedures and training?

☐ **Yes**

☐ **No (If no, explain)**

Click here to enter text.

c. Were Department member's actions *following* the use of force in compliance with policy, procedures and training?

☐ **Yes**

☐ **No (If no, explain)**

Click here to enter text.

7. Did conduct by Department members warrant an administrative investigation or further inquiry?

☐ **No**

☐ **Yes (If yes, explain)**

Click here to enter text.

8. Based on the information received, I concur with the Watch Commander's Review.

☐ **Yes**

☐ **No (If no, explain)**

Click here to enter text.

9. Does it appear that any follow-up action is necessary to correct policy, procedure or training violations?

☐ **No**

☐ **Yes (If yes, describe the actions taken by you to correct (i.e. CAP, Unit Order, etc.) the apparent policy, procedural or training violations in the Recommendations or corrective actions taken section below).**

10. Should this case be referred to CFRC?

☐ **No**

☐ **Yes (If yes, explain)**

Click here to enter text.

11. Is there potential litigation or a risk management issue identified with this case?

☐ **No**

☐ **Yes (If yes, explain and notify Risk Management Bureau)**

Click here to enter text.

Recommendations or corrective actions taken:

Click here to enter text.

Conclusions:

Click here to enter text.

Reviewed by: Enter text.

Employee#: Enter text.

Signature: _____

Date: Enter text.

COMMANDER'S USE OF FORCE REVIEW AND INCIDENT ANALYSIS

Incident Date/Time: Enter text.

URN#: Enter text.

Facility: Enter text.

REF#: Enter text.

PRE-INCIDENT TACTICS OR BEHAVIORS: *Consider the factors that impacted or gave rise to the need to use force.*

1. Did the employee(s) actions give rise to or contribute to the need to use force?
☐ No
☐ Yes (If yes, explain)
Click here to enter text.
2. Is there anything the employee could have or should have done that may have de-escalated or mitigated the need to use of force?
☐ No
☐ Yes (If yes, explain)
Click here to enter text.
3. Were there any actions that others present may have taken to mitigate the need to use force?
☐ No
☐ Yes (If yes, explain)
Click here to enter text.
4. Was the threat presented by the subject reasonably perceived by the employee(s)?
☐ Yes
☐ No (If no, explain)
Click here to enter text.

ACTUAL APPLICATION OF FORCE:

5. Was the amount or type of force used necessary, reasonable and consistent with the perceived threat?
☐ Yes
☐ No (If no, explain)
Click here to enter text.
6. Were any actions taken to temper the force response?
☐ Yes (explain)
☐ No (explain)
Click here to enter text.
7. Did the use of force stop when the inmate was controlled and the threat was neutralized?
☐ Yes
☐ No (If no, explain)
Click here to enter text.

8. Were any and all resulting injuries consistent with the reported force?

☐ Yes

☐ No (If no, explain)

[Click here to enter text.](#)

REVIEW OF THE FORCE INVESTIGATION:

9. Was the investigation conducted thorough and complete?

☐ Yes

☐ No (If no, explain)

[Click here to enter text.](#)

10. Are there any policy or procedure issues that need to be addressed?

☐ No

☐ Yes (If yes, explain)

[Click here to enter text.](#)

11. Are there any equipment or training issues that need to be addressed?

☐ No

☐ Yes (If yes, explain)

[Click here to enter text.](#)

12. Have any identified follow-up actions been completed?

☐ No (explain)

☐ Yes (explain)

[Click here to enter text.](#)

13. Are there any unresolved questions or outstanding issues?

☐ No

☐ Yes (If yes, explain)

[Click here to enter text.](#)

- ☐ A **Corrective Action Plan** was assigned and implemented for this incident.
Reference CAP # [Click here to enter text.](#)
- ☐ An **Administrative Investigation** was ordered and completed for this incident.
Reference IAB # [Click here to enter text.](#)
- ☐ **Concur with CFRT findings**
- ☐ Yes
- ☐ No (If no, explain)
- [Click here to enter text.](#)

Reviewed by Commander: [Enter text.](#)

Employee#: [Enter text.](#)

Signature: _____

Date: [Enter text.](#)

Report to the City of Fullerton:
Systemic Review of the
Fullerton Police Department
August 2012



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Foreword

This report constitutes the conclusion of OIR Group's systemic review of the Fullerton Police Department. The July 5, 2011 incident that resulted in the tragic death of Kelly Thomas resulted in a criminal prosecution that has yet to be concluded, an administrative investigation and this systemic review. Since that time, FPD has received much criticism about the way in which its officers acted that night and the Department's response, much of it well-deserved, as further explained in these pages. That being said, the FPD that existed on July 5, 2011 is not the FPD of more than a year later -- changed leadership, introspection, and reform has placed the Department in an upward trajectory. The recommendations here are intended to continue to assist the Department on that forward path and should not overshadow what the Department and the City have already accomplished on their own.

In our view, it is important to consider this report with the recognition that police departments are organic organizations; each day facing a potential crisis. Potential critical events such as the Occupy Fullerton movement and the regular protests following the Kelly Thomas incident have been handled without significant controversy or concern while other police departments have not fared as well in dealing with similar issues. Moreover, the vast majority of the thousands of regular citizen contacts that have taken place in Fullerton since the Kelly Thomas incident have occurred without significant incident or concern.

With that said, as with any similarly situated police agency and as detailed below, more can and should be done in reforming the way in which FPD hires and trains its officers, investigates and reviews uses of force, learns from those force incidents, holds its officers accountable and considers improvements in policy. Our recommendations are intended to spark continued reform in each of these areas to continue to move the Department forward in a positive way.

Introduction

On July 5, 2011, Fullerton police officers responded to a call for service at the City's transit center. Minutes later, Kelly Thomas lay grievously injured and unconscious. Several days later, Mr. Thomas died as a result of the injuries suffered that night. The injuries that eventually led to the death of Mr. Thomas were inflicted by Fullerton police officers. The tragic outcome and the manner in which his death occurred disturbed the City of Fullerton and its citizenry and sent shock waves of concern about the police officers' actions throughout the nation and beyond. Photographs of the horrific injuries suffered by Mr. Thomas were published, traumatizing the public's consciousness while contributing to the keen interest in learning how this encounter transpired. The public soon learned that a city security video camera had recorded much of the incident, further fueling the desire to know how the death of Mr. Thomas had occurred. Months later, after the video was released to the public by the District Attorney's Office, widespread review of the event caused further concern about the actions taken by the police that night.

As a result of an investigation commenced by the Fullerton Police Department ("FPD") and concluded by the Orange County District Attorney's office, two Fullerton officers were eventually charged with crimes as a result of their participation in the incident. At the time of this writing, the criminal proceedings continue. Should the case proceed to trial, a jury will eventually determine whether the force those two officers used on Mr. Thomas violated the Penal Code of the State of California.

At the conclusion of the criminal investigation, and as a result of a request from the City of Fullerton, OIR Group commenced an administrative investigation into the conduct of all of the officers who were involved in the Kelly Thomas incident. That investigation considered whether any of the officers violated FPD policy by their actions on July 5, 2011. OIR Group conducted numerous interviews of witnesses and subject officers and delivered a fifty-page report with three volumes of exhibits and transcripts to the Acting Chief of Police. In addition to collecting investigative facts, OIR Group made independent recommendations to the Acting

Chief as to whether the results of the investigation established violations of Departmental policy. The potential discipline that was considered ranged from a written reprimand to termination. Because state law prohibits disclosure of administrative proceedings involving police officers, there are limitations about what can be disclosed regarding their outcome.

The City also requested OIR Group to conduct a systemic review of the Fullerton Police Department. This report documents that review and includes an examination of current policies, practices, procedures, and training of the Department with an eye toward making recommendations for any observed need for reform. While this review was informed by what was learned about the Kelly Thomas incident as a result of the administrative investigation, it was not limited to those events. In addition to a broad inquiry into the way in which the Department handled the Kelly Thomas incident, our review was also designed to look at other critical incidents and force reviews to gather a more global perspective into the way in which FPD handles such issues.

As a result, in addition to reviewing the several volumes of materials that were produced during the administrative investigation, OIR Group's systems review process led us to conduct numerous additional interviews of current and former officers and command staff, review policies and procedures, and review documents relating to FPD's handling of other force incidents and Internal Affairs investigations. In addition, OIR Group spoke with other stakeholders, including community and civic leaders.

While our review was still underway, OIR Group was clearly cognizant of the continued interest by the community in the Kelly Thomas incident and related issues of concern. To begin to provide transparency and information about some of those issues, OIR Group prepared an interim report in February of this year addressing some of those issues and made several recommendations intended to help the City and the Department avoid such problems in the future. This report continues the observations and conclusions made in that interim report and is the culmination of our systemic review.

Our work on this report would not have been possible without the complete cooperation of the City, the Police Department and the Orange County District Attorney's Office. During our review, we were afforded complete and unfettered access to Department documents and personnel. Current and former FPD police members and command staff welcomed us and spoke with us freely and candidly. We appreciate the spirit in which our review was facilitated and are hopeful that this report and its recommendations will be received in the same manner.

Issues Directly Relating to the Kelly Thomas Incident

Initial Interaction with Kelly Thomas

On July 5, 2011, two FPD officers responded to a call for service from an employee of a downtown business. The caller reported that a homeless man was “trying” car doors in a parking lot near the business and the transit station. Two FPD officers responded to the call and encountered Mr. Thomas near the transit center. During the initial encounter, the officers’ “investigation” into the incident is better characterized as banter between Mr. Thomas and the primary officer dealing with him that devolves to non-productive and unprofessional discussions. For example, an attempt to learn Mr. Thomas’ name became an officer-fueled inquiry into whether Mr. Thomas spoke English and whether he spoke other languages, during which at one point, the officer sarcastically stated that his partner spoke ten languages. The initial dialogue between the primary officer and Mr. Thomas was mostly initiated by the officer and evidenced mutual disdain. This dialogue eliminated the officers’ ability to develop or maintain a professional and cooperative relationship with Mr. Thomas.

The second officer communicated more professionally while obtaining Mr. Thomas’ consent to search the backpack, but then he moved away from the discussion to begin the search, leaving the primary officer to deal exclusively with Mr. Thomas. After ordering Mr. Thomas to sit on the curb, Mr. Thomas eventually complied and remained there for several seconds without controversy or conflict. Rather than being satisfied with this level of compliance, the primary officer demanded Mr. Thomas to position his hands and legs in a certain way. Mr. Thomas appears at first to attempt to comply but then grew frustrated and possibly confused about what the officer wanted him to do and responded plaintively that he could not do all that the officer wanted. Because he apparently detected Mr. Thomas’ slowness to respond as a disregard for his orders, the officer’s mood grew hostile and he eventually threatened Mr. Thomas with physical violence if he continued to fail to listen to the officer’s instructions. Mr. Thomas did not respond well to the threat and after a few more seconds of dialogue, the officer put his hands on Mr. Thomas and the force incident that resulted in Mr. Thomas’ death unfolded.

The officers’ initial interaction with Mr. Thomas unnecessarily escalated a situation that, if handled professionally, could have been resolved without significant force. When officers arrived on scene, they were investigating a person who was suspected of trying to enter doors of vehicles, a non-violent offense in which there was no evidence that any crime had actually been

achieved. Mr. Thomas presented as a shirtless and shoeless homeless individual with whom one of the officers had some familiarity. During their initial encounter with Mr. Thomas, the officers' approach and conversation did not suggest any significant concern that the person they were dealing with might be armed or violent.

However, the officers dealing with Mr. Thomas found a way to transform a casual encounter into an incident resulting in death. Every patrol officer in America should know that there is a correlation between being homeless and the existence of mental illness. Yet in this case, the attitude adopted by the primary officer was one of disdain and impatience that was aggravated when Mr. Thomas declined to politely and deferentially answer his questions. From its inception, the conversation did not go well. The primary officer did not recognize or reinforce any preliminary interest that Mr. Thomas may have had in cooperating, and his attitude impacted the way in which Mr. Thomas related to the officers.

Perhaps the most troubling aspect of this episode that led to Mr. Thomas' eventual demise is that it all could well have been avoided had the responding officers handled the initial interaction with Mr. Thomas in a more professional and intelligent way. Not uncommon among the homeless population and/or those suffering from mental illness, Mr. Thomas had repeated prior interactions with the police, including FPD. During our review, we listened to an audio tape of one of those interactions when FPD responded to a call for service complaining about Mr. Thomas, and, in that case, the responding officer dealt calmly and professionally with Mr. Thomas, resulting in an arrest without the use of force. In fact, none of any earlier interactions between Mr. Thomas and the police came close to spiraling to the situation caught on camera on July 5, 2011. On that date, the way in which the primary officer dealt with Mr. Thomas helped set into action a chain of events that resulted in a major use of force and Mr. Thomas' eventual death.

Those who might say that Mr. Thomas' lack of complete cooperation, his profanity, or his unprofessional response to the officers dictated the eventual use of force fail to understand the dynamic or expectations of modern day policing. Professional police officers are trained that not everyone who comes in contact with them will be deferential, professional, rational or delighted to see them. Moreover, those who may be suffering from mental illness may not have the wherewithal to perform exactly how a police officer might want them to. While officers cannot control every outcome, principles of progressive policing teach that it is the peace officer who is expected to use verbal skills and an approach designed to deescalate the situation so that force is not used. It is incumbent upon police executives to provide and reinforce this perspective throughout their agencies through continual training and modeling of officer

behavior.

To its credit, even before the Kelly Thomas incident, FPD had provided crisis intervention training to fourteen of its patrol officers. The sixteen hour training focused on having officers gain an understanding of mental illnesses suffered by those on the street and included presentations by mental health professionals. One goal of the class was to improve the officers' crisis intervention skills and communication techniques. Additionally, in 2010 and 2011, training involving issues pertaining to the homeless was provided at briefings twice prior to the Kelly Thomas incident and was discussed regularly at other briefings that occurred throughout that time.

That being said, almost immediately after the Kelly Thomas incident, FPD executives recognized the need to provide additional training to all of its officers in strategies on how to deal with the mentally ill. We applaud the Department for its past initiatives and more recent ones in this regard. As detailed below, we also understand that FPD has recently enlisted the assistance of Orange County's Mental Health Services to have one of their Outreach Clinicians regularly ride with FPD patrol officers. Moreover, recently and on its own initiative, FPD is undertaking a "census" of its homeless population in which information about the population will be inputted into a data base and available to all FPD officers in the field.

In addition, prior to the Kelly Thomas incident, FPD had designated officers to liaison with the City's homeless population, but by the time of the incident, resource constraints had caused the FPD to reduce to one the number of officers who were devoted to this work. Since the Kelly Thomas incident, FPD has reinstated an additional officer to liaison with the homeless. The additional officer has begun his work, a corporal that was personally selected by the Chief of Police and at the recommendation of the corporal who has performed the work as FPD's homeless liaison officer for several years.

While these reforms are commendable, more can and should be done in this area. As part of our review, we spent a shift riding with FPD's homeless liaison officer. We saw first-hand the way in which he interacted with Fullerton's homeless individuals and the positive relationships he had developed with them. He also had a wide-ranging knowledge of the issues bedeviling the homeless, the challenges in developing the appropriate enforcement model for that population, the effect of mental illness on law enforcement's ability to effectively deal with those in the population so impacted, and the need to strike the appropriate balance between enforcing quality of life laws with the impact it has on the homeless population. The effective strategies employed by the homeless liaison officer highlighted the need to expand this program. During the four days

when the liaison officer is not at work or during his off hours, there was no comparable resource on duty for FPD. Case in point, the liaison officer was not on duty when the Kelly Thomas incident occurred. Although at least one FPD officer who had recently received crisis intervention training was working that evening, he was not dispatched to the Kelly Thomas call and only arrived after the force incident had been concluded.

The doubling of resources for the homeless liaison initiative is a major positive step. Yet even with this significant commitment, there is still not yet round the clock coverage for the Department. It is recommended that the Department work with the City to learn whether additional liaison officers can be designated for homeless assignment so there is total and seamless coverage in this area. Even if it proves impracticable to have a fully dedicated liaison officer on shift at all times, we suggest the Department at least designate an officer on each shift to fill this role and continue to provide those officers additional training and tools in order to better deal with the homeless population.

Recommendation 1: The Department should work with the City to develop a corps of officers specially trained and committed to interacting with the homeless population so that there can be round-the-clock coverage by a homeless liaison officer.

While the presence of now two liaison officers for the homeless has certainly served the City well, we feel that other FPD personnel have not fully benefited from his knowledge and experience. Police officers often model their behavior based on experiences with their training officers as well as their more experienced peers. While, as noted above, FPD patrol officers have recently undergone training in dealing with the homeless and mentally ill, working with someone who has perfected certain techniques and polices with a deeper understanding of the homeless population could serve an important role in modeling behavior and allow all officers to further develop verbal skills and strategies first hand. For that reason, we recommend that FPD patrol personnel be periodically scheduled to ride with the homeless liaison officers. For trainees, the field training program should mandate some ride along time with the liaison officers. In addition, civilian personnel who work for FPD in the jail and whose job assignments cause them to interact with the public should also be scheduled periodically to ride with the homeless liaison in order to have a better understanding of the population. Finally, and perhaps most importantly, FPD supervisors and command staff should also be mandated to ride periodically with homeless liaison officers so they can continue to be cognizant of the enforcement challenges and issues with regard to that population.

Homeless liaison officers should continue to be encouraged to participate and assist in

more broad-ranging initiatives dealing with the homeless. As a result of the Kelly Thomas incident, the City, County, and advocacy organizations have all increased their attention to dealing with this issue in a multi-faceted way, soliciting input from the community and the homeless community itself. To the degree such events and meetings are held in the evening or on weekends, we encourage FPD supervisors to continue to provide the liaison officers flexibility in their schedules so that they may regularly participate in such events and help facilitate the broader-based initiatives designed to address the issue.

Homelessness is obviously not exclusively an issue for Fullerton; there is a significant homeless population throughout the neighboring cities of Orange County. One strategy that could result in more effective policing of the homeless population would be to continue to reach out to neighboring cities to learn whether officers specially skilled and dedicated to dealing with the homeless could be cross-designated across city boundaries in North Orange County in a regional task-force type configuration. Policing has long recognized that law enforcement challenges do not respect city boundaries and for that reason, increased use of the multi-agency task force model has been devised to address such issues. A similar approach should be considered in addressing the homeless population in North Orange County and could result in a more cohesive, efficient, and integrated response.

Recently, an Orange County Homeless Liaison Officers' Association was created and, to its credit, FPD is a charter member. The Association's goal is for law enforcement in neighboring departments to discuss common issues and strategies regarding dealing with the homeless. This Association could pose a major step in a positive direction towards future inter-agency collaboration on this issue and is consistent with the recommendations set out here.

Recommendation 2: The Department should develop protocols that would have all of its officers periodically ride with a homeless liaison officer and include such ride-along assignments for trainees in the field training program. The Department should also include in the ride-along program FPD civilian personnel who deal with the public. The Department should ensure that supervisors and FPD's executive team periodically ride with the homeless liaison officers.

Recommendation 3: The Department should continue to encourage and facilitate its homeless liaison officers to participate in efforts by other agencies and organizations that address the issues of the homeless. The Department should continue to provide flexibility in homeless liaison officers' schedules so they can attend such events while on duty on evenings and weekends.

Recommendation 4: The Department should continue to explore and expand the concept of regional cooperation with neighboring police departments to continue to develop best practices, information sharing, and possibly shared enforcement responsibilities with regard to the homeless population.

Use of the Digital Audio Recorder

For years, FPD has required its officers to carry Department-issued digital audio recorders (“DARs”) and developed policy establishing its use. The use of DARs is not mandated by law and most law enforcement agencies in California do not require their officers to regularly record citizen contacts. In that regard, FPD has long seen the value in having its officers be required to tape record such citizen contacts and has been well ahead of other police agencies in having its officers use DARs to do so.

In the Kelly Thomas incident, information captured from Department-issued digital audio recorders (“DARs”) became critical evidence for both the criminal and internal affairs investigation. The Department was able to synch the audio evidence with the video to provide a compelling and evidentially critical account of what had transpired. While some of the officers who responded to the incident recognized the importance of activating their DARs, a number of other officers did not activate their recorders. One officer is heard on his DAR instructing his trainee to activate his DAR as they are traveling with lights and siren to the location. As the training officer explained on tape, it was important to activate the DAR as they were en route so that they did not have to worry about doing so when they arrived on scene.

In contrast, other officers who responded to the scene did not activate their DARs, indicating that they did not see the value in doing so, that they forgot to do so, or that they thought they had done so but in actuality they had not. There was also uneven performance with regard to when it was appropriate to deactivate their DARs. The varied response of officers who arrived to the Kelly Thomas incident was a clear indicator that FPD officers had not been provided sufficient guidance and training on the Department’s expectations regarding the use of the DAR.

In our review of other force cases, we detected other shortcomings with regard to the Department’s DAR policy that was in effect in July 2011. For example, one citizen alleged in a complaint that officers made inappropriate comments during the time the citizen was being transported to jail. However, when the investigator reviewed the DAR of the officers involved in the arrest and transport, he discovered that while the initial encounter and arrest of the

complainant was recorded, the time during which the prisoner was transported was not. As a result, there was no audio evidence to either establish or refute the complaint.

Earlier this year, and in response to the Kelly Thomas incident, an improved DAR policy was promulgated by FPD. For example, the new policy instructs officers that once activated, the DAR should continue to be in the record position throughout the entire field contact or until otherwise directed by a supervisor. In addition, the improved policy now specifies that the DAR should be activated when transporting all persons, including prisoners, and shall remain activated until the transport is completed.

Another positive reform to the DAR policy allows for FPD supervisors to conduct random audits in order to identify negative and positive performance or potential training issues. While the capability to perform random audits is a positive step in ensuring desired performance of its police officers, the new policy could be interpreted as inexplicably preventing supervisors from reviewing DARs to monitor an officer's performance based on cause. We recommend that the "for cause" targeted audit should expressly remain as an additional option for FPD supervisors in the policy. If there is well-founded suspicion that an officer is violating performance expectations of the Department, a DAR audit should be expressly permitted by FPD policy. While we have been informed that the recent amendments to the DAR policy were not intended to eliminate the review of DARs when there is cause and that it is still requisite that in every use of force, citizen complaint, prisoner injury, or any other investigation in which a supervisor investigates an incident involving an officer there will be a DAR review, the unintended consequence of the change was to expressly eliminate the "for cause" provision and we recommend that to avoid confusion it be expressly reinstated.

We recommend additional modifications to the DAR policy. First, in the Kelly Thomas incident, once the force incident began, all subsequent responding officers traveled "Code 3," i.e., lights and sirens to the incident. However, most of those responding officers did not activate their DARs en route to the location. A number of those officers failed to turn on their DARs when they arrived at the location because they immediately became engaged in the incident. However, as noted above, for those who had activated their DARs en route to the location, they did not have to think about turning them on when they arrived on scene.

In our review of other force incidents, other FPD officers also did not turn on their DARs after traveling "Code 3" to an incident and the resulting citizen contact was not captured because of their perceived need to immediately respond. For that reason, we recommend that the DAR policy be revised to instruct officers that they need activate their DARs as soon as they activate

lights and siren and begin a Code 3 response. In addition, the DAR policy should instruct officers to similarly activate their DAR when traveling to any “hot” calls, even if lights and sirens are not activated.

In our review of other force incidents, we found cases in which plain clothes FPD officers did not activate their DARs during citizen contacts because they were not carrying their recording equipment. While we recognize there may be rationale for limiting activation of DARs when officers are working a pure undercover assignment and when there is no obvious indicia that they are police officers such as a badge, shirt, or raid jacket. However, in cases in which FPD officers are wearing badges or other insignia making them recognizable as police officers, the DAR activation policy should apply to them in the same way it applies to uniformed patrol officers. While we have been informed that it is FPD practice for plain clothes detectives to be held to the same standard, we recommend that this practice be expressly included in FPD policy.

Recommendation 5: FPD should revise its DAR policy to provide supervisors the express ability to conduct targeted audits of police officers’ recordings.

Recommendation 6: FPD should revise its DAR policy to require activation of DARs when officers initiate a “Code 3” or “hot call” response.

Recommendation 7: FPD should revise its DAR policy to require that officers who are in plain clothes but identifiable as police officers comply with the dictates of the DAR policy.

Referral to the District Attorney

After Mr. Thomas was taken into custody and transported to the hospital, Fullerton detectives and FPD supervisors arrived at the scene to determine how to proceed with the investigation. In cases involving fatal officer-involved shootings or in-custody deaths, existing protocols are clear that the District Attorney’s Office is to be contacted so that they may respond and assume the investigation. However, in this instance, while FPD received early information that Mr. Thomas was in grave condition, he had not yet expired. In fact, hospital staff was able to keep Mr. Thomas alive for several days after the incident.

Because this incident fell outside existing protocols between FPD and the DA’s Office, FPD supervisors were unsure how to proceed. A call did go out to DA’s Office representatives the night of the incident and further communications occurred the next day; it is unclear whether at that time an actual request was made for the DA’s Office to assume investigative

responsibility for the incident. It was not until July 7, 2011 that, as a result of a further call from FPD that the DA's Office assumed responsibility for the investigation. The lack of clarity about the nature of the communications is, in part, because there was little documentation about what was being requested. What is known is that the District Attorney did not assume responsibility for the investigation the night of the incident. FPD's subsequent uncertainty over whether the District Attorney's Office was going to immediately assume the investigation created delay and uncertainty by FPD investigators and command staff about whether, how, and to what extent they should begin collecting officer statements and other evidence.

Over the next several days, there were additional conversations between FPD officials and the District Attorney's Office. Those conversations eventually resulted in the District Attorney's Office assuming the criminal investigation for the incident, but by then FPD detectives and crime scene staff had already undertaken many investigative tasks.

This incident evidences a lack of sufficient clarity in the handling protocols between FPD and the District Attorney regarding responsibility for investigations where there is not yet an in-custody death, but officer-involved force has resulted in a person being critically injured. It should be noted that this gap in protocols is not unique to FPD but also exists relative to all local law enforcement agencies in Orange County. That being said, it is critical before the next such critical incident that the protocols are clear regarding which entity will handle the investigation. For that reason, FPD executive staff should work with the DA's Office to refine investigative protocols so that there is clarity about which entity will be handling future investigations of this type where there is not yet an in-custody death, but officer-involved force has resulted in a person being critically injured. Agencies need to know with certainty and before the fact what entity is to investigate situations in which an individual has been severely injured as a result of police action.

Any discussions between agencies regarding which entity should handle an investigation need to be contemporaneously documented. Such documentation will provide a real time record of such discussions should, as in this case, later questions arise about the nature of those discussions.

In talking with other former and current members of FPD, we have been informed that there have been other occasions where there was uncertainty and divided opinions internally whether a force incident or allegations of misconduct should be referred to the District Attorney. For example, in a case in which a handcuffed prisoner was subjected to excessive force, the incident was not presented to the District Attorney for potential prosecution. In another incident

involving apparent intentional destruction of evidence, there was debate about whether the matter should be presented to the District Attorney (eventually it was, leading to a prosecution of the officer).

In our view, internal written protocols should be devised to provide guidance to FPD command staff about which matters should be presented to the District Attorney. Instead of ad hoc case by case decisions, development of such guidelines will result in more consistent and principled decision making. These protocols should be developed in consultation with the District Attorney. Certainly cases in which there exists probable cause that a crime has been committed by an FPD officer should be subject to a District Attorney referral.

Recommendation 8: FPD command staff should work with the District Attorney to refine protocols about which entity is to assume investigation of incidents in which an individual has been severely injured as a result of police action.

Recommendation 9: FPD should develop written protocols that would require contemporaneous documentation of any discussions with representatives of the District Attorney regarding the handling of force and critical incident investigations.

Recommendation 10: FPD should develop written protocols to guide command staff on which force incidents or allegations of officer misconduct should be criminally referred to the District Attorney.

Police Officer Access to Recorded Information

After the Kelly Thomas incident, all involved and responding officers were eventually transported to the police station. A copy of the video of the incident was available in the watch commander's office. Prior to writing their reports, involved officers were afforded the opportunity to watch the video recording of the incident. The viewing of the video recording was undertaken with groups of officers and no documentation was created about who had viewed the tape and when. It appears that the review by officers involved in the incident occurred with little or no supervision or control.

When the public learned that FPD officers had been afforded the opportunity to review the video tape before writing their reports, a firestorm of criticism erupted. Because the preview of video evidence is not consistent with standard best investigative practices, many members of the public believed that the officers were provided an ability to tailor their reports consistent with the video; an ability that is not afforded non-peace officers. For example, if a private individual

was under investigation for battering his neighbor, neither the suspect nor the neighbor would be afforded the ability to preview a video recording of the incident before a statement was taken from them by investigating authorities.

Some have argued that officers should be afforded the opportunity to review recordings of an event so that their reports are consistent with the recording. However, there is no scientific or empirical data that a report consistent with other pieces of evidence is an accurate one. By allowing officers to preview the footage, a police department is, in essence, causing the officer's own recollection to be supplanted by what is caught on video, even if what is recorded does not account for the state of mind of the officer, does not record sound, and does not disclose all actions that took place.

If consistency were the sole goal of an investigation into a force incident, police officers should also be privy to each other's accounts of the incident, civilian witness interviews, medical records, photographs, and other forensic evidence. There is no principled reason to create an exception for officers to allow previewing of video evidence when the investigative norm is to not provide such early access to evidence to those whose actions are being assessed.

While video surveillance footage is a helpful tool for investigation, supervision, and training, it has its limits. Cameras only record from a fixed point and present a two-dimensional view. Angle, distance and lighting conditions can all work towards creating an impression of actions that may be distorted. And very often, as in the Kelly Thomas incident, the video is not taken from the vantage point of the involved officer. Finally, the lighting condition, distance, and acuity of the video are sometimes better but often worse than what a live witness may have been able to observe.

Viewing video footage before writing a report is likely to distort pure recall either consciously or subconsciously. Studies by experts in witness memory have established that subjecting witnesses to extraneous evidence such as a video recording can cause witnesses to supplant what they actually recall with what they see from the video evidence. As a result, allowing personnel to view a video prior to obtaining an account of the incident from those involved eliminates the ability to obtain a pure unvarnished narrative of the incident.

Affording police personnel the ability to preview video evidence potentially subjects Department personnel to questions over the accuracy of reports. While an officer could be impeached on the witness stand in instances where his or her report is inconsistent with the recorded footage, a jurisdiction also may face liability risks if civil plaintiffs' attorneys

successfully convince juries that Departmental accounts are not to be trusted because video was viewed before reports were written. The same is true with regard to criminal defense attorneys who could use the “preview” procedure to attack the integrity of the Department’s criminal investigation of their clients.

A view-first policy could create the impression among some that the Department is attempting to clean up its reports so they appear consistent with each other and the video evidence that is present. Such an impression will reduce the public’s confidence in the Department’s ability to investigate incidents of officer-involved force or allegations of officer misconduct.

Perhaps most importantly, and as noted above, a view-first policy is not consistent with current investigative practices police departments employ on a daily basis. For example, bank employee victims of a robbery are not shown videos of the incident prior to being interviewed. Creating an exception for police personnel is inconsistent with long-accepted investigative practices.

For all of the above reasons, we recommend that FPD develop policy that would require that when officers use force or when officers’ actions are under investigation and there is recorded evidence of the incident, officers should be required to prepare reports or be interviewed before being afforded the opportunity to review the recording of the incident. If viewing or listening to a recording refreshes an officer’s recollections, the policy should afford the officers the opportunity to supplement their interviews or written reports.

With regard to any review of recorded evidence, standard investigative practices also demand that such review be undertaken individually. Group reviews of recorded evidence increases the likelihood that comments made by one police officer witness could impact the recall of another police officer witness. More significantly, providing group access to recorded information subjects the Department to perceptions among some that such access was provided to facilitate orchestration of recall and assist officers in “getting their stories straight”.

Recommendation 11: FPD should develop policy that would require that when officer conduct is being reviewed, the officer should be interviewed or write a report prior to viewing the recording. This policy should cover both video and audio evidence, including DARs.

Recommendation 12: FPD should develop policy prohibiting group access of recorded evidence to involved or witness police officers.

Best Practices for Obtaining Information from Officers in Major Force Incidents

On July 5, 2011, after Mr. Thomas was transported to the hospital, there was much discussion among FPD command staff about the collection of information from involved and witness officers. This discussion was compounded by the initial uncertainty regarding whether the District Attorney was going to assume immediate responsibility of the investigation. When FPD eventually learned that the District Attorney was not responding that evening, the Department was left with the decision about how to obtain information from witness and involved officers about what had transpired.

During our review, we were informed that there was much discussion and debate that night about the best way to gain an account of the event from FPD personnel. Eventually, it was decided that involved and witness officers would write police reports about what they had observed. In our view, considering the nature of this incident, the better practice would have been for FPD detectives to conduct tape-recorded interviews of witness and involved officers. Such interviews are the best vehicle for obtaining comprehensive and contemporaneous information about observations and actions. Police reports contain a narrative in which the reporting officer determines which facts and details to include in the report. As noted below, to the degree that the level of detail in the report is found wanting, supervisors can request further information but the give and take of that information flow is not immediately apparent in the final report. Finally, because of the delay in the writing and approval process, the final written report of the incident may not be obtained by the agency for several days.

Interviews, on the other hand, provide contemporaneous and detailed information about an officer's observations and actions. Unlike the report writing process, interviewers can immediately ask follow up questions and answers are recorded in real time. Finally, interviews contain voice inflection, tone, and other audio cues that are not captured in a written report. The investigation into the Kelly Thomas incident would have been better-served if the decision had been made to interview the involved and witness officers the night of the incident.

Recommendation 13: FPD should revise its protocols regarding how information is obtained from witness and involved officers in a major use of force incident to require that personnel are contemporaneously interviewed on tape about the incident to supplement or supplant the report writing requirement.

Timing and Submission of Police Reports

Some police agencies require that witness and involved officers to a major force incident also write police reports documenting their observations. In less significant force incidents, most agencies initially rely on a police report or supplemental report to capture the officers' recollection about what had transpired. As noted above, in the Kelly Thomas' incident, the decision was eventually made that the involved officers would prepare police reports to document their observations and actions. However, in some cases, it was days later before a final version of the police report was submitted and approved.

This fact was largely a circumstance of the editing and approval process. Standard police practices require any submitted police report to be reviewed and approved by a supervisor. This practice is sound; it is important to have a supervisor review initial reports to ensure that the officer has provided a report that is clear and has sufficient detail about the event.

In the Kelly Thomas case, it was decided, consistent with best practices, that one supervisor would be responsible for reviewing and editing all of the officers' reports. However, because of the editing process and officers' schedules, some reports were not officially approved until several days after the incident.

In our view, whenever possible, the submission of a final police report documenting the officer's actions or observations in a use of force incident should not be delayed but should be approved before the officer is released from duty. It is important that the Department obtain documentation about a force incident as soon as practicable and not have to wait several days for the report approval process to be completed.

Recommendation 14: In cases in which officers are to write reports regarding their actions or observations of a force incident, FPD should develop written protocols requiring that, barring exceptional circumstances, such as the incapacity of the officer due to injury, the report be completed and approved before the officer is excused from his shift.

Editing of Force Reports

Standard police practice is that all police reports, including reports in which an officer's force is documented, should be subjected to review by a supervisor and returned to the officers should the report lack clarity, contain grammatical or typographical errors, or is not sufficiently detailed. During our review, we were able to compare the original draft reports submitted by the involved officers in the Kelly Thomas case and, by and large, we found the review and editing

process to mostly involve the correction of grammatical and typographical errors. However, in one case, the submitting officer included in his original report a numerical range regarding the number of times he used force. During the report review process, the supervisor returned the report to the officer and suggested that he replace the numerical range with the word “multiple.”

As noted above, the purpose of the police report is to obtain a detailed statement of the force used. While, in our experience, the officer using force is often not able to be precise about the number of times he struck the subject, whatever information the officer possesses about the frequency of the force should be included. It is also not uncommon for a report documenting force to contain a range about the number of times force was applied since the officer is not counting the blows during the fast moving incident. However, a reviewing supervisor should not, during the review process, request the officer to substitute a numerical range with an even more imprecise description such as “multiple.” It should be the goal of any reviewing supervisor to obtain more detail, not less.

Recommendation 15: FPD should develop training materials for supervisors that emphasize the important role and goals of the report review and approval process. In those training materials, it should be emphasized that supervisors should not propose any edits that make the report less precise than originally submitted.

Evidence Preservation

With one important exception, we found the evidence collection by FPD representatives to be consistent with best practices. The exception was that when Mr. Thomas was transported to the hospital, the hobble that had been used to secure him was cut away so that he could be treated. Rather than having the hobble collected by the transporting FPD officers for its potential evidentiary value, it was discarded by hospital staff. While in this case, the hobble may have proved to have had little evidentiary value, it should have been collected and booked into evidence along with all other personal effects of Mr. Thomas and the evidence collected on scene. While as stated above, this failure to retain evidence appears to be a singular mistake and does not indicate a pattern or trend, as a prophylactic measure FPD should use this event as an opportunity to alert its officers on the need to preserve evidence in critical events.

Recommendation 16: FPD should regularly brief its officers on principles of evidence preservation.

Response to Stakeholders and the General Public Regarding the Incident

As the Kelly Thomas incident progressed from the night of July 5, 2011, FPD was relatively silent in informing its stakeholders about the incident. While City officials were contacted telephonically within hours of the incident, few details were provided. The existence of the video and the audio recordings and what was depicted on them should have placed Department leaders on immediate notice of the import of the incident before them. While this recognition certainly occurred to some, FPD was slow to respond publicly to the incident.

With regard to Mr. Thomas' father, the Chief of Police did reach out the next day and indicated that he was available for him as a resource. While Mr. Thomas continued to be treated at the hospital, the handling FPD detective provided support and information to Mr. Thomas' father to the degree possible considering the infancy of the investigation.

While FPD was releasing scant information to the media about the incident, information was beginning to reach the public's consciousness. Graphic photographs of Mr. Thomas' injuries taken at the hospital were released. Another video of the incident made its way onto YouTube which depicted the audio of Mr. Thomas calling out to his father. And Mr. Thomas then expired later in the week as a result of the injuries suffered from the incident.

During this period of time, FPD continued to remain relatively silent publicly about the incident and some information that did come out proved to be inaccurate. As noted in our interim report, a comment by the Department's Public Information Officer about the responding officer suffering "broken bones" turned out not to be accurate. A public comment by the Chief of Police about the use of the Taser also proved to be inaccurate. While as we stated in our interim report, we found no evidence to suggest that FPD intentionally provided misinformation about the incident, the Department should have resisted the dissemination of information until it could be verified. Most importantly, there was no overarching message delivered publicly about the tragic event that had occurred at the hands of police.

With regard to the Chief of Police, after receiving a telephonic notification of what had transpired that evening, he chose not to respond to the station. The next day, there were no public pronouncements expressing the Department's concern for what had transpired. Rather, the Department seemed to "hunker down" as the information about the incident became known through other sources and dribbled out information about the event in a rather haphazard way and usually "upon request." For example, as noted in our interim report, the release of Kelly Thomas' booking photo upon request from a news organization coupled with public information

that focused on the relatively minor injuries the officers' sustained only served to fan the flames of opinion that FPD's interest was in demonizing Mr. Thomas and siding with the officers. And as the incident continued to crescendo, the Chief of Police decided to leave for his pre-planned vacation.

To be fair, the Chief's decision not to speak in broad tones about the incident and to leave for vacation while the incident was "going viral" was not made alone or without consultation with others. That being said, as the leader of the law enforcement agency responsible for the incident, a Chief of Police has the ultimate responsibility for speaking for and leading the agency in a time of crisis.

In our view, the Chief of Police needed to address the incident head on and almost immediately. Certainly, by the time he arrived in the office the day after the incident, the Department had enough information to know that it had a serious and tragic event with which to deal. At that time, the Chief should have pushed more vehemently for the District Attorney to assume the investigation and informed the media about that request. The Chief also should have gone before the media, not to provide a detailed summary about the incident, but to inform all regarding the Department's deep concern about the incident. Regardless of whether criminal charges or administrative sanctions were being considered for the involved officers, a tragedy had occurred. A homeless man who had been detained for investigation of a relatively minor infraction was on the brink of death as a result of police action. Without prematurely assessing fault, the Chief could have and should have expressed regret for what occurred and communicated the Department's apologies to the Kelly Thomas family for what had happened to their son. The days after the tragic event were not the time for the City to think strategically or have potential litigation risk dictate the response; an unequivocal apology was called for and should have been made the very next day.

As indicated in our interim report, potentially misleading information about the condition of the officers and photos showing a disheveled Kelly Thomas from an earlier arrest was released by Department sources. As a result, some of the public believed the scant information that was being released by the Department was intended to discredit Mr. Thomas and portray the involved officers as victims. As we also noted, if information is to be released about a critical incident, it needs to be completely accurate; there is nothing that will undermine the public's trust more about how a Department is handling a critical force incident than inaccurate information. In our view, more important than a preliminary, and potentially inaccurate recitation of the facts is the need to demonstrate that the Department can empathize with family members' pain and the public's concern, regardless of what any eventual liability may be.

The task of providing information about the incident fell significantly to the Department's Public Information Officer ("PIO"). The PIO was a sworn supervisor and, coincidentally, an officer in the Department's Police Association, the group responsible for defending officers who are the subject of misconduct investigations. The mere fact that the PIO held dual titles caused some to be skeptical about his ability to be objective as a result of the inherent potential conflict in the two roles.

We have been informed that FPD's PIO protocol has been changed and that in future similar critical incidents, the Chief of Police would be responsible for communicating to the public. We agree with this important reform.

Recommendation 17: The Department should develop guidelines about how to handle the public response to critical incidents in which police officers' conduct is under scrutiny.

Recommendation 18: In the future, the Department should not be reticent about expressing regret should tragedy befall a citizen as a result of an FPD officer's use of force.

Recommendation 19: Consistent with FPD's new PIO protocols, in critical incidents in which an FPD officer's conduct is under scrutiny, all public responses should be made either by the Chief of Police or by a City official rather than a sworn police officer.

At the time of the Kelly Thomas incident, FPD had developed insufficient regular formal outside contacts in the community with which to communicate and receive information about the incident from the community's perspective. As a result, FPD had not built sufficient capital and trust among its community when the incident occurred. For that reason, the Acting Chief of Police's announced intent to create an Advisory Board is an important step toward improving Department and community relationships. With institutions such as advisory boards already in place, the Department will be better placed to respond to future crises. In addition, regular Advisory Board meetings offer an effective way to communicate FPD initiatives, reforms, and challenges to its community, and more importantly, receive information about matters of community concern on a sustained basis.

While there has been no formal Advisory Board in Fullerton, many of the Department's officers and professional staff have deep ties to the City. Currently, thirty officers and twenty-four professional staff reside in Fullerton. FPD officers are involved in many community-oriented activities, including scouting, boys' and girls' clubs, athletic teams, and the Fullerton lifting youth program. Individuals and the Police Officers' Association regularly donate to non-profit organizations and community causes. In a recent assessment by the federal grantors of

community-policing monies, a site visit found the Police Department to be in compliance with its requirements for community partnering. The Department has created a community policing strategy that is in accord with progressive community policing models.

In freeway-centric Southern California where employees often live miles from where they work with long commutes, the task of finding ways for those line officers, who are not residents of Fullerton, to connect in other ways with the community they serve is not easily achievable. However, command staff, from the Chief on down, does have the ability to set a tone for its patrol officers and should continue to find ways to reinforce any initiatives by its officers to connect with its community in positive ways.

The advantages of officers engaging the Fullerton community outside of their policing responsibilities cannot be underestimated in establishing trust and familiarity in that community. The community clearly benefits from such interactions. In addition, officers report that engaging with the community in which they work helps them gain a broader understanding of their policing responsibilities. In short, the development of such connections results in officers viewing their roles as more than just a job as a “law enforcer”, but rather a career as service-oriented problem solvers for the community.

Recommendation 20: FPD and the City should implement the recommendation by the interim Chief of Police to form a Chief’s Advisory Board.

Recommendation 21: FPD leadership should continue to encourage its line officers and supervisors to engage with the Fullerton community consistent with a true community policing model.

Leadership Issues at FPD

As noted above, our review of FPD was intended to extend beyond the Kelly Thomas incident and examine how the Department treated other force incidents and integrity issues. As with all police agencies, many other aspects of FPD’s operations are necessarily interrelated to the investigation and review of force, including policy development, training, hiring, remediation, and accountability. In addition, perhaps the most important components that impact the direction of a law enforcement agency are leadership and supervision.

As a result of lost trust in FPD by some, there have been repeated averments about FPD possessing a “culture of corruption.” While there have been incidents in which FPD employees have had serious integrity failures, our review found no evidence that supervisors and leaders

actively condoned such conduct. In fact, in the more egregious cases, FPD moved purposely to separate these employees from their jobs. We also saw no examples where officers and supervisors conspired to purposefully protect officers and prevent misconduct from coming to light. We did, however find that, prior to the Kelly Thomas incident, FPD had developed a “culture of complacency” whereby command staff had not devised sufficient control mechanisms to more readily detect misconduct and when it did, had a propensity to insufficiently address the problems. While none of the command staff discussed below are any longer with FPD, their legacy has certainly had a lasting impact on the organization that survives beyond their tenure. We would also be deficient if we did not caution that the illustrations below should not be applied broadly to all current and former command staff at FPD; we met and were informed about exemplary individuals who have filled those roles over the years. And even the high ranking supervisors who were involved in questionable incidents over the years also brought talents and dedication to the organization in their years in positions of authority.

That being said, one phenomenon that contributed to the development of a culture was a period of time in the recent history of the Department when there was dysfunction among higher command staff. In our review, we were informed about how two now retired high level command personnel were involved in an alcohol-related “horseplay scuffle” at a bar in Fullerton. In that case, the immediate response was to do nothing formally to address the incident. While there ended up being some formal response to the incident, the consequences suffered by the involved upper level command officers were not robust to say the least. During our review, we were informed that at least the internal perception was that other transgressions by upper level command staff went largely unaddressed or ignored.

As another illustration, one of the recent policing challenges FPD has faced is the downtown nightlife community. As a result of an explosion of bars in a concentrated area, the Department has had to create special units of officers to address the enforcement challenges. While the Department has frowned on its line officers frequenting the establishments, over the past years some former high level supervisors were regular attendees at the downtown bars.

We were informed that over recent years that there were competing camps among former upper level command staff which created real divisions among lower level supervisors. The rifts among certain upper level command staff often required lieutenants and sergeants to “choose sides” in the power struggle. The dysfunction rose to a level that at one point, some captains were virtually not talking to each other in the work place. The internal perception was that this dysfunction was allowed to fester during the internal maneuvering among command staff for the next Chief of Police position.

We were also informed during our review that this “culture of complacency” was evidenced by a lack of sufficient interest in ensuring that FPD hired, trained, developed and channeled the highest caliber officer possible. Leadership made comments openly at the station that every organization needed “C” players and that the supervisor would “be retired by the time they are problems” to justify questionable hires or retaining mediocre officer trainees on the Department. Some former command staff received a reputation of being so undemanding of subordinates that the supervisor would “give a goat a good evaluation.” Lower ranking supervisors also expressed concern about the attachment of some of their leaders to the community and to what degree there was true commitment to the job.

Statements and actions at the highest level of any law enforcement’s command structure molds the esprit de core for the whole organization. If lower level supervisors receive the impression that higher command staff are both not “talking the talk” and “walking the walk,” they too may become less vigilant and committed to ensuring that line officers under their command are performing well and consistent with the values of the organization. In any organization, but particularly law enforcement, subordinates carefully assess their supervisors and often pattern their orientation toward the Department similarly.

One illustration of this culture of complacency came to light as a result of a recent investigation into the theft of monies from FPD’s property safe. While again, credit should be afforded FPD for eventually discovering the theft, complacency and insufficient monitoring protocols allowed the thievery to go on for a period of time. And perhaps most telling, when FPD investigators made inquiry about the combination for the safe in which the cash was held, they found the combination attached to the outside of the property safe.

To be fair, we must emphasize that much has happened since the Kelly Thomas incident and that the development of any culture that we identify here occurred prior to July 5, 2011. As noted elsewhere in this report, much has already been accomplished in the ensuing year in an attempt to modify the culture. In fact, we have seen evidence that accountability among command staff is now seen as critical to the Department’s well-being. While a Department’s culture cannot be turned around overnight, we are heartened by how current leadership seems to understand the need for change and have begun to devise ways to address that need.

Another issue that has bedeviled FPD in recent years is the repeated formation of supervisor subordinate personal relationships. Sociological studies have regularly shown that the most frequent place that individuals meet and develop personal relationships is in the work place. The development of these relationships, particularly supervisor subordinate relationships when

the supervisor is high up in the organization's chain of command is fraught with challenges to the organization. First, the two involved during the initial development of such a relationship often attempt to keep the development of such relationships secret, sometimes because one or both of the individuals already have legal commitments to others. Usually, particularly in a small organization, word gets out and there still may be initial denials of the existence of the relationship. Then, when the relationship finally becomes public, distrustful feelings may have developed towards the two as a result of their denials.

A second problem with the existence of such a relationship is the almost automatic perception of favoritism toward the subordinate. No matter what precautions a law enforcement agency may try to create to keep a highly placed supervisor out of the reporting chain of the subordinate, there will always be a perception among some that the subordinate will receive special treatment as a result of her or his relationship with the supervisor. Many will conclude that the subordinate's supervisors will naturally want to ingratiate themselves with the high ranking officer and that will result in the subordinate receiving special assignments or being on a faster track for promotion.

Finally, when the relationship goes bad, and statistics show that it almost always does, the Department and the City is often vulnerable to a law suit by the subordinate that either she or he was "coerced" by the supervisor into the relationship from the beginning or that she or he was "harassed" by the supervisor when the subordinate decided to end the relationship. These legal claims are often difficult to prove or disprove, and when they occur, have the potential for creating significant liability and a schism within the Department should members have to choose sides in the dispute.

Unfortunately, for law enforcement leadership, the phenomena of supervisor-subordinate relationships in a law enforcement agency prove difficult to address. It is impractical to order officers not to develop such relationships, although new supervisors can be enlightened about the challenges such relationships may present to themselves and the Department at the time of their promotion. Another helpful palliative to the problem is to develop policy requiring supervisors to inform the Chief of Police when such a relationship forms and to hold supervisors accountable should they violate such a reporting policy. While certainly neither remedial measure is fool proof, the initiatives at least indicate that a Department is aware of the pitfalls of such relationships to the organization and that it is doing what it can in an attempt to address the potential problems.

Recommendation 22: FPD should ensure that supervisors in its organization are held to a higher standard, that high level command staff is held to the highest standard and when there is information that a supervisor has performed inconsistently with the values of FPD, the allegation is thoroughly investigated and, when merited, accountability is stern.

Recommendation 23: FPD supervisors should be exposed and required to regularly acquaint themselves with principles of ethics based leadership.

Recommendation 24: In line with recent improvements, FPD should continue to bolster its auditing of property, narcotics, and firearms.

Recommendation 25: FPD should ensure that its supervisors are regularly briefed on the pitfalls of developing supervisor subordinate relationships.

Recommendation 26: FPD should develop policy requiring FPD supervisors to notify the Chief of Police once a personal supervisor subordinate relationship is initiated. The Chief should then take all precautions to ensure that actual or the appearance of favoritism toward the subordinate is not permitted to occur.

Review of FPD Hiring Practices

One issue emanating from the Kelly Thomas incident related to the hiring of one of the involved officers. We have reviewed that issue and found nothing untoward or extraordinary about that hiring decision. The applicant met standards by the Peace Officers Standards and Training (“POST”), the credentialing state agency for peace officers in California. The fact that the officer had suffered the loss of use of an eye was not then and is not now a disqualifier for police service. Other similarly situated peace officers have performed ably in their roles.

We were informed that, in the past, those responsible for FPD’s hiring program had relationships with one feeder academic institution that caused the Department to rely heavily on that institution for police candidates. Recently, the Department wisely has broadened its recruitment program so that it can draw from a larger array of potential candidates.

Recommendation 27: FPD should continue with its new orientation of recruiting police candidates from a diverse pool of resources.

Review of FPD Force Policies and Related Policies/ Training

During our review, we examined FPD’s basic use of force policies and related policies

and found them to be consistent with case law and current police practices and similar to most other law enforcement agencies in the State. This is due in part to the fact that FPD subscribes to Lexipol, a private service that provides sample policies for many law enforcement agencies in the State of California and around the country. Lexipol is staffed with former police practitioners and attorneys who work to ensure that the policies they promote stay consistent with current case law. When new case law warrants a change in policy, Lexipol advises its subscribers that a change in policy is required.

However, the managers of Lexipol recognize that there may be times in which a law enforcement agency may want to customize certain policies dependent on the mission or interests of the organization and expressly designs its policies allowing for such customization. While the policies promoted by Lexipol provide a base line for law enforcement agencies to consider, each policy should continue to be considered individually by law enforcement managers to determine whether the policy should be modified to fit particular needs or interests of the agency. FPD has appropriately performed this calculus in the past; for example its policy regarding the use of DARs is a customized policy.

Consistent with this philosophy, we recommend that FPD consider the following refinements to its current policies relating to use of force:

The preamble to current FPD policy regarding use of force describing the Department's philosophy contains some commendable phrases about the dignity of life:

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

Certainly, officers must have authority to use force to perform their duties to effectuate an arrest or to protect themselves or others from threats of harm. However, the goal of any progressive police agency should be to ensure that force is used only when necessary. While there will always be occasions in which force is required, the objective should be to eliminate incidents in which officers may be "authorized" or "justified" in using force, but it is not "necessary" to use that force to complete their responsibilities. In accord with principles of progressive policing, FPD's interest should be to eliminate these uses of discretionary force to handle a situation when other skills and tactics can be used in their stead. This objective requires a reorientation and culture change of police attitudes regarding the use of force. The goal is to

eliminate force which is “lawful but awful”; force which is defensible but likely did not need to occur.

While FPD’s current language in its philosophy regarding use of force somewhat speaks to this concept, to help reinforce the idea that the Department’s interest is to reduce incidents of force to an absolute minimum, we also recommend that the Department consider reorienting its use of force policy to further promote the prevention of force. For example, the preamble might contain language such as below to assist in further articulating FPD’s interest in reducing uses of force:

When time, circumstances, and safety permit, there may be alternatives to using force. When reasonable and safe under the totality of the circumstances, members should consider such alternatives as advisements, warning, verbal persuasion, and other tactics.

Recommendation 28: FPD should reorient officers’ philosophy with regard to use of force by promoting alternatives to force to resolve situations in the field.

FPD policy and protocols should reinforce officers who handle situations in which force would have been justifiable but who found other ways to resolve the incident without resorting to force. One way in which this behavior can be encouraged is through the issuance of “commendable restraint” citations. Another way to positively recognize officers who find ways short of force to perform their duties is to include that assessment in FPD’s performance evaluation as a metric of desirable behavior.

FPD’s version of “commendable restraint” citations is to include incidents in which officer’s handled matters without resorting to force in the Department’s Watch Commander’s Log. We were presented samples of the log in which officers’ performance was documented in which they showed, for example, “great restraint in getting [the arrestee] to cooperate and follow commands”. We were also informed that the information in such logs found their way into employee’s performance evaluations. While we appreciate that FPD has understood the need to comment favorably on officer performance that resolves issues without turning to force, we believe that the “log” method makes it more difficult to track and reward such performance and suggest that such information be more formally exported into a separate document and then be inserted into the officer’s personnel file.

Recommendation 29: FPD should reinforce officers’ conduct that resolve confrontations without resorting to force through formal means such as commendable restraint citations

and by considering the amount of force an officer uses in assessing the officer's annual performance.

Current FPD policy appropriately requires any officer who uses force to immediately report the incident to a supervisor. We recommend that the reporting requirement extend to any officer who witnesses another officer using force, including force by other police agencies. This requirement will help ensure that all force is reported and will help orient officers to make them better witnesses to the use of force by other officers.

Recommendation 30: FPD should enact policy that would require FPD personnel who witness force being used by a fellow officer or by another law enforcement agency report the force to a supervisor.

Current FPD policy allows in some instances for force to be documented without the need to interview the officers involved in the use of force. In cases in which the evidence surrounding the use of force is "unequivocal," current policy states that involved officers need not be interviewed about the incident, and information in their police reports will be used to assess the use of force. While this approach may have utility in cases in which the arrestee's statement, the injury evidence, other witnesses, and the officers' report are consistent, we believe that some force incidents should always require an interview of the involved officers and a heightened level of review by FPD executives. For example, incidents which should require this increased scrutiny include cases in which there was significant injury as a result of the force that required medical treatment, or certain applications of force such as canine bites, use of the carotid restraint, use of the baton, head strikes with impact weapons, and use of the Taser.

Recommendation 31: FPD should set out with more specificity force incidents which would require that involved and witness personnel are interviewed.

Training/Use of Force Options

Police agencies train on force options that are available to its officers depending on the situation presented. Those force options are dependent on the level of resistance or threat faced by the officer. For example, when presented with a deadly threat, officers are authorized to use deadly force to eliminate that threat. When presented with solely resistive behavior, officers are only authorized to use lesser levels of force.

In our interviews with officers, there was possible confusion by some regarding appropriate force levels. For example, in discussing whether the use of the Taser was authorized

and designed as an impact weapon, officers responded in the negative but some indicated that they had been taught that any device was allowable as a weapon in certain circumstances. While certainly in a life-threatening circumstance that fact may be true, it was unclear whether the officers clearly understood that the exception was limited to those circumstances. In fact, the sentiment among some officers seemed to intimate that virtually any level of force was permitted to address resistive behavior in order to bring a resistive suspect under arrest short of the use of a firearm. Clearly, that view is inconsistent with FPD's force policy; for example, only certain levels of force are authorized to accomplish tasks such as securing the arms of a suspect so that he can be handcuffed.

In order to eliminate any potential confusion on this issue, targeted refresher training on these limits to force options should be provided to all officers on the Department.

Recommendation 32: The Department should provide targeted training to its officers so that all are clear that only certain force options are available and authorized in non-life threatening situations.

Distraction Strikes

In our review of FPD, we learned that officers had been trained in the use of "distraction strikes." Distraction strikes were explained to us as blows to a part of the body of a suspect intended to "distract" him so that hands could be secured or handcuffs could be applied. We found general confusion about what was allowable as a "distraction strike." The use of distraction strikes has proved controversial with other agencies and is in need of further review by FPD about what is meant by a distraction strike and what is permitted. For example, there was at least some evidence that an officer involved in the Kelly Thomas incident believed that a knee to the head of an individual was allowable as a "distraction blow."

We are concerned about the lack of clarity surrounding the use of distraction strikes by the FPD. We recommend that if the Department is going to continue to allow distraction blows, clear policy should be devised on their use regarding what is permissible and what is prohibited. We believe that any written policy should prohibit the use of blows to the head as "distraction strikes."

Recommendation 33: FPD should reconsider its training protocols and policy regarding the use of "distraction strikes." If distraction strikes are to be authorized, officers should be provided more guidance on the allowable uses of force under such category. Any distraction strikes policy should prohibit blows to the head.

Foot Pursuits

FPD's current policy regarding foot pursuits is comprehensive and alerts its officers to the inherent dangers of foot pursuits, particularly those that are conducted in a tactically unsafe manner. For example, the foot pursuit policy notes the need for officers to be in radio contact during a pursuit, the dangers of partner splitting, and entering into a structure. However, the foot pursuit policy is written as an advisory with factors for the officer to consider and there is no formal review mechanism in the policy to give the advisory language any teeth. In our review of a select number of force incidents, we noticed that a significant percentage of them began with a foot pursuit. As noted elsewhere in this report, some of the foot pursuits that we reviewed raised questions about the appropriateness of the tactics. For example, there was one foot pursuit in which plain clothes officers went into a long foot pursuit of a suspect without the tools that a uniformed officer would have such as a radio, pepper spray, Taser, handcuffs, and vest.

FPD should review its foot pursuit policy to prohibit certain foot pursuits that are on their face inherently dangerous, such as non-uniformed officers going into pursuit. More importantly, FPD should include a more formal review mechanism for foot pursuits, and when performance of its officers falls below performance standards, hold officers accountable for violation of those standards.

Recommendation 34: FPD should reexamine its foot pursuit policy to rule out particularly dangerous pursuits such as pursuits by non-uniformed personnel.

Recommendation 35: FPD should develop protocols to more formally review foot pursuits and hold officers accountable when they engage in foot pursuits that are not consistent with Department standards.

Taser Use

Current FPD policy regarding the use of the Taser is comprehensive and generally well-considered. However, based on the Kelly Thomas incident, it is clear that the policy should be revised to prohibit the use of the Taser as an impact weapon. In addition, we believe that the current Taser policy allows too much discretion for its use in certain situations. For example, current policy permits Taser use of persons on rooftops, pregnant persons, handcuffed persons, elderly persons, and juveniles provided that the need to control the person outweighs the attendant risks. We believe that the inherent risk associated with Tasers for these limited categories of individuals will almost always be too great to deploy a Taser on them and would recommend that FPD's policy more strongly caution Taser use in those situations.

Recent studies of Taser use, including a study by the Department of Justice's National Institute of Justice, cautions against multiple and prolonged use of the Taser as presenting particular risks of dire injury. For that reason, we believe that the current FPD policy affords officers too much discretion to allow "multiple reasonable applications" of the Taser. We believe that after three unsuccessful applications, unless there are exceptional articulable circumstances, officers should be instructed to cease using the Taser and move to other control methods. We also believe that the Department's Taser policy should speak to the dangers of prolonged use of the Taser by prohibiting such use.

Recommendation 36: FPD should modify its Taser use policy to prohibit its use as an impact weapon.

Recommendation 37: FPD should modify its Taser use policy to rule out more than three applications of the Taser and to prohibit prolonged Taser applications.

Performance to Standards Policy

While current FPD policy has principles that touch on the topic, there is currently no succinct general performance policy in its manual. In our experience, there are frequently occasions in which a police officer will perform duties in such a way that there may be no specific policy which is violated by the actions but the acts or series of acts are markedly below the expectations of the Department. In force incidents, this arises most frequently when tactical blunders inconsistent with training end up causing the officer to use force. In these cases, the force may be in policy, but the officer, by his tactical deficiencies and disregard for officer safety may have placed him in a situation where he was then required to use force.

In these situations, the existence of a performance to standards policy affords police managers the ability to hold employees accountable for behaving incompetently. We recommend that FPD enact policy that informs its employees that they are expected to maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions and that they will be expected to perform their duties in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the functions and objectives of the Department.

Recommendation 38: FPD should adopt a "performance to standards" policy which can be used to hold officers accountable when an officer's performance is so below the expectations of the Department's training that discipline is warranted.

Review of FPD Force Investigations and Review

As part of our systemic review, we examined a random sample of FPD force investigations that were completed prior to the Kelly Thomas incident. While obviously the issue of FPD's use of force in the Kelly Thomas incident has brought this issue center stage in Fullerton, it is incumbent upon a police agency to examine every officer's use of force for compliance with the policies and expectations of the organization, potential training issues, supervisory issues, equipment issues, and gaps or lack of clarity in existing policies. By law and necessity, officers may use force as part of their peace officer authorities. It is incumbent upon law enforcement executives to review each use of force exactly; as evidenced repeatedly over the course of the past generation or two, no one event can shake the public's trust in a police agency more than an abuse of its authority to use force.

FPD expressly states the need for thorough investigations into allegations of misconduct in its closing letters to citizen complainants by noting: "you can be assured that this matter was treated seriously and the incident was thoroughly investigated." In our review, we did find some aspects of the investigative process to be well done. For example, in general, we found the officers' description of the force used to be detailed and well written. Another aspect of the force investigation that deserves positive comment is the high quality photographs of injuries as a result of the force which are taken by FPD's Crime Scenes Investigative unit. We also found that the force reviews and investigations were timely completed. In one case, even when the complainant failed to re-contact the Department for an interview, FPD admirably continued on to complete the investigation. However, as detailed below, our review did find significant room for improvement in FPD's internal investigative process and cases which were not "thoroughly investigated."

Review of Investigations

In one force investigation, a witness officer was not interviewed because according to the supervisor investigator, a review of the officer's DAR and police report found that his version of the incident was consistent with the other on-scene officers. Even in cases in which a supervisor's initial review finds consistency between officers, a thorough force investigation will include interviews of all officers who either used or witnessed the force.

A number of the force investigations we reviewed involved a dynamic situation such as a foot pursuit that preceded the use of force. In other force incidents, officers who used force or witnessed force were in various positions when relating to the subject. In these cases, it is

helpful when both police and civilian witnesses are interviewed to have the witness sketch a diagram so that the reviewer can track the direction of travel and/or the relative positioning of the officers and witnesses when the force occurred. While many law enforcement agencies do not use this technique to capture this information, we recommend that FPD surpass the norm by deploying this effective investigative technique.

In one force investigation in which the person arrested complained about the force used on him, the interviews of witnesses identified by the complainant were conducted telephonically. Telephone interviews are usually a poor substitute for in-person interviews. For example, in this case, the way in which the officer took the complainant to the ground was critical in analyzing the appropriateness of the force and it would have assisted the investigator if the witness could have demonstrated how he viewed the takedown. In addition, the positioning of the witness, complainant, and arresting officer was important in this case, and it would have been helpful to have the witness sketch a diagram to show the relative positioning. Neither investigative technique was possible in a telephonic interview. In addition, one could interpret the use of telephonic interviews for civilian witnesses as evidence that the fact gatherer is not particularly interested in obtaining a complete account from these witnesses. For these reasons, we recommend that telephonic interviews be avoided in force complaint investigations unless there is considerable geographic distance between the investigators and the witness or other significant hurdles make an in-person interview impracticable.

We were informed that telephonic interviews are not FPD's norm in conducting use of force investigations but are sometimes necessary when a witness is unwilling to come to the station or allow the investigator to visit their home or business. In those cases, we recommend that all efforts to obtain contact or an in-person interview be documented and included in the force report.

In one force complaint investigation, the officer indicated that he "tackled" the subject, but there is no further description about the tackle, e.g. whether he grabbed the subject's legs, torso, or other parts of the body; whether he pushed the subject to the ground and if so, how that was accomplished; or whether he tripped the subject to the ground. The interviews of participants must be of sufficient depth and articulation so that the actions of the officer are described in detail. One effective interview technique is to have the witness demonstrate the force that was observed and then have the interviewer describe the activity for purposes of the recording. Some take down techniques are generally preferred over others, but in this case insufficient information was obtained from the involved officer for any reviewer to gain a mental picture about precisely how the force was effectuated.

In another force complaint investigation, a summary of an interview of an individual is included in the report but it is unclear from the narrative whether the individual is an onlooker, nearby resident, or if he is a friend or associate of the subject. Witness summaries should explain how it is that the individual happened to witness the event, some background about the witness and if the witness is affiliated with the subject. Witness summaries should also include addresses and contact information for the witness should he or she need to be re-contacted.

Many force incidents occur in relation to an arrest. It is helpful for any reviewer to learn the results of that arrest, i.e., whether the District Attorney filed or dismissed the case, and the current status of the case by the time the force investigation is complete.

In one force review, the subject upon whom force was used was questioned about that force by the officer who used force on him. To have the officer who used force actually ask the arrestee about the force he used is directly contrary to good police practices. Force interviews of the subject should be conducted by a supervisor who was not involved, did not direct, and did not witness the force incident. To allow the officer who used force to interview the subject who is in custody about the force used on him creates a dynamic that does not advance general principles of objective fact finding and creates a coercive environment that will likely chill or distort the witness' response and should be expressly prohibited. FPD should develop policy that would prohibit an officer who used, directed, or witnessed force from interviewing the person upon whom force was used or civilians who witnessed the force.

The supervisor who compiles the factual recitation of the force investigation report should avoid editorializing or including conclusory statements about the substance of the witness interviews. For example, in one force review, the supervisor wrote that the complainant "changed his story" in the middle of the interview. Rather than write such a conclusion in the fact section, it is preferable that internal conflicting information provided by the complainant be set out in detail and with dispassion. It is best to leave to the analysis/conclusion section of the investigative report as the place to point out any inconsistencies in witness accounts.

Witness interviews were not transcribed in any of the force investigations that we reviewed. While ideally, every force investigation would contain transcribed interviews, we recognize the resource dedication that such a protocol would entail. Stopping short of that requirement, we recommend that interviews and DARs of significant force incidents be transcribed.

In order to ensure that investigations of force incidents are thorough, FPD should revise

its Administrative Investigation Guide to include the aforementioned precepts. The revised Guide should include language that expresses FPD's expectations for high quality investigations. When the investigation is internally reviewed, supervisors should continue to consider the investigative regimen set out in the Guide in assessing any investigation for completeness.

Recommendation 39: FPD should revise its Administrative Investigation Guide that sets out the Department's expectations for force investigations. Supervisors should continue to review force investigations to ensure compliance with the investigative requirements as follows:

- a. Every officer who used force or witnessed force should be interviewed;**
- b. When the force incident is dynamic, the force investigator should ask witnesses to diagram the positioning and track the movement of the participants. The diagram should be initialed and included in the investigative file;**
- c. A preference for in-person interviews should be articulated. Should geography or other issues prove to be an obstacle to in-person interviews, that fact should be included in the investigative report;**
- d. The interviewer should obtain sufficient information from participants and witnesses so that the force used is articulated with specificity. The report narrative should contain a detailed description of the officer's actions;**
- e. The report narrative should indicate how it is that a civilian witness was in a position to witness the force and whether the witness was known to the individual upon whom force was used, and if so, how;**
- f. Contact information of complainants and witnesses should be obtained and included in initial reports;**
- g. A discussion of whether any charges were filed against the person upon whom force was used and the status of those charges should be included in the report;**
- h. Instruction to investigators to refrain in the factual narrative of the report from characterizing or editorializing about the facts compiled in the case.**

Recommendation 40: FPD should develop policy that would prohibit officers who used, directed, or witnessed force from interviewing the person upon whom force was used or civilian witnesses about the force incident.

It should be noted that the force and complaint investigations that are the subject of this discussion were conducted by FPD field supervisors, not the two sergeants who make up the Department's Professional Standards Bureau. ("PSB") Serious internal affairs matters are assigned to these two sergeants, and in contrast to the field conducted force reviews and force complaint investigations, we found PSB investigations to be largely objective and thorough. For that reason, we recommend that a higher percentage of force investigations be assigned to PSB for handling.

As a result of budget challenges, FPD has needed to be creative in staffing assignments. Officers assigned to patrol fulfill the public's expectation for reasonable response times. Because resource concerns have made it impossible for FPD to maintain past staffing levels, detectives and officers assigned to other specialized assignments have had to regularly assume patrol duties for at least some of their shifts. This adjustment has also required sergeants assigned to FPD's Professional Standards Bureau to fill in regularly on patrol. Because of the critical role that internal affairs investigators fill in ensuring timely and thorough internal investigations of misconduct, we recommend that FPD refrain, if at all possible, from regularly assigning Professional Standards Bureau sergeants to patrol functions. Doing so would also free those sergeants up to conduct a higher percentage of force investigations, other allegations of misconduct, and audits.

We note some recent positive developments in this arena that were self-initiated by FPD. Recently, an additional sergeant was added to PSB to assist with additional investigations and audits. While the sergeant's primary duty will be in the Personnel/Training Division to provide greater supervisory oversight on hiring and training, he will be able to take on administrative investigations as well.

Recommendation 41: FPD should shift responsibility for a greater percentage of force complaint investigations to be handled by its Professional Standards Bureau.

Recommendation 42: FPD should refrain from regularly scheduling sergeants assigned to the Professional Standards Bureau to patrol duties.

FPD's Force Review Process

The standard letter response that FPD provides to a complainant at the end of an investigation into alleged misconduct states: "We always learn something of value when citizens take the time to share their feelings and personal impressions about the conduct of Fullerton Police Department employees." While, in fact, every force or complaint investigation has the capacity to be a learning experience for FPD, our review of force investigations has found scant evidence that FPD, in fact, does learn as much as it could from such events.

In one force incident, an FPD officer came upon a man sleeping in his car that he recognized and suspected may have had outstanding warrants. Appropriately, the officer called for backup and other officers, including a canine officer responded to the location. The initial officer also appropriately radioed dispatch to learn whether there were any outstanding warrants for the man. Before he was able to obtain a response from dispatch, responding officers arrived and placed their cars in a position to attempt to block the man from escaping. The initial officer then approached the man and ordered him out of the car. The man claimed he could not get out because he could not open his door, and he was instructed to climb out of the window.

When the man declined to follow instructions, the canine officer told the man that he was going to unleash the dog to get the man to comply. Then one of the responding officers used his baton to smash the passenger window of the car and stated that he was intending to reach into the car to take the key out of the ignition. At the same time, the canine officer placed the canine on the hood of the car. The man was able to defeat the blocking maneuver, window smashing, and canine response and drove away with officers in pursuit. The pursuit eventually took the officers into a neighboring city, at which point the officers used a pit maneuver to stop the man and the canine was deployed. The man was then successfully taken into custody.

With regard to this case, we did not disagree with FPD's finding that the force used, i.e. the canine, was appropriate under the circumstances. We also noted that there were several tactical decisions that were in accord with best police practices. First, as noted above, the initial responding officer called for backup before approaching the individual he had known from previous encounters. Second, the officer radioed dispatch to learn if the man had any outstanding warrants. In FPD's review, it did not comment positively regarding these well-considered tactical decisions.

On the other hand, there were also some tactical decisions that were debatable and others at least worthy of further discussion and analysis. First, while as noted above, the initial officer

radioed dispatch to learn whether the man had any outstanding warrants, he did not wait to receive a reply before he began his approach even though it appeared he had time to do so. Second, the decision to smash the window with the baton so that the officer could reach into the car and grab the keys to the ignition is a dangerous maneuver fraught with peril for the officers. We have seen too many instances in which officers have been caught positioned half way into a car and the suspect drives off, dragging the officer and placing the officer in a life threatening position. The decision by the canine officer to position the dog on the hood placed the canine in a precarious situation. As the car drove away, the dog could easily have been run over or badly hurt, endangering a valuable FPD asset. There was also no discussion about the unsuccessful "boxing in" of the suspect and how tactics might be improved the next time officers encountered a similar situation. Finally, there was little analysis or assessment of the vehicle pursuit, an inherently dangerous maneuver and the positioning of those in pursuit as well as the increased danger when the suspect vehicle traveled out of city limits and onto less familiar streets. In essence, any analysis was limited to the legitimacy of the force and failed to address the other important performance issues identified above.

We similarly found a lack of analysis in other force incidents that we reviewed:

In one incident, plain clothes officers went into foot pursuit of a suspect without equipment a patrol officer would have and eventually used force. As a result, the officers were not wearing vests and did not have a radio, pepper spray, a Taser, baton, or handcuffs. At the end of the pursuit, the officers were disadvantaged as a result of their failure to have the basic equipment patrol officers carry. There was no discussion in the force review of the advisability of plain clothes officers going into foot pursuit of suspects.

In another incident, an officer drove past a suspect he believed to be armed and eventually force was used on the suspect. No discussion or analysis was included in the force review about the advisability of this tactical decision.

In one incident, two officers were in a neighboring city when they went into foot pursuit of a suspect they believed to be armed and eventually used force on the suspect. No discussion or analysis was included in the force review about the dangers of engaging in a foot pursuit in an unfamiliar area.

In another incident, one officer split from his partner to go into foot pursuit, eventually using force on the suspect. No discussion or analysis was included in the force review about the safety issues that arise when officers split and the pursuing officer is now one-on-one with the

fleeing suspect.

In one incident, officers went into foot pursuit of an individual and eventually used force to take him down. No discussion or analysis is included in the force review about why the officers decided to go into pursuit or the legal basis for pursuing. Based on the information included in the report, there was scant legal justification for chasing the suspect.

In each of these force reviews, we did not disagree with FPD's determination that the force used was in policy. However, in each force incident there were lost opportunities to examine issues that were presented through various lenses of review.

The first lens that was lost was that of officer accountability. The force reviews and complaints of excessive force investigations were confined to determining whether the force itself was in policy. Substandard tactical decision making that could have increased the likelihood that force would end up being used was not analyzed. The tactical decisions by officers prior to the force incident were not evaluated to learn whether they measured up to the expectations of FPD. In our view, a holistic review to assess officer performance with regard to the entire incident is an essential component of any thorough force review.

The second opportunity presented by each force incident that was overlooked was to reinforce officer behavior that was tactically proficient. For example, the decision to call backup rather than approach a possible felon alone was consistent with FPD training and the precepts of officer safety. However, there are no indicia that during any subsequent force debriefing whether the officer's actions were commended either formally or informally.

Another aspect of any force incident to consider is whether the force incident suggests that FPD policies provided insufficient guidance to its officers regarding its expectations of performance or whether the force incident suggests some Department-wide training deficits. Each force review should be examined as to whether the incident is an indicator of a need for refinement of policy or increased training. Finally, the incident should be evaluated in terms of whether supervision was sufficient and whether any equipment used worked according to design and expectations.

During our review, there was no evidence that FPD's training staff was integrated into the force review process. We reviewed some of the training scenarios that FPD provides to its officers and were impressed with the dynamic nature of them and the teaching on "shoot/don't shoot" scenarios. One of the best feedback mechanisms for training personnel to learn whether officers are successfully applying their training in the field is to personally review use of force

investigations. That review can help identify weak spots in officers' proficiency both on an individual and systemic basis, tactical challenges being faced by officers in the field, and insight into where the training curriculum could use adjustment or emphasis. To ensure a completely robust response to the Department's uses of force, FPD should find a mechanism to ensure that the officers entrusted with training have a meaningful role in the process.

While a holistic review described above can be accomplished through a paper review, we have found that a multi-faceted approach is more effectively accomplished through a committee approach. With regard to at least more significant force and a sampling of less significant force, a committee comprised of members with various types of expertise and responsibility can perform an exacting and full ranging review. Ideally, a force review committee would obtain a copy of the investigative reports for review before the meeting. At the meeting, the investigator will present a briefing of the facts gathered. Then, the committee would move into its review phase where issues such as the propriety of the force, tactical decision making, supervision, training, and policy would be discussed. Robust force committees then devise written action plans intended to inform the officer about whether the force was in policy and make recommendations about briefing the incident to the involved officers or the Department as a whole. If concerns are raised about supervision or current policy, a member of the committee is assigned to conduct further research on the issue and bring findings and recommendations back to the committee at a later date. In sum, the force committee is designed to achieve the critical goal of ensuring the involved offices and the department as a whole benefit from a review of the incident with the objective of reducing the need to use force in future incidents and that when force is used that only the minimal force is used to resolve the matter.

We were informed that FPD's Force Review Process is meant to determine solely whether force was reasonable and within policy. Tactical considerations were delegated to the employee's supervisor and lieutenant and addressed in briefing sessions as training and in evaluations as performance issues. In some cases, additional training is also sometimes required and/or an employee is placed on a performance improvement plan.

While we did receive examples where tactical decisions and performance were addressed through briefings, we do not agree that such important aspects of force incidents should be delegated to the officer's immediate supervisor. The Department's approach will likely result in uneven supervision and treatment; with diligent sergeants appropriately identifying issues and guiding their officers while others who are less skilled, experienced, or motivated less likely to identify such issues or provide sufficient guidance and remediation. In our view, these important issues should be incorporated into the force review process and command staff should be

regularly ensuring that in each force incident there is robust feedback to the officers involved and to the Department as a whole.

Recommendation 43: FPD should improve its force review process to ensure that not only is the incident centrally reviewed to determine whether the force used was in policy but also to examine whether there was tactical decision making that was consistent with FPD policy and expectations.

Recommendation 44: FPD's force review should also consistently reinforce officer conduct that is consistent with or surpasses the Department's expectations through formal or informal commendations.

Recommendation 45: At the end of the force review, officers involved in every force incident should be debriefed regarding how the Department considered the handling of the incident including the tactical decision making.

Recommendation 46: In addition to deciding whether the force was in policy, FPD should examine force incidents to determine whether there were issues of supervision, policy, or training that it should address.

Recommendation 47: FPD should develop protocols so that training staff reviews force incident investigations and provides meaningful input in an individual and systemic way to improve the training of officers.

Recommendation 48: FPD should consider designing protocols whereby significant force incidents and a sampling of less significant force incidents are reviewed by a force review committee. The force review committee should develop a written action plan for each force incident reviewed and ensure an effective feedback loop to present the results of any action plan back to the committee at a later time.

Recommendation 49: FPD should continue to use mechanisms, such as training bulletins or briefings to ensure that information learned is exported back to the line officers and first level supervisors in a meaningful way.

FPD's Imposition of Discipline

One of the most important responsibilities for command staff of a law enforcement organization is the imposition of discipline. In our experience, the few officers who end up

facing charges of criminality often have a history of disciplinary issues for which a Department has not held the officer sufficiently accountable. When that occurs, the message to the officer is that the Department tolerated his misconduct and that the worst he need be concerned about is a slap on the wrist. As a result, an ungrounded officer could end up repeating and often escalating his incidents of misconduct to the point where he or she becomes a liability for the organization and a danger to the community he is intended to serve.

During our review of FPD, we found examples where officers who had performed inconsistently with the values of the organization had been insufficiently addressed by former FPD executives:

In one instance, an officer was hired despite a prior arrest for driving under the influence. While still on training, the officer was again arrested for driving under the influence of alcohol. When an officer is on training, a law enforcement agency can separate the officer for any incident and the officer has virtually no legal recourse to challenge the decision. However, in this case, former FPD managers did not move to separate the officer despite the warning signs displayed by the two arrests. Subsequently, the officer used City funds to fuel his drug dependency habit which finally ended his law enforcement career. Had FPD moved more resolutely when the pattern of substance abuse first emerged, the officer would not have been in a position to further harm the City as a result of his substance dependency issues. There were also indicia in this case that the weak response of the Department to the earlier incidents was, in part, a result of the officer's family connections to the law enforcement community.

Several years ago, several FPD officers were found to have violated policy and the values of the organization as a result of on-duty misconduct in dealing with a citizen. The misconduct was so aberrant and distasteful that a case could well have been made for termination of at least some of the participants. While each received discipline for their violations of policy, none were terminated, and several of the involved officers ran into further trouble as their careers progressed.

More recently, an officer was found to have subjected a handcuffed arrestee to excessive force. However, instead of presenting the matter for potential criminal prosecution and/or terminating the officer, former police managers decided to award him merely a reprimand for his misdeeds.

Failure to hold officers sufficiently accountable for misconduct provides license to those officers to continue their miscreant ways. Giving an officer a "break" ends up working to the

disadvantage of the Department, erodes trust in the community that the Department has the fortitude to address misconduct, and actually does a disservice to the offending officer. When transgressions are allowed to slide, it increases the likelihood that the officer will offend repeatedly, causing more serious jeopardy for that officer down the road.

In most cases, by effectively communicating to their officers the expectations of the agency, holding them accountable and developing an effective corrective action when officers transgress, command staff can manage to remediate most transgressors. However, no matter how effective and exacting the hiring process may be, so long as law enforcement agencies are required to select from the human race, a small set of applicants will be hired who will abuse the trust and authority that we must provide to them in order for them to fulfill their responsibilities. It is incumbent upon law enforcement leaders to address the first indicia of abusive conduct from these individuals and move to separate them from the agency to prevent dire consequences.

For that reason, we have found it helpful when law enforcement command staff considers the disciplinary system as dichotomous -- in one category are serious transgressions involving abuse, integrity, or character flaws that demand that the badge be separated from the officer and, all other violations. With that binary conceptualization, leaders of the organization should not negotiate with those who fit into the first category at the grievance or post-disciplinary phase, while those who fit in the second group are deserving of a well-crafted remedial plan designed to prevent the employee from future violations of policy.

In determining the appropriate level of discipline, command staff should strive for consistency so that similarly situated employees are treated similarly while recognizing that there is room for differential treatment depending on factors unique to the employee. One helpful device that law enforcement agencies have used successfully is a disciplinary matrix or disciplinary guidelines. A disciplinary matrix sets out a disciplinary range for all potential policy violations. More refined matrices then note factors specific to the employee's situation that may be a basis for mitigating or aggravating the discipline. For example, a complete acceptance of responsibility by the employee is cause for mitigating the discipline and the obverse denial of responsibility may be a basis for aggravating the discipline. A past history of discipline could serve as a basis for aggravating the discipline while an officer with no disciplinary history over a lengthy career may deserve discipline on the lower end of the scale. More refined disciplinary guidelines allow for decision-makers to depart upward and downward from the defined disciplinary range in unusual circumstances provided there is articulated justification for the departure. Another significant advantage to using a disciplinary guideline system is that it places employees on fair notice about what kind of discipline they may expect should they violate a

particular policy provision and reduces the perception among officers that the imposition of discipline is completely arbitrary. Finally, the use of a matrix or guideline system reduces the ability to have unprincipled factors such as favoritism enter into the decision making.

The Department should also make more effective use of the probationary process. During the one year probationary period of every new hire, exacting monitoring of the progress (or lack thereof) of the officer is essential. It is during this one year where all of the auditing and review tools available to the Department should be effectively used to learn whether the officer is meeting the expectations of the Department. If even minor transgressions, violations of policy, off-duty misconduct or other red flags are observed during this one year period, serious consideration should be provided to releasing the officer from probation and separating the employee from the Department. Because the Department does not need “cause” to fail an officer from his probationary status, it is better to address early concerns about an officer’s performance during that one year period, rather than allow a troubled probationary officer to slip by so that he can be a potential problem employee for the Department for the twenty -plus years of the officer’s tenure.

Recommendation 50: FPD should consider developing a disciplinary matrix or guidelines to help ensure consistent and principled disciplinary decisions.

Recommendation 51: FPD should hold firm when its initial determination is to terminate an officer and should only modify the decision when there is new information or analysis provided during the grievance process that warrant such modification.

Recommendation 52: FPD should make effective use of the one year probationary period for newly hired employees and should not hesitate to remove officers should concerns about the officer’s performance be identified during the probationary period.

Communicating Results to the Complainant

We reviewed a sampling of letters FPD prepared to complainants in which they reported the results of any complaint investigation and found them to be professionally prepared with a level of detail that is not generally seen by other police agencies. In one case, however, we did see a letter which failed to note that in addition to force and discourtesy complaints, the complainant had also alleged that he was not read his Miranda rights. It is important that any response letter responds to all concerns raised by the complainant.

Recommendation 53: FPD should develop protocols to ensure that complaint response

letters address each of the allegations raised by the complainant.

Mediation

Some law enforcement agencies successfully employ mediation as a way to resolve citizen complaints about officer conduct. While each organization deploys the mediation process somewhat differently, the idea is that low level complaints about officer conduct can be better resolved short of a ponderous administrative investigation by simply bringing the complaining party and the officer together with a mediator. The citizen complainant and the officer both must agree to attempt to have the complaint resolved in this way; some Departments incentivize its officers by indicating that a successful mediation will obviate the need for there to be an internal affairs investigation involving the officer.

The most effective mediation programs have been those in which the mediator is a non-department member, neutral third party who has been trained in mediation techniques. Orange County has a number of volunteer mediators who could serve to mediate disputes between FPD and citizen complainants.

In our experience, mediation is often effective because sometimes the complainant is mainly interested in having his concerns taken seriously. A neutral setting also provides an opportunity to educate the complainant about police procedures and provide better insight on why the officer took certain actions. Officers can benefit from going through the process as a result of the self-reflection prompted by the mediator and subsequent discussion to better learn how and why certain behaviors may be off-putting to citizens with whom the officer comes into contact.

Recommendation 54: FPD should develop a mediation system as an alternative way to resolve disputes among citizens and its officers.

Pre-Investigative Resolutions

In our experience, there are situations in which an officer's policy violation is evident, the employee recognizes his or her errors, but the matter still proceeds to a lengthy formal investigation. It seems as if the "bureaucracy" of administration takes hold and a rigid adherence to the system causes an unnecessary deployment of investigative resources when the facts and violation are not at issue. Some police agencies are beginning to develop alternative resolution mechanisms for these cases which hold employees accountable without the delay and expense of formal investigations.

Resolving a misconduct case by way of mutual agreement early in the case's lifecycle can be beneficial to both the Department and the employee. Early settlements can save the Department the time and resources necessary to conduct a complete investigation. Settlements also resolve the matter permanently, avoiding the cost and uncertainty of an appeal. The employee's benefits are also two-fold. The employee receives a speedy outcome of their case, thereby avoiding a long period of insecurity. The employee should also be offered a somewhat discounted penalty for accepting responsibility and agreeing to an early settlement.

Settlements are, by their nature, voluntary. An employee should understand that he or she may opt instead for the traditional route, waiting for the outcome of a complete investigation and maintaining his or her right to appeal. FPD also should only offer these settlements to a clear category of well-suited cases. The matter should have straightforward facts. The facts should not be complicated, and there should be low potential that new information or violations would be revealed by conducting a full investigation. The violation should also be clear-cut. The types of violations should be those that would result in lower level discipline and should not be applicable to potential termination cases, excessive force cases, or those involving potential integrity issues. The employee should readily admit to and take responsibility for the facts at issue and the policy violation.

Because these are agreed upon settlements and do not involve serious misconduct, they also provide an opportunity to create tailored remediation plans. In the end, through the use of pre-investigative settlements, the Department can document the truth in a fair process, resolve the matter promptly, expend fewer resources, protect employee's rights, and develop a tailored remedial plan to address the violation.

Recommendation 55: FPD should consider developing protocols and policy permitting the Department and the employee to address potential policy violations without the need to resort to a full, formal, and time consuming administrative investigation.

Alternatives to Standard Discipline

For situations in which the policy violation is not so severe that termination is the only acceptable remedy, the root purpose of any resulting discipline should be to remediate the employee and reduce the likelihood of future similar misconduct. Adopting this premise as a guiding principle, FPD can develop an alternative disciplinary system to better advance these concepts than the traditional disciplinary system. The tailored remedial system is predicated on the belief that the traditional disciplinary system anchored by reductions in pay is too simplistic

in that it does not require management to engage with the employee in a meaningful way or consider remedial programs designed to reduce the likelihood that the misconduct will reoccur. Moreover, the imposition of reduced pay is essentially punitive, with deterrence as a result of financial loss the only possible benefit. Because of its strictly punitive nature, reductions in pay often leave the employee disgruntled with no remedial component. Moreover, a collateral consequence of any financial penalty is that the hardship suffered by the employee extends to his or her family.

Under the alternative disciplinary model, the employee would be able to choose either the traditional penalty or the alternative program which is more closely tailored to remediate the violation of policy. Specifically, employees in suitable cases can agree to take courses, receive training or counseling, make presentations to their peers, write apologies, or engage in other projects that can provide professional growth for themselves and their peers. In addition to the greater likelihood that such a tailored program will reduce the likelihood that the employee will reoffend, if there is a subsequent violation, the Department is better positioned to defend the award of progressive discipline, since the tailored remedial program has proven ineffectual. Moreover, another beneficial consequence of the tailored remedial disciplinary system is that if an employee elects that disposition, he or she also relinquishes any right of grievance or appeal, thus eliminating challenges to the discipline imposed.

Recommendation 56: FPD should consider developing an alternative disciplinary system tailored to more artfully remediate the policy violation at issue.

Purging of Documents Relating to Allegations of Misconduct

During our review, we were advised that FPD “purges” its force reports and internal affairs investigation after five years. While exceptions are made to this purging process, for example, retention of documents regarding incidents that are the subject of litigation, most internal affairs investigations are destroyed after five years. This practice is not unusual for California law enforcement agencies and is consistent with state law that requires retention of those materials for at least five years.

However, in our view, the retention law for internal affairs records was intended as a floor rather than a ceiling for how long a law enforcement agency should keep such documents. The career of many law enforcement officers span twenty or more years and it seems incongruous to destroy materials which might demonstrate a pattern of undesirable conduct over more than five years. The routine destruction of materials over this period of time provides an

information deficit, particularly for newer supervisors and decision makers who may not be aware of the older cases. It also limits a longer span review of FPD culture and, in fact, notable cases which we were informed about we were not able to review in detail because they had been destroyed consistent with the internal five-year purge law.

As a result, we recommend a longer period of retention. In our view, allegations of misconduct should be retained until at least five years after the employee is no longer employed by the Department. This longer retention time allows for the Department to continue to have available the complete history of an employee's prior investigations of misconduct. Finally, the retention time extending past the employment of the officer affords the City to fully respond to Brady requests and inquiries from other agencies should a separated officer seek employment with them.

Recommendation 57: FPD should develop protocols that would extend the purging of internal affairs investigations and disciplinary records to at least five years beyond the employment end date of the employee.

Transparency

Our review found that issues identified through the internal investigative process rarely find their way to Department members at large. As with other police agencies, the disciplinary and internal affairs system is shrouded in mystery; Department members have little clue about the workings of the process, the types of cases and misconduct they address, and what information is learned about the disciplinary system comes from locker room talk.

This lack of transparency in the internal investigative process extends as well to those outside the Department. Important stakeholders such as advocacy groups, civic leaders, and the residents of Fullerton know and learn little from the Department about individual cases and systemic issues impacting FPD. While there have been recent exceptions, the Department has traditionally provided virtually no information about the methodology, case outcomes or systemic issues to its residents or to the general public. As a result, particularly since the Kelly Thomas incident, the outside world has relied for virtually all of its information about internal investigations and accountability from the media and the blogs, some of it inaccurate. Since the Kelly Thomas incident, the decision to place the Department's policy manual on line is a huge step in the right direction, it is incumbent upon FPD, consistent with the privacy rights afforded peace officers by state law, to continue this move toward more transparency and to educate its employees and the people of Fullerton about its efforts to ensure fair and effective investigations

and appropriate accountability.

Recommendation 58: FPD should work to devise ways, consistent with state law, to provide employees, stakeholders, and the public at large with more information about individual cases and systemic issues flowing out of its internal investigative processes.

Independent Oversight

As noted above, our review of the FPD has resulted in a number of systemic recommendations, designed to instill best practices in how the Department trains its officers on the use of force, investigates and reviews force incidents and allegations of misconduct, and, more broadly to move the Department in a cultural shift towards force prevention and more organizational accountability. To the extent FPD agrees to adopt our specific recommendations, we believe that better systems will be in place to achieve these stated goals. However, police departments are round-the-clock operations and always just a critical incident away from renewed public concern about the Department's actions.

Moreover, despite the installation of systems designed to ensure more thorough and unbiased internal investigations of misconduct, skepticism about the Department's ability to fairly police itself will remain. Because American policing has not historically fared well in this area, there is general skepticism about whether police will ask its officers the hard questions during an internal investigation, whether the evidence will be objectively assessed, and whether there will be appropriate accountability when police decision-makers judge the actions of their officers. Many will continue to believe that when assessing complaints of officer misconduct, the Department will either consciously or subconsciously place a thumb on the scale in favor of the officer.

As a result of this concern, progressive police agencies have adopted various forms of oversight ranging from professional auditing to a more traditional civilian review board. Because a police agency is a busy organization, internal investigations have a complex set of rules set out by state law, and most importantly, access issues and recent interpretations of state law have hampered the ability of the civilian review boards to be transparent and effective. Similar challenges have impacted oversight models which have endeavored to actually take over the internal investigations of police departments. While attractive in theory, a police board consisting of members of the community, without more, does not have the access to information, the time, or the expertise to impact police agencies in a meaningful way.

Provided it obtains a commitment to access of internal documents, as we have been provided during this study, a professional auditing/monitoring model can provide a meaningful outside voice in the way in which the Department completes and makes disciplinary decisions. Our experience has been that for this model to be most effective, it should be able to fulfill its oversight role in “real time,” that is to provide quality control over internal investigations before they are completed and forwarded to the decision maker and to provide real time input before final decisions are reached on whether the officer violated policy and if so, what level of accountability is demanded. Moreover, real time monitors will readily be able to identify additional systemic issues and work with the Department to develop fixes through refinement in policy, training, or protocols.

One model that enjoys the benefit of professional monitors and retains community input is a hybrid oversight system with a professional monitor and liaison police review committee. Under this model, the auditor works on case specific matters but regularly meets with appointed representatives of the community to report on specific cases and systems issues. In addition, the regular meetings allow the Committee to bring concerns percolating in the community to the monitor for inquiry and review. Our experience is that independent oversight provides a meaningful check on police authority, and if done effectively, works to the benefit of the City and the Department by increasing the public’s trust in its policing.

Recommendation 59: The City should consider creating an independent model of oversight to ensure that its Police Department objectively and thoroughly investigates critical incidents and allegations of misconduct and renders objective disciplinary decisions.

ADDENDUM

Post Thomas Incident: Subsequent FPD Reforms

To the credit of recent Department leadership, FPD has instituted and agreed to implement important reforms to address issues emanating from the Kelly Thomas incident and other matters brought to the Department's attention. Shortly after the incident, Department members received additional training on interacting with the homeless and the mentally ill. In addition, FPD officers also received crisis intervention training, including an overview of schizophrenia, bi-polar personalities, and depression, and FPD officers were also taught de-escalation techniques.

FPD has also recently adopted improved policies on use of its Digital Activated Recorders and improved protocols should officers mistakenly enter the wrong residence.

More recently, a new policy manual was approved and made publicly accessible. Most police departments do not have their manual of policies and procedures as publicly available and it is a testament to a commitment to increased transparency by current FPD leadership that it was amenable to placing the Department's manual on the Internet.

Another important reform to FPD's policies and procedures is the more robust review of property, money, and narcotics. Critical in these reforms is a commitment to conduct regular audits of the handling of these items and the dedication of personnel to a long overdue property audit.

FPD has also created new and improved policy regarding the handling of citizen complaints, including the ability to access complaints on-line.

The Department has updated its hiring standards that surpass the POST standards and has increased the number and type of locations from which it is recruiting.

More recent training that is being afforded FPD officers involves the use of force. Included in this training is a two hour block discussing legal, reasonable, ethical, and moral decision making when using force. The training also includes scenarios where force would be justifiable but may not be necessary to resolve the situation.

FPD has initiated community policing and crime strategy meetings in accord with its commitment to community policing.

There has been a commitment to form a Chief's Community Advisory Board. The Board would provide a vehicle with which matters of community interest could be directly presented to the Chief. Additionally, the Board would serve as a sounding board for the Chief to gain insight from its members on policing in Fullerton and discuss ways to improve those services. We were afforded the opportunity to review a proposed model for this Board and found it to provide a good blueprint for its formation and mission. The creation of an Advisory Board is one circumstance that we would have pushed for in this report; we are pleased that the initiative is already in process.

Importantly, FPD has committed in writing to provide an additional officer to assist with homeless policing matters. The addition of an officer to provide that service would double the resource dedication that currently exists. While this doubling of resources to this issue is commendable, as detailed above, we recommend even more resource dedication by FPD. In addition, the agreement between FPD and Orange County's Mental Health Services to have an outreach clinician ride with officers on a regular basis to assist with providing services to the mentally ill and homeless in the community is a significant step in the right direction. Many of these reforms would have been on our list of recommendations and we are heartened that Department leaders identified the need for them before we issued our report.

Eleventh **Office of Independent Review Annual Report**

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Foreword

An inmate claims that after he talked back to a jail guard, he was shoved up against the wall by the deputy, punched in the head, and kicked after he fell to the ground. The guard asserts that he was escorting the inmate when the inmate threatened him, tried to punch him and the guard responded by taking the inmate to the ground.

This scenario has played out repeatedly over almost two and a half centuries in America's jails. As the Los Angeles County jail system became the largest in the country, force between inmates and deputies has been regularly reported and the participants have often provided diametrically different versions of what transpired. Unlike incidents that occur in public, jail events are almost exclusively witnessed by the participants, jail employees and inmates. With each set of witness camps having motivation to either not be helpful to any subsequent fact finding process or to provide a version of the event that is less than objective, determinative evidence was hard to procure, particularly when the jail authorities assigned to be the fact gatherers were not trained or motivated to attempt to objectively or thoroughly collect that information.

The result was that there were few times in which claims of improper force could be sustained. Clearly, deputies did get away with using excessive force because there was no evidence to corroborate the claims of the inmate; and there were times in which inmate claims against deputies were fabricated but there was not enough evidence to prove that fabrication. As a result, a paradigm existed where force incidents in the jails occurred and too many times there was no effective way to establish with evidence what had transpired, even when the Sheriff's Department was motivated to do so.

As detailed further in the OIR's Eleventh Annual Report, in a few short months, this unsettling paradigm has undergone significant changes. Reforms we had been long advocating gained purchase as a result of increased attention placed on the jails and other outside voices joined the discussion. As set out in greater detail below, more robust policies were created, supervision

was increased, a new orientation towards force was introduced, and the way in which force was investigated and reviewed was overhauled as a result of internal reform and external recommendations. OIR worked with the other reform entities and LASD itself to bring the ideas of change to reality.

While as detailed in this report, LASD's way of doing business in the jails with regard to its attitude towards force has undergone a sea change, the most significant change agent that has been introduced into the equation is the installation of video cameras. The Department now has a video record of 90% of force incidents in its downtown jails and is no longer completely reliant on "observations" of inmates and jail deputies to try to figure out what has occurred. In scores of cases, an objective eye has captured the incident and now deputies who have used excessive force can be called to task and those who have had false allegations made against them can be exonerated by the video record. While as also detailed in this report, no system is perfect, the success of the cameras causes us to question why it took so long to heed our requests for this technology. However, rather than labor to try to understand the delay, we embrace the video cameras that help us with making credibility and accountability calls that were not possible in the years during which the LA County jails did without.

As further detailed in this report, LASD continues to face challenges, not only in the jails, but in attempting to address deputy-involved shootings, off-duty conduct, and integrity issues among its personnel, to name a few. This report is intended to provide a snapshot into each of those challenges and inform LASD's public about what the Department is doing to address them. The reader of this report will learn about the significant uptick in LASD's resolve to rid itself of personnel who have disgraced the badge, the recent decrease of alcohol-related driving offenses, and the continued challenge of critically examining its deputies' use of deadly force. We appreciate the ability to provide transparency in each of these areas so that informed dialogue can be had by all stakeholders interested in the Department's obligation to provide public safety consistent with the Constitution and expectations of its public.

Sexual Misconduct Allegations Against Deputies

As illustrated by the case examples cited below, when allegations of sexual misconduct are made, the Department has taken them seriously and conducted thorough criminal and administrative investigations. Even in cases in which the District Attorney has declined to prosecute the alleged misconduct, LASD has taken disciplinary action based on a lower standard of proof needed to sustain such action. As detailed below, when such allegations are proven, serious and often career-ending discipline is imposed.

Historically, sexual misconduct involving law enforcement can occur both on- and off-duty. In this report the vast majority of the allegations we describe are for on-duty conduct or originated from on-duty contact during a call.

Investigations of Off-Duty Misconduct

Case One: Off Duty Deputy Poses as an Undercover Vice Officer

An off-duty deputy started talking to a young female employee working in a tanning parlor. He claimed that he was an undercover police officer and displayed a badge. He told her that he was recruiting young, attractive women to pose as prostitutes for undercover operations and offered to pay her \$50 an hour. The young woman gave him her email address and cell phone number and promised to keep his offer secret. She later told her mother who, in turn, contacted the Sheriff's Department which began investigating not knowing that the suspect was a Department employee.

Detectives learned that the suspect then sent emails to the victim asking to set up a meeting at the tanning parlor and reminded her to keep the matter secret. He also called her on several occasions. When he arrived to meet her, detectives were waiting and detained him for suspicion of impersonating an officer and then learned he was a patrol deputy. (He was not involved in any prostitution or vice operations whatsoever.) He claimed he was only there because he wanted to hang out with the victim. He later told a supervisor that he had been planning on cheating on his wife and was glad that he had been caught.

When the Internal Affairs Bureau began investigating the allegations, investigators had concerns that a crime had occurred, so the matter was turned over to the Internal Criminal Investigations Bureau. At the conclusion of the ICIB investigation, the District Attorney concluded there was insufficient evidence that a crime had been committed under the law prohibiting fraudulent impersonation of a peace officer, in that the deputy was actually a peace officer, and declined to file any charges.

The Case Review panel heard the matter and found that the deputy was in violation of policies covering General Behavior and Obedience to Laws, Regulations and Orders. The deputy was discharged by the Department. OIR concurred with the disposition and discipline.

Investigations of On-Duty Conduct

Case Two: Engaging in Inappropriate Sexual Conduct with Explorers

The Sheriff's Department hosts a Law Enforcement Explorer Training Academy whereby youth from the community receive training to assist Deputy Sheriffs at facilities throughout Los Angeles County. After 100 hours of training, Explorers are permitted to perform such nonhazardous tasks as fingerprinting applicants, taking routine reports, and assisting with DUI checkpoints. A male Explorer reported he had heard rumors that a deputy had kissed or tried to kiss two 16-year-old female Explorers. LASD's Special Victims' Bureau was contacted and initiated an investigation into the allegations. The first of the two named female Explorers told investigators the deputy had touched her buttocks, commented on her breasts, and tried to kiss her. The second female Explorer revealed she was in a sexual relationship with him which included oral copulation and sending him nude photographs of herself. When questioned by investigators, the deputy admitted to receiving nude photographs from one of the Explorers, but denied having engaged in any inappropriate sexual activity.

The District Attorney's Office filed one felony count of oral copulation of a person under 18 and misdemeanor child molestation. After the criminal charges were filed, the Deputy was relieved of duty without pay and tendered his resignation from LASD three months thereafter while the criminal charges against him were still pending. He thereafter entered into a plea bargain whereby he was permitted to plead guilty to the felony count in exchange for the dismissal of the

misdemeanor count, no jail time, a three year probationary term, and 200 hours of community service.¹

Case Three: Alleged Sexual Assault of Vehicle Inspection Patron

A female patron arrived at a vehicle inspection area to have her vehicle inspected after repairing a broken headlight. The deputy assigned to conduct the vehicle inspection directed the patron to his office. The patron stated the deputy leered at her body by looking her up and down and asked her inappropriate questions such as if she was married and if she liked her body. He allegedly told her he liked her breasts.

As the patron tried to exit the office to obtain a money order for related fees, the deputy blocked her path and grabbed her breasts. The patron came back to the inspection area once she had obtained her money order. The deputy got into the passenger side of her vehicle and directed her to drive into the parking structure. As the patron started driving through the parking structure, she saw the deputy was masturbating over the top of his clothing. The patron received a phone call on her cell phone and told the deputy she had to leave to attend to a family emergency. The deputy asked the patron to promise to come back. The patron drove with the deputy out of the parking structure and asked the deputy to exit her car. As he did so, he placed his hand on top of her hand which was grasping the vehicle stick shift and stroked it up and down as if he was masturbating. He then took the patron's hand and placed it on his penis, over his clothing. The patron pulled her hand back. The deputy then asked her if she wanted to see his penis and if she wanted to kiss his parts as he appeared to be unzipping his pants. The deputy again touched the patron in her in inappropriate places and the patron told him to exit the vehicle with the promise that she would return the next day.

The deputy denied all allegations. An outside law enforcement agency conducted the criminal investigation which was submitted to the District Attorney who declined to file the case for lack of sufficient evidence. After the administrative investigation and despite the finding by the District Attorney, the deputy was found to have violated numerous Department policies, including: Professional Conduct, General Behavior; Immoral Conduct; Derogatory Statements and Failure to Make Statements During an Administrative Investigation. The deputy was discharged. OIR concurred with the findings and disposition.

Case Four: Deputy has Sex with a Wheelchair Inmate

Deputies A and B were transporting inmates to court appearances. One inmate was being transported regularly to court where she was facing manslaughter charges for killing a person

¹ Under California state law, conviction of a felony disqualifies individuals from being peace officers so he would have been discharged had he not resigned.

while driving under the influence of alcohol. She was temporarily wheelchair bound due to the injuries she sustained during the traffic collision. Inmate and Deputy A began to communicate regularly during the transportation to court appearances. The inmate wrote numerous love letters to Deputy A. One day during transportation between the court and the jail and when no other inmates were in the van, Deputy A pulled the van over on a remote street while Deputy B took a nap in the front seat. The inmate then performed oral sex on Deputy A and subsequently had intercourse with him in the back of the transportation van.

The inmate later tattooed Deputy A's name and the date they had intercourse on her finger and wrist. The inmate told investigators a few weeks after she had intercourse with Deputy A, Deputy B had pointed a gun at her after he believed she may report the incident. The incident came to light when another female inmate told a deputy that she had been told by the inmate about her sexual relationship with Deputy A. LASD's Internal Criminal Investigations Bureau then conducted a criminal investigation and submitted the case to the District Attorney who declined to file criminal charges due to lack of sufficient evidence. During the administrative investigation both deputies denied all allegations but the Case Review panel found numerous policy violations. Both Deputy A and B were found in violation of General Behavior; Fraternization; Obedience to Laws, Regulations and Order; Performance to Standards and False Statements During an Internal Affairs Investigation. Both deputies were discharged and are currently appealing their cases through the Civil Service Commission. OIR concurred with LASD's decision to terminate the deputies.

Case Five: A Deputy Attempts to Take Inappropriate Photos of Court Patron

A court clerk watched as a deputy entered the clerk's lobby and surreptitiously used his cell phone under a female adult patron's skirt to take a picture. She reported what she witnessed to fellow employees and a Sheriff's Department supervisor was then informed. Surveillance camera footage appeared to corroborate the witness's allegations. The surveillance footage showed the deputy walking into the office area with papers and a cell phone in his hands. He then left for a few moments and returned but this time with the cell phone open and the screen glowing. The deputy is seen walking up behind the woman and then crouching down behind her with his cell phone still on and glowing in his right hand.

When initially confronted, the deputy denied ever being in the clerk's office that day and stated he had no idea what the investigators were talking about. During a subsequent interview the deputy admitted being in the clerk's office, but only to chat with employees. He claimed he saw a piece of paper on the floor near a woman and picked it up asking if it belonged to her. He alleged that the woman said it was not her paper. Investigators examined the phone but found no photographs of the alleged incident.

The deputy then volunteered to provide more information and admitted that he had intended to take a photograph under the skirt of the woman but changed his mind at the last moment. Initially his intent was to take the photo and send it to a friend with whom he had exchanged similar photos in the past. The next day he contacted the criminal investigators and made statements which were perceived to be intended to curry favor and sympathy. Following the investigation by the Internal Criminal Investigations Bureau, the District Attorney charged the deputy with Disorderly Conduct, Unauthorized Photography Through or Under Clothing (Penal Code § 647(j)(2)). He subsequently pled nolo contendere to the charge and was placed on probation.

LASD's Case Review panel found that the deputy had violated a number of policies: Professional Conduct; General Behavior; Immoral Conduct; Performance to Standards; Conduct Towards Others; and Obedience to Laws, Regulations and Orders as it related to his actions in the clerk's office. He was also found in violation for Failure to Make Statements and/or Making False Statements During Departmental Investigations for his conduct during the investigation. For his later contact with investigators where he made statements trying to elicit sympathy he was found in violation of policies prohibiting Obstructing and Investigating / Influencing a Witness; and Failure to Cooperate During a Criminal Investigation. For all those findings, the deputy was discharged from the Department. OIR concurred with the findings and the disposition.

Case Six: Sergeant Repeatedly Harasses a Civilian Employee

While a Department manager was making rounds in of his station in the very late hours he heard voices coming from an interview room in a portion of the station not used during the night time. Upon checking he noticed that there were no lights on in the interview room and that a sergeant who had recently transferred from that unit and a female civilian employee were inside. Suspicious, the manager went to get another supervisor to act as a witness. When he returned, the lights were now on in the interview room and shortly afterwards the sergeant and the civilian employee exited. The sergeant quickly walked out of the station and drove away.

The manager asked the female employee what was going on and she responded, "Will you believe me if I told you?" She went on to describe the sergeant's behavior while he was still assigned to the station and she was a new trainee employee with the LASD. She described how the sergeant would arrange for her to meet him in a conference room on numerous occasions, where he would close the door and romantically hug her. She said that while hugging her he would touch her buttocks and attempt to kiss her. Because of the fear of losing her job, she did not report the misconduct.

The employee explained that when the sergeant transferred out of the unit she had hoped the behavior would end but she was surprised when he showed up at the station that night. She explained that he asked her to follow him and he led her to the darkened section of the station

and into the interview room where he once again inappropriately hugged her.

A criminal investigation was initiated for suspicion of sexual battery and false imprisonment; however the District Attorney declined to file any criminal charges. During the administrative investigation the sergeant claimed that he had only stopped by his former station to use the bathroom. He saw the civilian employee working and she asked to speak with him. Even though she did not say she wanted to discuss something in confidence or in a private setting, he led her to the secluded area of the station where they spoke about life issues. He claimed that he left the lights off because he was tired and described them hugging mutually. He denied hugging her closely, moving his hands down to her buttocks or trying to kiss her.

Internal Affairs investigators contacted other female civilian employees in the unit. One witness told investigators that the civilian employee had told her in the past that the sergeant had wanted to meet her in the unit's parking lot and that it made her so uncomfortable that she walked a different route to her car to leave that day. Four female employees described their experiences being alone in meeting rooms or offices with the sergeant and that he hugged them inappropriately, tried to touch their buttocks or tried to kiss them.

At the completion of the investigation, the matter was heard by the Equity Officer Panel which concluded that the sergeant had violated the Department's policies against Sexual Harassment and Inappropriate Conduct Toward Others (based on Sex). The sergeant was discharged by the Department and the parties later entered into a settlement agreement where he agreed to resign while the charges remained on his record as "founded." OIR concurred with the disposition and the settlement.

Case Seven: Inappropriate Relationship with Domestic Violence Victim

A station detective investigated a Domestic Violence case involving allegations that the alleged victim's estranged husband had violated a restraining order she had against him and threatened to kill her. After concluding his investigation, the District Attorney filed a felony criminal threats charge and two misdemeanor counts of violating a restraining order. At trial, the estranged husband alleged the detective was engaged in a sexual relationship with his wife and had presented false testimony against him. In support of these allegations, he presented evidence that the detective had added his wife as a "Friend" on his Facebook account during the pendency of the investigation and had sent her a message referring to her as "precious" and stating he missed her a lot. Both the detective and the alleged victim denied they were engaged in a sexual relationship. However, the Facebook evidence did cause the jury to question the alleged victim's and the detective's credibility. The estranged husband was acquitted and thereafter filed a personnel complaint against the detective as well as a federal civil lawsuit alleging the detective violated his civil rights. The jury found for the estranged husband and awarded a judgment of \$450,000.²

While the sexual relationship between the detective and the alleged victim could not be proven, the Department found the detective had violated the General Behavior and Performance to Standards policies by adding the alleged victim as a Friend on his Facebook page during the pendency of the investigation, by sending her an unprofessional message, and by failing to disclose the information to the prosecuting attorney prior to trial. The detective was removed from his position as a Bonus Deputy which essentially means he can no longer work as a detective and will no longer receive the increase in pay awarded to Bonus Deputies. OIR concurred with the Department's findings and discipline.

Case Eight: Deputy Accused of Rape by Girlfriend Met During a Service Call

Not all cases are obvious volitional misconduct but highlight the risks associated with deputies attempting to strike up a relationship with people that they meet on service calls.

A deputy met a family with an eighteen year old daughter during a call for service to the recreational vehicle where they lived. According to the young woman and her father, the deputy started coming around their residence on and off duty to "check up" on them and her several siblings. He would bring snacks and developed a friendship with the family. The daughter agreed to go on a ride along with the deputy because she was interested in his work. She later alleged that the way he acted around her the night of the ride along made her uncomfortable. On a later date the deputy came to their residence again and asked her father if he could take her to the movies. Her father agreed and so she went to a movie with the off duty deputy. She alleged that he made her feel uncomfortable by touching and caressing her back and kissing her on the cheek.

The very next day, the two went out again to have dinner together and the next day, he returned again and told her that he would like her to meet his parents. She went along where he introduced the young woman as "his girl" to his parents. She said they spent two nights in the house as a guest in a separate bedroom. On a later date she again spent time in his parent's house to celebrate the deputy's birthday. She alleges that the next morning the deputy came into her room and raped her. Later that day she went to a local hospital for an examination and made the rape allegation.

Another police agency criminally investigated the allegation. The deputy's parents were interviewed who said that the deputy had befriended the family and bought food and a generator for their RV. They said that it appeared to them that their son and the young woman were in a relationship together and that - other than the first night - they stayed in the same bedroom. In all, the deputy and the young woman knew each other for about six weeks when the rape allegation was made. The deputy's father also explained that they had taken the young woman to their

² The jury's verdict was subsequently vacated as part of a settlement agreement.

dentist where she had two root canals performed. The deputy agreed to be financially responsible for the expenses.

Investigators learned that a witness was claiming that the young woman's father was trying to set up a deputy. They contacted the witness who said he knew the family and that the father was "constantly scamming people." The witness said that a about month earlier the woman's father had told him that he was setting up a "stupid" deputy. The witness also recounted that he drove the woman and her father to a hospital for an alleged burn on her leg. Only later did he learn that she went to the hospital to claim that she had been raped. He said as he drove them to the hospital neither seemed upset and that they were acting "jovial."

The outside agency investigators had significant difficulties gaining the cooperation of either the female complainant or her father to submit to an interview to describe their allegations. They did, though, provide photos that had been taken surreptitiously of the deputy and the young woman throughout their contacts at the RV. There were also photos of food that the deputy brought to the family and were in a folder titled "bribes for the kids." The family suddenly left the Los Angeles area before the investigation was completed.

Ultimately, no criminal charges were filed against the deputy who appeared to have been the victim of an elaborate scam. The administrative investigation was concluded and the determination was made that the deputy had violated the policies of General Behavior and Obedience to Laws, Regulations and Orders for initiating a relationship with an eighteen year old female while on-duty and continuing that relationship in both an on-duty and off-duty capacity. OIR concurred with the disposition.

Similar Cases from Prior Years:

While the just described incident was adjudicated since OIR's last Annual Report, there have been similar instances in recent years where a deputy returned to the location of a call for service for apparently non-law enforcement reasons then led to serious policy violations. The Civil Service Commission recently upheld the discipline imposed on a deputy who returned to a residence ostensibly to check up on the welfare of a young woman who had called the Sheriff because she was in a dispute with her ex-boyfriend. The deputy went inside while his partner waited in the radio car. Within hours, the woman accused the deputy of sexually assaulting her. The deputy asserted that he was only checking on her welfare. While the evidence could not establish that the assault took place, DNA testing strongly suggested that they had kissed. The deputy claimed that his DNA that had been found around her mouth area was because he had lit a cigarette for her while she claimed he had kissed her.

In another similar incident, deputy completed a call for service regarding a family disturbance. He then returned to the residence while off duty that same day as well as the following day. He romantically pursued the adult daughter. The deputy drove her in his personal vehicle, told her he wanted to be in a relationship with her and touched her romantically. Once back at the parent's home, he sat next to her on a couch and tried to hug her several times as she pushed him away. Later he also exchanged text messages with her. The family informed the Sheriff's Department of his actions after he came back the next day. The deputy was disciplined for violating the policies of Professional Conduct and Immoral Conduct. The matter is pending with the Civil Service Commission.

Policy Does Not Prohibit Personal Relationships

While several of the incidents described above are obvious and egregious violations of policy, no particular LASD policy prohibits a deputy from striking up a romantic relationship with someone they meet on a service call. Potential policy violations center on the previously mentioned Professional Conduct and Immoral Conduct policies. While a deputy is expected to use common sense, the Department should consider a more explicit rule prohibiting deputies from returning to the location of a service call for non-official reasons. The LASD does have a very explicit policy prohibiting personal contact between inmates, felons and recent inmates.

As it appears that a number of allegations of misconduct have risen from deputies returning to residences after a call for service, OIR asked the Department to review its Manual of Policy and Procedures (MPP) and Field Operations Directives and found that it does not have policy that either directly or indirectly addresses the issue of pursuing relationships with civilians met while on duty. OIR is formulating recommendations to present to LASD regarding additional mechanisms designed to prevent deputies from finding themselves in potential career ending situations and, once formulated, will be presenting those ideas to LASD.

Lies and Other False Statements

What is a lie and what makes it actionable from a disciplinary point of view, and worrisome from an oversight point of view? The truth is, most everyone lies at some point, and deputies are no exception. Some deputies tell “big” lies involving the planting of evidence and some tell “small” lies involving taking a sick day when they are perfectly healthy. At the same time, deputies are trained that lying is sometimes appropriate during a challenging interrogation and is considered “good police work.” Suspects, for instance, are sometimes falsely told that their fingerprints were found on a gun, or that their DNA has been confirmed at a crime scene. These lies are intended to elicit a truthful admission of ownership of the gun by the suspect, or of acknowledging their connection to a person or place.

Herein lays the difficulty in ferreting out actionable lying: Lying during an interrogation is often commended as a necessary evil to get to a larger truth. However, lying on a police report can lead to criminal prosecution and/or administrative sanctions, up to and including being fired. Lies on an application for employment, and lies of omission or commission during an investigation into misconduct are also actionable and can result in getting fired.

In this section, we first discuss two recent administrative investigations involving the filing of false police reports. We then discuss a case where a deputy omitted information from his application for employment and a case involving three deputies who lied about a force incident

with an inmate. Next, we discuss how a founded administrative investigation involving allegations of dishonesty or moral turpitude on the part of a deputy can affect a criminal defendant's constitutional right to a fair trial. Finally, we note how different jurisdictions have chosen to address the constitutionally required disclosure of information relevant to a peace officer's credibility.

Administrative Investigations Involving False Statements

Filing a False Police Report

Filing a false police report regarding the commission or investigation of a crime is not simply an error in judgment; it is a crime. At the prosecution's discretion, the crime may be filed as a misdemeanor or a felony. The crime and punishment is set forth in Penal Code section 118.1 as follows:

Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years.

Filing a false police report also violates Department policies. Since the publication of OIR's last report, two false police report cases have gone through the Department's disciplinary process. In the first case, the District Attorney's Office filed felony charges against the involved deputy. In the second case, however, the prosecutor did not file any charges, so the consequences were purely administrative. As will be discussed in more detail below, the decision to file or not file a charge can affect the administrative investigation. However, because the burden of proof for an administrative investigation is a preponderance of the evidence, rather than the higher "beyond a reasonable doubt" standard required for a criminal conviction, the Department can discipline a deputy for filing a false police report even if he or she is not criminally prosecuted.

Case One: Gun in Planter

A deputy conducting a patrol check of a motel parking lot saw a male and female arguing. According to the deputy's report, he got out of his patrol vehicle to check on their welfare and as he approached them, the male spontaneously said, "come on, all I got is some meth." The deputy then asked the man if he had anything else and, according to the deputy, the man said, "I don't think so, you can check." The deputy then indicated in his report that while searching the man, he recovered a loaded firearm

concealed in his right side pants' waistband and a clear plastic baggie containing a substance resembling methamphetamine. The man was then placed under arrest. The female was asked to step away from them but repeatedly approached and was arrested for obstructing a peace officer.

When a station detective interviewed the female the next day, the female told him the motel manager was outside talking to them when the deputy approached them and that the deputy recovered a gun from a planter and not the man's person. The detective interviewed the motel manager who stated that when the patrol vehicle pulled into the parking lot, the man walked away quickly and dropped an unknown object into a planter. He then turned around and walked back toward the deputy. Surveillance cameras were present but not functional at the time. The detective thereafter called the deputy and explained what he had been told by the female and the motel manager. The deputy confessed that he had in fact recovered the gun from the planter after the man had tossed it. When asked why he would report having found the gun on the man's person, the deputy explained that he just wanted to make the arrest stick. The man had been previously convicted of four felonies which meant that simply possessing a gun was a violation of his parole/probation and when the deputy had presented the gun to him, he denied the gun was his; so the deputy decided to change the facts in his report so as to link the man more closely to the gun, which would increase the chances of returning him to prison. As a result of the investigation that was conducted by the station detective, the man and woman were both released and no charges were filed with the District Attorney.

The false police report case was then referred for investigation to the Department's Internal Criminal Investigations Bureau and later presented for filing to the District Attorney's Office. Eleven months after the case was presented, the District Attorney filed one felony count of filing a false police report and one count of perjury by declaration, in violation of Penal Code sections 118.1 and 118, subdivision (a), respectively.¹ The deputy entered into a plea bargain and pled no contest to a count of misdemeanor filing a false police report in exchange for dismissal of the felony charges and a three-year probationary sentence with credit for one day in custody. Based on the facts developed in the criminal investigation, the criminal conviction and the contents of the deputy's administrative interview, the Department found the deputy to be in violation of policies pertaining to Performance to Standards, False Statements, False Information on

¹ During the time that the case is being investigated and while the District Attorney is reviewing the case to determine whether or not to file charges, deputies being investigated for serious criminal conduct are generally relieved of duty with pay. It is not until charges are actually filed that the Department can relieve them of duty without pay.

Records², Obedience to Laws, Regulations and Orders, and General Behavior. He was discharged and OIR concurred with the outcome. The employee is currently appealing his discipline to the Civil Service Commission.

This case is a tragedy. The well-respected, hardworking and seasoned deputy threw away his career by taking a “short-cut” to make an arrest stick. He lied in order to increase the likelihood of having a “bad” guy taken off the street and locked up, arguably a lie with a laudable motive. However, the deputy failed to realize or comprehend that such lies made by peace officers erode the trust bestowed upon them by the public and violate the very laws they have taken an oath to uphold. And by lying in the report, the deputy made it impossible for the District Attorney to pursue any charges against the suspect.

Case Two: “Buying a Report”

Trainees are typically assigned to work with Field Training Officers while they are on patrol training. On some occasions, however, a Field Training Officer (FTO) is not available so a trainee is paired with a seasoned deputy. On this particular trainee’s first day of patrol training, an FTO was unavailable so she was assigned to work with Deputy A – a veteran deputy. While handling a deceased person call, they were assigned to respond to an assault with a deadly weapon call. Deputy B was assigned to assist on the call. Because the trainee and Deputy A were tied up with the deceased person call, Deputy B responded to the assault with a weapon call, interviewed witnesses, recovered a knife, and arrested a suspect. Deputy B was contacted by Deputy A, who offered to take the arrest and write the report for training purposes. Deputy B agreed and related information regarding who he had contacted, the statements that were made, and the evidence he recovered. Deputy B then turned the suspect and the evidence over to Deputy A who then told the trainee they would be “buying the report” after Deputy B left.

Deputy A told the trainee “buying a report” meant taking the call from another deputy and writing the report as though they were there and handled the call. After booking the suspect, they went into a report writing room where Deputy A dictated what the trainee should write in the report. When he dictated that they responded to the call, questioned the witnesses, recovered evidence, and arrested the suspect, the trainee questioned him about it. However, Deputy A told her that it was the way they needed to do it or they would get in trouble.

Three days later, the trainee received a subpoena to appear in court for the above incident but did not feel she could testify to what was written in the report. She called

² MPP § 3-01/100.35, False Information in Records, states, “Members shall not make false official records. They shall not knowingly or willingly enter, or cause to be entered, in any Department books, records, reports, computer or electronic data systems, any inaccurate, false or improper police information or material matter.”

Deputy B and told him how Deputy A had instructed her to write the report. Upon learning that his participation in the arrest was omitted from the report, he advised her to contact the detective who filed the case. The detective relayed the information to the District Attorney, who then dismissed the charges filed against the assault with a knife suspect. The information was then referred for investigation to the Department's Internal Criminal Investigations Bureau.

After the investigation was completed, the case was presented to the District Attorney's Office for filing consideration. The District Attorney reviewed the case for the next eight months and declined to file any charges. The District Attorney concluded the evidence was insufficient to prove the deputies either acted with the necessary criminal intent required to prove the crime of filing a false report or to prove the false statements made in the report were material. While the evidence showed Deputy A intentionally directed the trainee to write statements in the report asserting they responded to a call when they did not, and also wrote part of the report himself, the District Attorney felt the intent requirement could not be met because the deputies did not alter the facts reported to them by Deputy B; they simply misrepresented who conducted the investigation.

On the issue of materiality, the information is material if it "could probably have influenced the outcome of the proceedings." (See *People v. Rubio* (2004) 121 Cal.App.4th 927, 929.) The District Attorney opined that in order to prove materiality, they would need to prove the misrepresentation would influence the outcome of the criminal proceedings *to the detriment of the suspect*. Here, the District Attorney concluded there was no detriment to the suspect since the felony charges filed against the suspect were dismissed.

After the adjudication of the criminal matter, the involved deputies were named as subjects in an Internal Affairs investigation. During the internal investigation, Deputy A admitted to not responding to the call, to dictating the report to the trainee as if they had responded to and handled the call, and to authoring parts of the report. He said he did so because Deputy B was about to get off work and writing the report would eliminate the need for Deputy B to work overtime. Deputy A was found in violation of the Performance to Standards and False Information in Records policies. He was discharged and is currently appealing his discipline to the Civil Service Commission.

Although the trainee reported the incident to a supervisor a few days later, the Department found her in violation of the Performance to Standards policy. The trainee did not meet the Department expectations by waiting until she received a subpoena to appear in court before reporting the misconduct. The Department initially recommended discipline in the range of a 10-15 day suspension, but after discussions with OIR, agreed to reduce the discipline to a five day suspension. OIR was of the opinion that a lower level of discipline was warranted due to the fact that this all occurred her first day of patrol training and the trainee's eventual courageous decision to report the

misconduct to a supervisor, notwithstanding the fact that she waited until she received a subpoena to do so.

Lying in Employment Application

Lying in the pre-employment application for the Sheriff's Department can result in serious administrative consequences. Applicants are warned at the time they complete their application that any false statements or omissions made in the application shall be cause for removal from the eligibility list. If the false statement is discovered after an applicant is hired/appointed, then immediate discharge is warranted.

Case Three – Lying about Financial Background

The Department received a phone call from a deputy's ex-girlfriend who alleged the deputy had lied in his application for employment when asked about his financial obligations and failed to disclose a monetary judgment against him which resulted in the garnishment of his wages.

During the administrative investigation, OIR also learned the deputy had been employed as a police officer for a different agency prior to joining LASD. While employed for the other agency, the deputy violated a defendant's Fifth Amendment right by deliberately referencing a defendant's out of court statement which had been excluded by the trial judge. The appellate court found the deputy intentionally told the jury about the statement in order to prejudice the jury and reversed the defendant's felony conviction.

In the administrative case, there was sufficient evidence to prove that the deputy lied in the employment application about the extent of his financial obligations and failed to disclose that his wages had been garnished. The Department found the deputy violated the Department's False Statements in Records policy. He was discharged and is currently appealing his discipline to the Civil Service Commission. OIR concurred with the Department's findings and discipline.

Lying About a Force Incident

Making false statements during an administrative interview not only bolsters the strength of the underlying alleged offense, but can also serve as the basis for a separate false statement charge. In this case, the evidence indicated several deputies were involved in an unreported use of force on an inmate and participated in a cover-up. Once the force incident was discovered, the involved deputies were interviewed. Their statements contradicted other evidence which strongly supported a conclusion that the employees were making false statements.

Case Four – “See No Evil, Hear No Evil”

A vendor reported to deputies her belief that an inmate had stolen items. Deputies A and B removed the inmate from the dormitory and moved him to an elevator landing area that was out of the view of security cameras.³ The inmate alleged that Deputy A punched him several times in the rib cage and strip searched him in the presence of Deputy B. The video footage showed Deputy A and the inmate going out of the camera’s view into the landing area. Deputy B was shown standing in the hallway a few feet away at times and then walking out of view into the landing area before returning to the hallway. When Deputy A and the inmate reappeared on camera, the inmate was wearing one shoe. Deputy A later told investigators that the inmate tensed up during the search, so he jabbed the inmate once on the side of his stomach with his hand. When investigators interviewed Deputy B, he admitted that he was standing in the area “providing security,” but denied ever hearing or seeing an altercation take place. Investigators showed Deputy B the video surveillance footage but he claimed he was unable to identify Deputy A even though every other witness who was shown the same video recording was able to make an identification.

The inmate was then returned to his dorm where he promptly confronted the vendor about reporting on him. The vendor immediately told Deputy C the confrontation. Deputy A then entered the dorm, removed the inmate and walked him to an area next to the control booth. Deputy A placed paper over the window of the dorm door. A custody assistant ordered the other inmates to return to their bunks. At this point, Deputy C entered the hallway and stood near the control booth. The inmate reported that Deputy A pushed his face against the wall, which caused a cut on his nose and led him to bleed profusely. The inmate’s clothing was so bloody that Deputy A retrieved a fresh outfit and brought it to the inmate and sent him back into the dorm. Deputy A did not report the force, but later claimed to investigators that the inmate made a “fast movement” towards him so he pushed his face against the wall. He also said Deputy C told him he had “better handle the paperwork on that,” and “you are on your own,” after seeing the injury and blood on the inmate.

Deputy A also ordered an inmate worker to clean blood off the hallway wall. Scientific investigators later recovered evidence of blood from the wall and identified the inmate as the source of the blood. Deputy C failed to report the use of force she witnessed. During the investigation, Deputy C said she was initially standing near Deputy A “providing security” with her back turned. She then turned around and saw the inmate with blood on his face and Deputy A told her he had “shoved his head into the wall.” Deputy C said she “freaked out” and did not know what to do and did not want to be labeled as

³ At the time of the incident in 2010, the facility had a limited number of cameras.

a “snitch.” Another inmate told investigators that Deputy A ordered him to beat up the inmate after the incident, but that he refused. Other inmates corroborated his claim.

Both Deputies B and C essentially acted as lookouts while Deputy A meted out his own form of punishment to the inmate for suspected rule violations. The falsehoods were further amplified by the incredible statements by Deputies A and B. It is simply not believable that Deputy B could be standing a few feet from the elevator and then return to the landing on multiple occasions and not know what Deputy A was doing. That Deputy B was unwilling to identify Deputy A on the video surveillance when other witnesses were able to is further evidence that he was continuing to cover for Deputy A’s misconduct.

All three deputies were discharged. OIR concurred with the Department’s findings and discipline.⁴

The Constitutional Duty to Disclose Impeachment Evidence to Criminal Defendants

Instances of deputies lying in reports or during investigations do not simply affect the immediate case at hand. Instead, they may influence the outcome of every other case in which the deputy’s testimony is considered. This is due to the constitutional requirement that the prosecution disclose potentially exculpatory evidence to a criminal defendant, including evidence that relates to a witness’ credibility, and the California Supreme Court’s decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, which mandates disclosure of allegations of misconduct by peace officers.

Disclosure of Brady Evidence

In 1963, the United States Supreme Court in *Brady v. Maryland* (1963) 373 U.S. 83, held prosecutors are required to disclose evidence to criminal defendants that is either exculpatory or impeaching and material to either guilt or punishment. This means evidence relevant to the credibility of a material witness must be disclosed to the defense. False reports previously made

⁴ The incident was initially investigated by ICIB after the inmate reported the incident to a supervisor on the following shift. The case was submitted to the District Attorney for felony filing consideration in December of 2010. In March of 2011, the crime lab determined the blood evidence matched the inmate’s DNA sample. The District Attorney declined to file felony charges on October 18, 2011 and referred the case to the City Attorney for possible misdemeanor charges. The City Attorney had concerns about the District Attorney’s declination and referred the matter to the State Attorney General for review in February of 2012. The Attorney General then asked the D.A. to reconsider its declination decision and on April 16, 2012, the District Attorney again declined charges and again referred the matter to the City Attorney. On June 14, 2012, the City Attorney declined to file charges “solely” because the one year statute of limitations to file misdemeanor charges had already expired when the District Attorney declined to file charges the first time.

by a material prosecution witness have specifically been held to qualify as impeachment evidence. (*People v. Hayes* (1982) 3 Cal.App.4th 1238, 1244.) Similarly, evidence in personnel records such as founded administrative investigations for false statements qualify as impeachment evidence. (See *Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998, 1016; and *United States v. Giglio* (1972) 405 U.S. 150.) Moreover, even information that a judge has thrown out a confession or vacated a conviction due to a violation of *Miranda* or any other constitutional right can qualify as impeachment evidence under *Brady*. (*Milke, supra*, at p. 1006.)

The requirement to turn over impeachment and exculpatory evidence applies to evidence known to police investigators, whether or not the prosecution is aware of the evidence. In other words, if a law enforcement officer is privy to impeaching or exonerating information, that officer is part of the “prosecution team” and has an obligation to turn over the information to the prosecutor under *Brady*. (See *Kyles v. Whitely* (1995) 514 U.S. 419; see also *United States v. Blanco* (9th Cir. 2004) 392 F.3d 382, 393-394.) Conversely, “it is incumbent upon the prosecutor to learn of any favorable evidence ‘known to the others acting on the government’s behalf in [a] case, including the police.’” (*City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, 8.) If law enforcement does not turn over exculpatory evidence to the prosecutor and that evidence is later discovered, it can result in reversal of the conviction whether or not the prosecutor had actual knowledge of it because it is the prosecutor’s duty to learn of any such evidence. (*Ibid*; see also *Youngblood v. West* (2006) 547 U.S. 867, 869-870, and *Aguilar v. Woodford* (9th Cir. 2013) 725 F.3d 970, 982.) One such reversal occurred last year when Frank O’Connell was released from custody after serving 28 years in prison for a murder conviction. The judge reversed the conviction, finding the prosecution violated *Brady* by failing to turn over notes relevant to the eyewitness testimony and dying declaration evidence presented at trial. The notes were in the possession of LASD homicide detectives and had not been turned over to the prosecutor.

In 2002, the Los Angeles District Attorney’s Office created a *Brady* protocol. The protocol set forth procedures for handling potential *Brady* material. In addition, the protocol created a database, referred to as the *Brady* Alert System, where the *Brady* Compliance Unit stores impeachment evidence on peace officers. This database can be accessed by prosecutors and information is disclosed to defense attorneys on a case by case basis when an officer is a material witness in a case. However, the District Attorney’s Office has determined that only impeachment evidence proven by “clear and convincing evidence” should be included in this database.

The legal standard chosen by the District Attorney’s Office is lower than the beyond a reasonable doubt standard, but higher than the preponderance of evidence standard required to sustain an administrative investigation for a policy violation against a peace officer. Because of this heightened standard, evidence of prior founded administrative investigations for which a deputy has been disciplined is not automatically turned over to the prosecutor by the Sheriff’s Department. Also, no Sheriff’s Department policy specifies the circumstances where founded allegations relevant to a peace officer’s credibility (such as founded charges for false statements or other policy violations involving moral turpitude) are to be turned over to the prosecution,

absent a specific request. Prosecutors in Los Angeles County are instructed under their Brady policy that, in order to make a request from the law enforcement agency to have them inspect the personnel files of a particular peace officer, “the police report, statements provided in witness interviews, and/or written documentation or statements provided by the law enforcement agency must establish that a law enforcement employee is a material witness and that there may be evidence concerning that material witness which is favorable to the defendant to which the defense may be entitled.” (*Special Directive 10-05*, Los County District Attorney, September 20, 2010, <http://da.lacounty.gov/pdf/sd10-05.pdf>.)

However, neither members of the Sheriff’s Department who have been found to have violated policies involving moral turpitude or dishonesty nor their supervisors are instructed to turn over this information to the prosecution, and any such evidence would not appear on the face of any police report or be part of an investigation involving an unrelated arrest of a suspect being prosecuted. Hence, it is highly likely that personnel records containing founded allegations involving moral turpitude or dishonesty are not being turned over to the defense absent the formal filing of a *Brady* motion by the defense.

Disclosure of Pitchess Information

In addition to the constitutional requirements of *Brady*, the California Supreme Court in *Pitchess v. Superior Court*, *supra*, 11 Cal.3d 531, held that criminal defendants were entitled to discovery of citizen complaints alleging misconduct by peace officers. The Legislature codified this judicially created right four years later in Penal Code sections 832.7, 832.8; and Evidence Code sections 1043 through 1045. When a trial court determines such information from a peace officer’s personnel file is relevant, it can order limited disclosure of the names, addresses, and telephone numbers of individuals who have witnessed or alleged officer misconduct. Such information must remain in an officer’s personnel file and be available for disclosure, pursuant to Penal Code section 832.5, for only a period of five years.

The Interplay Between Pitchess and Brady

Because Penal Code section 832.7 states that peace officer personnel records are confidential and shall not be disclosed except by request for discovery under Evidence Code section 1043 and 1046, there has been much debate about whether a law enforcement agency can provide information contained in personnel files to prosecutors absent a formal discovery request and order. The California Supreme Court in *City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, however, noted Penal Code section 832.7 could not be used “to defeat the right of the prosecutor to obtain access to officer personnel records in order to comply with Brady before a court where a case is pending.” Some prosecutorial agencies have nonetheless been reluctant to ask law enforcement agencies to provide them with information contained in personnel files and have declined to create a database containing *Pitchess/Brady* information on officers. While the Los Angeles District Attorney’s Office created a “*Brady* List” in 2002, information on deputies with founded disciplinary actions involving acts of dishonesty, i.e. policy violations that have

been proven by a preponderance of the evidence, are not systemically solicited nor voluntarily provided for inclusion on the list. Instead, it appears that the vast majority of deputies added to the list are those who have been investigated for criminal misconduct which has come to the District Attorney's attention. Recent District Attorney Special Directives issued on June 4, 2013, in fact list findings of misconduct that reflect on a witness' truthfulness, bias or moral turpitude as examples of possible impeachment evidence, but the directives note the burden of proof at administrative hearings is "preponderance of the evidence." The directives also reiterate that its prior policy set forth in Special Directive 10-05 is still in effect and only information the Brady Compliance Unit determines has been proven by "clear and convincing evidence" will be included in its database.⁵

Brady Policies in Other Jurisdictions

At least six other counties in California (Humboldt, Lake, Santa Barbara, Santa Clara, Ventura, and Yolo), have established *Brady* policies that require inclusion of officers in their "*Brady* list" based on a lesser "substantial information" standard. Evidence based "on mere rumor, unverifiable hearsay, or a simple and irresolvable conflict in testimony about an event" does not meet this burden.⁶

In Ventura County, prosecutors do not examine law enforcement personnel files, *per se*, but their *Brady* policy specifically requests all law enforcement agencies within their jurisdiction continuously review the personnel files of their employees for any sustained finding of misconduct that reflects on the truthfulness or bias of the witness, for any criminal convictions, and for any pending criminal charges involving either a felony or moral turpitude offense. If any such information exists, the police agencies are responsible for informing the Ventura County District Attorney's Office that an officer has information in his or her personnel file that may be Brady material. This disclosure then triggers placing the officer on a list maintained by the Writs, Appeals, and Training Unit. When that officer is a witness on a case, the prosecutor handling the case must consult the list and determine if the officer's testimony is material. If so, the prosecutor files a motion for an *in camera*⁷ review of the officer's personnel records pursuant to *Pitchess* and/or *Brady*.

More recently, after a scandal surfaced involving a crime lab employee who was skimming drugs and who had a prior undisclosed conviction for domestic violence, the San Francisco Police

⁵ See *Special Directive 13-01* and *Special Directive 13-02*, Los Angeles County District Attorney, <http://da.lacounty.gov/topdocs.htm>.

⁶ *Final Report*, California Commission on the Fair Administration of Justice, August 4, 2008, at p. 89, <http://www.ccfa.org/documents/CCFAJFinalReport.pdf>.

⁷ An *in camera* review is a review of personnel files conducted in the judge's chambers without the presence of the prosecutor, the defense counsel, or the defendant. The only persons present are the judge, the court reporter, and a representative from the employee's police department.

Department worked with the San Francisco District Attorney's Office to similarly establish new policies and procedures whereby the Police Department would systematically provide information to prosecutors on its employees' sustained misconduct contained in the personnel files and prior criminal convictions.

Even more expansive than the expectations of state prosecutors are those of federal prosecutors. When handling federal criminal prosecutions, the United States Attorney's Office requires law enforcement agencies to notify them of all allegations of officer misconduct, even if the allegations were not sustained, were not credible, and resulted in exoneration (*United States Attorney Manual*, Title 9, Sec. 9-5.100; see also Lasko, R., *Agency Policies Imperative to Disclose Brady v. Maryland Material to Prosecutors*, *Police Chief Magazine*, March 2011.)

Conclusion

The failure to disclose exculpatory evidence is a constitutional violation and a leading cause for reversal of California criminal convictions. Because law enforcement has a separate constitutional duty under *Brady* to disclose impeaching and exonerating evidence, even absent a request by either the defense or the prosecution, OIR has long been concerned that current LASD protocols may not ensure full disclosure of *Brady* material contained in law enforcement personnel files. OIR has recommended that the Sheriff's Department evaluate its employees who have been disciplined for policy violations involving dishonesty or moral turpitude to see if their assignments are appropriate and to determine if any corrective action should be taken. OIR has also recommended LASD consider establishing protocols for communicating the information about founded administrative investigations relevant to a deputy's credibility to the prosecution even absent a request. LASD has been receptive to these recommendations and is currently working with OIR on developing a protocol on the issue. In addition, we were recently informed that the District Attorney's Office has expanded its *Brady* unit and is looking into both revising its policies and providing police departments with more guidance on this issue. We agree that more guidance is needed and look forward to working with the Department and the District Attorney's Office to ensure the constitutional requirements in this area are fulfilled.

Video Cameras in Jail: An Effective Work in Progress

In our *Tenth Annual Report* we discussed the on-going process of installing surveillance video cameras at Men's Central Jail. At the time of publication, the Twin Towers and Inmate Reception facilities in downtown Los Angeles were not yet operational. Additionally, the Department was still formulating policy on how video footage should be used after a use of force incident. Simultaneously, the Department had implemented the Custody Force Review Committee (CFRC) to review significant uses of force in jail facilities which did not rise to requiring an Internal Affairs Bureau. The CFRC process allowed OIR to observe first-hand how Custody Division managers would use video surveillance footage to effectively review use of force incidents for both determining potential policy violations and for training purposes.

The process of blanketing the jails with surveillance has not been without hiccups. As will be discussed below, the initial recording settings sometimes undermined effective force and administrative investigations.

Here we will briefly trace the history of the installing cameras in the downtown jail facilities, discuss some of the problems confronted and policy decisions made by the Department and then assess its current effectiveness as a tool for accountability.

Installation History

In our October 2011 report, *Violence in the Los Angeles County Jails: A Report on Investigations*

and Outcomes, we wrote that the use of surveillance video cameras would serve a critical role in investigating force incidents and force allegations:

Clearly, video cameras can benefit the fact finder tremendously in determining exactly what occurred during a given encounter. OIR has long held and espoused the view that the installation of video cameras will not only help prove or disprove allegations of deputy misconduct, but likely will deter improper behavior in the first place. For that reason, we are heartened by the apparent activation of a too-long delayed plan to install cameras in Men's Central Jail and the Inmate Reception Center. We have also long advocated for the installation of cameras at all of the remaining jail facilities, particularly Twin Towers because of its high percentage of inmates with mental health issues.

The first wave of camera installations at Men's Central Jail was completed in November 2011 with 69 cameras in high security areas of Men's Central Jail. The installation was completed by February 2012 and the majority of cameras were recording and storing footage by that March. Today there are a total of 705 cameras installed in the facility. Since our last annual report, the installation was also completed for both the Twin Towers and Inmate Reception (IRC) facilities and those jails started recording in November 2012 with approximately 840 cameras.

The Department kept OIR up to date as the camera installation progressed. Facilities Services Bureau provided OIR with the proposed installation diagrams so we could provide our input. For example, several allegations were contained in the ACLU declarations that unreported force incidents had taken place in the laundry rooms attached to the 2000 and 3000 modules. The laundry rooms are secluded with no windows and one doorway; OIR wanted to assure that those areas were under surveillance. OIR attorneys also visited the facilities and gave suggestions for where we believed blind spots existed where there had been prior uses of force or allegations of force. We were heartened that our suggestions were taken seriously and cameras were installed in areas for which we raised concerns. Our feedback continued as we began reviewing uses of force which had been captured on camera and we saw some instances where the nearest camera was at such a distance that its footage was of limited evidentiary value. Again, the Department addressed OIR's concerns by installing additional cameras in those locations.

On the July 4th weekend of 2012, LASD personnel discovered that they were suddenly unable to retrieve recorded surveillance footage. Further inquiries revealed that the storage servers had suffered a wholesale failure. Video data for all the cameras in the downtown jail facilities (MCJ, Twin Towers and IRC) had been set up to route the information by high speed networking to a common storage room. Due to the urgency of the installation, the selected storage room did not have adequate cooling and ventilation for the racks of heat generating servers. To provide cooling, portable air conditioners were placed in the storage room. The room, though, did not have adequate ventilation and, as a result, the constant cooling caused condensation to form on the ceiling of the storage room. Over an extended period of time, the condensation caused the ceiling panels to

collapse and inundate the servers with water which caused the failure. As a result, footage stored between March and early July was lost and the system was off line until approximately July 27, 2012 for repairs and renovation of the storage room so that the same failure could not occur again. The shutdown did not affect the investigations of reported uses of force between March and the server failure as relevant surveillance footage of a force incident is normally downloaded and burned to DVD discs shortly after a force incident. Between July and August, though, force incidents were not being recorded by the surveillance cameras.

Policy Issues

In our *Tenth Annual Report*, we noted that “as more and more force incidents in Custody are captured on video, the Department has had to address numerous questions about how video evidence will be used in the investigations.” We observed that OIR had initial issues in finding common ground with the LASD over the proposed policies “governing the viewing of video by deputies who are involved in or witness an event.”¹ However, as a result of constructive dialogue between OIR and LASD, the difference in viewpoints was resolved which resulted in an effective policy that ensures that the involved deputies’ recollection of the event will be obtained free from the videotapes’ influence.

In July 2010, LASD issued a directive that when there is video of an incident under investigation, the investigator will inform the employee that there is a video before the interview and that it will be shown to the employee after the initial interview takes place. This directive was followed in many types of investigations, including those conducted by the Homicide Bureau. A similar procedure was also followed by the Internal Affairs Bureau. With the mass installation of cameras in jail facilities, concerns were raised by certain stakeholders that a uniform policy of not allowing deputies to see use of force videos prior to writing their reports would lead to unfair punishment when deputy recollection was inconsistent with what was shown on video.

OIR fruitfully engaged with executives and managers at LASD as well as other stakeholders and outside experts to find the proper path in determining whether it was more beneficial for a user of force or a witness to first write a report before viewing video evidence or seeing the video and then writing the report. We strongly advocated that obtaining a pure recollection of events from LASD personnel was the most important quality to capture in use of force investigations and thus initial force reports by involved deputies should be written before they see any video footage. We were mindful that due to lighting, distance, angle and other technical factors that what is depicted on video is not necessarily consistent with what actually occurred. The deputy union (ALADS) representatives were appropriately concerned that deputies would get in trouble for making false statements for honestly describing a force incident differently than what is depicted because of the impact that stress has on individuals’ ability to accurately discern events.

¹ *Tenth Annual Report*, September 2012, Office of Independent Review, at p. 27.

OIR conducted its own research to learn more about video policies in other jurisdictions and found that many police agencies have not systemically addressed the issue of what occurs first: writing the initial report or seeing video evidence.

In a public report written in the aftermath of the BART Police Department shooting of a train passenger Oscar Grant in the Fruitvale BART Station on New Year's Day of 2009, the authors stated:

Officers should not view video of an incident prior to being interviewed. Allowing involved officers to view video prior to an interview allows them to either subconsciously fill in the blanks where there are no memories of the incident or preplan for alibis for substandard conduct. Either way, allowing officers to view video of the event prior to the interview erodes the public's faith in the process and unnecessarily impacts the investigation.²

The same concern was raised in nearby Fullerton following the beating and death of Kelly Thomas. Fullerton Police Department's acting chief acknowledged that the decision to allow the involved officers to view the video first compromised, or at least damaged, the public's trust and confidence in the process. Despite OIR's position that first writing what occurred based on the user of force's memory was critical, we were mindful of ALADS and other stakeholders' concerns that deputies would be subject to discipline for any discrepancy between their report and what was shown on video. We acknowledge that the memory of a user of force will not be perfect. "Officers may honestly say they cannot recall some aspect of the incident or report information that conflicts with other evidence."³ That is the very reason, though, why seeing video footage of an incident from its different perspective could have an undue impact on a deputy's recollection of the events. In our review of the available research, we found ample evidence that seeing additional information than what was experienced (such as seeing the action from a different angle) can alter the memory of an event in the way that the BART Police Department report described. The research we reviewed stressed the importance of "minimizing post-event misinformation."⁴ While what is shown on a video is not necessarily "misinformation," it can certainly be different information than that recalled.

The Department undertook a very sober and thoughtful process to determine the best course of action. This included the establishment of a working group bringing Department executives, union leaders, OIR and outside expertise. As a result of the productive process, the Sheriff ultimately decided to formally adopt a policy which requires that deputies "prepare all necessary written

² *Public Report: Review of BART PD Policies, Practices and Procedures: New Year's Day 2009*, submitted to BART by Meyers, Nave Professional Law Corporation, at p. 5. http://www.bart.gov/docs/Meyers_Nave_Public_Report.pdf

³ "Police Responses to Officer-Involved Shootings," *NIJ Journal*, No. 253, Jan. 2006, <http://nij.gov/journals/253/responses.html>

⁴ "Brief Exposure to Misinformation Can Lead to Long-Term False Memories," *Applied Cognitive Psychology*, 26: 301-307 (2012).

reports related to a force incident prior to reviewing a video recording of the incident.” Once a supervisor has reviewed the first reports and the video, a deputy can view the video and provide a separate supplemental report stating that they observed the video and “that it either refreshed their memory, adding any corrective language, or that the original written statements were accurate.” The policy (MPP § 3-10/115.00 Video Review and Admonishment) also addressed the legitimate concerns that discrepancies between what a deputy writes in a report and what is shown on video would be held against the deputy:

Because Department personnel are required to provide a written report of their actions prior to viewing video recordings, the Department will not assume an adverse inference when personnel amend or supplement their reports if a video review prompts further recollection of incident details. Whether an adverse inference should be drawn from an amendment or supplement will depend upon the facts and circumstances in each case. Finally, the policy also contains an admonishment that shall be read to Department members before reviewing any video. The admonishment is a reminder that what is shown on video may depict events that the viewer did not see or hear or recall.

Allegations of Force

When anyone, including an inmate, alleges that a Department member used force, the person to whom the allegation is made has a duty to report it to their immediate supervisor who is obligated to immediately conduct an inquiry into the allegation.⁵ OIR examined alleged uses of force at Men’s Central Jail that were made by inmates or third parties in 2012. Based on records requested

⁵ The LASD’s Use of Force Reporting Procedures policy, MPP § 3-10/100.00, states in part:

“Allegations of force, whether made by the person upon whom the alleged force was used or by a third party, shall be investigated in a timely manner similar to a force investigation (e.g., interview the complainant and witnesses, collect evidence, gather documents, respond to the scene, take photographs, etc.). The Department member to whom the force allegation was reported shall report the allegation to their immediate supervisor (with a minimum rank of Sergeant). That supervisor shall immediately conduct an inquiry in order to determine the validity of the allegation (i.e., whether it is corroborated by statements and/or evidence). However, if that supervisor was alleged to have been involved in, or a witness to, the incident, the inquiry shall be assigned to another supervisor.

The supervisor conducting the inquiry shall adhere to the following guidelines:

- follow up on information provided by the individual making the allegation (i.e., interview person(s) whom the individual said were present and/or witnessed the incident, look for and collect evidence that the individual mentions);
- collect evidence and take statements;
- take photographs of the location, if appropriate;
- review any medical records (in cases of an inmate, review the inmate injury report). If an inmate injury report was not prepared for an inmate, ensure that one is prepared and the inmate is medically treated;
- photograph all visible injuries (if applicable); and, thoroughly document/describe all statements taken and evidence collected; and
- *determine if the force incident was recorded and secure any such recordings of the incident.”*

from and provided by MCJ Operations, OIR identified 36 force allegations which were asserted to have taken place in 2012.

Of those 36 alleged uses of force that OIR examined, in almost half supervisors were able to retrieve and view surveillance footage to assist in their inquiry:

Allegations of Force at MCJ in 2012		
Footage retrieved and viewed		16
Not retrieved and viewed		19
	<u>Reason not retrieved</u>	
	System not yet operational	10
	Inmate retracted allegation when interviewed	1
	Footage lost or off-line due to water damage	4
	Dormitory location	4
Unknown		1
Total		36

Once the CCTV system became fully operational in Men's Central Jail by March 2012, most allegations of force could be resolved by reviewing surveillance footage. Exceptions at the time were misconduct claims which allegedly took place in the hospital module as well as the 5000 dormitory modules. The hospital modules are now equipped with cameras. The Department did not initially install cameras within the 5000 dorm living module, though such cameras are now part of the future installation plan. There are, however, cameras affixed in hallways just outside the dorms.

Case One

In one of the dorm complaints, an inmate complained that he was kicked while laying face down on his bunk during a search. When interviewed, the inmate changed his initial allegation and claimed that he was accidentally kicked by the deputy and refused to identify the involved deputy. Despite what appeared to be evasive answers by the inmate, the inquiry developed no further information and without video footage the only information to resolve the inquiry was the inmate and deputy statements.

Case Two

In another complaint, an inmate alleged that “pruno” (an alcoholic drink made in jails from fermented food) was found under his bunk during a search and that when he sat up a deputy roughly pushed him back down hurting his neck and back. The allegation was thoroughly investigated and the deputy said that he only verbally ordered the inmate to lie back down after he ignored several prior instructions to do so. Again, without any video footage, no determination could be made regarding whose version of the event was more accurate.

Of the 16 allegations in 2012 where video footage was available, the benefit of such evidence was clearly evident. In none of these 16 allegations did video footage corroborate that an unreported use of force or other form of physical misconduct occurred. Some of these allegations were quite vivid, but could not be borne out in any way by what was captured on camera.

Case Three

An inmate alleged that a deputy injured his wrists by violently pulling his handcuffed arms upwards, causing a shoulder injury. The video showed that a sergeant was present during the contact between the inmate and the accused deputy. The deputy is shown in contact with the inmate and there is no struggle between them or any force applied to the inmate. Based on the video evidence, the allegations were found to have no merit.

Case Four

An inmate claimed that an employee used his forearms to strike the inmate between his shoulders. He also alleged that the employee sexually assaulted him and slammed his head against metal bars. The camera system had only been recording for a few days at the time of the alleged incident. The footage showed the employee contacting the inmate but there was no struggle or force used, let alone a sexual assault.

Case Five

An inmate claimed that he was handcuffed when a deputy pushed him down an escalator. While he did have injuries, the medical staff opined the injuries were not consistent with a person being handcuffed. More vividly, though, the surveillance footage showed the inmate by himself and not handcuffed at the top of escalator. The inmate then bent down at the knees and completed a somersault down the escalator, injuring himself.

Case Six

An inmate claimed that deputies pushed him down an escalator. The particular inmate submitted made the allegation with the Department – and refused medical treatment

- and later made complaints directly to OIR and apparently also to the Ombudsman. Supervisors retrieved the surveillance video for the day of the alleged incident and found the relevant footage. The inmate was shown walking down the escalator with other inmates. No Sheriff's personnel were near him and there was no video evidence that he either fell or was pushed down the escalator.

Case Seven

An inmate claimed that a deputy threw him against cell bars which caused bruising to his shoulder and forehead. Supervisors located the relevant footage which did involve a reported use of force involving a nearby inmate. The video showed that during the incident, the complaining inmate was seen laying on the ground and pushed his feet against the wall and slid along the floor. This apparently caused the bruising. LASD jail supervisors making the inquiry interviewed the inmate twice. The inmate eventually admitted that he lied during the first interview because he was angry at deputies so he made up the allegation to cause trouble for them.

There were several examples of allegations where the Department located video footage but the angle or point of view of the camera could not reveal what actually took place.

Case Eight

An inmate alleged that a deputy entered his cell, twisted his arm and slammed his head in a wall twice during a cell search. The supervisor conducting the inquiry located video taken from the row where the inmate was housed. He also interviewed personnel involved in the search. A sergeant was present during the search and he said he was the only LASD employee who entered the cell. A lieutenant also was present. Video footage showed several Department personnel standing in front of a set of cells but due to the angle of the camera, no one could be seen entering the cell.

Case Nine

In this particular allegation, the inmate alleged that he had missed lunch service because of an attorney room visit. He asked the deputy for a lunch. The inmate said that the deputy became angry at him for making the request and slammed him twice against the bars of a gate leading onto a row. The deputy denied committing the alleged misconduct. The surveillance footage that was obtained did not show the sally port gates which control access onto the row. There are, however, cameras which have a view of the hallway which runs perpendicular to the gates. That footage showed the deputy escorting the inmate to the module and there is little interaction between the two. The deputy is then seen leaving the inmate momentarily and saying something to an inmate worker. (The Department relies on inmate workers to serve the meals to inmates

in their cells.) The worker goes off camera and then is seen returning to the hall carrying a lunch. At this point the complaining inmate and the deputy were off camera after last being seen into the sally port area leading to the housing row. When the inmate worker approaches the entrance to the sally port with the lunch, he suddenly stops. He pauses and appears to be watching something and then turns around and walks away while still carrying the lunch. The inmate worker was apparently not identified. Other inmates in nearby cells were interviewed, though, and neither they nor other Department personnel recalled seeing anything. Because there was no corroboration to the allegations and no injuries, the matter was closed as “unfounded” and no formal investigation was opened. It appears to OIR, though, that more effort should have been exerted to identify and locate the inmate worker who may have witnessed something take place just off camera.

Several months later, another inmate alleged that the same deputy treated him roughly after he returned from attending to business outside his cell. Video footage was instrumental in showing what occurred. Discipline in that incident is pending.

Case Ten

An inmate submitted a complaint form alleging that he had been handcuffed and left in the recreation area for more than three hours, then was violently grabbed and slammed into the door as he was being led to the disciplinary module (“the hole”). While he was being led away, he alleged the deputy violently handled him, causing pain to his shoulder, and cursed and insulted him while insisting that the inmate apologize to the deputy for wasting his time.

The sergeant who received the inmate’s complaint reviewed the CCTV for the relevant time and location. He discovered that much of the inmate’s complaint was substantiated by the video evidence. While there were some inconsistencies between the inmate’s statement and the video – most notably that the inmate did not appear to be slammed into a door or wall – he did accurately describe rough handling by the deputy, including the painful way his cuffed hands were lifted behind him as he was escorted to the elevator. The video also showed the deputy entering the rec area, grabbing the inmate off a chair and dropping him to the ground.

The deputy had not reported his use of force. The custody facility initiated an administrative investigation, and, despite the deputy’s claim that his actions did not constitute reportable force, the Department issued a significant suspension. OIR concurred in the outcome.

It is clear that video cameras at MCJ have become an invaluable tool to resolve allegations of forcible misconduct even though they are still limitations. For the most part, the allegations of

force investigations we examined for this report were appropriately conducted. As this discussion demonstrates, video surveillance footage – or the absence of it – does not substitute for a vigorous and timely effort to locate and interview all potential witnesses.

Frequency of Reported Use of Force on Camera

As is apparent with looking at the 2012 allegations of force, the use of video footage was curtailed by (1) not being online at MCJ until March and then off-line during the repairs in July and (2) that Twin Towers and IRC footage was not available until November. Therefore, OIR examined reported uses of force which occurred in the Custody Division in the first nine months of 2013 to determine whether the cameras were effective in capturing uses of force.

In addition, in early 2013, OIR learned that Custody Support Services (CSS) was preparing daily force synopsis which described the location, time and circumstances of uses of force that took place in Custody facilities during the prior day. At our request, CSS began to provide OIR with the force synopsis every business morning. While historically OIR reviewed significant uses of force which were investigated by the Internal Affairs Bureau, having access to the new daily synopsis allows OIR to be aware of and ask follow up questions about uses of force which do not rise to the level of an IAB investigation within 24 hours of the incident rather than weeks later when the force investigation package is completed. The daily force synopsis charts also note whether there is video of the incident to alert OIR when footage is available should we want to follow-up on any particular incident about which we have concerns.

The data from the charts is the basis for our analysis of the quantitative effectiveness of the surveillance cameras. As noted in our recent October 2013 report, *Allegations of Abuse in the Los Angeles County Jails*, we believe that installation of security cameras was “a critical development” for reform. Cameras are only effective, though, if footage is available when needed. As we show below, the vast majority of uses of force are being captured on surveillance cameras in facilities with extensive camera networks.

Facility	Uses of Force	No video	Yes video	On video %
CRDF	28	15	13	46.4%
IRC	53	5	48	90.6%
MCJ	73	9	64	87.7%
NCCF	37	12	25	67.6%
PDC East	12	0	12	100.0%
PDC North	4	1	3	75.0%
PDC South	9	7	2	22.2%
TTCF	187	13	174	93.0%
Total	403	62	341	84.6%

The Pitchess Detention Center (PDC) and North County Correctional Facility do not yet have the modern digital systems, but there is finally a plan in place to install them. The women's facility, CRDF still only has cameras in the reception and booking area but plans are underway to install significantly more cameras in that jail. The presence of the cameras in the downtown jails and the documented ability of them to capture force events should make the completion of installation of cameras in the remaining jails a priority project.

Use of video footage for reviewing uses of force both at the Executive Force Review Committee and the Custody Force Review Committee levels has been very fruitful to leading to possessing more information to render decisions, determining whether a policy violation occurred, assessing appropriate discipline and providing guidance to Department staff where training and procedures can be improved.

Case Eleven

Deputies removed two inmates from a module after an altercation and were escorting them handcuffed through a hallway at least twenty feet apart. The inmate in front tried to pull away from the deputies which resulted in deputies using a take down technique and holds to regain control. When the struggle began, deputies left the second inmate and ran towards it while the inmate kept walking slowly in the same direction. A deputy arrived in the hallway to assist and seeing the second inmate walking unescorted began walking rapidly towards him. As he quickly closed the distance, the deputy issued a command to the inmate to stop and the inmate stopped walking. The deputy later said that the inmate did not stop and because he could not see the inmate's hands he thought the inmate could be arming himself. The deputy pushed the inmate backwards and then grabbed him in an attempt to take him to the floor. Instead of going down, the handcuffed inmate was swung around, struck a wall with his back and then went to the floor.

The video showed the entire incident. It appears that at the end of the use of force, the deputy tried to handcuff the inmate and only then realized he was already handcuffed. The incident was investigated and presented to the Case Review Committee which found that the deputy had violated the unreasonable force policy and imposed significant discipline for the deputy's failure to reasonably ascertain that the inmate was handcuffed and did not pose a threat. OIR concurred with the panel's conclusions. The video surveillance footage proved to be a valuable tool in determining what actually occurred by showing that the inmate's behavior was not threatening and that he came to a stop when told to do so by the deputy.

Along with the use of fixed surveillance cameras, the Sheriff's Department has also encouraged the use of handheld video cameras to record high risk interactions. This includes the escorting of high

security inmates who require a sergeant escort as well encounters where force is likely to occur.

Case Twelve

This incident involved an inmate who was moved and secured to a metal bench after a fight between inmates. The inmate refused to cooperate with deputies until personal property he thought had been taken by other inmates was recovered. Despite a sergeant's best efforts to find the allegedly missing property and to reason with the inmate, he refused to move from the bench he was secured to with handcuffs and a chain. He taunted deputies that they would have to use force. All these interactions were recorded on a video camera as was the plan the sergeant devised to get control of the inmate. The intent was to move him to a safety chair and to secure him with straps. A safety chair is a device used by the Department which secures an inmate for movement who presents a high security risk. The inmate struggled the entire time and a carotid neck restraint was used at the sergeant's direction. Ultimately, all the force used, including control holds, was reported and investigated. LASD found that the force used was in policy. The video footage, though, provided valuable insight into how to prepare for similar situations, raised valuable questions about the use of the carotid neck restraint and highlighted OIR's concerns that trying to get an inmate into a safety chair is often leading to more use of force than was initially intended as the inmate resists being strapped into the device. This particular incident is being used by the Department as an example where better training methods can be explored to decrease the potential for injuries to staff and inmates during a pre-planned use of force.

Recording Rate Improvements are Necessary

The Department decided to record at a rate of 5 frames per second (f.p.s.) when the digital camera system was first installed. The lower the frame rate, the thinking went, the longer that recorded footage could be saved on what is finite server space. At the time the installation was taking place, the allegations made by the ACLU were still very fresh. A number of the declarations were of allegations of unreported force which purportedly had taken place years in the past. As such, the belief was that having footage saved for as long a period as possible was more valuable than the quality of the video footage. This conclusion was based on the belief that the particular recording frame rate would not have a significant impact on the ability to determine what occurred during an incident, let alone whether an unreported use of force occurred. At the time, OIR raised concerns that a recording rate of 5 f.p.s. was far too low and that the ability to determine what took place during a use of force or an inmate assault could be compromised.

Once the new surveillance footage started becoming a regular part of use of force investigations, reviewers – such as the CFRC panel – quickly became cognizant that, at times, the frame rate did not provide a clear and coherent visual accounting of what had taken place. One case in particular

exemplifies that the rate of recording can be so compromised that fact finders are not able to make definitive conclusions about the force event:

Case Thirteen

An inmate was refusing to cooperate as he was being prepared to transfer from one jail facility to another and became disruptive. A Department employee handcuffed the inmate, separated him from other inmates and had him face a wall. The inmate began to bang his head against the wall. A deputy said that he saw the inmate's behavior and that it appeared to him that he was about to head butt a custody assistant who standing directly next to and somewhat behind the inmate. The deputy said he was behind the inmate and struck him in the upper shoulder with his forearm. He then took the inmate to the floor where he was secured. The video footage appeared to show the inmate against the wall with his head moving. The footage further showed that the deputy walked up behind up and seemed to deliver a forearm strike to the inmate's neck or shoulders with such force that it appeared the inmate bounced off the wall in front of him and then went to the floor as the deputy was also taking him down. From the video it did not appear that the inmate had been appearing to deliver a head-butt before the force occurred. Criminal and administrative investigations were started. The District Attorney declined to file charges. The administrative matter was presented to the Case Review panel. During the investigation, the inmate provided little material information but never admitted that he was planning on assaulting the custody assistant. Other employees were interviewed and they all provided accounts that were consistent with the deputy. Several employees said that they saw that the inmate was about to assault the custody assistant.

Ultimately, the panel concluded there was insufficient evidence that the force used was unreasonable. This was mainly because the video quality was so poor that the panel could not discern what the inmate's actions were. Investigators asked for an analysis of the video from experts. The conclusion reached was that "the quality of the video is poor, recording at most, five frames per second and in some parts of the video only one frame per second." The Department discovered that as the system stores the visual information, memory overloads occur when there is a large amount of motion during a short period of time – in other words, when action is taking place, like a use of force incident. In fact, during the most critical moment of this incident – as the deputy approached and delivered the forearm strike - the system was storing at one frame per second.

While the Department found that the allegation the deputy used unreasonable force was unfounded, the deputy was found in violation of the force prevention policy for not using reasonable efforts to de-escalate the incident.

This is not the only instance where the actions of deputies and an inmate were recorded at a lower frame rate. OIR is aware of another case where an inmate purportedly struck a deputy when he was upset that his cell was searched. This led to a significant use of force. As in the case just described, the recording rate slowed to such a degree that one can only see the inmate moving towards the deputy and then the next frame shows the deputy reacting to being struck. The blow itself is not visible.

As a result of these concerns that OIR raised several times to Custody Division, the Department increased the recording rate to 10 frames per second. Footage is retained for one year which allows for the recovery of video footage for claims against the County in all but the tardiest allegations of inappropriate force. The increase of the recording rate to 10 f.p.s. may still be insufficient as experts recommend anywhere from a minimum of 20 to 30 f.p.s. for video digital systems.⁶ We urge the Department to continue to consult with experts to determine the most effective combination of storage space, resolution and bandwidth so that the Department and important stake holders are able to obtain the greatest benefit from the installation of the video cameras.

Conclusion

We have found that the recent installation of high resolution video cameras in the jail setting has been an invaluable tool in resolving force allegations as well as policy compliance before, during and after a reported use of force. Furthermore, concerns that explainable discrepancies between video footage and what Department employees report would lead the Department to bring more administrative cases against employees has not occurred. While there is room for technical improvement, the installation of the cameras may be the most effective and important reform that has taken place since the controversy over jail violence entered the public eye. We urge the Department to proceed as quickly as practicable with the installation of cameras throughout the jail system and as review of the video evidence proceeds, to continue to evaluate the recording rate issue.

⁶ See *Video Surveillance Trade-offs*, 2012, Motorola Solutions, Inc., http://www.motorolasolutions.com/web/Business/Documents/static%20files/VideoSurveillance_WP_3_keywords.pdf and *Is a High Frame-rate Always a Must for Effective Video Surveillance?*, 2010, Mistral Solutions Pvt. Ltd., <http://www.mistralsolutions.com/hs-downloads/tech-briefs/dec11-article2.html>.

Policy Development and Reform with Respect to Discipline

Policy development and reform is a vehicle for the Sheriff to communicate his expectations to all Department members as well as the public. New policies are implemented as needed and existing policies are regularly reviewed and refined to clarify the Sheriff's expectations and address changes in the law or situations which were unforeseen at the time the policy was drafted. All members are required to be familiar with published policies and failure to comply with them can result in discipline. In an effort to increase consistency and ensure a timely, thorough and reasoned review of all administrative investigations involving the potential for significant discipline, the Sheriff adopted reforms which will be discussed here.

When an employee faces significant discipline, such as discharge, he or she can be relieved of duty and ordered to stay at home. The LASD reformed protocols which are leading to relieving employees in a more consistent manner and the completion of investigations in a more timely fashion. The Department also changed the manner in which cases with serious allegations were reviewed by creating a Case Review Board. In addition, while the Sheriff has been an advocate of transparency and has verbally instructed all unit commanders and executives to consult with and provide OIR with any information requested, including all investigations of deputy involved shootings, significant force incidents, and internal affairs investigations – some unit commanders and executives have been inconsistent about consulting OIR, particularly at the grievance or settlement stage. Hence, at OIR's request, the Sheriff implemented a formal written policy this

year which requires Department members to consult with OIR at all stages of the administrative investigation process.

Relieved of Duty Meetings Chaired by Sheriff

When there is evidence that Department members may have committed a serious violation of law or policy, LASD considers whether those members should be “relieved of duty.”¹ When sworn members are relieved of duty, their gun and badge are taken and they are ordered to remain at home rather than report to duty.² Unless the member has been criminally charged, LASD is obliged to continue to pay the salary of the employee even after he or she has been relieved of duty. Until recently, the decision about whether to relieve an employee of duty has been largely ad hoc, with little guidance provided to unit commander on this important decision. More recently, at OIR’s recommendation, written guidance has been promulgated to LASD executives regarding criteria to consider in determining whether to relieve an employee of duty. In OIR’s view, if there is a likelihood that the allegations will result in a decision to discharge the employee, the employee should be relieved of duty.

Because every case has important permutations, even now not every case is best suited for a concurrent internal affairs investigation. Sometimes, there is a legitimate basis for the criminal case to gain some traction (or even be completed) before an administrative investigation begins. On the other hand, cases should not languish because they can and if LASD can move forward administratively with little likelihood of prejudice to the criminal case, it should. A quicker turnaround administratively results in faster closure for the Department and the employee by allowing a decision to be made sooner rather than later on whether the employee should be discharged. If the evidence is not there to prove a policy violation, the employee can more quickly be brought back to work. If the evidence supports a discharge, the employee can be terminated and no longer paid.

Over the past few months, the Sheriff himself has paid specific attention to these relieved of duty cases. At least every month, he meets with his internal investigative team and receives progress reports on each case. We have seen direction given by the Sheriff to start administrative investigations, and perhaps more importantly, the need to provide updates causing these priority investigations to be completed more quickly. Moreover, the meetings have resulted in protocols designed to prevent completed investigations from languishing at the units during the review

¹ Manual of Policy and Procedure § 3-04/020.10 states, “At any stage of a personnel investigation, commensurate with the seriousness of the action or conduct involved in the case, the concerned employee may be relieved of duty by the unit commander, his designated representative at the direction of the unit commander or higher rank, or by personnel from the Internal Affairs Bureau when acting as the agent of a division chief or higher.”

² Per Department policy, relieved of duty personnel who are assigned to home, “shall remain at home during normal business hours,” which is 8:30 a.m. to 5:00 p.m.

process. All in all, in addition to providing a mechanism for the Sheriff to be more aware and engaged in the major misconduct cases, his attention to such cases has caused a faster turnaround at both the investigation and review phases.

The Internal Investigative Process

If a supervisor receives information which causes him or her to believe an employee has violated policy, the supervisor relays the information to his or her unit commander. The unit commander must then decide whether the policy violation rises to the level of formal discipline or can be handled through additional training or counseling. If the unit commander believes the alleged misconduct rises to the level of a policy violation for which formal discipline is warranted, he or she initiates an administrative investigation on the employee and must decide whether or not the investigation can or should be handled by an investigator at the employee's unit of assignment or by the Internal Affairs Bureau. Typically, the Internal Affairs Bureau will handle the investigation if the discipline could result in discharge, if the investigation involves employees from different units, or if the investigation involves a supervisor.

The Public Safety Officers Procedural Bill of Rights requires administrative investigations to be completed and a letter of intent to discipline served on the employee within one year of the Department's knowledge of the misconduct.³ Hence, whether the case is investigated by the unit or by Internal Affairs, the investigation must be completed in time to have the unit commander review the investigation, evaluate whether the evidence is sufficient to substantiate any policy violations, and determine a recommended level of discipline, if appropriate. If the level of discipline recommended ranges from a written reprimand to a 15-day suspension, the captain sends the recommendation up the chain of command to the concerned Area Commander and Division Chief for final review and approval. However, if the recommendation is a 16 to 30-day suspension, a demotion, or a discharge, the investigation must be presented to the Case Review Board – as will be discussed in more detail below. Once a disciplinary decision is made, the employee must be served with a letter of intent to impose the discipline within the one year statute date. The letter of intent lists the policy violations which have been violated and the level of discipline.

After an employee is served with a letter of intent to impose a specific amount of discipline, the employee then has a right to grieve the discipline prior to the discipline being imposed. If the grievance is denied and the discipline is imposed, the employee can then appeal the disciplinary decision to the Civil Service Commission or the Employee Relations Commission.

³ The statute's time limits can be tolled under limited circumstances such as when there is a pending criminal investigation. (See California Government Code § 3304.)

Case Review

As mentioned above, when allegations of policy violations have been deemed founded and the discipline recommended by the employee's Chief is a 16-30 day suspension, demotion, or discharge, the case is presented to the Case Review Board. In the past, the Case Review panel consisted of the Undersheriff and the two Assistant Sheriffs. A factual presentation of the administrative investigation was made before the panel and the Chief presented his or her recommendation and thoughts regarding the level of discipline. A representative from the Department's Advocacy Unit was present to consult on the issue of whether the level of discipline could be sustained at Civil Service, and a representative from OIR was present and was offered an opportunity to express any concerns about the investigation, the findings, or the level of recommended discipline. Under this system, the Undersheriff in particular yielded a significant amount of authority over the final decision. However, during the appeals stage of the discipline process, a Chief would occasionally reduce the discipline imposed at Case Review without first conferring with the Undersheriff or OIR prior to changing the findings or reducing the discipline. This lack of consultation produced what OIR believes were inconsistent results sometimes based on emotional sympathy for the employee, erroneous information or a misunderstanding of the facts.

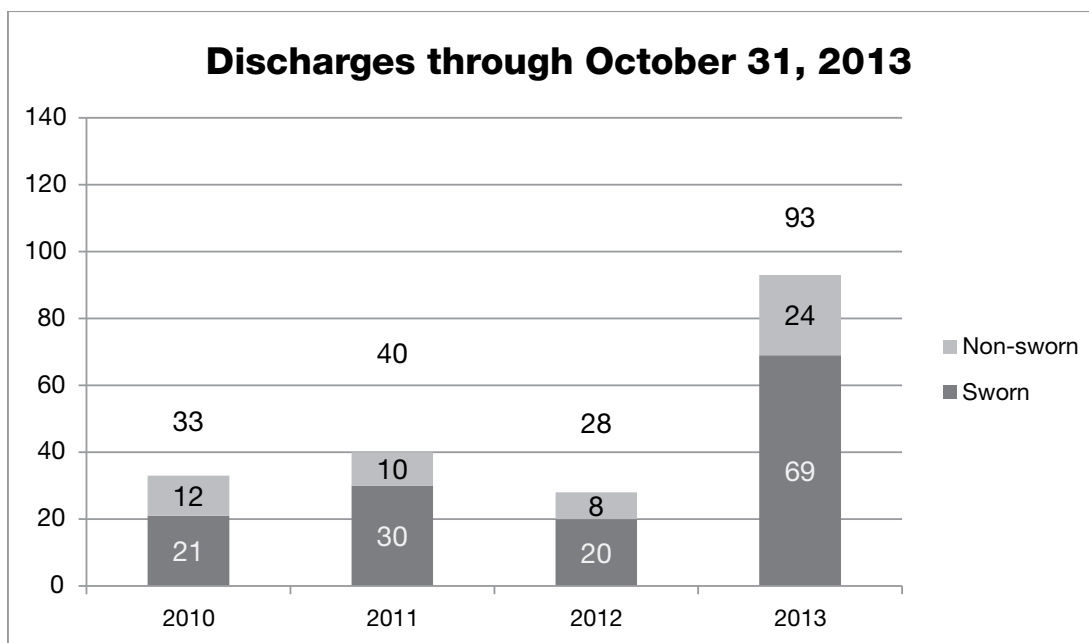
In order to increase consistency and transparency in discipline, several safeguards were instituted last year. On February 17, 2012, for instance, the Sheriff created a Case Review Board wherein three Commanders preside and act as his direct representatives. In addition to hearing the presentation of the investigation from an investigator and considering input from the OIR representative assigned to monitor the case, the board members are responsible for reading the complete investigative file in order to become thoroughly familiar with all of the evidence and must recuse themselves if they have a personal relationship with the subject employee. The Case Review Board's role is to review disciplinary recommendation made by Division Chiefs. With the concurrence of the Case Review Board, Chiefs may impose a suspension of 16 to 30 days, demote, or discharge an employee. If the board members do not unanimously concur with the Chief's recommendation, the case is presented by the Internal Investigations Division (IID) Chief to the Sheriff for final disposition. If the Case Review Board recommends a different level of discipline than the Division Chief, he or she shall consult with the IID Chief to facilitate a resolution. If a resolution is not reached, the IID Chief and the Chief will present the matter to the Sheriff for final disposition.

Under this new process, if the Chief hearing a appeal is contemplating a change in the findings or reduction in discipline, the Chief or Division Director must consult with OIR and the IID Chief. If after these consultations the Chief or Division Director is still of the opinion that the findings or discipline should be reduced, the IID Chief shall decide whether to present to a re-convened Case Review Board the reasons why a change in the findings or discipline is being contemplated or present the matter to the Sheriff for a final disposition. This system better ensures the discipline is consistent and that all individuals with knowledge of the case are present prior to any change in discipline. Moreover, it has greatly increased the integrity of the process and the consistency in discipline.

Since the Case Review Board was formed in February of 2012, it has only reconvened to listen to arguments to reduce discipline in two cases. In the first case, the Case Review Board had concurred with the Chief's recommended discipline of a 20-day suspension for Performance of Duty/Performance to Standards, False Statements, and Use of Force Reporting/Obedience to Laws violations. At the appeal hearing, the employee convinced his Chief that his actions did not amount to force and that his performance issues could be adequately addressed through training. After additional information from Training Bureau experts was presented at the rehearing, the Case Review Board concurred with the Chief's desire to find the Performance of Duty/Performance to Standards allegations were "unresolved," and the remaining allegations were "unfounded." As such, the deputy received no discipline and was instead ordered to participate in additional training. OIR did not concur with the decision to change the findings and discipline, but chose not to pursue the matter with the Sheriff given the additional evidence.

In the second case, the deputy had been discharged for an off-duty incident involving alcohol, vandalism, and belligerent conduct toward members of the public. At the rehearing, the Case Review Board was presented with additional information regarding the deputy's good character and remorsefulness for his conduct. OIR opposed the request for reduction due to the lack of any new information related to the misconduct and reminded the Board members of the deputy's failure to exhibit any remorse or take any responsibility for his conduct during his administrative interview. The Case Review Board thereafter affirmed its prior decision to discharge the deputy and the Chief accepted the decision and did not pursue the matter with the Sheriff.

In the first ten months of this year, a total of 93 employees have been discharged by the Department through the Case Review Board or ERRC process.⁴ This number reflects a major increase in discipline seen over the past five years.



OIR's Role in Administrative Investigations

OIR is tasked with monitoring all administrative investigations from “cradle to grave.” This means that as soon as an administrative investigation is initiated, OIR is typically informed and sometimes even consulted before the initiation of an internal affairs investigation. During the investigative process, OIR consults with the unit commander and/or the investigator to get updates on the progress of the investigation. Then, once the investigation is completed, a copy of the completed investigation including all written reports, transcriptions, photographs, diagrams, audio, video, and any other relevant evidence is provided to OIR for review. OIR reviews the investigation for thoroughness and objectivity. If OIR believes additional investigation is warranted, it will so recommend and discuss with the investigator and/or unit commander. OIR also discusses the

⁴ At the Sheriff's direction, the Executive Risk Review Committee (ERRC) which is comprised of three commanders has also recently been tasked to hear cases with the potential for significant discipline. In the past, the ERRC heard Sexual Harassment, Discrimination, and other select risk/liability incidents and issues. The ERRC now also hears off-duty misconduct cases as well as other cases selected to be heard by the IID Chief. The investigations are presented to the ERRC commanders in essentially the same manner as the investigations are presented to the Case Review Board. However, unlike when a case is presented to the Case Review Board, ERRC renders the decision as to whether the case is founded, unfounded, or unresolved. If the case is deemed founded, the ERRC commanders in conjunction with the employee's unit commander and Chief or Division Director determine the appropriate level of discipline. If there is a lack of consensus regarding the findings or discipline, the matter is handled in the same manner as when there is a lack of consensus in a case presented to the Case Review Board.

potential policy violations revealed by the investigation, whether there is sufficient evidence to sustain any policy violations and, if so, what the appropriate level of discipline should be. These discussions are usually had with the employee's unit commander. However, if there is disagreement with the unit commander regarding either the sufficiency of the investigation, the findings on the charges, or the discipline, and OIR believes the discipline recommended by the unit commander is unreasonable or inconsistent with the discipline imposed in other similar cases, OIR will discuss the case with the unit commander's chain of command.⁵ While OIR's recommendations and suggestions are advisory only, OIR has always had the option of making its position known to the employee's chain of command in an attempt to gain concurrence with its position.

Unfortunately, this process has not always worked seamlessly. Either intentionally or inadvertently, some unit commanders have imposed discipline on employees for policy violations without consulting OIR or have changed the findings or reduced the discipline OIR has agreed with at the grievance or appellate stage without consulting OIR. Once the discipline is imposed, it is too late for OIR to present information or arguments up the employee's chain of command which might persuade the Department to reach a different conclusion. While in many cases OIR is concerned that an employee is not receiving sufficient discipline, in some cases OIR is concerned that an employee is receiving too much discipline, is accused of violating a policy which was too vague and ambiguous, or has committed misconduct which is better addressed through counseling or training rather than through formal discipline.

The new policy, published on January 25, 2013, clearly sets forth OIR's role in the Administrative Investigations process by requiring consultation with OIR prior to making a final determination on any policy violations, *prior* to determining the level of discipline, and prior to changing the disposition and/or discipline at the grievance or settlement stage of a formal appeal. If OIR does not concur with the findings or discipline in any case, no disposition shall be made until after OIR has had the opportunity to address the case through the Department's chain of command. (See MPP 3-04/020.06 set out in full at pages 57 to 58.)

Conclusion

At the time our 10th Annual Report was published last year, the Case Review Board was just getting started so the jury was still out on whether it would be an improvement over the prior case review process. OIR was concerned that because the members of the Case Review Board were Commanders, they would simply rubber stamp the Chief's recommendation. After more than a year and a half of working with the Case Review Board, it is clear that the Case Review Board has

⁵ The typical chain of command has traditionally been from employee (sworn or non-sworn) to unit commander (Captain or Director), to Commander, to Chief, to Assistant Sheriff, to Undersheriff to Sheriff. Recently, however, the Sheriff has eliminated the Undersheriff position and has appointed two additional Assistant Sheriffs for a total of four Assistant Sheriffs.

successfully increased the integrity of the decision making process, the discipline has been more consistent, and more time, thought and deliberation has gone into each decision. The Commanders who preside on the Board take their job as direct representatives of the Sheriff very seriously and are not hesitant to ask questions or express their disagreement with a Chief's recommendation if they do not feel it is consistent with what the Sheriff would decide if he were present.

It has been OIR's experience that since the initiation of the Case Review Board, the facts of cases and proposed discipline have been more thoroughly deliberated and considered. The panel members all take a considerable amount of time to read through each investigation, listen to the audiotaped interviews, and view any evidence available. This has resulted in an admirable grasp of the facts, pointed questions to the investigators, and well-reasoned, thoughtful, and consistent decisions. Moreover, because a change in the discipline recommended by the Case Review Board cannot be unilaterally changed by the employee's Chief at an appeal hearing without consulting OIR and the IID Chief for possible re-presentation of the case to the Case Review Board, changes to discipline after an appeal hearing are based on a proper understanding of all relevant facts.

With respect to the OIR policy, it has helped ensure that OIR is consulted on a more consistent basis. However, it has not completely eliminated the occasional reduction in discipline without consultation. OIR brought this issue to the Sheriff's attention recently at an Executive Planning Council meeting with the Assistant Sheriffs and Chiefs in attendance. A hard copy of the policy was distributed to all in attendance and the Sheriff instructed the IID Chief to come up with a mechanism that would increase compliance. A form was created which will now need to be attached to each administrative investigation. The form must indicate whether OIR was consulted, whether OIR concurred with the findings and discipline, if not, why not, and whether additional investigation was requested by OIR. We are hopeful that this will eliminate the number of cases wherein OIR is not consulted and obviate the need for OIR to request that administrative investigations be opened up on unit commanders and executives who fail to comply with the OIR policy. (See Administrative Contact Sheet at page 59.)

3-04/020.06 ADMINISTRATIVE INVESTIGATIONS – OFFICE OF INDEPENDENT REVIEW

Although the ultimate and final decision rests with the Sheriff and Department managers with respect to which Unit will conduct an investigation, whether there are founded policy violation(s), and the appropriate level of discipline, Department managers shall consult with the Office of Independent Review (OIR) as they formulate and/or revise such decisions.

Representatives from OIR shall be afforded the opportunity to review investigative, disciplinary, and other documents generated or received by this Department.

OIR shall be consulted by a Unit Commander or designee prior to engaging in any of the following:

- determining if an investigation shall be conducted by the concerned Unit, the Internal Affairs Bureau, or the Internal Criminal Investigations Bureau;
- making a determination on any policy violation(s);
making a final determination to inactivate a case;
- committing to a Pre-Disposition Settlement Agreement;
determining the level of discipline; and/or,
- changing the disposition and/or discipline at the grievance or settlement phase.

OIR shall be afforded access to any internal or external investigation, communication, and/or memorandum including, but not limited to, personnel investigations (whether conducted by an individual Bureau, Station, Unit, Detail, the Internal Affairs Bureau, or the Internal Criminal Investigations Bureau); Homicide Bureau investigations into any deputy-involved shooting or inmate death; any use of force investigation or investigation into a non-hit deputy-involved shooting; any non-privileged civil claim or lawsuit information; any Watch Commander Service Comment Report and attendant documentation; and/or any other similar document as requested.

NOTE: Absent the most compelling of circumstances, these documents shall be provided to representatives of OIR upon request. Exceptions to this policy shall be resolved only after consultation with the concerned Unit Commander's chain of command.

When an administrative investigation is completed by the concerned Unit, a copy of the completed file shall be forwarded to OIR. The Unit Commander shall review the case and determine an appropriate course of action only after consultation with OIR.

If OIR determines a case requires additional investigation, the concerned Unit Commander shall discuss the case with OIR to determine the level of additional investigation proposed. Any dispute regarding the need for and/or scope of additional

investigation shall be addressed by OIR through the concerned Unit Commander's chain of command.

The case shall then be forwarded to the concerned Area Commander and Division Chief, irrespective of the disposition, for review. If OIR did not concur with the findings and/or discipline, no disposition shall be made until after OIR has had the opportunity to address the case through the Department's chain of command. No proposed disposition shall be communicated to the involved employee(s) until after OIR has been provided the opportunity to address the case through the concerned Unit Commander's chain of command.

When an administrative investigation is completed by the Internal Affairs Bureau, the completed case file shall be forwarded to the Unit Commander of the Unit where the incident occurred. A copy of the completed case file shall be forwarded to OIR. The Unit Commander shall review the case and determine an appropriate course of action only after consultation with OIR.

If OIR determines a case requires additional investigation, the concerned Unit Commander shall discuss the case with OIR to determine the level of additional investigation proposed. Any dispute regarding the need for and/or scope of additional investigation shall be addressed by OIR through the concerned Unit Commander's chain of command.

The case shall then be forwarded to the concerned Area Commander and Division Chief, irrespective of the disposition, for review. If OIR did not concur with the findings and/or discipline, no disposition shall be made until after OIR has had the opportunity to address the case through the Department's chain of command. No proposed disposition shall be communicated to the involved employee(s) until after OIR has been provided the opportunity to address the case through the concerned Unit Commander's chain of command.

If the employee grieves or appeals the discipline, the concerned Division Chief shall consult OIR prior to approving any settlement agreement.

Revised 01/27/13

ADMINISTRATIVE INVESTIGATION CONTACT SHEET

IV # _____ Unit/Station: _____

Date of Incident: _____ 1 Year Statute Date: _____

Subject Name(s): _____ Employee #: _____

Subject Name(s): _____ Employee #: _____

Office of Independent Review (OIR)			
Attorney contacted:		Date:	
	Yes	No	Date
OIR Concur with Findings:			
OIR Concur with Discipline:			
OIR Request Additional Investigations:			
Comments:			
Internal Affairs Bureau (IAB)			
IAB Staff Contacted:		Date:	
Comments:			
Advocacy Bureau			
Advocacy Staff Contacted:		Date:	
Comments:			
Training Bureau or Other Entity			
Person Contacted:		Date:	
Comments:			
	Yes	No	
Attached all emails between the Unit/Station and the above entities			

Additional Comments should be continued on a separate page if necessary

Alcohol-Related Misconduct Update

We have praised the Department's efforts in the past to address the problem of alcohol-related misconduct by enhancing its disciplinary guidelines, by educating its employees regarding the cost of driving under the influence and by increasing unit commander responsibilities to include responding to an arrested employee's location and ordering the employee to submit to a blood alcohol test when there is evidence that alcohol was a factor in the arrest. Despite the Department's efforts, it is disappointing to report that there was an uptick in the number of personnel arrested for driving under the influence (DUI) in 2012. After a five-year low of 28¹ DUIs in 2011, the number of personnel arrested for DUIs in 2012 was up to 38. On a positive note, however, there have only been 13 arrests for DUIs in the first ten months of 2013. At the same time last year, there were 34. It is believed that the Department's increase in discipline for deputies with a prior DUI, deputies who are belligerent toward arresting officers, and deputies whose blood alcohol content is more than twice the legal limit has greatly contributed to the decrease in numbers.

¹ At the time the OIR's Tenth Annual Report was published last year, the number of personnel known to have been arrested for a DUI in 2011 was 28. Since that time, however, an additional arrest made in 2011 was brought to our attention. The arrest information was not provided contemporaneously to either OIR or the Risk Management Bureau of the Sheriff's Department which is responsible for keeping track of all alcohol-related incidents involving personnel. The individual is an unsworn employee who was involved in a traffic collision. He was taken to the hospital where his blood alcohol content was determined to be .19%. He was not arrested at that time, but later learned his license had been suspended and charges had been filed against him. An administrative investigation into the incident was initiated and he received a 20-day suspension for the off-duty misconduct.

The first chart below reflects the number of sworn and unsworn personnel arrested for DUI in the past five years. The second chart reflects the number of sworn and unsworn personnel arrested for any alcohol related offense in the past five years. When one looks at all alcohol-related incidents rather than simply DUIs, 2012 numbers have remained relatively low compared to earlier years:

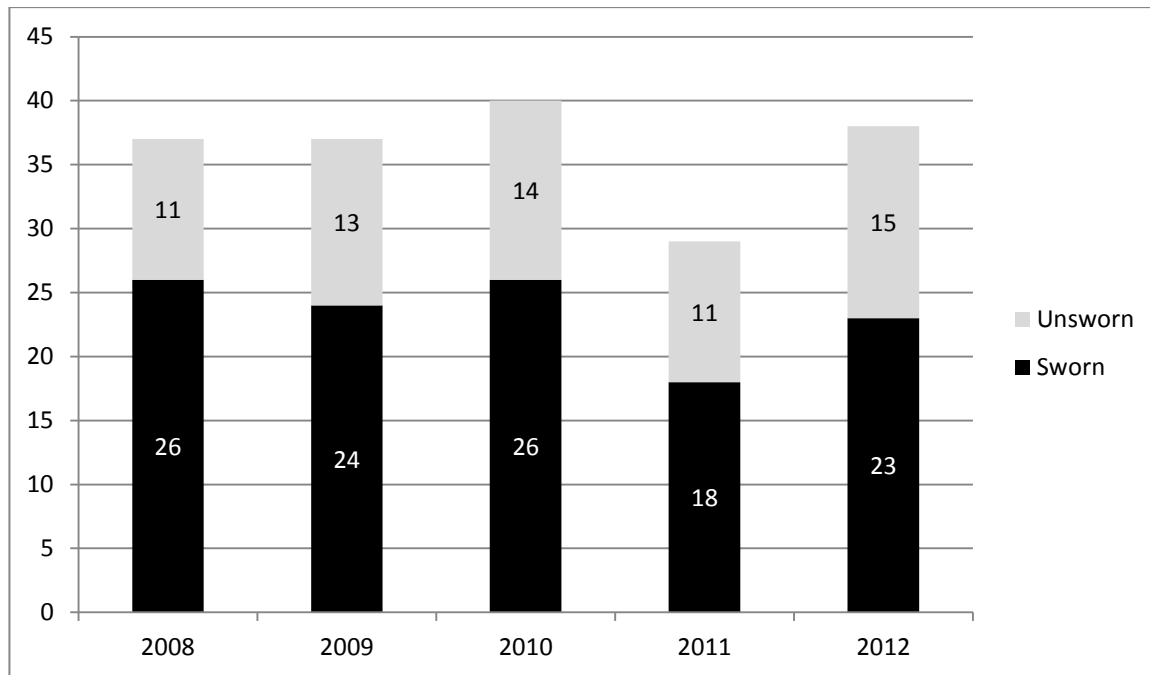


Figure 1: LASD Personnel Arrested for DUI

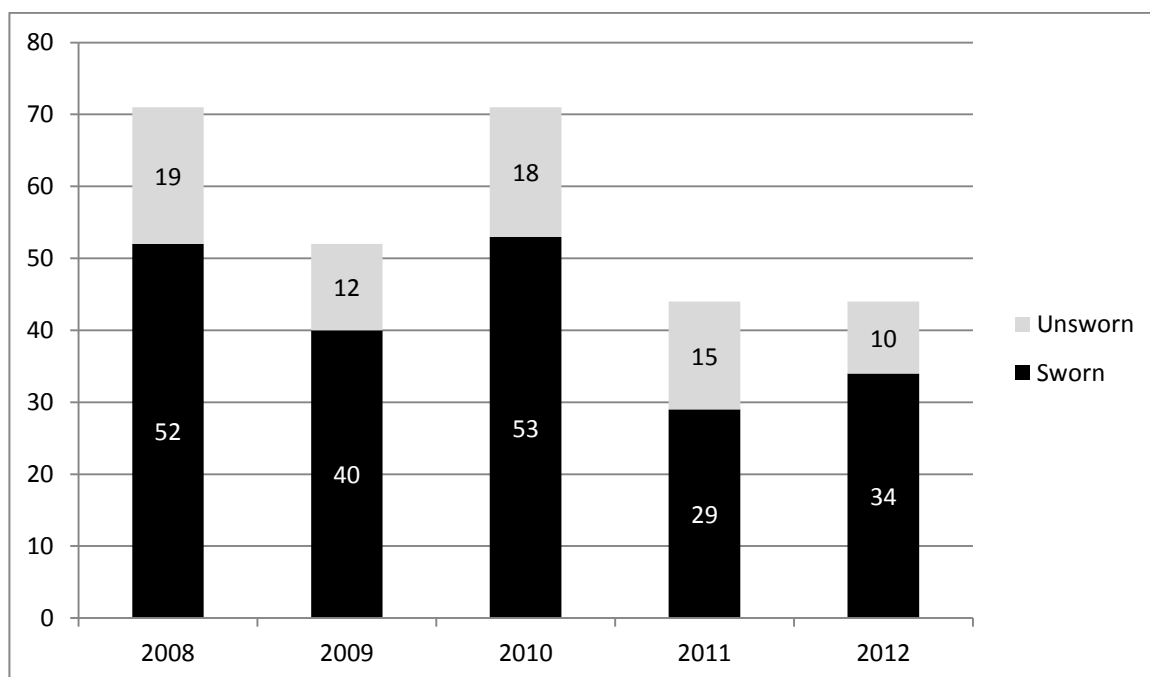


Figure 2: LASD Personnel Arrested for off-duty alcohol-related incidents

The Department has grown less tolerant of off-duty alcohol-related misconduct, particularly when it involves personnel being uncooperative with law enforcement or when the employee has engaged in prior alcohol-related misconduct. It is too early to tell whether the recent decrease in arrests of personnel for DUI is due to the Department's decision to discharge more individuals for alcohol-related misconduct, its continued messaging to Department members about the potential career ending consequences of alcohol-related misconduct or both but we are hopeful that the decrease in alcohol-related misconduct observed so far in 2013 will hold through the end of the year. OIR was also pleased to learn that ALADS, the union for sworn personnel, has joined the Department's efforts to reduce off-duty alcohol related misconduct by sending a stern warning to its members that those who are involved in off-duty alcohol-related incidents and behave belligerently toward on-duty police officers are looking at a serious setback in their career. The following are some case examples of serious alcohol-related cases resulting in discharge since our last report.

Case One

A sergeant consumed an unknown amount of alcohol at an after-work holiday dinner with a team of deputies under his supervision. He thereafter drove his unmarked county vehicle westbound into the opposite lanes of traffic with no headlights. He then merged back into the eastbound traffic lanes and struck a center median. Officers from an outside agency initiated a traffic stop and detained the sergeant on suspicion of driving under the influence. After failing several of the field sobriety tests administered, he was arrested. During his transport to the police station and during the booking process, the sergeant was belligerent. He cursed at the officers, urinated on the station jail floor, and was confrontational and verbally abusive. In addition, the sergeant had a loaded two-inch revolver in the center console of the vehicle and both an unloaded shotgun and a loaded semi-automatic hand gun in the trunk of his vehicle. The Department's policy on Safety of Firearms prohibits the carrying of firearms while under the influence of intoxicating substances. The policy presumes an individual is unable to exercise reasonable care of a firearm if he has a .08% or higher blood alcohol level. It was later determined the sergeant's blood alcohol level was .25%.

The sergeant was charged with misdemeanor driving under the influence of alcohol. He pled guilty and was sentenced to a probationary term. Despite his subsequent apologies to the outside law enforcement agency, the Department found the sergeant had violated the Department's Safety of Firearms, General Behavior, Disorderly Conduct, Obedience to Laws – DUI, and Care of County Property policies and he was thereafter discharged. OIR concurred with the findings and discipline.

Case Two

A professional staff employee consumed at least four margaritas at a restaurant where video footage showed the employee stumbling while walking down a hallway. On her way home in her county vehicle, she passed out in the middle of a freeway. A concerned citizen reported that she found her slumped over the steering with her foot on the brake and the vehicle's gear selector in the drive position. The citizen banged on the driver's window until she woke up and unlocked the doors. Officers from an outside law enforcement agency were called and responded. After smelling a strong odor of alcohol emitting from her breath and performing poorly during field sobriety tests, she was arrested. A breath sample provided at the station registered a blood alcohol level of .20%. At the time of the arrest, the employee was on probation for a DUI conviction which occurred about two years earlier, also in a county vehicle.

The District Attorney's Office filed a misdemeanor charge of DUI, to which she pled no contest and received a probationary sentence. The Department found the employee had violated the Department's Professional Conduct, General Behavior, Disorderly Conduct, Obedience to Laws – DUI, and Use of Alcohol policies. The employee was served with a letter of intent to discharge, but retired prior to imposition of the discharge.

Case Three

A deputy was involved in two alcohol related incidents within a couple of months. During the first incident, the deputy was at a nightclub and when he was leaving, the on-site security guard noticed he had leaned against a wall and appeared very intoxicated. The deputy had thrown up on himself. The security guard assisted the deputy to his vehicle and tried to place him in the backseat of the car. The deputy became angry and spit on the security guard. The security guard had also noticed the keys were in the ignition and the Deputy's duty weapon was laying in the gutter. Identification showing the Deputy was an LASD deputy was found inside the vehicle. The security guard decided to take the duty weapon for safekeeping while the deputy slept in the backseat of the car. About an hour later the security guard went back to check on the deputy, but he and the vehicle were gone. The next morning, the deputy reported his gun missing and filed a police report alleging it was stolen from his glove box. The investigation in this matter revealed the deputy had lied about how his firearm went missing as well as about driving home while under the influence of alcohol.

In the second incident, the deputy was charged with driving under the influence of alcohol when he was found non-responsive, slumped over the steering wheel of his vehicle while stopped at an intersection. When fire and medical responded, they tapped on his window. The deputy woke and his vehicle coasted forward and hit the medical response vehicle in front of him. The deputy took a breath test at the station and his

blood alcohol content registered at .07/.06%. He was charged criminally with driving under the influence and pled no contest to the lesser charge of misdemeanor reckless driving with consumption of alcohol. The Department found him in violation of policies on General Behavior, Disorderly Conduct, Safety of Firearms, Conduct Toward Others, Care of County Property, Making False Statements, and Obedience to Laws and set the level of discipline at discharge. OIR concurred with the findings and discipline.

Case Four

A deputy was involved in two driving under the influence cases. In the first case, the deputy was involved in a hit and run incident. He eventually also crashed into a tree. Responding officers found numerous liquor bottles, brass knuckles and a prescription bottle of Vicodin in the backseat of the vehicle. During his arrest, the deputy argued with arresting officers and tried to get out of being arrested due to his position as a law enforcement officer. The deputy's blood alcohol content was .25/.26%. He was charged with and convicted of misdemeanor driving under the influence with an elevated blood alcohol content.

In the second incident, and while on probation from the first incident, the deputy tried to evade police. The deputy reportedly sped away from the patrol car that followed him with its lights and sirens activated. The deputy eventually made it to his home where he attempted to quickly pull into his garage. When the patrol vehicle followed behind, the deputy closed the garage door on the patrol vehicle's hood. This prevented the garage door from closing completely. When the officers made contact with the deputy, he presented signs of aggression and again suggested he should receive preferential treatment because he was a law enforcement officer. The arresting officers had to resort to using a TASER to get the deputy to submit to their commands and place him under arrest. The deputy's blood alcohol was measured at .29%. He was arrested for driving under the influence and resisting arrest. The Department found the deputy had violated the Department's General Behavior and Obedience to Laws – DUI policies in each case. The discipline on the two cases was combined and the deputy was discharged. OIR concurred with the findings and discipline.

Case Five

While a deputy was relieved of duty with pay pending an unrelated internal criminal investigation, she was observed speeding in a school zone by an LASD patrol deputy. Numerous pedestrians including children were in the area. The patrol deputy attempted to initiate a traffic stop using her overhead lights. When the speeding vehicle neglected to yield, the patrol deputy sounded the patrol vehicle's air horn and siren. The vehicle slowed, but instead of yielding to the right, the driver made a left turn without signaling and then came to a stop in front of a house. Upon contacting the driver, the patrol

deputy observed the deputy's speech was slurred, her answers to questions were delayed, and her eyes were constricted. The patrol deputy asked for her driver's license and she fumbled getting it out of her purse. The patrol deputy returned to her vehicle to call for a supervisor. When she returned, the deputy was outside of her car on the phone. She told the patrol deputy she was speaking to her lawyer, invoking her rights and was going to go into her house. The patrol deputy told her she was being detained, was not free to leave, and instructed her to get back into her vehicle. The deputy repeatedly refused to comply with the patrol deputy's orders and instead walked toward her house. The patrol deputy ended up having to use Oleoresin Capsicum spray to get her to comply. Backup units arrived and she was arrested. Numerous prescription pills as well as a clear baggie containing cocaine and a razor blade were recovered from her purse.

The District Attorney filed one felony count of possession of cocaine and two misdemeanor counts of driving under the influence and resisting arrest. Upon the filing of the felony charge, the deputy was relieved of duty without pay. Approximately ten months after her arrest, she entered into a plea bargain wherein she pled guilty to felony possession of cocaine and misdemeanor disturbing the peace. The entry of judgment on the felony charge was deferred² and the driving under the influence and resisting arrest charges were dismissed as part of the plea bargain. The Department found her in violation of General Behavior, Obedience to Laws, and Performance to Standards policies. The deputy was served with a letter of intent to discharge but resigned prior to the discipline being imposed. OIR concurred with the findings and discipline.

Case Six

While off-duty, Deputies A, B, and C drove together to two separate restaurants where they each consumed alcoholic beverages. After the second restaurant closed, they all got into Deputy C's vehicle and drove to a location where Deputy B asked to be dropped off. On route, however, they engaged in a verbal altercation. When they arrived at the location where Deputy B asked to be dropped off, they all exited the vehicle and a physical altercation ensued between Deputy A and Deputy B. According to Deputy A, Deputy B punched her multiple times, breaking her nose. She was able to get away after Deputy C came to her aid. Deputy A then retrieved her firearm from the vehicle and claimed because she feared for her life as well as Deputy C's life; she shot a round at Deputy B as Deputy B advanced on her. Deputy B then ran away and Deputy A fired a second round at her not knowing if she was going to circle back.

² Pursuant to Penal Code sections 1000 et seq., a qualifying individual may enter a guilty plea and defer entry of judgment on a charge of possession of cocaine while he or she completes an 18 month substance abuse program. Successful completion of the program will entitle the individual to dismissal of the charge. However, if the individual is unable to successfully complete the program, he or she will be sentenced and will thereafter be considered convicted of a felony for all purposes.

Deputy B, on the other hand, said she punched Deputy A only after Deputy A took a swing at her. She then straddled Deputy A in an attempt to hold her down. Deputy A then bit her cheek and Deputy C came over and struck her in the head for no reason. In response, Deputy B said she grabbed Deputy C by the hair and pulled her down to the ground. Deputy A left to retrieve her firearm while Deputy B straddled over Deputy C. When Deputy B saw Deputy A extend her arm in her direction, she immediately dismounted Deputy C and started running away. As she turned to run away, she heard a shot whiz by her right ear. She continued to run and heard a second shot a few seconds later but was not hit. All of the deputies denied driving the vehicle.

Patrol deputies on duty responded to a call of shots fired and located the deputies at or near the scene of the shooting. They were all ordered to submit to test for their blood alcohol content hours after their last drink. Deputy A's blood alcohol content measured .15%, Deputy B's blood alcohol content measured .11%, and Deputy C's blood alcohol content measured .09%. The case was investigated by the Internal Criminal Investigations Bureau and presented to the District Attorney for a filing decision more than a year and a half ago. Rather than wait for a determination, however, the Department decided to proceed with the administrative investigation and found them all in violation of the Department's General Behavior and Disorderly Conduct policies. Deputies A and B were additionally found in violation of the Obedience to Laws policy and Deputy B was found in violation of the Safety of Firearms policy. Deputies A and B were discharged and Deputy C received a significant suspension. OIR concurred with the findings and discipline.

Case Seven

Based on two alcohol-related incidents occurring in 2009 and 2010 (one DUI and one drunk in public incident), Custody Assistant was discharged. During the appellate process, the employee did not present any new facts which would justify a reduction in the discipline. Nonetheless, a Chief agreed to reduce the discharge to a 30-day suspension. This was done without OIR's concurrence. The Department reinstated the custody assistant and entered into a settlement agreement wherein he agreed to resign if he engaged in another-alcohol related incident within five years. In 2012, a year and a half after signing the settlement agreement, the custody assistant was again arrested for a DUI after being observed weaving by officers of an outside law enforcement agency. His blood alcohol level was .18%. Pursuant to the terms of the settlement agreement, he resigned two days after his arrest.

Case Eight

An officer from an outside law enforcement agency found an off-duty custody assistant asleep at the wheel in the driver's seat of his vehicle which was stopped at

an intersection facing a green light. His foot was on the brake, the car was running and in “drive.” After waking him up and conducting field sobriety tests, a breath test was taken and registered his blood alcohol content at 15%. The District Attorney filed a misdemeanor charge of DUI. About five months later, while his criminal case was still pending, the employee was again arrested for a DUI after an officer from another outside law enforcement agency responded to a non-injury traffic collision in which the custody assistant was found at fault because he had driven through a red light. His blood alcohol content was .16%. A second DUI case was filed by the District Attorney. On both occasions, he did not immediately report the incident to a supervisor as required by policy and waited up to six hours after he was released from custody to report the arrests. The custody assistant pled no contest to driving under the influence of alcohol in both criminal cases and was placed on probation. The Department found him in violation of Obedience to Laws, General Behavior and Off-Duty Incidents policies and discharged him. OIR concurred with the findings and discipline.

On the issue of discipline, the Department has continued to impose lengthy suspensions for employees engaged in alcohol-related misconduct. With respect to DUIs in particular, the discipline has continued to range from 15 days to discharge.³ The 15-day suspensions are usually reserved for employees who are first-time offenders, do not have an elevated blood alcohol level, and were cooperative with arresting officers. Of the DUI 2010 arrests noted above, all of the cases have been through the investigative and disciplinary process. All but one of the 2011 DUI cases and about 80% of the 2012 DUI cases have likewise been through the investigative process and reached a disposition.

In our Ninth Annual Report published in 2011, OIR reported the Department’s protocol instructing supervisors how to handle all off-duty alcohol-related incidents, including non-driving incidents. The protocol was issued on August 16, 2010, and requires unit commanders to respond to an arrested sworn employee’s location and order the sworn employee to submit to a blood alcohol test to be used for administrative purposes. While this protocol has been followed the vast majority of the time, OIR has documented more than a handful of instances where unit commanders or their designees have responded to make an on-scene assessment of the employee’s behavior and have not ordered a blood alcohol test. In some instances, the responding supervisor was unaware of the protocol and the unit was advised of the protocol by OIR and encouraged to train its personnel on the protocol. In other instances, however, unit commanders aware of the protocol have chosen not to order a blood alcohol test for a number of different

³ The only exception to this rule is when the employee is not required to possess a driver’s license as a requirement of employment. All sworn personnel, custody assistants, and law enforcement technicians are required to possess a driver’s license as a requirement of employment. Their off-duty driving misconduct therefore has a clear nexus with their employment. However, there have been some instances with student workers or certain clerks where the Department has been advised by their Advocacy Department that they are unable to discipline them for their off-duty driving misconduct due to a lack of nexus to their employment.

reasons. A couple of supervisors have told OIR that by the time they arrived, the employee did not appear intoxicated. Another supervisor told OIR that the arresting officers had determined the employee was not intoxicated so he did not feel it was necessary to order a blood alcohol test. And, other supervisors have said they are reluctant to order their employees to submit to a blood alcohol test if the employee consumed the alcohol at home, rather than in public. In each of these instances, however, the employees should have been required to submit to blood alcohol tests. Nothing in the protocol requires the employee to be intoxicated prior to being ordered to submit to a blood alcohol test. All that is required is that alcohol be a factor in the incident.

No one, especially a Department member, would dispute the fact that consuming alcohol can impair one's judgment and ability to accurately recollect an event. Whether a person is legally "intoxicated" or not, the level of alcohol in his or her blood may be relevant to the employee's judgment and version of events. Hence, when there is any evidence of alcohol consumption by an employee who is subsequently detained or arrested, alcohol can potentially have been a factor regardless of when, how much or where the alcohol was consumed. For instances not specifically covered under the policy, such as when the employee is not being detained or has been the victim of an offense, a blood alcohol test should be offered and can in some instances help exonerate an employee. The Department's protocol requiring supervisors to order sworn employees to submit to a blood alcohol test any time they are detained and alcohol is a factor in the incident is effective – but only if consistently followed. Failing to follow the protocol raises questions regarding the integrity of an investigation into the misconduct and opens up the supervisor to allegations of favoritism or failing to perform to standards. An additional issue recently surfaced due to an off-duty incident wherein the employees were ordered to take a blood test, but it was not until four or five hours after the incident. We are working with the Department on a protocol which will help reduce this delay. OIR will continue to monitor compliance with the protocol for handling off-duty alcohol related incidents to ensure the Department's internal investigations are as trustworthy, accurate and as thorough as possible.

Deputy Involved Shootings Update

Case Summaries and Outcomes

There is likely no greater potential for police-related controversy than the officer-involved shooting. The law uniquely provides our police the authority to use deadly force to protect their lives or those of third parties and policies actually oblige officers to assert that authority when necessary. Over the years, deputies have been shot at and sometimes struck by suspect gunfire, necessitating a deadly force response.

Unfortunately, in this country many people carry guns on the street and it is often difficult to ascertain who is armed and who is not. Deputies are trained that when they observe actions that indicate a suspect is about to draw a weapon on them that if they wait for the suspect to fire or aim a firearm, it may be too late for them to stop the threat. This paradigm makes it unfortunately not surprising that a deputy may misperceive the movement of a suspect as attempting to arm himself, causing the deputy to use deadly force on a suspect who is later found to be unarmed.

Because the decision to use deadly force is almost always a split second decision based on a perceived or real sudden action by the suspect, it can be difficult to prove fault for the immediate use of deadly force decision, even when it turns out that the suspect was not carrying a gun. However, that does not mean that a law enforcement agency is unable to develop exacting regimens of accountability designed to address the issue. Critical analyses of officer-involved shootings have demonstrated that the large majority of those shootings are preceded by a litany

of tactical decisions by those officers. Critical decisions, such as how to approach the suspect, whether to go in foot pursuit, the use of cover, the importance of communication with fellow officers, when and whether to draw the firearm, and considerations for cross-fire and backdrop all influence whether the encounter will end in gun play. Tactics that are designed to keep officers safe necessarily reduce uses of deadly force because an officer who has performed consistent with principles of officer safety will often find himself less vulnerable to real or perceived acts of aggression by a suspect. For example, the officer that leaves cover or his partner, fails to radio, goes into a long foot pursuit, loses sight of the suspect and then follows him over a fence into a dark alley will more likely feel the need to use deadly force when he jumps the fence and perceives any movement by the suspect as an act of aggression. Compare that to the officer who practices optimal officer safety tactics, calls for backup, cautiously follows and maintains visual contact with the suspect, and uses fellow officers, air support, and K-9 to safely bring the suspect into custody. Analyses of these cases demonstrate that practice of the important principles of officer safety concomitantly reduces officers' perceived need to use deadly force.

The resolve of the LASD to hold deputies accountable for tactical decisions that may have been the precursor to deadly force has waxed and waned over the years. This is largely a function of the panelists who make up the Executive Force Review Committee (three commanders who make determinations regarding whether deadly force and tactical decisions are within policy). Recent members of the Committee have brought an exacting eye to bear on those decisions. These panel members have not been shy about holding involved deputies accountable for tactical decisions which are inconsistent with the expectations of the Department. Because the disciplinary findings can and usually are converted to training opportunities, the Department is able to express its concern about those tactical decisions, track those who have not performed consistent with expectations, and provide a remedial plan designed to ensure that field deputies will perform in the future consistent with those expectations.

In addition, certain individuals may be more susceptible to perceived threats than others. If certain officers react to stressful events with more heightened fear than the norm, they may feel the need to shoot when other deputies would not. While scant research has been done on this topic, it would stand to figure that not all officers will have the same response to a perceived threat. Accepting this premise, law enforcement agencies should be tracking officer performance and especially examining officers who have repeated instances of using deadly force. While LASD has had the tools to track deputies' use of deadly force for years, it is only recently that the Department has appeared to make a concerted effort to identify multiple shooters and move those individuals to other assignments where the deputies are less likely to encounter suspects with guns. These non-punitive transfers reduce the risk of deputy-involved shootings in a way that has not been systemically embraced before by LASD. OIR will continue to assess the utility of this practice and continue to urge the Department to consider this approach in similar scenarios. Recent events strongly suggest, though, that consistent vigilance is necessary to assure that a

deputy who is moved out of an assignment where a shooting is more likely is not able to get back onto the streets by other means such as working overtime at a different station.

A refrain oft repeated by the deputies' union is that OIR's opinion regarding tactical decisions should be disregarded by LASD because the OIR attorneys have never been in a deputy-involved shooting before. The rationale seems to be that only officers who have used deadly force can adjudicate others who use deadly force. While there is little logic to this pronouncement, the union spokespeople also misperceive how OIR comes to its conclusion about whether a deputy-involved shooting is tactically sound. OIR's analysis does not compare deputy behavior to what we think the deputy should have done; rather it relies entirely on whether the deputy performed consistent with LASD's expectations. Thus, we compare the performance of the deputy with how that deputy has been trained by the Department. If the deputy's performance is consistent with that training, we do not find that performance out of policy; if it is not, then we ask whether the performance is so below Department expectations that a finding of a violation of policy governing tactics is in order. It is that analysis and our group experience of reviewing over five hundred shootings since our inception that forms the basis for our conclusions. There is probably no other reviewing body in the country that has collectively reviewed as many shootings as the OIR.

Case One: Failing to Exercise Patience

Four deputies responded to a mental health clinic where a mentally ill female patient was sitting in the patient lobby holding a hammer. When the deputies arrived at the location, before making contact with the woman, they gathered to discuss a tactical plan. Deputy A was assigned the TASER. Deputy B (a field training officer) and Deputy C were assigned to use deadly force, if necessary. Deputy D (a trainee) was assigned to assist as needed. As the deputies were discussing their assignments, they suddenly heard the security guard yell, "Oh, shi*!" The deputies rushed into the lobby and found the four feet nine inch tall, ninety pound woman standing near the back wall with a ball peen hammer over her head. Deputies A and B took the lead positions and entered the lobby first. There were no other patients in the lobby but clinic staff was positioned behind the back wall. There were also several staff members hiding behind the lobby counter which was adjacent to where the woman was standing. The deputies ordered the screaming woman to drop the hammer and when she failed to do so Deputy A deployed his TASER. The darts struck her and the TASER cycled for approximately five seconds but the woman did not fall to ground or drop the hammer as the deputies had expected. Instead, she took a small step back, closed her eyes and maintained her grip on the hammer. When the TASER completed its cycle, the woman regained her composure. The deputies then saw her take a step forward toward Deputy A with the hammer raised over her head. Believing his TASER had malfunctioned, Deputy A was transitioning to his duty weapon. Observing the woman's actions and fearing for the safety of his partner, Deputy B fired two rounds fatally striking the woman. This was Deputy B's first shooting in his approximately sixteen year career.

The EFRC panel found (and OIR agreed) that both Deputies A and B, as the lead deputies, rushed their actions and failed to employ sound tactical principles before engaging the woman who was experiencing a mental health crisis. For instance, the deputies failed to gather sufficient information from the informant(s) about who remained in the building and where they were located. Before confronting the woman, the staff that had remained in the building should have been evacuated. The panel also found that the tactical plan was deficient and that requesting additional resources, such as the Department's Mental Evaluation Team, assisting units, special less lethal weapons and equipment (shields) and a field supervisor would have been advisable. For failing to meet Department standards the deputies were issued discipline.

With regard to the use of less lethal force, the panel found Deputy A's use of the TASER reasonable and within Department policy. OIR concurred. OIR found, however, that Deputy B's use of deadly force was questionable. Troubled by Deputy B's actions, the EFRC panel deemed his use of deadly force as "unresolved" — a finding uncommon for the Department when determining use of force.¹ The panel's main concern was the conflict between Deputy B's perceived need to protect the life of others from serious physical injury or death and the reverence for human life. Although not disciplined for his use of deadly force, to its credit, the panel recommended that he be immediately removed from the field. He was, and to date, Deputy B has not been assigned field duties. Additionally, Deputy B was removed from his field training officer position and placed on formal Departmental Performance Review for a period of two years. Also, recognizing the need for training that addresses how to deal with the mentally ill community, soon after the EFRC panel hearing, the station captain arranged for his line personnel, including Deputy B, to be trained by mental health experts from the Department's Mental Health Evaluation Team (M.E.T). The station captain has also established relationships with Mental Illness and Law Enforcement Systems and a local chapter of the National Alliance of Mental Illness (NAMI) to seek additional mental health awareness training.

In contemplation of the Deputy's potential future return to patrol duties, the Department is in the process of developing a training plan the deputy must complete before a return to the field. Although still concerned about Deputy B's return to the field, the Department has agreed to seek OIR's input regarding the individualized plan. OIR has strongly recommended that the plan include additional training that addresses how to deal with the mentally ill population.

Case Two: Failure to Follow Foot Pursuit Policy

Two deputies on patrol at nighttime saw a man riding a bicycle on a sidewalk with no operating light. They conducted a traffic stop and noticed that when the man climbed off his bicycle that he had his right hand underneath his shirt. The deputies ordered the man to show his hands but he

¹ "Unresolved" is defined in MPP § 3-04/020.25 "When the investigation fails to resolve the conflict between the complainant's allegation and the Department member's version of the incident; when there is no preponderance of evidence to support either version of the incident."

instead shouted profanities, dropped his bike and ran away from the deputies towards an alley. One deputy gave chase on foot while the other returned to the patrol car and followed his partner into the alley. Neither deputy broadcast their location or the foot pursuit.

The deputy on foot later described seeing the suspect running and hiding behind parked cars in the dark alley. He said that the suspect kept clutching his hand near his waistband. He reported that as the suspect moved in a crouching position along a wall of a building, he suddenly turned towards the deputy with his right hand still hidden. Fearing that he was about to get shot, the deputy fired multiple times. After he stopped shooting and the suspect went down to the ground, the deputy finally initiated a radio broadcast reporting the deputy involved shooting.

In the meantime, his partner had entered the alley in his patrol car. The deputy lost sight of both the suspect and his fellow deputy. As he came to a stop he heard gunfire and feared that his partner had been shot and killed. He quickly parked, exited and ran around to the other side of the patrol car. He still could not see his partner but saw the suspect either crouching down or slowly walking in a crouched position along a wall. The deputy said he shouted at the suspect to show his hands. He said the suspect suddenly jerked his right shoulder toward the deputy who believed that the suspect was holding a gun under his shirt. The deputy fired two rounds and he said the suspect went down. It turned out the suspect was unarmed as no gun was recovered at the scene.

The suspect was struck by four bullets and died at the scene. During the autopsy three bullets were recovered. Two of them were potentially fatal shots fired by the first deputy and one was a potentially fatal shot found to have come from the second deputy's gun.

It is difficult to reconcile the two versions of events described by the deputies. The first deputy fired 11 shots and said he never fired after he put out the radio broadcast announcing the deputy involved shooting and that was not until the suspect went down. During the broadcast, though, one can hear two shots being fired. Those were in all likelihood the second deputy firing his handgun. The second deputy, though, maintained that the suspect was on his feet and presented a threat which is why he fired.

OIR was concerned both with the question of whether deputies' tactics were within the Department's training and whether the use of deadly force was objectively reasonable under the totality of the circumstances. The EFRC panel reviewed the case and found that both had violated the LASD's performance to standards and foot pursuit policies for not broadcasting their actions, failing to request assisting units, failing to contain the area before attempting to capture the suspect, and failing to reasonably maintain or use cover and concealment when they believed the suspect was armed in a dark confined area. On the issue of whether the deputies used unreasonable force, the EFRC panel - as in Case One - concluded that question was left "unresolved." In addition to discipline, the panel recommended the deputies receive additional training. OIR concurred with the decision.

Case Three: Failing to Broadcast Foot Pursuit and Announce Shooting

Two deputies were on patrol at nighttime and saw a male (Suspect One) crossing a street with a car battery in his hand. Believing he had stolen the battery the deputies decided to make contact with the suspect who put the battery on the ground and jogged down a driveway. Deputies exited their vehicle and went in foot pursuit of the suspect down the driveway but could not locate the suspect as he had climbed over a wall. The deputies re-entered their patrol vehicle to look for the suspect. They located suspect One with another male (Suspect Two) shortly thereafter. The deputies ordered both suspects to stop. Deputy B saw Suspect Two climb over a wall with a handgun in his hand. Both deputies saw Suspect One crouch down in front of a parked vehicle in a driveway. Deputy A saw a handgun in the suspect's waistband. Deputy A gave several commands for the suspect to stand up with his hands raised, however, the suspect did not comply. The suspect then stood up and began to climb a fence while at the same time reaching into his waistband to retrieve a gun. Deputy A fired two rounds as the suspect climbed over the wall as he yelled "take it, take it" presumably in reference to giving the gun to the second suspect who deputies believed had already climbed over the wall. Deputy A then climbed over the wall and saw Suspect One laying on the ground, face up with his arms flailing around and heard the suspect yell that he was going to kill him. Deputy A fired two more rounds. Suspect One was hit and injured. No handgun was recovered and investigators surmised that it may have been given to Suspect Two who fled and was never apprehended.

The EFRC panel found Deputy A had violated the Department's Performance to Standards and Obedience to Laws, Regulations, and Orders policies, specifically pertaining to Tactical Incidents and Foot Pursuits for failing to broadcast the foot pursuit in addition to failing to take a position of cover and concealment once observing an armed suspect attempting to flee. Additionally, Deputy A was disciplined for failing to immediately announce he had been involved in a shooting after the initial rounds of firing at the suspect and for climbing the wall in pursuit of the suspect and re-engaging the suspect in a second shooting instead of taking a position of cover. Deputy A was placed on the Department's Performance Mentoring program in addition to completing 36 hours of training on various tactical and decision-making classes. Deputy B was disciplined for failing to communicate to his partner when he observed that an outstanding suspect was armed with a handgun, failing to announce that he was in a foot pursuit and failing to notify LASD's communication center and assisting units that there was an outstanding suspect armed with a handgun. Deputy B was required to complete 20 hours of training.

Case Four: Another Failure to Announce a Foot Pursuit

A Sheriff's station received several calls regarding a video production of a local rapper (the video was to be partly shot in the middle of a street). It was anticipated the event would produce a large crowd, including some local gang members. Additionally, at the location where the video production was to take place, deputies had recovered a handgun earlier in the day. With knowledge of this information, two deputies decided to patrol the area.

Upon arrival, they noticed several people standing around a home and in the street. They zeroed in on a man leaning into a car, talking to the occupants. One of the occupants of the car exited and ran from the deputies. The deputies chased the suspect several houses down the street, when the suspect produced a handgun and proceeded to run up a driveway into a wooden structure (it appeared to be a partially built garage).

One deputy became tangled up in his radio cord and was a few steps behind the other deputy. As the other deputy pursued the suspect up the driveway and near the wooden structure, the suspect allegedly pointed his weapon at the deputy and the deputy fired his weapon at the suspect, missing him.

After the shooting, the suspect jumped over a brick wall and continued running through backyards and eventually ended up running down a main street. The deputies jumped the brick wall and followed him. Once on the main street, one of the deputies finally broadcast the proper radio communications, informing the LASD that he had been involved in a shooting and was chasing a suspect.

After reviewing the case, OIR expressed several concerns about the tactics the deputies chose to deploy that night. First, LASD's foot pursuit policy is very clear in requiring deputies to broadcast their foot pursuits within a reasonable time period (usually seconds after its initiation). Additionally, it was concerning that the deputies chose to run up a dark driveway, jump a block wall, continue running through backyards and finally onto a main street before they communicated anything over the radio. Given that they were unsure of their exact location, if something would have happened to incapacitate either deputy, responding units would have been delayed in locating them.

The EFRC panel determined there were policy violations due to the lack of radio communication and the decision to chase an armed suspect through a location that was not described or identified to other law enforcement personnel. Discipline was given for the policy violations and OIR concurred. Additionally, both deputies were required to attend additional training.

Case Five: Contacting Gang Member While Seated in Patrol Car

As two deputies were patrolling in a radio car, they drove up alongside a man walking who they reportedly recognized. The man was known to them as a local gang member. The passenger deputy said to the man, "Hey, what's up dude?" from a sitting position in the radio car, as it was moving. The suspect said he was walking to his girlfriend's house but then suddenly began running. He then produced a handgun and ran through a yard, tossing the weapon into a neighboring yard. The suspect then jumped over a gate. From approximately two car lengths distance away and with cover of a parked vehicle, one of the deputies believed he saw the suspect reach for a second weapon. The deputy ran up to the fence, reached with his gun over the

top of the fence and blindly fired down towards the suspect's location. The suspect was not hit and continued running. He was eventually arrested and the gun which he threw was recovered.

After review of the case, OIR was concerned with the tactics used by the deputy who fired his weapon. First, the decision to speak to a local gang member while seated in a car and driving parallel to the gang member was questionable because the deputy was placed at a huge tactical disadvantage had the suspect chosen to assault or fire upon the radio car or deputy. In fact, LASD trains deputies that sitting inside a car is a very dangerous spot to be in when confronting a potential suspect. Second, OIR was concerned about the deputies' failure to broadcast the foot pursuit over the radio or advise anyone that they were confronting a man with a gun. Finally, given the amount of cover and distance the deputy had when the suspect had discarded his weapon and jumped the gate, the EFRC panel serious questions as to why the deputy chose to run up to the gate, jump and hang half-way upon it while blindly firing downward at the suspect. At EFRC, the panel found the deputy who fired his weapon in violation of the Performance to Standards policy for not using proper cover and advancing on an armed subject and issued discipline accordingly. OIR concurred with the panel's decision.

Systemic Changes in MCJ Visiting

OIR became aware of a number of incidents occurring between 2010 and June 2011 which involved a newly promoted sergeant and deputies assigned to the visiting area of Men's Central Jail. All of these incidents either became the subject of criminal, administrative and/or force investigations. Very recently, as this report went to print, the federal government brought criminal civil rights charges against several of the deputies who were working at Visiting during this timeframe. Because of the pending criminal civil rights charges, we will refrain from discussing the facts of those incidents at this time or the administrative action taken, but focus on the systemic reforms related to the Visiting area that were spearheaded by the newly assigned Captain of Men's Central Jail and OIR.

Arrests for Cellphone Possession

In the fall of 2011, OIR became aware of a number of arrests at the Visiting area of Men's Central Jail for visitors possessing cell phones. Likewise, OIR researched the statute being used as a basis for the arrest and became concerned that the statute was intended to apply to possession of cell phones inside the secured area of the jail and not intended to apply to visitors who were outside the security checkpoint of the jail.

As a result of that concern, on October 26, 2011, OIR drafted a memo to Department executives, raising questions about the legal grounds for arresting visitors possessing cellphones. OIR also shared these concerns with the new captain at MCJ. The captain took OIR's concerns seriously

and since that meeting, there have been no arrests of visitors for possessing a cell phone at Men's Central Jail.

In addition, as a direct result of OIR's memo, Custody Support Services issued an Informational Bulletin in January of 2012. It advised employees that the statute prohibiting cell phone possession was only intended to apply to persons inside the secured part of the jail and not to persons in the visiting area. (See Informational Bulletin, "Wireless Devices and Visiting," at page 83.)

Cameras Installed and Break Room No Longer Used for Booking

In the summer of 2011, the captain oversaw the installment of 24 video cameras in the Visiting area lobby and the break room. The installation was completed in July. These cameras were installed long before the wholesale installation of the jail cameras we report on elsewhere in this volume. In addition, a metal bench was installed in the break room so arrestees could be safely secured. The fingerprint equipment was removed as the small space was not conducive to secure booking. OIR conducted site visits to confirm the presence and operation of the cameras as well as the removal of the booking equipment.

Additional Training Regarding Consulate Visits

In the summer of 2011, the jail's leadership sought and received assistance from the Department's International Liaison Unit to provide training on the laws relating to diplomatic visitors as well as the Department's Policy on Consular Visitors.

Results of Systemic Changes

As a result of the changes described above, as well as assigning more mature deputies and supervisors to Visiting, there has been a marked change in use of force incidents in that area:

Year	Uses of Force
2011	6
2012	2
2013	0 ¹

¹ Information provided by Custody Division as of December 13, 2013.

Los Angeles County Sheriff's Department
INFORMATIONAL BULLETIN
Correctional Services Division ~ Custody Operations Division
Custody Support Services



Bulletin #2012- 01

WIRELESS DEVICES AND VISITING

In October of 2007, several California Penal Codes were passed to help combat the growing number of wireless communication devices, specifically cell phones, inside the custodial environment.

California Penal Code section 4575(a) states that "Any person in a local correctional facility who possesses a wireless communication device...who is not authorized to possess...is guilty of a misdemeanor." These include cell phones, pagers and wireless internet devices.

The Custody Division Manual Section 3-01/090.05 Wireless Communication Devices identifies that proper authorization to possess these items behind security must come from the Undersheriff. If a staff member, vendor, volunteer, or "non-inmate" person is found in possession of one of these items without proper approval, the watch commander shall be immediately notified.

If an inmate is found in possession of a wireless device, appropriate reports and evidentiary procedures shall be followed

Persons who possess a wireless device with the intent to deliver, or complete an actual delivery of a wireless device to an inmate can be arrested for a misdemeanor under California Penal Code section 4576 (a).

California Penal Code section 4576 (b)(1) specifically addresses visitors found with a wireless device; however, due to developing case law it is the intent of the Sheriff to only criminally enforce this section on those visitors who are found in possession of a device beyond a security or screening checkpoint (e.g. PDC property). If a visitor is found with a device outside of security at MCJ, TTCF, IRC and CRDF, you may have the person secure the item, or leave the premises. The device shall not be confiscated or searched for mere possession unless further probable cause exists.

All facilities that allow inmate visiting beyond a checkpoint or screening area shall post appropriate signage stating visitors can be arrested for violations of 4575(a) P.C. and 4576(a) P.C. All facilities shall also review any relevant unit orders for compliance to this bulletin.

If you have any questions concerning this bulletin, please contact Custody Support Services at [REDACTED].

Summary Of Systemic Changes

Year Eleven

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Employees with <i>Brady</i> issues are in sensitive positions	Evaluate assignments of employees with prior violations involving dishonesty	Formed working group to discuss	In progress, see page 30
Lack of protocol for advising prosecutorial agencies when employee is disciplined for dishonesty/moral turpitude	Develop protocols for communicating findings relevant to credibility to prosecutorial agencies even absent a request	Formed working group to discuss	In progress, see page 30
Credibility of investigations impacted by allowing custody deputies to view video of force incidents before writing report	Develop policy that requires a deputy to provide a written report of the force incident prior to viewing video footage	Policy implemented requiring that a report is written first and then, if necessary, prepare a supplemental report after viewing the video.	Yes, see pages 35-37
Video recording frame rate is too low to adequately capture incidents	Increase the recording frame rate from 5 frames per second	Increased recording frame rate to 10 frames per second	Yes, see pages 45-46, however that rate may still be too low
Unit commanders or other executive imposing discipline without consulting with OIR	Implement written policy clearly describing the duty of decision makers to consult with OIR	Policy implemented requiring consultation with OIR prior to determining discipline or changing the disposition or discipline	Yes, see pages 54-55

Visitors to LASD jail facilities were subject to arrest for possessing cell phones	Clarify protocols and/or policies in compliance with the California Penal Code	Custody Support Services issued a directive that the cell phone prohibition applies to individuals beyond security checkpoints.	Yes, see pages 82
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Report to the City of Portland on Portland Police Bureau Officer-Involved Shootings and In-Custody Deaths

Fourth Report • January 2016

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Foreword

This is OIR Group's fourth report on Portland Police Bureau's officer-involved shootings and in-custody deaths. It is our fifth report to the City of Portland, counting our July 2010 Report concerning the death of James Chasse. In all, the Portland City Auditor has tasked OIR Group with reviewing 32 officer involved shootings and three in-custody deaths involving the Portland Police Bureau that occurred from March 2004 to March 2013. This report, our final under our current contractual relationship with the City, reviews 11 officer-involved shootings that occurred over a span of two years and three months, from January 2011 to March 2013.

To provide a recap of the 35 critical incidents we have reviewed, we prepared a table (found in the Appendix to this report) listing and providing some basic facts about each. As laid out in the table, subjects died in 19 of the 32 officer involved shootings. Eighteen of the 32 subjects at whom officers fired had a history of mental health issues or were experiencing some type of mental health crisis. Nine shootings involved African-American subjects; three involved Latinos; and 20 involved white subjects.

While it is useful to see this information compiled in a table and to critically examine the numbers and trends, our reviews also focus on the many details of an event that cannot neatly be encapsulated on a chart or described by a set of data. We delve deeply into each critical incident, to examine each decision that the officers made, their level of planning and communication with each other, willingness to consider alternative plans, and the effectiveness of on-scene supervisors to manage and direct resources and control the scene.

The Bureau's internal processes for investigating and reviewing these incidents is equally important to the conduct of the officers in the individual incidents, and therefore given equal weight in our analysis. As we have written repeatedly over the years, the Bureau is superior to most comparable law enforcement agencies in the way in which it reviews critical incidents. There is, however, always room for improvement. This is true at the individual case level, but also systemically. Throughout this report, we make recommendations for the further evolution of the Bureau's internal review standards, to meet and address both the expectations of Portland's engaged citizenry and the national reconsideration of effective policing and legitimate use of deadly force.

Increasingly, the public has raised its expectations for officer performance, and extended its scrutiny beyond the baseline questions of legality and officer perception at the moment of trigger pull to the tactical considerations that come into play before the decision to shoot. When officers use tactics consistent with principles of officer safety – taking time to slow down their response, when feasible; maintaining distance between themselves and subjects; and remaining in positions of cover when possible – they are less likely to be in a position where a use of deadly force becomes necessary. The Bureau's existing review process, if properly implemented, is ideal for evaluating these tactical decisions that impact the outcome of the incident. However, the Bureau's remaining work comes in ensuring that the implementation of this review process is consistently at the optimal level for all incidents and that the results of the review are used to make appropriate changes to policy, training, and equipment.

Systemically, an important foundation is in place. In the span of the 35 incidents we have reviewed, the Police Bureau has made significant strides in its willingness to acknowledge the reality of tactical deficiencies, even in the context of a legally justified shooting. For example, as we discuss below, the shooting death of Brad Morgan in 2012 provides evidence of a Bureau willing to learn and grow from its mistakes. Similarly, the Bureau has also shown improvement in the

speed with which officers secure injured subjects so that medical personnel can safely enter the scene to treat them, an issue that has been the source of critique in numerous prior incidents.

We remain concerned, however, about the length of time it takes to interview an involved officer following a shooting. Since our first report, we have advocated for the removal of the “48-hour rule” from the City’s contracts with the police unions that requires the Bureau to give 48 hours advance notice prior to a compelled administrative interview. While there has been some recent progress with the Portland Police Commanding Officers’ Association agreeing to a rescission of the rule, the overwhelming majority of officers involved in shootings are not members of this union, so the change does little to affect the Bureau’s inability to obtain contemporaneous officer interviews after a critical incident. We hope the union representing line officers will follow the lead of its sister association and work with the City on this issue during the next round of contract negotiations.

Of the cases we review in this report, the most striking common feature is that in seven of the 11 incidents, there is some evidence that the subject had the intent to precipitate a deadly force encounter with police with the desire to end his own life. We discuss that phenomenon in detail in the Common Issues section of this report, and find that in some of these cases, during its review, the Bureau was too quick to assume that the subject’s state of mind and subsequent actions “forced” officers to use deadly force. In these reviews, the Bureau was less open to evaluating the possibility of alternative approaches to the scenario that might have afforded officers a better opportunity to influence the outcome. We caution the Bureau against adopting the language, culture, and mentality that suggests the death of a suicidal individual who appears intent on provoking a confrontation with police is always inevitable.

We have consistently reported on the Bureau’s complete and objective investigations, and that perception endures across these latest cases. Where we have noted deficiencies, as we do in this report, we have found the Bureau open to those critiques. We also have observed the Bureau’s willingness to be self-critical in its review process, to confront perceived deficiencies, and to do so in an open and transparent way. The City’s agreement with the U.S. Department of Justice following that agency’s review has opened the Police Bureau to a new level of scrutiny and commitment to reform. As a result of that agreement, the Bureau is showing significant improvement in the length of time it takes to complete its

internal investigations and reviews, but we caution the Bureau not to sacrifice thoroughness for the sake of timeliness.

The role of the Auditor's Independent Police Review Division also has evolved since its inception in 2001. The office initially had little to say about the Police Bureau's investigation and review of critical incidents. Now, however, in addition to the role the office plays with respect to citizen complaints, a member of the office rolls out to the scene of an officer-involved shooting, meets regularly with Internal Affairs investigators to discuss the timing and scope of the investigation, sometimes sits in on interviews of witnesses and involved officers, approves the Internal Affairs investigation for quality and thoroughness, approves the initial findings, and is a voting member on the Police Review Board. As noted below, the office also weighs in on requests for delays in the investigative and review process. This increased role for the City's civilian oversight body is evidence of the City's commitment to having the Police Bureau produce complete, objective, and transparent investigations into shootings and other critical incidents.

We have been reviewing critical incidents for the City of Portland for six years, through the span of three different Chiefs of Police, and while we criticize some parts of the process and find some inconsistencies with individual reviews, one thing has been consistently noteworthy: the level of cooperation we have received from the Police Bureau's executive team. In addition to providing assistance as we gathered all relevant documents, training, policies, and practices, Bureau representatives have been uniformly generous with their time, candid and helpful in answering our questions and responding to our concerns. That degree of receptivity to our work is not universal among the agencies with whom we have worked, and we thank the Bureau for its consistent willingness to engage. While we will not always agree about interpretation of the facts or the best ways to reduce the likelihood of officer involved shootings, the dialogue and interest in listening to each other allows us to think harder about our recommendations and hopefully causes the Bureau leadership to continue to evaluate their position as well.

Scope of Review

As we have done for our prior reports,¹ we reviewed all of the Bureau's investigative materials for each of the 11 critical incidents, including the Detectives' and Internal Affairs' investigations, as well as grand jury transcripts where available. We also read and considered the Training Division Review and materials documenting the Bureau's internal review and decision making process connected with each incident. We requested, received, and reviewed relevant training materials, referred back to training materials we reviewed for our prior reports, and interviewed current Training Division personnel. We also talked with Bureau executives regarding questions that were not answered in the initial materials provided and requested additional documents that were responsive to those questions.

Our analysis centers on the quality and thoroughness of the Bureau's internal investigation and review of each of the incidents presented. We look at relevant training and policy issues, and corrective actions initiated by the Bureau. We do not opine on whether any particular shooting, or related tactic or use of force, is within policy, but do point out where we see conduct contrary to what we understand is expected. We do fault the Bureau, however, when we find issues that were not addressed or thoroughly examined by the investigation and review process that could have impacted the Bureau's findings on the appropriateness of the force or other tactical decision making.

As with our previous reports, this report contains three sections after this Foreword. Section One contains a factual summary of each of the 11 critical incidents, along with an analysis of issues presented by each. Section Two is an analysis of themes and issues we identify that are common to several of the incidents. Section Three presents a list of all recommendations we make throughout this report. We also have included an Appendix detailing all 35 cases we have reviewed in this and prior reports.

¹ Our prior reports include the following:

Report Concerning the In-Custody Death of James Chasse, July 2010;
Report on Portland Police Bureau Officer Involved Shootings, First Report, May 2012;
Report on Portland Police Bureau Officer-Involved Shootings, Second Report, July 2013;
Report on Portland Police Bureau Officer-Involved Shootings, Third Report, November 2014.

SECTION ONE

Officer-Involved Shootings

Summary and Analysis

January 1, 2011 • Kevin Moffett

On the date of the incident, a Portland Police Bureau officer was flagged down regarding a disturbance at a nightclub. As he waited for cover officers to arrive, he heard a series of gunshots. The officer broadcast this information and then Sergeant Michael Fort² self-dispatched himself to the scene. When he arrived, he exited his vehicle.

Shortly thereafter, the first officer heard additional gunshots and at the same time, Sergeant Fort observed an individual, later identified as Kevin Moffett, standing on the sidewalk and firing a handgun at a group of people. Sergeant Fort, who was standing in the street, discharged his handgun one time in the direction of Mr. Moffett. The bullet missed Moffett and struck a brick wall of a parking structure. Sergeant Fort then followed Moffett on foot as the suspect fled on foot. Other responding Portland Police Bureau officers eventually took Mr. Moffett into custody in a nearby park.

² Sergeant Fort was promoted to lieutenant while the investigation was pending, yet the investigative and review materials refer to him as Sergeant Fort, which we also will do in the remainder of this report.

Mr. Moffett's gunfire had fatally wounded a security guard who worked at the nightclub. Mr. Moffett was charged by a grand jury with the killing and eventually pleaded guilty to the homicide.

The District Attorney determined that Sergeant Fort's use of deadly force was not to be presented to a grand jury and negotiated with him to provide a non-recorded statement to the grand jury that was hearing potential charges against Mr. Moffett. The Bureau found that Sergeant Fort's use of deadly force was within policy.

Timeline of Investigation and Review

1/1/2011	Date of Incident
1/10/2012	Internal Affairs Investigation completed
5/3/2012	Training Division Review completed
6/25/2012	Commander's Findings completed
10/30/12	Police Review Board convened

Analysis/Issues Presented

Tactical Decision Making

The Training Division Review found that a number of Sergeant Fort's tactical decisions were consistent with principles of officer safety and Bureau training. Those included making effective use of parked vehicles as cover and concealment when he approached the shooting location, firing only one round to stop the suspect, following the suspect using principles of distance and concealment, and broadcasting the suspect's location of travel as the suspect ran from him.

However, the Training analysis also found several tactical decisions made by the Sergeant that were not ideal. First, the analysis noted that when Sergeant Fort arrived at the location, even though he observed the first responding officer seated in his police car and on the radio, he did not contact him to coordinate resources or gather information but instead proceeded alone toward the crowd from which

the shots had emanated. As a result, the Review found that Sergeant Fort did not have a “cover officer” nor did he obtain any additional information about the incident.³ The analysis determined that Sergeant Fort put himself at risk by these actions – he was out in the open, in the immediate area of an unknown gunman who had yet to be located or identified.⁴ The analysis concluded that Sergeant Fort’s actions were not consistent with Bureau training and that he had other options that would have made his response more consistent with principles of officer safety.

The Training Review further noted that after Sergeant Fort fired the one round, he did not broadcast that fact nor did he request that medical respond and stage for the security guard who had been shot. The analysis concluded that these actions were similarly not consistent with Bureau training.

Despite the Training Division’s findings, the Acting Captain responsible for making recommendations to the Review Board regarding the tactics of Sergeant Fort concluded that he performed “extraordinarily well” and attributed any actions of the sergeant that might have been subpar to the “fog of war.” While acknowledging the Training Division Review found the sergeant had not in several respects performed consistent with training, the Acting Captain excused his actions, concluding that the “immediacy” of the situation did not fit with a typical police response and that the incident was “immediate, ongoing, and chaotic.” The Acting Captain determined that there were times that Bureau members needed to place themselves at increased risk and that this incident was one of those times. Contrary to the Training Division’s conclusion that Sergeant Fort’s failure to broadcast that he had used deadly force was inconsistent with training, the Acting Captain concluded that the sergeant had made notification at the “appropriate” time. Curiously, even though the Acting Captain concluded that Sergeant Fort had performed “extraordinarily well,” he recommended that the incident be debriefed by others focusing on issues such as planning and effectively communicating. In other words, while the Acting Captain believed that the Bureau should continue to receive training on these important tactical concepts, he recommended no remediation for the involved individual who had performed inconsistently with them.

³ The initial responding officer reported that he was not even aware that Sergeant Fort had been present at the location or that he had fired his weapon at the suspect.

⁴ To his credit, in his interview Sergeant Fort admitted that he was not in a good position of cover at the time he used deadly force.

The Training Division had access to the same investigative materials as did the Acting Captain, but found no cause to conclude that it is acceptable for members to perform inconsistently with their training when a situation is “immediate, ongoing, and chaotic.” Nor did the Training Division indicate that it trained Bureau members to sometimes place themselves at “increased risk” in order to fulfill their public safety responsibilities. In fact, police trainers have indicated to us that it is precisely the “chaotic” times when it is most important to follow principles of officer safety so that members do not place themselves at increased risk and compound the potential for even more disastrous results. Most importantly, the Acting Captain failed to acknowledge the Training Division’s conclusion that under the “chaotic” conditions presented, Sergeant Fort had other tactical options by which he could have effectively responded to the threat.

Quality of Investigation and Review

Delay in Obtaining Involved Officer’s Statement

On the date of the incident, Sergeant Fort declined to be interviewed by detectives about his use of deadly force.⁵ Sergeant Fort provided two non-recorded statements to detectives but those statements were focused on the actions of Mr. Moffett with respect to the homicide for which he eventually was convicted. Sergeant Fort also provided a non-recorded statement to the grand jury that was investigating the actions of Mr. Moffett. The Bureau did not obtain the involved officer’s account of his use of deadly force until more than 48 hours after the incident, when Internal Affairs investigators interviewed Sergeant Fort. As we have discussed repeatedly in past reports and elsewhere in this one, the failure of the Bureau to obtain a statement from an officer regarding his use of deadly force until two days after the incident is inconsistent with best investigative standards. It is imperative that law enforcement agencies obtain an account on the date of the incident as to why one of its officers decided to use deadly force. This incident was one of the first in a series of cases in which Bureau officers stopped

⁵ Interestingly, on the date of the incident, one responding Bureau officer reported that he observed Sergeant Fort sitting in a police car with a Bureau lieutenant and that after the lieutenant walked away, “it seemed like” Sergeant Fort wanted to talk about the incident and began to talk about certain observations he had made of the subject’s actions. However, the reporting officer advised Sergeant Fort that unless the incident presented a “safety issue,” Sergeant Fort should not discuss the incident “a whole lot” until the Association provided him with an attorney. By the time detectives made a request for a formal interview, Sergeant Fort had consulted with his attorney and advised the detectives he would not provide a statement.

providing voluntary statements to detectives on the date of the incident. While the Bureau continues to work on protocols designed to ensure its officers provide a more timely account of any use of deadly force, until it is able to return to a situation where officers give that account on the date of the incident, the Bureau's officer-involved shooting investigations are not completely consistent with progressive investigative principles.

Inordinate Delay in the Investigation and Review Process

As noted above, this incident took almost two years for the Bureau to investigate and review. While this case suffered from some of the regular delays we have reported on in the past, there was an even greater potential for delay in this case when the District Attorney requested that the administrative review be postponed until the criminal case against Mr. Moffett was completed. To its credit, the Auditor's Independent Police Review Division objected to this additional delay and the then Chief of Police decided to proceed with the review despite the District Attorney's objection. The decision by the Chief not to delay the review was the correct call. The timing of internal reviews should not be impacted by whether a criminal case against the person shot has been completed.

Surveillance Video of Shooting

The question of when to show a video of an event to officers involved in deadly force incidents is a subject of great current interest. Best investigative practices dictate that in order to obtain a pure statement of the officer's state of mind and his or her own memory, it is imperative that officers provide a statement prior to watching the video. In this case, consistent with those practices, investigators showed Sergeant Fort a recording of the nightclub shooting, but only after they obtained a statement from him about his observations and recall.

January 2, 2011 • Thomas Higginbotham

On the date of the incident, a private security guard called 911 and reported that an individual, later identified as Thomas Higginbotham, had threatened her and attempted to assault her, was refusing to leave the commercial property to which she was assigned, and was possibly armed with a knife. An East Precinct officer was first dispatched to the call. Officers Jason Lile and Larry Wingfield radioed that they would assist.

Officer Wingfield arrived at the commercial property first, and spoke briefly with the security guard. She told him that the subject had threatened her, she had ordered him off the property and that she wanted him arrested for trespass. By the time that officers had responded to the property, Mr. Higginbotham had walked away. The security guard said she believed that the man was living at an adjacent abandoned car wash. The officer who had been initially dispatched to the call arrived at the location and stayed with the security officer to talk with her further while Officers Lile and Wingfield proceeded to the car wash.

Upon arrival at the car wash, the officers observed a man inside the building who provided them access to the structure. The man told the officers that the owner of the building had given him and Mr. Higginbotham permission to live in the structure. The man directed the officers to an inner room where Higginbotham was staying. The officers approached, knocked, and told Mr. Higginbotham through a closed door that they needed him to come out so that they could talk with him. Higginbotham told the officers that he had a knife.

Eventually, Mr. Higginbotham came out of the room holding a knife. Officer Lile fired his Taser at him but it had no apparent effect. Officers later learned the Taser probes had not penetrated the heavy clothing that Mr. Higginbotham was wearing to make contact with him. According to the officers, Mr. Higginbotham continued to advance upon them and, in fear for their lives, Officer Wingfield fired eight rounds and Officer Lile fired four rounds. Mr. Higginbotham was struck by ten of the rounds fired. Officers quickly called for medical assistance to respond but rescue was briefly staged nearby until Mr. Higginbotham could be separated from the knife and dragged from the close quarters where he had gone down to a more open area so that paramedics had sufficient space to work. Attempts to resuscitate proved unsuccessful and Mr. Higginbotham was pronounced dead at the scene.

The grand jury found no criminal liability with regard to the deadly force deployed by Officers Wingfield and Lile and the Bureau found their actions within policy.

Timeline of Investigation and Review

1/2/2011	Date of Incident
1/20/2011	Grand Jury concluded
4/9/2011	Internal Affairs Investigation completed
10/4/2011	Training Division Review received*
11/11/2011	Commander's Findings completed
1/18/2012	Police Review Board convened

*The Training Review is undated but the copy provided to us was stamped "received" on October 4, 2011. We recommend that Training Division Reviews be dated so that the completion date can be readily ascertained.

Analysis/Issues Presented

Tactical Planning and Decision Making

The officers here made some questionable tactical decisions before obtaining all relevant and available information. The Training Division Review and Commander's Review and Findings noted some, but not all, of these issues.

- ***Insufficient Fact Gathering***

The Training Division Review found a number of decisions by the officers that were inconsistent with Bureau training. First, the analysis noted that when the officers first arrived at the commercial establishment, they did not take sufficient time to gather information regarding the details of the incident with the security guard and relevant information about the suspect's potential for volatile behavior. The Review indicated that more time spent with the security guard may have revealed further details, particularly since there was information in the radio

broadcast communicated to the officers that the suspect was potentially armed with a knife and had displayed assaultive and threatening behavior to the security guard.

The Review observed that while Officer Wingfield had knowledge of much of this information at the conclusion of his brief interview with the security guard, only rudimentary facts were relayed to Officer Lile, who had inexplicably remained in his patrol car when Officer Wingfield was talking with the security guard. The Training analysis concluded that the information was critical and should have been the focus of the officers' preliminary investigation because it may have impacted their response. The analysis found that the officers' initial investigation appeared to be rushed, resulting in a lack of total situational awareness.

The analysis noted that Bureau officers are trained that the more information that they can gather prior to an encounter, the more time they have to assess the level of the threat and plan a response. Training opined that the failure to gather relevant and available information here led to confusion regarding the officers' legal standing when confronting the suspect. The Review concluded that the insufficient fact gathering conducted by the involved officers was inconsistent with Bureau training.

The Commander's Review and Findings acknowledged that while the security guard had alerted the officers that Higginbotham had been seen with knives in the past, she had not seen one produced during the incident for which she had called. While the memorandum concedes that Officers Wingfield and Lile communicated only minimally about their plan and that there could have been more clarity about each officer's actions and responsibilities as the incident unfolded, both the Commander's Review and Findings and the Training Review concluded that there was nothing suggesting that a formal planning session would have changed the results, as the incident was "driven by Higginbotham's actions" after contact.

While both the Commander's Review and Findings and Training Review point out several problems with regard to the involved officers' failures to sufficiently gather some information before confronting Mr. Higginbotham, both documents failed to note other key pieces of information that the officers neglected to ask about. Specifically, officers could have learned more about the location, status, and likelihood that Mr. Higginbotham was armed, most significantly in their discussion with the transient who provided them access to the car wash. Instead of asking that individual in advance whether Higginbotham possessed weapons

and using that information to gauge how or even whether to approach the room in which he was located, the officers asked him only after they first knocked on the door and began to engage with Mr. Higginbotham.

- ***Simultaneous Deployment of Taser and Handgun***

The Commander's Review and Findings notes that the potential use of the Taser was not discussed by the involved officers nor was there a plan formulated about who would use the Taser if less lethal force was needed. The memorandum concludes that these issues should have been discussed prior to attempting to contact the suspect. It further notes that having a plan ahead of time offers clarity when chaos ensues.

The memorandum also recounts that Officer Lile deployed the Taser in his left hand while he held his handgun in his right hand. He explained that while he uses a right handed holster for his gun, he is actually left handed and decided to use his left hand to deploy the Taser as he thought he may have to subsequently use lethal force and did not want to put his handgun away. While the Commander acknowledges the Bureau does not teach this technique to its officers, the memorandum notes the "philosophy and concept" is acceptable and the tactic is reasonable, as officers are taught to transition from weapon system to weapon system during an encounter. The Training analysis did not identify Officer Lile's simultaneous deployment of the firearm and the Taser as an issue.

There is, however, no basis for the conclusion that the "philosophy and concept" is acceptable. It would have been helpful to the Bureau's review of this incident to learn why the Training Division does not train to have a Taser in one hand and a firearm in another at the same time. While the Commander found this technique reasonable, there are reasons why the tactic is not trained, such as the concern that an officer under stress will mistakenly deploy lethal when the officer intended to deploy less lethal, or vice versa.

More pertinent to this case, if the officers had devised a plan ahead of their tactical approach and determined who would deploy less lethal, Officer Wingfield could have been the lethal cover officer, negating Officer's Lile's perceived need to have both his gun and Taser simultaneously unholstered. In a broader sense, if there was a concern that one officer was going to need to transition from less lethal to lethal, the two officers could have waited for the third officer to arrive and used the additional resource and options a third officer on scene could have provided.

- ***Decision to Approach and Engage Subject***

Another issue not discussed by either the Training Review or the Commander's Review and Findings is whether it was consistent with principles of officer safety for the officers to approach Mr. Higginbotham's room and attempt to engage him. Officer Wingfield testified before the grand jury that the hall leading to Mr. Higginbotham's room was a "dark" and "scary looking place." He further testified that their experience in the car wash was a "kind of barricade." Officer Wingfield told Internal Affairs that in order to get to Mr. Higginbotham's room, they had to travel down a narrow path, with bad lighting, and no place to acquire cover. Officer Wingfield further said that "stuff" was packed two feet high on either side of the narrow path. Officer Lile told Internal Affairs that he, Officer Wingfield, and the civilian walked like "three ducks in a row"⁶ because there was nowhere to go other than the path due to the clutter in the building.

Given the many physical challenges presented by the approach to Mr. Higginbotham's room, if the officers would have gathered the available information suggesting Mr. Higginbotham was likely armed, the officers could reasonably have determined that it was unsafe for them to make contact with him the way in which they did. They may have instead decided to hail him from a farther and safer distance, and if he refused to come out, may have declared the situation a barricade and requested activation of the Special Emergency Reaction Team (SERT). Had the situation unfolded in this way, the outcome likely would have been different.

The involved officers themselves recognized the perilous situation in which they had placed themselves. Officer Wingfield indicated that they had found themselves in a "bad spot to be in," that he was "caught on the wrong side of the room," and acknowledged that they had let the suspect get way too close. Officer Wingfield said that once Higginbotham came out of the room with the knife he tried to back up but kept tripping on clutter. Officer Wingfield told the grand jury that because they were not able to make it out the door, the only remaining option was to shoot the suspect.

⁶ The transient only walked the officers to the door and then officers ordered him to back away into the bay of the car wash, which he did.

- ***Allowing Subject to Drive Outcome***

Perhaps most concerning in the officers' statements and the Bureau's analysis is their concession that the suspect dictated the outcome of this incident. Officer Wingfield testified that when Higginbotham came out of the room and advanced on the officers with a knife, he began to come to the realization that the suspect was going to "make us shoot him." The Training analysis concluded that the incident was largely "driven" by the aggressive reaction of Mr. Higginbotham. The Commander's Review and Findings concurred that the incident was "driven" by Higginbotham's actions after contact.

As we have stated before, tactical decision making that is consistent with principles of officer safety provides smart techniques for detention and apprehension that provide police the ability to more frequently influence how the encounter will end. In many cases, the tools, training, resources, and abilities of police officers can and should be employed so that an incident will culminate on the police officer's terms. For a police agency to conclude that it was unable to change an outcome despite the tactical advantages it has surrenders too much control and gives too much credit to suspects. Particularly here, where Mr. Higginbotham was found holed up in a room, was not going anywhere, and did not present a threat to anyone else, time and resources were on the side of the officers. The Bureau did not consider whether the suspect was able to "drive" the outcome because the officers failed to equip themselves with critical information about the suspect that they could have readily obtained, failed to devise and communicate to each other a plan on how to deal with him, and performed inconsistently with principles of officer safety by positioning themselves too close to him with no opportunity for cover or tactical repositioning, so that he was then able to "force" the officers to use deadly force on him.

In our Second Report, we similarly commented on verbiage in a supervisory analysis that suggested the suspect was in control of the outcome and "dictated" the officer's use of deadly force. While sometimes the use of deadly force will be unavoidable, it should be the goal of the Bureau's experts to provide training and guidance to its members so those circumstances are held to a minimum. In cases where a smarter and more cautious response could have affected the outcome, the suspect's intent notwithstanding, the Bureau should instill in its command staff the will to identify those cases and critique officer conduct and decision making accordingly. For that reason, we repeat here a recommendation from our Second Report.

Recommendation 1: The Bureau should ensure that command staff recognizes that it should be the overarching objective of every tactical engagement for the Bureau to influence the outcome.

The “21-Foot Rule”

When he appeared before the grand jury, Officer Wingfield testified, “They train us to not let anybody get within 21 feet of you with an edged weapon.” The origin of this “21-foot rule” was a Salt Lake City police officer who performed a rudimentary series of tests and concluded that an armed attacker who bolted toward an officer could clear 21 feet in the time it took most officers to draw, aim, and fire their weapon. In 1988, Calibre Press produced a training video entitled “Surviving Edged Weapons” that repeated the 21 foot conclusion and was widely distributed to police agencies. In a May 2015 conference sponsored by the Police Executive Research Forum (PERF), police chiefs in attendance said that unfortunately the “21-foot rule” has been taught informally in police academies and in some cases it has morphed into an incorrect way of thinking.⁷ The chiefs were concerned that instead of seeing the 21-foot rule as a general warning to think defensively and protect themselves when confronted by a person with a knife, some officers came to see the rule as a legal justification to shoot a person with a knife who is less than 21 feet away. Chiefs were further concerned that the rule has been cited to justify the use of deadly force in incidents when other tactics might have allowed a resolution of the situation without deadly force.

The chiefs at the PERF conference concluded that the 21-foot rule should never be seen as a green light to use deadly force or as creating a “kill zone.” Rather, officers should be given broader training in sound decision making, de-escalation strategies, and tactics for creating time and distance so they can better manage the incident without needing to resort to force.

In a 2009 follow up report, the Police Assessment Resource Center found that the Portland Police Bureau was still training its officers on the 21-foot rule and found that the rule had been misapplied in at least two training analyses. PARC recommended then that the Bureau should clarify the 21-foot rule, emphasizing

⁷ The discussions at the PERF conference with regard to the 21-foot rule and other contemporary use of force issues was incorporated in a document that PERF subsequently produced and made publicly available entitled: “Re-Engineering Training on Police Use of Force.”

that it does not per se justify any shooting when the suspect is less than 21 feet away.

The testimony presented by Officer Wingfield at the grand jury is evidence that the lore of the 21-foot rule may still be inculcated in the Portland Police Bureau. Some officers may have reached the simplistic and mistaken conclusions as feared by the chiefs at the PERF conference. For that reason, it is incumbent upon the Bureau to provide its officers more contemporary training that updates its expectations when officers are confronted with edged weapons instead of the simplistic messages that could be wrongly exported from a video made over 25 years ago.

Recommendation 2: The Bureau should ensure that its officers have not misinterpreted the principles behind the 21-foot rule and provide more contemporary training designed to ensure that officers recognize the appropriate considerations in determining whether and when to use deadly force against someone wielding an edged weapon.

Post-Incident Response

After the shooting, the involved officers took positions of cover. Officer Wingfield notified dispatch that shots had been fired and requested medical to respond Code 3 to the location. With other officers providing cover, the officer who had been originally dispatched to the trespass call and who had arrived at the car wash shortly after the incident, retrieved the knife from Higginbotham's hand and gave it to a sergeant, who had arrived on scene and assumed the role of incident commander.

When paramedics arrived on scene, the original plan was to hit Higginbotham with a bean bag in order to determine his condition. However, because of the close quarters in which Higginbotham had fallen, the sergeant asked an officer to kick the suspect in the legs to see if there was any movement. Upon observing no movement, the sergeant decided to have officers move Higginbotham from the confined space into an area where rescue personnel could have sufficient space to treat him. As officers began dragging Higginbotham to a less confined area, the sergeant then grabbed Higginbotham's arm and pulled him into the car wash bay, where paramedics began attending to him.

Another responding sergeant reported that when he encountered paramedics as he was arriving at the location, they informed him they did not know where to stage.

Early in the post-incident response, the sergeant instructed officers to clear the car wash building to determine if there were other individuals located in the structure. Prior to detectives' arrival on scene to commence their investigation, the sergeant determined that a more thorough clearing of the car wash structure was required to locate any possible additional transients who might be in the building. As a result, according to his report, he contacted the supervisory detective who had yet to arrive, obtained assent to conduct another sweep, and assigned himself, two additional on-scene sergeants, and an officer to clear the building.

The Training Division and the Area Commander opined that the post-incident response was reasonable and consistent with training.

- ***Field Supervisor's Tactical Involvement***

While, as noted above, the Training Division Review and the Commander's Review and Findings praised certain decisions made by the incident field sergeant, neither document discussed his significant tactical involvement in the post-shooting response. For example, the officer who retrieved Mr. Higginbotham's knife gave it to the sergeant to secure. Then, rather than supervise the movement of Higginbotham to the car wash bay, the sergeant participated in the process himself. Finally, when he determined it was necessary to clear the building again, he assigned himself and two supervisors to do so rather than delegate the responsibility to officers.

Bureau protocols and training instruct supervisors to assign tactical responsibilities to officers while they supervise and manage the operation. While the sergeant did assign certain tasks to officers, as noted above, he assigned himself to perform other tasks that officers could have completed under his supervision. This level of personal tactical engagement may provide a partial explanation for why the sergeant did not apparently think to assign an officer to meet emergency personnel when they arrived on scene and direct them where to stage. In any event, the Bureau post-incident analysis should have examined the sergeant's response more critically to reinforce the principle that supervisors are expected to command, not perform.

Quality of Investigation and Review

Timeliness of Review Process

The investigation and review of this shooting took over a year to complete. The longest delay was for completion of the Training Division Review, a period of almost six months. The Bureau must create internal mechanisms designed to ensure a prompt preparation of that analysis so that other participants in the review process are able to perform their functions in a timely.

Delay in Obtaining Accounts of Incident From Involved Officer

When asked on the date of the incident to provide a voluntary statement to detectives, Officer Lile refused to provide one and Officer Wingfield indicated that he would do so if the statement were non-recorded. It is unclear from the investigative report whether Officer Wingfield in fact provided a non-recorded statement to detectives.⁸ Three days later Internal Affairs interviewed the officers – the first time the Bureau obtained the officers’ account of the shooting incident.⁹

We have written repeatedly about the problems created by the Bureau’s inability to obtain statements from involved officers any earlier than 48 hours after a critical incident. The procedural history in this case is yet another example of the importance of obtaining a contemporaneous account of a deadly force incident. The failure to do so was particularly problematic here, given the absence of any uninvolved witness officers. This fact was acknowledged by the Bureau Commander in his Memorandum in which he stated that the refusal of officers to provide an interview to detectives had created a “void” in the investigation that could adversely impact officers in future incidents. In order to restore community confidence in these investigations, the Bureau must return to a situation where they obtain such an account from its officers on the date of the incident.

Failure to Include Bulletin Regarding Transients at the Car Wash

Officer Lile reported that on the date of the incident he had read a bulletin issued by the Police Bureau regarding transients frequenting an abandoned car wash.

⁸ Obtaining non-recorded statements from officers involved in shootings would violate standard Bureau protocols.

⁹ One of the detectives assigned to the investigation wrote that the first briefing he obtained of the incident came from an attorney representing one of the shooting officers who had talked to the officer and then relayed the officer’s account to the detective.

The bulletin could have provided helpful information regarding Officer Lile's state of mind and knowledge of the issue had it been retrieved and incorporated into the investigative file. However, there is no further reference in the investigation to any subsequent efforts to retrieve the bulletin referenced by the officer.

Fourth Amendment Issues

As noted above, when Officers Wingfield and Lile arrived at the abandoned car wash, they encountered an individual who said he had permission from the owners to stay there. He then opened the structure and allowed the officers to enter. Upon further inquiry, the individual informed the officers that Mr. Higginbotham stayed in a room in the building and directed them to it. Appropriately, when detectives arrived to take over the shooting investigation, they contacted the owners telephonically and received verbal consent to search the premises.

The officers' entry onto the premises implicates potential Fourth Amendment issues. Questions arise about whether the individual first contacted by the officers had the authority to allow the officers entrance into the car wash and/or whether the circumstances presented to the officers provided them legal authority to enter the structure regardless of whether the individual gave them consent. For purposes of this discussion, it is irrelevant whether the officers did or did not have the Constitutional authority to enter the car wash building. This incident squarely presented that legal question, and the Bureau's reviewers should have addressed it. While there is a one-line observation in the Training analysis about the officers' legal standing, there was no detailed analysis of the issue. Because the circumstances of an officer-involved shooting are among the most consequential events within the Bureau, it is incumbent upon the Bureau to consider, discuss, and fully evaluate all Constitutional and other issues that arise, even if they are tangential to the actual use of deadly force.

Recommendation 3: When the circumstances surrounding an officer-involved shooting present Constitutional issues regarding the decision making of involved officers, the Bureau's review process should incorporate, discuss, and assess those decisions.

June 30, 2011 • William Kyle Monroe

On the date of the incident, the Police Bureau received a 911 call reporting that an individual, later identified as William Monroe, was bothering children in a park. Later, another caller reported that the individual was armed with a knife. Three Portland officers responded to the incident, including Officer Dane Reister. According to Officer Reister, when he located the individual in the park, he attempted to detain him by using verbal commands but the subject did not follow his instructions.

Officer Reister then obtained a less lethal shotgun from his police car and continued his efforts to have Mr. Monroe comply with his instructions to get on the ground. According to Officer Reister, Mr. Monroe disregarded his commands and began to run. Officer Reister then discharged the less lethal shotgun four times, striking Mr. Monroe in the lower torso and legs. When Officer Reister and two other responding officers secured Mr. Monroe, they observed he was bleeding profusely. After further assessment at the scene, the officers saw shotgun shell casings and realized that the weapon had been improperly loaded with lethal shotgun rounds instead of the less lethal beanbag rounds specifically designed to be loaded into a less lethal shotgun.¹⁰ Mr. Monroe was handcuffed, treated by paramedics at the scene and transported to the hospital. The shotgun rounds fractured Mr. Monroe's pelvis, and pellets penetrated his bladder, abdomen, and colon, resulting in significant permanent injuries. Investigators later learned that Mr. Monroe had a history of mental illness.

When he realized that Officer Reister had discharged lethal rounds at Mr. Monroe, an on scene sergeant began preserving the crime scene and making notifications consistent with deadly force investigation protocols.

Subsequent to a criminal investigation conducted by the Police Bureau, on November 18, 2011, Officer Reister was indicted by the grand jury on Third and Fourth Degree Assault charges. Subsequently, the District Attorney's Office added a charge of Negligent Wounding. In July 2012, the judge assigned to the criminal case dismissed the Negligent Wounding charge and the District Attorney appealed. In the spring of 2013, the City settled a lawsuit brought on Mr.

¹⁰ As explained in more detail below, the Portland Police Bureau equips its certified officers with both lethal and non-lethal shotguns. The non-lethal shotgun platform is easily distinguishable from the lethal shotgun because of its distinctive color. However, the current weapon system used by the Bureau allows lethal and less lethal ammunition to be used interchangeably in both the lethal and non-lethal shotgun platforms.

Monroe's behalf for \$2.3 million. On October 2, 2013, the Bureau notified Officer Reister of its intent to terminate him for his actions. While the criminal appeal remained pending, the untimely death of Officer Reister ended any further proceedings.

Timeline of Investigation and Review

6/30/2011	Date of Incident
11/18/2011	Grand Jury indicted Officer Reister
5/3/2012	Internal Affairs Investigation completed
7/12/2012	Training Division Review completed
9/5/2012	Commander's Findings completed
11/7/2012	Police Review Board convened

Analysis/Issues Presented

Sufficiency of the Termination Letter

The Chief of Police's letter informing Officer Reister of the Bureau's decision to terminate him primarily faults him for his mistake in loading lethal ammunition into a non-lethal weapon system. In addition, however, the letter faults Reister for his failure to recognize after he fired his first round that he was firing lethal rounds. According to the letter, there is a distinct and noticeable difference in how the two types of rounds feel and sound when they are fired. The letter further indicated that unlike a deadly force situation, this was not an incident in which there was an immediate threat of harm since Mr. Monroe was running away and therefore Officer Reister was not facing a deadly threat when he deployed.

The Training Division Review of this incident concluded that it would "hope" that Officer Reister would have been able to "immediately realize that he was not firing a less lethal round after the first shot," but "it was not possible to expect an officer in this situation to recognize the audible and physical feedback from a

firearm.” The Training analysis further stated that this type of recognition could not be addressed through training.

While the Chief of Police should not be bound by conclusions reached by the Training Division, when a Chief’s decision conflicts with Training’s findings, the Chief should clearly acknowledge the contrary position and state the rationale behind the disagreement. To not do so explicitly will increase the likelihood that any appeal from the discipline will be significantly undermined by the unaddressed findings from the Bureau’s training experts.

Recommendation 4: When the Chief’s disciplinary determination is based on a rationale that contradicts conclusions made in either the Training Division Review or the Commander’s Review and Findings, the disciplinary letter should explicitly address the contradiction and set out the reasons for the disagreement.

Systemic Remediation in Response to the Incident

During the extensive criminal and administrative investigations of this case, the investigators spent significant time interviewing Officer Reister in an attempt to discern how he ended up deploying a less lethal weapon loaded with lethal rounds. Unfortunately, no clear answers emerged on precisely how the situation unfolded or when the lethal rounds were inserted into the less lethal weapon. Regardless, the Bureau appropriately determined that Officer Reister bore the fundamental responsibility for the tragic error. The investigation also exposed a lack of clarity about whether Officer Reister had been properly certified to even use the less lethal weapon.¹¹

The Training Review also spent considerable time reporting on systemic changes that the Police Bureau had made as a result of the incident, and made recommendations for additional reform. The analysis noted that based on an immediate recommendation by the Training Division, the Bureau issued an Executive Order prohibiting non-supervisory Bureau members to possess additional or replacement less lethal munitions. The Executive Order further required that less lethal shotguns be stored in the armory with less lethal rounds

¹¹ Officer Reister asserted that while he did not actually attend a less lethal certification class, his attendance at another class provided him the requisite certification. The investigation revealed that shared belief among other attendees and even some instructors. In any event, Officer Reister ended up regularly deploying less lethal munitions for several years as a result of this confusion.

stored in a side saddle carrier and/or butt stock carrier. The Order further required operators to visually inspect each round as they load and encouraged (but not required) them to have another Bureau member view and confirm the loading process. Finally, the Order required that all less lethal ammunition be carried in its original factory packaging.

With regard to the certification confusion, the Training Division immediately notified officers that had not attended a specific less lethal certification course they were not considered certified to carry a less lethal shotgun until they had attended the specific certification course. Other additional recommendations were made by Training in order to shore up identified deficits in the certification and training materials retention processes.

The Training Division also recommended that because of the “versatility, durability, cost, ease of use and training of the 12 gauge shotgun,” the Bureau should continue to use the shotgun as the delivery platform for the less lethal rounds. Training encouraged continued investigation into other options as they became available for use on the law enforcement market and recognized that best practices are always evolving.

The Bureau should be commended for moving quickly to identify some ways to reduce the likelihood of any similar future confusion and for enacting the Executive Order to implement those changes. Moreover, as a result of legal proceedings stemming from this incident, outside experts provided additional recommendations for systemic reform. The Multnomah County District Attorney retained a police practices expert to assist with the evaluation and prosecution of the case against Officer Reister. The expert examined numerous documents and reports, visited the Bureau garage, locker room and armory, and consulted with Training Division staff.

While the expert opined that the Bureau’s Executive Order referenced above was a “step in the right direction” and noted progress in documenting the less lethal training and qualification of officers, he also opined that additional appropriate measures should be considered to reduce any future likelihood of officers being similarly confused about ammunition. Those included:

- Removal of the 12 gauge less lethal shotgun platform from the Bureau to be replaced with a platform non-interchangeable with the lethal shotgun.
- Assignment of less lethal platforms to specific less lethal officers rather than being stored in the armory to be checked out.

- The practice of loading and unloading should not be performed inside a patrol vehicle but only at a safe ballistic containment area.
- The lighting conditions in the patrol unit parking areas where officers often loaded and unloaded less lethal weapons should be improved.
- Each officer should have an assigned locker for the storage of the officer's patrol bag so that the bags would no longer be left lying around unsecured.
- Less lethal platforms and lethal platforms should not be stored together in a patrol armory.
- In order to prevent sympathetic fire from on scene officers armed with lethal weapons, officers should be trained to make an announcement just prior to less lethal deployment such as "bean bag" or "less lethal."

Officer Reister's criminal defense attorney also retained a police practices expert. In a Declaration filed in Court, the expert found that the process by which Police Bureau officers check out and load their weapons was poorly designed and allowed for the mistake in the shooting of Mr. Monroe to occur. The expert similarly commented on the poor lighting of the police garage where Officer Reister's duty bag had been stored and where he may have loaded the lethal munitions into the less lethal shotgun.

The expert further noted that Bureau officers did not all have assigned lockers for their duty bags and generally stored them on metal racks in an unsecured parking garage. The expert opined that any individual walking off the street into the garage could get to these bags and take ammunition, police safety equipment and personal items, and found that there were no human controls present to monitor the police units nor did the parking structure have video surveillance.

Perhaps most importantly, the expert noted that the Bureau could completely remove the risk associated with comingling lethal ammunition with less lethal specialty munitions by transitioning from the shotgun platform to a non-shotgun shooting platform. According to the expert, he had been informed that prior to the date of the shooting of Mr. Monroe, the Bureau's command staff had received a recommendation that they transition to a less lethal launching system incompatible with the shotgun and that the launchers were offered to the Bureau without cost if the Bureau would agree to purchase the reusable less lethal sponge round munitions for the system.

The Police Review Board¹² similarly recommended unanimously that the Bureau look into having two distinct platforms for less lethal and lethal shotgun weapon systems, so that the ammunition rounds would not be interchangeable.

While the Bureau has informed us that it adopted many of the recommendations advanced by the outside experts, it is still considering whether to move to a weapons deployment system that would make the insertion of lethal rounds into a less lethal weapon impossible. We urge the Bureau to implement this recommendation.

Recommendation 5: The Bureau should implement the recommendation made by the Police Review Board and outside experts following the shooting of Mr. Monroe and move to incompatible lethal and non-lethal weapons platforms.

Efficient and Effective Post-Incident Response

After it was discovered that Mr. Monroe had been shot with lethal shotgun rounds, the on-scene sergeant adeptly transitioned to handling the incident as an officer-involved shooting. He separated Officer Reister from the immediate location, placed him with a chaperone officer and instructed on-scene officers not to disturb evidence and to cordon off the crime scene with evidence tape. He also made the necessary notifications and requested further resources. An off-duty lieutenant also arrived and offered his experience to ensure that Bureau protocols for officer-involved shootings were followed. Most importantly, on-scene officers recognized that Mr. Monroe did not pose a threat and expressly requested emergency responders to “step up” their response, communicating with them that

¹² The Police Review Board was created in 2010, replacing what had been known as the Use of Force Review Board and the Performance Review Board. It serves as an advisory board to the Chief of Police, reviewing internal investigations into alleged misconduct, making findings and proposing discipline or other corrective action. It is made up of five voting members, including the subject officer’s Assistant Chief and Commander, the Independent Police Review Director, a peer member who is the same rank as the subject, and one community member. It also includes nine advisory members, including a facilitator, coordinator, the remaining Assistant Chiefs, and representatives from the Police Commissioner’s office, Professional Standards Division, Training Division, the Bureau of Human Resources, and City Attorney’s Office.

they did not need to stage¹³ but could respond immediately to the crime scene, ensuring that medical assistance was provided to Mr. Monroe as soon as possible.

Bureau Response to Prior Policy Violation

Officer Reister's termination letter refers to an earlier incident in which he received a letter of reprimand for unsatisfactory performance as a result of his failure to unload a weapon prior to a training exercise and then firing a smoke projectile resulting in the injury of another officer. However, while Officer Reister admitted that he made a mistake and viewed the incident as a learning experience, there was apparently no formal retraining provided to Officer Reister as part of the Bureau's remedial action. Moreover, the incident did not result in a sufficiently robust review of Officer Reister's training records to identify that he had not taken the less lethal certification class yet was regularly deploying less lethal munitions in his duty assignments.

Recommendation 6: In addition to any discipline imposed, the Bureau should include a targeted retraining component whenever it determines that a member has violated its performance policy.

Tactical Issue Not Identified or Addressed

Officer Reister indicated that at one point he did not fire his less lethal shotgun because a fellow officer had moved into his line of fire. This issue was not identified during the Training Review. If the evidence did establish that the tactical response of other officers unnecessarily compromised Officer Reister's response, the issue should have been identified and addressed in the Training analysis and, at a minimum, discussed with the responsible officer who had moved into Officer Reister's line of fire.

Quality of Investigation and Review

Significant Delay in Obtaining the Involved Officer's Statement

On the date of the incident, detectives requested that Officer Reister provide a statement but he declined. It was one week before Officer Reister provided a

¹³ Sometimes, rescue units are requested to "stage", which means that they respond to a designated location near the crime scene until on-scene Bureau personnel determine whether the situation is sufficiently safe to allow paramedics to enter and provide emergency medical treatment.

voluntary statement; a delay far too long for effective fact gathering and inconsistent with best investigative practices.

Inclusion of Medical Records in Investigative Report

In earlier reports, we have taken the Bureau to task for its failure to include medical records of persons injured by gunfire in its investigative reports. We were encouraged here, however, to see that the extensive medical records of Mr. Monroe were obtained and included as part of the investigation.

Failure to Obtain Tape-Recorded Statements of Civilian Eyewitnesses

Internal Affairs investigators discovered two civilian eyewitnesses to the incident that had not provided recorded statements to detectives during the criminal investigation. To the investigators' credit, they completed the fact gathering by obtaining recorded statements from these witnesses but by then several months had passed, making recollection for these witnesses more problematic. We have generally been impressed by the quality and thoroughness of Detectives' investigations. Here, an after action review to determine why detectives did not identify these witnesses could have provided valuable lessons to the Detective Division.

Failure to Include Forensic Report in Investigative File

The Internal Affairs investigative log references a test fire conducted by the Oregon State Police with regard to this incident to assist in determining how far Officer Reister was from Mr. Monroe when he fired the four lethal rounds. According to the log, the test concluded that the final round was fired from 15 feet away. However, the OSP report is not included in the investigative file. Investigators should have obtained a copy of the report and included it with its investigation. If the report was not available, they should have documented their efforts to obtain it.

Delay in Investigative and Review Process

As noted above, the length of time from the incident to the Review Board was 17 months, too long a period of time for investigating and reviewing officer-involved shootings. Even more concerning, it took almost another year following the Review Board hearing before Officer Reister received a termination letter. This delay apparently was tied to the length of the criminal proceedings. While, to its

credit, the Bureau eventually decided to issue the termination letter before the extenuated criminal proceedings had concluded, it should have made that determination within a reasonable time after the Review Board had issued its recommendations to the Chief.

January 25, 2012 • Brad Lee Morgan

Shortly after 3:00 a.m. on January 25, 2012, Brad Morgan called 911 and reported that he had robbed someone at knifepoint in downtown Portland and currently was standing on top of a 10-story building planning to commit suicide. He would not reveal his exact location, but dispatch was able to track the call to a general area and assigned Central Precinct officers to respond. While officers worked to identify and search possible locations, the 911 call taker kept Mr. Morgan on the line, engaging with him about the source of his suicidal feelings. During the course of that nearly 20 minute conversation, the dispatcher seemed to build a good rapport with Mr. Morgan.

While she was talking with Mr. Morgan, the dispatcher was simultaneously relaying information to officers about the content of their conversation, including clues he revealed about his location, his clothing and appearance, and that he possibly had a gun and, according to the dispatcher, was “making suicide by police statements.” The audio recording of the call shows these statements to contain more detail that was not passed on to officers on scene. Specifically, Mr. Morgan said, “I’d actually prefer for a police officer to shoot me at this point. I, I’m not looking forward to this jump.” He also said, “I want to take one of their lives,” and, later, “I’m not gonna hurt myself. I’m gonna provoke the police to do it or I’m gonna jump off after that doesn’t work.”

When officers located Mr. Morgan standing on top of the elevator structure on the top floor of a 10-story parking garage at SW 3rd Avenue and SW Morrison Street, Morgan and the 911 call taker ended their conversation so Morgan could begin to talk to the officers.

Officer David Michael Scott, along with several other officers, was dispatched to the call involving Mr. Morgan. Sergeant John Holbrook also responded to the call, and was the primary sergeant in charge. It was as officers were coordinating their activities to try to locate Mr. Morgan that the dispatcher relayed information about him possibly having a gun and “making suicide by police statements.” At that point, a different sergeant (who was monitoring but not assigned to the call) got on the air to advise officers to wait for backup before resuming their searches of various structures in the area. Officer Scott was at that point almost to the top of the structure where Mr. Morgan eventually was found, but stopped and backed down to a lower level to wait for a cover officer to join him. When another officer and his trainee caught up, they drove in tandem to the top floor of the parking structure where they eventually located Mr. Morgan standing atop a

concrete structure housing the elevator at the southwest corner. Sergeant Holbrook arrived shortly after.

Sergeant Holbrook and Officer Scott moved away from their patrol cars to try to get close enough to talk to Mr. Morgan while maintaining distance and cover, but found they could not hear what Mr. Morgan was saying and likewise did not believe he could hear them. They made the decision to leave their position of cover to approach Mr. Morgan in order to facilitate a face-to-face conversation and hopefully convince him not to jump. They moved to about 40 feet away, behind a short concrete barrier that provided minimal cover, particularly given that Mr. Morgan's perch was elevated approximately five to six feet. Officer Scott took the lead in talking with Mr. Morgan, and felt like he was establishing a positive connection. Sergeant Holbrook maintained command of the scene, and was coordinating radio traffic and the response and position of other officers while also monitoring the conversation with Mr. Morgan. He assigned an AR-15 rifle operator to assume the role of long cover, and brought a third officer up to be a part of the communication team. When Mr. Morgan believed he recognized that officer and objected to talking with him, Holbrook directed him to return to the patrol cars and have another officer approach. After a short time, that officer decided to return to his patrol car to get his jacket, so Holbrook and Scott were the only two officers engaging with Mr. Morgan in a consistent way. After several minutes of talking with Mr. Morgan with no substantial progress, Sergeant Holbrook requested that both Project Respond¹⁴ and the Crisis Negotiation Team¹⁵ respond to the scene.

Officer Scott engaged with Mr. Morgan about the difficulties in his personal life that were motivating his suicidal thoughts and attempted to offer him some

¹⁴ Project Respond is a mobile mental-health crisis response team that provides round-the-clock crisis intervention and mental health emergency services in Multnomah County. They work closely with Bureau officers, but will not get involved in a situation that is not secure. Had Project Respond personnel arrived on scene, they would have staged in a secure location away from the top floor of the parking structure and would not have gotten involved to evaluate or offer assistance to Mr. Morgan until officers had de-escalated the situation.

¹⁵ The Crisis Negotiation Team (CNT) has 26 members, but all of them work in other assignments and are not employed full-time as negotiators. There is no CNT component on duty 24 hours a day, so when they are called out to a scene, negotiators either come from their home if off-duty, or from another assignment. If CNT members had arrived at the scene before the shooting, they would have taken over communications with Mr. Morgan.

encouragement for how things might improve if he would let the officers get him help. At some point, though, the conversation deteriorated. Mr. Morgan asked, “What would happen if I pulled a gun out right now?” While both Scott and Holbrook tried to personalize a response about why he would not want to do that, he then said something about how he could kill one of them and how it does not count if he killed a cop. Shortly after he made these statements, Mr. Morgan walked toward the front of the ledge, closing the distance between him and the officers to about 15 feet, put his hand in his pocket or waistband and pulled out what appeared to be a black semiautomatic pistol. Sergeant Holbrook and Officer Scott – both of whom had purposefully kept their guns holstered up until this point in an attempt to avoid escalating the situation – drew their weapons. Sergeant Holbrook fired three rounds from his 9mm handgun, all of which apparently missed. Officer Scott attempted to fire, but his 9mm gun malfunctioned. He cleared the jam and fired one round, while Holbrook dropped to his knee and fired one more round. Mr. Morgan dropped from view, falling off the edge of the elevator structure and into a small trench just below the roof of the structure. The shooting occurred roughly 20 minutes after officers’ arrival on scene.

Sergeant Holbrook maintained command of the scene until another sergeant arrived to relieve him, despite being involved in the deadly force incident. He considered having officers approach the area where Mr. Morgan had dropped, but quickly concluded they could not safely do so. Mr. Morgan was believed to be armed and had pointed his gun at officers. Neither he nor Officer Scott could be certain their bullets had struck Mr. Morgan, so it was unclear to them whether he was down and injured or just lying in wait. In order to locate him, officers would have had to climb up and then peer over the ledge and expose themselves to a possible ambush. Instead, Sergeant Holbrook decided to call out the Special Emergency Reaction Team (SERT), who had the specialized tools and training to manage the approach and rescue. He and Officer Scott retreated to a position of cover and were ultimately relieved and removed from the scene. Other officers continued to cover and monitor the area around the elevator structure while waiting for SERT officers to respond.

Approximately 35 minutes after they were called out, SERT assumed command of the scene. There was some delay in this transfer created by the failure to have on-scene personnel available to brief and guide the SERT officers. This delay was addressed in the SERT after-action report. SERT ultimately deployed a robot camera to locate Mr. Morgan, roughly one hour after the shooting. It took

additional time and the acquisition of a 20-foot ladder from the local fire station in order for officers to reach Mr. Morgan and confirm he was deceased. The gun that Mr. Morgan had was actually a replica gun that he had spray painted black to make look more realistic.

Following the autopsy, the State Medical Examiner concluded the cause of death was a gunshot wound of the brain. The pathologist who performed the autopsy testified at grand jury that the bullet struck vital parts of the brain controlling the heart and respiration, so Mr. Morgan “collapsed and died very quickly.” Only one bullet struck Mr. Morgan, though another passed through his sweatshirt without causing injury.

The Multnomah County Grand Jury met and concluded that the involved officers had no criminal liability for Mr. Morgan’s death. The Bureau found the officers’ tactics and use of deadly force to be within policy.

Timeline of Investigation and Review

1/25/2012	Date of Incident
2/15/2012	Grand Jury concluded
9/17/2012	Internal Affairs Investigation completed
11/14/2012	Training Division Review completed
2/1/2013	Commander’s Findings completed
3/20/2013	Police Review Board convened

Analysis/Issues Presented

Tactical Decision Making

The officers dispatched in this incident had to weigh the competing goals of building rapport and trust with Mr. Morgan to convince him to come down from the ledge and of keeping enough distance to protect themselves from harm. With the belief that they could not build rapport in any manner other than a face-to-face

conversation, and with great confidence in their ability to communicate with people in crisis,¹⁶ Officer Scott and Sergeant Holbrook made the decision to abandon positions of cover and close the distance between themselves and Mr. Morgan. In doing so, they placed themselves in a dangerous position from where, ultimately, they felt the need to use deadly force to respond to the threat Mr. Morgan posed. Both the Training Division Review and the Commander's memorandum provide thoughtful analysis of that decision. Though they ultimately disagree with each other on the question of whether the officers' actions in moving closer to engage Mr. Morgan were consistent with training, they both conclude that the use of deadly force was reasonable and within policy.

The Training Review, in particular, is quite detailed in its discussion of the training that the officers would have relied on to convince themselves that engaging Mr. Morgan face-to-face was the appropriate course. Like all Police Bureau officers, both Officer Scott and Sergeant Holbrook had been through Crisis Intervention Team training. That training emphasizes personal communication skills that are dependent on face-to-face contact. While the Review concluded it was not unreasonable for the officers to approach Mr. Morgan, it also states that given the information regarding "suicide by police" articulated by the dispatcher, it would have been consistent with training for Sergeant Holbrook to place greater value on maintaining distance between officers and Mr. Morgan while requesting additional resources, including the Crisis Negotiation Team. The Training analysis notes that officer safety should always outweigh a desire to intervene to prevent suicide and that, by placing a priority on their own safety, officers also reduce the likelihood that subjects will force a confrontation with police that could end with the use of deadly force.

The Commander's memorandum disagrees with the conclusion made by Training, finding that the decision to move forward was not contrary to training. The memorandum emphasizes statements made by both officers about their desire to establish a personal connection with Mr. Morgan and their belief that a successful resolution depended on their willingness to approach him. The Commander concludes that while the wisdom of the decision to move closer to Mr. Morgan may be the subject of disagreement, it was neither reckless nor impulsive. The officers made a judgment call at the time, based on all the circumstances

¹⁶ The interviews in this case contain repeated references to the frequency with which Central Precinct officers deal with suicidal people threatening to jump, mainly off of Portland's numerous bridges. Most estimated that the precinct handles two to three such calls per week, often to successful resolution.

presented to them, and the Commander found their performance to be within policy.

While we found the Commander's memorandum to be thorough in its approach and careful in its analysis, a comment it makes indicates a flaw in its reasoning: "Bradley Morgan was committed to his suicidal plan and no amount of negotiation would have prevented him from forcing the officers to take his life." Even if that statement was true, it does not relieve officers of the obligation to observe sound principles of officer safety and avoid placing themselves in a situation where they feel compelled to use deadly force. And as we discuss in more detail in the Common Issues section of this report, the notion that officers would be "forced" into taking particular action surrenders too much power and control to a suicidal subject. Finally, as discussed further below, a review of the recording of Mr. Morgan's 911 call signals that Mr. Morgan may not have been as intent on ending his own life as the Commander suggests in his memorandum.

Communication with the Bureau of Emergency Communications

The Bureau of Emergency Communications dispatcher who handled Mr. Morgan's 911 call spent nearly 25 minutes on the phone with him before the officers arrived and took over communications. In that time, the call taker established a rapport with Mr. Morgan, gathering information, listening to his story, and showing empathy. According to a Bureau crisis communications trainer who had taught a block on crisis intervention and suicidal calls to dispatchers during an Emergency Communications Bureau in-service training several months prior to this incident, the call taker who spoke with Mr. Morgan clearly used that training in her conversation with Mr. Morgan.

Unfortunately, much of that positive rapport was lost when officers arrived and Mr. Morgan and dispatch quickly ended their conversation. At one point, a frustrated Mr. Morgan told the officers that he had already told the other "cop" all the information they were asking about. But both the dispatcher and the scene officers were following standard protocol at the time.

Following this incident and as a direct result thereof, the Training Division has begun to introduce to patrol officers some of the practices and skills that Crisis Negotiation Team members use on a regular basis. Specifically relevant here are strategies intended to transfer positive rapport from a 911 call taker to a field officer that are now being taught in Enhanced Crisis Intervention Team training and in regular in-service and Advanced Academy classes. Rather than simply

have the dispatcher hang up when officers arrive, officers and call takers dealing with people in crisis are encouraged to have officers conference in to the 911 call before the dispatcher hangs up. This allows the call taker to introduce the officer to the person in crisis in a way that lets that person know the call taker trusts the officer to continue the conversation in a positive way. The call taker can then give the officer a synopsis of the call, letting the person in crisis know that the call taker has been listening and giving the person a chance to correct anything the call taker gets wrong, while at the same time informing the officers about the content of the prior conversation before their direct engagement. It is impossible to say, of course, whether this procedure would have led to a different outcome for Mr. Morgan, but it is possible to see how the conversation with Officer Scott and Sergeant Holbrook might have been more productive if they could have stepped into conversation while the call taker was still engaged.

In addition to the loss of positive rapport, many details of Mr. Morgan's conversation were not relayed to the officers on scene. Most importantly, the call taker told the officers simply that Mr. Morgan was "making suicide by police statements." In fact, Mr. Morgan's expression of his intent was much more specific. Likewise, his threats about killing a police officer were more explicit than the statement that he might have a gun. Throughout their interviews, both Sergeant Holbrook and Officer Scott seemed to downplay the possibility that Mr. Morgan had a gun, or that he might use it to either shoot at them or provoke them into shooting at him. If officers had known the full context of Mr. Morgan's statements, they may have been less likely to minimize the threat and maintained a greater distance from him.

Recognizing that it is not possible for a 911 call taker to relay to officers every detail of a call, or to be able to identify every bit of information that officers in the field might find relevant or important, the Training Division has started to teach officers to request dispatch to email them the audio file of a 911 call while they are en route to the scene or as they plan their approach. With MDC technology in patrol cars, this is a simple and straightforward request. While this may not have been practical in this case because Mr. Morgan's conversation with the call taker lasted so long, officers generally report they find it helpful to actually listen to the 911 call rather than rely on the dispatcher's characterization of the caller's statements.

These Training initiatives stemming from this tragic incident are dependent on a positive working relationship between the Police and Emergency

Communications Bureaus, and it appears the two agencies understand that imperative. Police Bureau personnel are providing in-service training to all dispatchers on handling crisis communication and suicidal calls. When the Bureau established its Enhanced Crisis Intervention Training program, it reached out to the Emergency Communications Bureau for input on how they could collaborate better on calls. And the Police Bureau is currently working to have dispatchers assigned to its Crisis Negotiation Team, both to tap into their expertise and to provide cross-exposure.

In past reports, we have commented on some ways in which communication breakdowns between dispatchers and patrol officers potentially contributed to negative outcomes. In our Third Report, we recommended that the City require Bureau of Emergency Communications dispatchers to attend Critical Incident Management Training. We note that having Police Bureau crisis communication trainers teach during regular in-service training for dispatchers may be a more practical and efficient way to accomplish a similar objective, and recommend the Emergency Communications Bureau make this a regular part of its annual training.

In our Second Report, we recommended that Bureau of Emergency Communications supervisors be included in the Police Review Board hearings for incidents where a dispatcher's performance – good or bad – is at issue. (Recommendation 19, Second Report, p. 62) We renew this recommendation as a way to continue building a positive relationship between the Police and Emergency Communications Bureaus and to ensure that lessons learned by the Police Bureau in the course of its review are effectively transferred to Emergency Communications.

Recommendation 7: The City should ensure that Police Bureau crisis communications instructors regularly provide training to dispatchers, either as part of the Police Bureau's Critical Incident Management Training or during the Bureau of Emergency Communications' annual in-service training.

Recommendation 8: The City and Bureau should consider ways to formally bring Bureau of Emergency Communications supervisors or decision makers into the Police Bureau's review process in cases where a dispatcher's judgment or performance is potentially at issue.

Sergeant in Tactical Role

Despite the presence of a number of other officers on scene, Sergeant Holbrook assigned himself to be part of the communication team approaching Mr. Morgan and ultimately fired his weapon at Mr. Morgan. As we have noted in the past and in other cases we review for this report, sergeants on the scene of a tactical incident should take command of the incident and direct resources appropriately without engaging directly in a tactical role. While it is impossible to say whether this incident might have been managed differently had Sergeant Holbrook maintained a purely supervisory role, as a general principle it is preferable for sergeants to maintain a bigger picture view of the entire incident than to assume a tactical role.

The Bureau overhauled its training for supervisors in 2011, just before this incident, and the curriculum instructs sergeants to be the team's decision maker and work through their officers to resolve an incident rather than personally engage.

The Training Division Review here was critical of Sergeant Holbrook's decision to put himself on the communication team, calling it not consistent with training. The Commander's memorandum acknowledged that supervisors are trained not to insert themselves into tactical situations, but found that Sergeant Holbrook's role here did not have a negative impact on the management or outcome of the incident. The basis for this finding is unclear, since we can never know whether a scenario in which the sergeant played a supervisory role would have ended differently.

Post-Shooting Tactics

Following the shooting, Sergeant Holbrook made the decision to transfer the call to SERT officers because Mr. Morgan pointed a gun at officers and was in an unknown position and condition. For officers to reach the area into which he had fallen required specialized equipment and exposure to the possible threat Mr. Morgan posed. There was a brief delay in transferring information to SERT officers when they arrived, 35 minutes after being called out, but SERT ultimately took command of the scene. They used a robot camera to locate Mr. Morgan, and officers deployed shields to approach. Recovering Mr. Morgan's body from the top of the elevator structure required a 20-foot ladder and Fire Department personnel. In all, just over an hour and 20 minutes passed between the time of the shooting and the medic's confirmation that Mr. Morgan was deceased.

Changes in Training and Approach

The Training analysis following this shooting focused on the concern that officers moved in to talk to Mr. Morgan without appropriate regard for their own safety, ultimately putting themselves in a position where they felt so threatened by Mr. Morgan's actions that they needed to respond with deadly force. In reviewing the shooting, Training considered the differences between how patrol officers are trained and the principles that guide the Bureau's crisis negotiators. A relatively simple and straightforward point that Training now emphasizes in its crisis communication curriculum is that officers should consider contacting subjects by phone. Patrol officers are accustomed to dealing with people up close, face-to-face, and are trained to read body language and respond to other non-verbal cues. Crisis Intervention Training, which all patrol officers attend, emphasizes building rapport with individuals through face-to-face communication. Crisis negotiators working with the Crisis Negotiation Team, by contrast, frequently interact with individuals via telephone. Here, officers knew Mr. Morgan had a cell phone as he had been talking with the 911 call taker. The involved officers considered calling Mr. Morgan, but both reverted to their training and stated they believed they could more effectively build rapport in a face-to-face conversation.

Following this shooting, the Bureau made a number of other changes in the way it trains its officers to approach suicidal subjects or people in crisis. As discussed above, Training now emphasizes that both officers and dispatchers should think about how to transition a call from a 911 call taker to on-scene officers, so that the positive connection call takers may have established can be transferred to the officers who will continue communications. In situations where a 911 call has already terminated, officers are now trained to ask dispatchers to email them a recording of the call, so that they can hear both the content and tone of what a caller said rather than relying on the call taker's characterization.

Officers continue to be instructed to call the Crisis Negotiation Team when the circumstances require, but recognizing that patrol officers are the first responders and it often takes crisis negotiators some time to arrive, these crisis negotiation principles are being taught to all patrol officers at the Advanced Academy and, on a more extensive and detailed basis, to officers who go through Enhanced Crisis Intervention Training. Training Division has used this shooting as a learning tool to help officers better understand how to react to people threatening suicide or otherwise in crisis. The Bureau's trainers expect that officers would handle a

situation like that presented by Mr. Morgan somewhat differently today than they did in 2012.

Quality of Investigation and Review

Both the Detectives' and Internal Affairs investigations were thorough in the evidence gathered and interviews conducted. There were a few questions that investigators did not ask the involved officers but that would have been useful to reviewers. For example, we discussed above how the 911 call taker did not provide responding officers all the details of Mr. Morgan's "suicide by police" statements, or his threats to kill an officer. It would have been useful to ask officers whether, or how, this additional information from the dispatcher might have changed their assessment of the threat Mr. Morgan posed.

The Training Division Review is thorough, provides thoughtful analysis, and offers constructive critique. The Review also recommends that all sworn officers attend the 20-hour critical incident management class that all supervisors are required to complete. That recommendation was endorsed by the Bureau, but turned out to be too difficult to implement fully. Instead of sending every officer to the 20-hour class, which would have encompassed half of their typical 40-hour annual in-service training, the Training Division added a block of classroom training from the critical incident management class to the annual in-service, and then incorporated crisis communication principles in the scenario training that officers must complete during annual training. While it may be ideal to have every officer attend 20 hours of critical incident management training, the Bureau has to deal with the reality of tight budgets and numerous training demands. When the Training Division realized it was not feasible to send everyone to the 20 hour class, it made a reasonable adaptation to the training, so that all officers received some additional instruction and training on managing critical incidents.

Delay in Investigation and Review

The Police Review Board did not review this incident until 14 months after it occurred. Internal Affairs did not complete its investigation until eight months after the incident, and four months after completion of the Detectives' investigation. There was a further delay in completing the Training Division Review – two months after the Internal Affairs investigation was complete. And the Commander's findings memorandum was not finished until two and a half months after the Training Review. We note these delays, as we have noted them

in many prior cases we have reviewed, but also recognize that the Bureau's processes for administrative investigation and review have changed significantly since 2012, in response to external criticism as well as the agreement between the City and the Department of Justice.

March 26, 2012 ◦ Jonah Aaron Potter

Portland police responded to the scene of an armed robbery of a convenience store where the suspect was captured on surveillance video brandishing what appeared to be a large semiautomatic handgun. A witness who had been inside the store at the time of the robbery described the gun as possibly fake. This witness followed the suspect outside the store and got a description and partial license plate number of the car he drove away. Though the suspect had his face covered by a ski mask or balaclava, his wife recognized the description of the car, as well as the suspect's shoes and body movement from the video she saw on a local news broadcast. She identified her husband, Jonah Potter, to police, gave them a full description of the car and license plate number, and told them her husband had been depressed for some time and had progressed from a prescription drug addiction to heroin use.

The following morning, an officer on his way to court saw the car, a blue Honda Civic, parked on the street at SE 37th Avenue and SE Oak Street. The car was occupied and an individual, later identified as Mr. Potter, apparently was asleep in the driver's seat. The officer broadcast this information and watched the car until a team of officers arrived. Officers initially planned to box in the subject's car to prevent him from driving away. Before they implemented that plan, though, a sergeant responded and assumed command via radio while he was en route to the scene. He instructed officers to stay back from the car, out of the occupant's view, and delegated responsibilities to different officers. One officer served as a spotter whose role was to watch the car and its occupant and alert the others if the subject woke up or began to move. Other officers were instructed to place spike strips further up the road, with the intent of disabling the car if the subject started to drive away. A team of six officers was assigned to perform a high-risk traffic stop, if necessary, and set up around the corner on Stark and 37th.

Because the subject was reported to have been armed the day before, the sergeant got approval from his chain of command to activate the Special Emergency Reaction Team (SERT), intending that team to bring an armored vehicle to block the suspect vehicle in, without putting an officer at risk. The sergeant's plan was to let the subject sleep until SERT arrived and could address the scenario with its specialized equipment. He also developed a contingency plan in case the vehicle's occupant awoke before then. If the spotter alerted the team to movement in the vehicle, the sergeant planned to initiate a high-risk stop on the car to prevent it from leaving the area. The stop team included two SERT officers

working regular patrol assignments – Dennis Wilcox and Larry Wingfield – as well as four other officers, including Tracy Chamberlin and Richard Storm.

Shortly after this plan was established, and before the sergeant arrived on scene, the spotter informed officers that the subject appeared to be awake and was moving about inside the car. The sergeant instructed the stop team to move in, and the six officers in four marked patrol vehicles drove up on Mr. Potter's car, with their lights activated. They stopped in positions that mirrored their training for high-risk traffic stops. The officers got out of their cars with their guns trained on Mr. Potter's car. One officer began giving loud commands for the subject to roll down his window and put his hands out. Mr. Potter did not comply with those commands. Instead, officers reported seeing him digging around inside the car. At one point, he opened the driver's door partially and looked around at the officers, but then closed the door. Shortly after, he opened the door and quickly got out of the car. As he spun toward the officers, they all identified a gun in his hands. Four officers fired a total of seven rounds. Officer Wilcox fired one round from his M4 rifle. Officer Wingfield fired three rounds from his M16 rifle. Officers Storm and Chamberlin each fired one or two rounds from their 9mm handguns. All officers articulated their backdrop as being either a large rock wall, a group of bushes and trees on a rise, or a dirt berm in front of an elevated lot.

One round struck Mr. Potter's arm, causing his gun to fly out of his hand and land several feet away. Officer Wingfield acknowledged that training and protocol would be to assemble a custody team to approach the subject (who was obviously still alive) with a ballistic shield, but he believed he could safely secure the subject's gun and nullify the threat, so he left hard cover and while other officers covered the subject with their weapons, Officer Wingfield walked over and retrieved Mr. Potter's gun, which officers only then could identify as a pellet gun. After securing the gun, the officers moved in and handcuffed and searched Mr. Potter. Officer Wingfield turned Mr. Potter over, concerned that the bullet might have hit an artery and required immediate attention to stop the bleeding. Though the injury to Mr. Potter's arm was serious, it was not life threatening. A medical team arrived quickly and immediately entered the scene to attend to Mr. Potter and transport him to the hospital.

Two and a half weeks after the shooting, while still hospitalized, Mr. Potter directed officers to a note he had left inside his car. The note was "to the officer(s)" and stated, "I'm very sorry that I had to get you involved, and make you do my dirty work. I tried to purchase a real gun to do it myself, but couldn't.

I really hope this doesn't affect you or your job in any way, and again I'm very sorry." Mr. Potter also had left a suicide note for his wife.

Within two weeks of the incident, the Multnomah County Grand Jury met and determined the involved officers' use of deadly force was justified under criminal law. Because the same grand jury charged Mr. Potter with criminal counts relating to the robbery and later confrontation with police, the District Attorney's office did not publicly release transcripts of the proceedings. Mr. Potter later pleaded guilty and was sentenced to prison for attempted second-degree robbery and menacing.

The Bureau found the officers' tactics and use of deadly force to be within policy.

Timeline of Investigation and Review

3/26/2012	Date of Incident
4/9/2012	Grand Jury concluded
11/6/2012	Internal Affairs Investigation completed
12/7/2012	Training Division Review completed
1/9/2013	Commander's Findings completed
2/20/2013	Police Review Board convened

Analysis/Issues Presented

Tactical Planning

The sergeant in command of this incident and the officers involved followed their training to such a degree that the Training Division Review had no recommendations following this incident, other than to use it an excellent example of leadership, planning, tactics, and teamwork. We agree with Training's conclusions. Bureau personnel developed a plan that maximized both the safety of the officers and the subject, communicated clearly regarding each

officer's role, adapted to a changed circumstance to implement a contingency plan, and executed the plan in a tactically sound way.

Quality of Investigation and Review

Timing of Officer Interviews

The question of when Police Bureau officers involved in a critical incident will be interviewed is one that has been in flux throughout much of the time period for which we have reviewed those incidents for the City. Of the cases we review in this report, the timing of interviews in this case most closely resembles the Bureau's current practice. Following current standard practice, the four officers who used deadly force all declined to give statements to Detectives on the day of the incident. The witness officers were interviewed that day. The Detective Division then served all the involved officers with communication restriction orders, ordering them not to speak or communicate with anyone regarding the case, with the exception of investigators, spouses, clergy, medical or psychological professionals, and union representatives or attorneys.

The Internal Affairs investigator then served the four officers who used deadly force with a notice that they were to submit to compelled administrative interviews at a given time, at least 48 hours after the incident. Before the scheduled Internal Affairs interview, however, all four officers submitted to voluntary interviews with Detectives and were interviewed two or three days after the event. As a result, Internal Affairs postponed its interviews until after the grand jury completed its review of the case. We have repeatedly raised concerns with the so-called 48-hour rule, which prohibits the Bureau from requiring officers involved in a use of deadly force to submit to an administrative interview for at least 48 hours. As we state in the Common Issues section of this Report, we remain concerned that the Bureau is required to wait two days before getting any interview from involved officers about their use of deadly force.

Our understanding is that current practice is similar to what occurred here, with the exception that rather than wait until after the grand jury concludes to conduct interviews with involved officers, Internal Affairs investigators now sit in and listen to Detectives' interviews and, when Detectives are done and have left the room, will ask any additional or follow up questions they might have. We have not seen this dynamic at work in any of the cases we have reviewed, so we cannot judge its effectiveness, but urge the Bureau not to think of it as a solution to the

problems presented by the 48-hour rule currently governing officers' availability for interviews. While the new practice provides some advantages over past involved officer interview protocols, in that it at least provides Detectives the opportunity to interview officers, the Bureau should not be required to wait for two or three days to hear why an officer used deadly force against a citizen. As we discuss further below, until the collective bargaining agreement that prevents the City from obtaining an account from officers on the day of the shooting is amended, investigations into critical incidents will continue to be negatively impacted.

We offer one caution to Internal Affairs investigators as they begin to operate under this new procedure. We have seen many cases where investigators benefit from the opportunity to read the full Detectives' investigation and review, and where applicable, officers' grand jury testimony prior to creating a list of questions to ask an officer during his or her administrative interview. The new order of interviews has the benefit of allowing Internal Affairs to ask questions while an event is still fresh in the officer's mind but deprives them of the opportunity to prepare for the interview by reading the full Detectives' casebook. As a result, Internal Affairs investigators should expect to conduct follow up interviews to answer questions that are triggered by an issue raised or discovered in the full Detectives' investigation.

Medical Records

We recommended in our last report (which post-dates this incident) that Detectives and Internal Affairs investigators should attempt to gather records of a subject's medical treatment following a non-fatal officer-involved shooting. We noted that investigations into fatal shootings always include an autopsy report that contains significant evidence to describe how and where bullets entered the body, what path they took within it, and the damage done to internal organs. Here, as in the case that prompted this recommendation in our prior report, neither Detectives nor Internal Affairs investigators made any apparent attempt to get copies of Mr. Potter's medical records or to talk to any medical personnel who treated him about the nature of his injury.

Of course, a subject has a privacy interest in not sharing his medical records with investigators and may refuse to waive the confidentiality of those records, but it does no harm for investigators to request access to a subject's medical chart or providers. Moreover, detectives who are conducting a criminal investigation have the ability to obtain a search warrant for the records. As we said in our earlier

report, making all possible efforts to obtain the records of the subject's medical treatment immediately after the shooting should be a routine part of any officer-involved shooting investigation. In its response to that report, the Bureau agreed with this recommendation and has reportedly implemented it.

July 17, 2012 • Juwan Blackmon

Just before noon on July 17, 2012, the Tactical Operations Division Gun Task Force was conducting a surveillance of a location when an officer observed an individual later identified as Juwan Blackmon¹⁷ showing a handgun to other individuals in a parking lot outside the location. Mr. Blackmon briefly entered the location, then exited and got into a car with three other people. He was seated in the back seat on the driver's side. The officer who observed the handgun relayed his observation of the gun, as well as pictures of Mr. Blackmon to the rest of his team. The task force sergeant decided that when the car drove away from the surveillance, two task force officers who were positioned away from the surveillance to perform such traffic stops would stop the vehicle to arrest Mr. Blackmon.

Another task force officer who had been in discussions with the task force sergeant asked East Precinct officers to assist on a high risk traffic stop of the vehicle. As the task force officers were following the vehicle and waiting for additional back up, the vehicle pulled into a turn lane to turn into an apartment complex parking lot. Seeing that they had some assistance from arriving East Precinct officers, and not wanting the vehicle to enter the parking lot and park, the task force officers initiated the traffic stop by turning on their overhead lights. The vehicle came to a stop in the driveway of the apartment complex.

Officer Gregory Moore was in a marked vehicle directly behind the task force officers. The second-arriving East Precinct officer was behind Officer Moore. Following Bureau training on high risk traffic stops, the officers positioned their cars and got out to the appropriate positions to provide cover. Officer Moore and the second-arriving East Precinct officer took cover behind the front of the second-arriving East Precinct officer's car, covering the driver side of the suspect vehicle.

The task force officer who was the passenger in the lead stop vehicle broadcast commands to the occupants of the car to keep their hands on the ceiling of the car and look forward. The front seat occupants complied. Mr. Blackmon and the other back seat occupant had to be reminded to continue to follow the instructions as they were dropping their hands and looking behind.

¹⁷ Mr. Blackmon was 17 years old at the time of this shooting. While we hesitate to use the name of a juvenile, we note that he was identified by name in both media accounts and Bureau statements at the time of the shooting.

There had been radio broadcasts requesting responses by an officer with a K9 and by one with a less lethal beanbag shotgun. Officers decided that because their prime target, Mr. Blackmon, was in the back seat of a two door vehicle and therefore had no path of exit, they would wait to begin the extraction of the suspects from the vehicle until after these resources arrived. Officer Dennis Wilcox arrived with less lethal and took a position next to Officer Moore and the second-arriving East precinct officer. The K9 officer arrived with his K9 and took a position behind the others.

Once the dog and less lethal beanbag shotgun had arrived and custody teams were established, roughly five minutes into the stop, the front seat occupants of the vehicle complied with officers' commands to get out of the vehicle and were taken into custody without incident.

Mr. Blackmon was then told to push the driver's seat forward and exit out the driver's door. The officers were aware that he was the suspect seen with the gun. He exited the car. He was told to raise his hands, but only did that part way. He continued to look around at the officers and twist his body. He was told to grab his shirt by his collar and raise it exposing his waist. He started to reach toward his collar, but did not raise it. He then dropped his hands while spinning around to his right. When Mr. Blackmon dropped his hands, Officer Moore fired one round from his pistol. Officer Wilcox fired one less lethal round. Officers were not certain whether Mr. Blackmon had been struck, or by which rounds. Mr. Blackmon started running away from the officers, fleeing behind tall shrubs and into the apartment complex.

Officer Jeff Dorn released his K9 with a command to chase Mr. Blackmon. The dog started to follow Blackmon, but instead turned and focused on the remaining occupant of the stopped vehicle and bit the occupant. Officer Dorn had to issue multiple commands to remove the dog from that occupant. Radio traffic was sent out to try to contain Mr. Blackmon, while the officers on the scene took the final occupant into custody without incident. Officers, including assisting officers from neighboring jurisdictions, established a containment and gave chase, broadcasting location information when available, and after a short search Mr. Blackmon was located and arrested without further incident a few blocks away. Mr. Blackmon had been struck by Officer Moore's bullet and sustained a through wound to his upper right thigh. He received medical treatment at a hospital and was released to Bureau custody. Two guns were retrieved from a yard along Mr. Blackmon's path and he ultimately admitted both were his.

Timeline of Investigation and Review

7/17/2012	Date of Incident
8/3/2012	Grand Jury concluded
9/26/2012	Internal Affairs Investigation completed
1/24/2013	Training Division Review completed
3/12/2013	Commander's Findings completed
5/28/2013	Police Review Board convened

Analysis/Issues Presented

Gun Task Force Surveillance

The Tactical Operations Division Gun Task Force surveillance had been planned in advance as part of the execution of a search warrant. As part of this planning, the task force anticipated that it might need to do a traffic stop on individuals leaving the target location. While East Precinct personnel were aware of task force activity at that location in the past, the task force did not alert East Precinct to their operations that day. It is a testament to the quality of the personnel and the strong training by Bureau that the East Precinct officers and supervisors were able to seamlessly slip into the necessary roles. Neither the Commander's Review and Findings nor the Training Review looked at this issue. However, it would have been preferable for the task force to have provided East Precinct with notice that they had a tactical operation in the area and might be calling on East Precinct for assistance.

Recommendation 9: Specialized units performing planned operations in a patrol area that could require assistance from patrol personnel (or could be interfered with unwittingly by patrol personnel) should alert the patrol supervisors and personnel unless there is a documented reason why such an alert could jeopardize the operation.

High Risk Traffic Stop

As the Training Review noted, the officers executed a text book high risk traffic stop. The Bureau should be commended for the level of training it is giving its officers. Two of the involved officers were in the final phase of their probationary periods with the Bureau. Nonetheless, everyone knew their roles and fulfilled them.

Three issues came out of the interviews that the Bureau may want to consider for future training. During the extraction of the occupants from the vehicle, the task force lead vehicle passenger officer ordered the passengers to lift their shirts from the collar to expose their mid-section and turn in a circle. According to another officer on scene who had recently attended the Advanced Academy, the Academy has stopped teaching this technique, but during his training at the Academy some senior officers were present and they said that they were not aware of the change in training. If there has been a tactical decision to abandon this technique, the Bureau needs to ensure that is communicated to all officers so they are not using outdated tactics or techniques that have been deemed by the Bureau to be unsafe.

Second, one of the officers on the custody team indicated that she could not hear the commands being given by the lead officers to the occupants as they were extracted from the car. Not being able to hear those commands could cause an officer to misinterpret the behavior of an occupant and react inappropriately based on that misinterpretation. The Bureau should examine whether the inability to hear the commands is an isolated problem or something broader that should be addressed.

Third, the task force officer who was the passenger in the lead vehicle indicated that he was both the primary officer issuing commands to extract the occupants from the car, and providing cover on the passenger side of the vehicle with his gun drawn and aimed at the occupants. With the number of officers present, the Bureau review process should have explored whether another officer should have been given that cover responsibility to allow the task force officer to focus on each individual he was extracting.

The Training Review noted that the Bureau should continue to be rigorous in its training for high risk traffic stops and in creating varying scenarios. We concur.

Recommendation 10: The Bureau should continue with its rigorous scenario based training, and should ensure that when it decides on a change in tactics or techniques, that change is communicated to all personnel, not just those who attend more recent training.

Use of Less Lethal Bean Bag

In his interview, one of the task force officers stated that he understands that the less lethal bean bag, as well as the Taser and the K9, can be used when a suspect fails to comply with commands. He stated they are used “to get their attention” in order to obtain compliance. Other officers on the scene heard the warning to Mr. Blackmon that if he did not comply he would be shot. This is an apparent misstatement of Bureau policy, and the Bureau should review its training to ensure that it clearly articulates the correct policy and then determine whether the officer’s misunderstanding is a widely held view that needs Bureau-wide correction.

Quality of Investigation and Review

Scope of Police Review Board Review

The review of the use of deadly force was broad, covering not just whether Officer Moore had an objectively reasonable basis to believe Mr. Blackmon posed an immediate threat of death or serious physical injury, but also whether Officer Moore was negligent or reckless in firing given the background. The Bureau should be commended for continuing to look at shooting incidents holistically.

The Police Review Board review also appropriately examined the use of less lethal force. However, neither the Training Review, Commander’s Review and Findings, nor the Review Board review touched upon the use of the K9. This is an unfortunate gap in the review of the entire incident. It is important to examine whether the K9 was used appropriately in this situation, and whether there are any lessons that can be learned from the deployment here, including from the fact that the K9 targeted the wrong individual. In addition, we have seen in other agencies situations where the mix of deadly force and a K9 results in unintended consequence.

Recommendation 11: When a K9 is used in a shooting incident, evaluation of the K9 deployment should be part of the Training Division Review, Commander's Review and Findings, and Police Review Board discussion.

Internal Affairs Investigation

The Internal Affairs investigators did a very good job in their interviews. Of specific note was the quality of their follow up questions. On multiple occasions, when an interviewee answered with a conclusory statement, the investigators followed up with questions that specifically asked the interviewee what she observed that led to her conclusion. This is an important part of obtaining a complete, informative interview, but often missed. They should be commended for this.

On a minor note, in this incident, important information that supported the conduct of the officers was broadcast over the radio. While the radio traffic is included in the file, there is no documentation that the investigators reviewed the radio traffic and found it consistent with the officers' statements. This should be expressly included in the Investigative Report.

Unprofessional Comments

During her Internal Affairs interview, one of the responding officers used the phrase "shuck and jive" to describe the conduct of Mr. Blackmon. There was no note of anyone taking any action, including simply explaining to her that that is a phrase that is certainly unprofessional, could be considered racially offensive, and should not be used. For those situations not rising to the level of a violation of policy, there should be at least an informal process for investigators to flag such issues for supervisors so that they can conduct appropriate counseling.

Commander's Review and Findings

The Commander completed his review and findings very quickly. According to Internal Affairs' internal tracking system, this took just 4 days. In the past this has been a task the Bureau has struggled to complete in a timely manner and therefore we are impressed with how promptly this one was done.

In this matter, however, only by the East Precinct Commander completed the review. There is no indication that the task force Commander was given an opportunity to review the incident or proposed findings. While it was East

Precinct personnel that used the lethal and less lethal force and were the primary targets of the review, nonetheless, task force personnel had a key role in the incident and it would have been important to have the incident critically reviewed by their command as well.

Recommendation 12: When specialized units are involved in an incident along with patrol units, both Commanders should have a role in preparing the review and findings, based on the relative level of involvement of their personnel.

Timeliness of Training Review

The Training Division Review in this case was not completed until four months after completion of the Internal Affairs investigation. The Auditor's Independent Police Review Division initially delayed its review of the investigation because the Training Review was not complete and ultimately signed off on the investigation without the benefit of Training's analysis.

We understand that at the time of these incidents, there were transitions of personnel that may have led to the confusion and issues with the assignment and completion of the Training Review. Nonetheless, even after corrections were made in the assignment of the Training Review, the completion of the Training Review was quite delayed. If issues still exist in the assignment and completion of the Training Review, the Bureau should address these.

Cooperation with Surrounding Jurisdictions

In his interview, when asked about any concerns about the incident, an involved sergeant mentioned several issues that arise when the Bureau is assisted by neighboring jurisdictions and that he thinks it would be helpful to have addressed through joint protocols, similar to the Bureau's collaboration with those jurisdictions on vehicle pursuits.

Specifically, he mentioned that when the assisting officers arrive, they do not check in on the radio like Bureau officers do. Therefore, he may not be aware of their presence or precise location and is not able to use them as effectively as if he were notified of their arrival and could direct their deployment.

In addition, he stated a concern that after Mr. Blackmon had fled, some of the assisting units from neighboring jurisdictions were pursuing him, but broadcasting their information on their radio network only, with the information then relayed to

the Bureau. This resulted in a delay of information to Bureau personnel, and also created a risk to these units because in the event of an emergency, Bureau personnel could not directly assist them. There is no apparent documentation whether the Police Review Board considered or addressed these concerns.

In addition to the areas the sergeant identified, a third area for review between the Bureau and its neighboring jurisdictions is training on high risk traffic stops. As this incident demonstrates, Bureau personnel are so highly trained in high risk traffic stops, that everyone knows their role and the standard procedure. However, this also means that if other jurisdictions are assisting, they need to have the same level of understanding of roles and the procedure.

Recommendation 13: The Bureau should review critical incidents with neighboring jurisdictions and attempt to develop universal procedures and best practices for assisting units to alert the handling jurisdiction that they have arrived to assist, as well as radio communication protocols to ensure the most timely and complete sharing of information and to advance principles of officer safety.

July 28, 2012 • Billy Wayne Simms

Just after noon on the date of the incident Police Bureau officers in East Precinct responded to two related calls involving suspects with a gun, one involving shots being fired. They received a description of the suspects and the car they were driving. They broadcast this information on the East Precinct radio frequency. They subsequently learned that the car was a rental car and was outfitted with GPS. Through the rental car agency, the East Precinct sergeant was able to obtain the location of the car as it traveled through Portland and into the North Precinct area.

The East Precinct sergeant then sought assistance from North Precinct officers to locate the vehicle, informing them over North's radio frequency that it had been involved in a shooting incident. During the course of the search for the vehicle, the East Precinct sergeant also broadcast that at the scene in East Precinct, they had recovered a gun magazine. A North Precinct officer accepted the assignment. A second officer responded that he would assist. Three additional North Precinct officers and a North Precinct sergeant also joined the search for the vehicle.

The East Precinct sergeant used the North Precinct radio frequency, to broadcast the changing location of the vehicle as it was being provided by the rental car company's GPS system. He provided several locations, but when the officers arrived, the car was no longer there, or before they could arrive a new location was provided. Finally, the East Precinct sergeant informed the North Precinct officers that the GPS had the car located at 6840 N. Fessenden Street. The officers confirmed from personal knowledge that this was a 7-11 store next to a gas station at "Six Points," a busy intersection.

The second officer to respond that he would assist was the first to arrive at the 7-11 store. He pulled into the parking lot in view of the store. Once in the parking lot, he confirmed the vehicle was parked in front of the 7-11 store, facing west towards the store. He transmitted over the radio that he had located the vehicle at the 7-11. The car was unoccupied, but the officer saw two males inside the 7-11 whom he believed to be the suspects. He asked over the radio for a description of the suspects. As the two males began to exit the store, a suspect description was provided that matched one of the males, the driver.

In the meantime, the officer who had been first to accept the assignment arrived and parked near the apron to the 7-11 parking lot a small distance behind (north) of where the first arriving officer was parked. The second arriving officer

approached the first arriving officer briefly and then returned to his car. Officer Justin Clary arrived and parked on Fessenden, just west of the 7-11, as did the other two North Precinct officers who had joined the search. Officer Clary armed himself with his AR-15 rifle because of the information that they were dealing with an armed suspect. Officer Clary and the other two officers who parked on Fessenden walked east into the 7-11 parking lot to get a view of the car and the inside of the 7-11. In the meantime, the North Precinct sergeant who had joined the search had also arrived and parked to the east of the 7-11, near the Shell gas pumps.

The two males that the first arriving officer had seen previously then exited the 7-11 and headed towards the suspect vehicle. Officer Clary and the two officers walking with him from Fessenden immediately challenged the males with verbal commands to stop and put their hands up. The passenger turned and started walking away from the vehicle and stopped. The driver, Billy Wayne Simms, continued walking to the vehicle, got in, and started the engine. When Mr. Simms started the engine, the officer who had arrived first and was parked in the parking lot drove his car forward to box him in. Mr. Simms drove in reverse towards the officer's car, and then drove forward over the cement parking stops onto the sidewalk of the 7-11. He then turned the car northbound and continued driving.

Officer Clary was continuing to shout commands from the position in the 7-11 parking lot he had walked to while trying to glimpse inside the 7-11. He was north and slightly east of Mr. Simms's car, on the passenger side. Officer Clary watched Mr. Simms through the open front passenger window. Officer Clary observed Mr. Simms making a motion that he interpreted as Mr. Simms digging around under the front seat to find something, while Mr. Simms maintained constant eye contact with Officer Clary. Officer Clary believed Mr. Simms was arming himself. Officer Clary then observed Mr. Simms begin to raise his right arm toward Officer Clary, and believing that Mr. Simms was about to shoot him or another officer, Officer Clary brought his AR-15 up to aim, and fired six times. Officer Clary stated that once he raised the AR-15 to aim it, his ability to see Mr. Simms's hand was limited.

Mr. Simms's car continued northbound after Officer Clary shot, crossing Fessenden and crashing into an apartment building across the street from the 7-11. Officer Clary and the North Precinct sergeant continued across the street to cover the vehicle. As responding officers arrived, a perimeter was established around the block with the apartment building. A second North Precinct sergeant

responded and took command of the incident because the first North Precinct sergeant had been a witness to the shooting. The two North Precinct sergeants discussed the location of the vehicle and the inability to safely obtain a vantage point from which they could ascertain Mr. Simms's condition, including whether Mr. Simms was still in the vehicle or had moved into the apartment. Not knowing if Mr. Simms was still mobile and not seeing a safe way to approach, the two North Precinct sergeants agreed that it was too dangerous for the officers to approach the vehicle, and the second North Precinct sergeant, who had assumed command, requested the Special Emergency Reaction Team (SERT). SERT responded and cleared the vehicle, finding Mr. Simms in the driver's seat, deceased.

When Mr. Simms was removed from the car, a .22 caliber handgun was found tucked in the back of his waistband, missing its magazine.

The post mortem examination found six gunshot entrance wounds that perforated the right lung, the left lung, the diaphragm and the liver, and damaged the pulmonary trunk and ascending aorta. The examiner found that more than one of these gunshot wounds was fatal.

A Multnomah County Grand Jury met on August 9 and 10, 2012, just under two weeks after the incident, and determined that Officer Clary had no criminal liability for Mr. Simms's death.

Timeline of Investigation and Review

7/28/2012	Date of Incident
8/10/2012	Grand Jury concluded
10/31/2012	Internal Affairs Investigation completed
1/24/2013	Training Division Review completed
3/5/2013	Commander's Findings completed
5/10/2013	Police Review Board convened

Analysis/Issues Presented

Tactical Planning

The Training Review evaluated several of the decision points in this incident, noting most were handled appropriately, including:

- North Precinct sergeant's and multiple officers' decisions to join in the search for the vehicle to ensure numerical superiority;
- Officer Clary and the two other officers adapting to the situation and moving to be part of a cover and arrest team after observing the other officers on scene even though there was no articulated plan;
- Attempt by the officers to issue commands and exert control when the suspects exited the 7-11;
- Moving out of the way of Mr. Simms's vehicle as he drove away; and
- Calling SERT when it was concluded that there was no safe approach to Mr. Simms's vehicle.

The Training Review concluded, however, that there was the lack of a plan and leader for the incident, and the location and backstop for the attempt to take Mr. Simms into custody were "least desirable."

The Commander's Review and Findings concurred that the backstop was less than desirable and that Officer Clary's use of deadly force should be found to be in policy, with a debrief on the issue of the backstop. The Commander's Review and Findings also found that the officers should be debriefed on their tactical planning before the incident, and that the conduct of the sergeant who participated in the search for the vehicle should be found to be out of policy for not directing the units while searching for the suspect vehicle and not formulating and communicating a plan to take the suspects into custody.

The Commander's Review and Findings analysis of the tactical planning before the incident provides a sufficient explanation of the analysis of the sergeant's performance to understand fully the basis for finding it out of policy. The Commander quotes from the Training Review analysis that found that, "No one took charge or directed appropriate action." While the officers are looking for the vehicle, "at no time did the primary officer or sergeant suggest what should be done if they found the vehicle. A basic plan articulated over the radio would be more ideal" The Commander explained that the sergeant who participated in the search had clear ownership of the incident not only because he was actively

involved, but also because he was the sergeant assigned to that geographic area of responsibility. The Commander faulted him because rather than taking the opportunity to direct officers on possible tactical solutions, “he allowed the units to think independently and stated ‘At that point I was confident that they were able to manage it.’” The Commander found that this omission violated the Bureau’s Fundamental Concepts of Tactics: (1) Have a Leader, (2) Have a Plan, (3) Be Adaptable, (4) Don’t Assume, (5) Communicate, (6) Correct Mistakes. He concluded that the sergeant “missed the opportunity to direct units during the search of [sic] the suspect vehicle to several possible tactical solutions and, once on scene at the store, to develop a plan and communicate the plan. Sergeant . . . was unable to grasp the situational awareness in order to provide basic direction and defaulted to a ‘rapidly evolving event.’”

However, the analysis of the performance of the other officers that merited debriefing is absent. The Training Review pointed out that none of the officers “took charge or directed appropriate action.” No one suggested what they should do if they found the vehicle. The Training Review found that not having a plan resulted in two different deployment strategies, with two cars parking out of sight for an invisible deployment and two pulling into the lot to use their cars for cover. The Commander’s Review and Findings sets forth the facts regarding the conduct of the officers, but only quotes portions of the Training Review when discussing the sergeant. It does not provide an analysis of the officers’ conduct nor a clear, specific statement identifying the portions of their conduct that should have been different. An explicit critique of their performance would improve the value of the findings.

Having a clear statement of the Commander’s analysis is especially important because the Police Review Board did not recommend any debrief of the officers on the lack of tactical planning or leadership before the incident. Rather, after a discussion of the issues of lack of planning and the difficulty of planning with so many unknown factors, and after the suggestion of debriefing the officers as a team, the Review Board did not require any debrief on these topics. Instead, the Review Board found that all officers should receive a debrief on the choice of location to initiate contact, specifically referencing that it was in front of a store front during business hours.

The Review Board removed the recommendation for a debrief of Officer Clary on the issue of the backstop on his use of deadly force, because they found he was aware of and took the backstop into account.

The Review Board did find the sergeant's conduct was out of policy on the operational planning and supervision and recommended that he receive command counseling.

The Police Review Board's Findings and Recommendations memorandum, provides a summary of the discussion and some clues about possible reasons, but it does not clearly set forth why the Review Board limited the areas for the debrief of the officers from the broader issues raised in the Training Review to merely the location of the contact and backstop. While this was a fluid, rapidly evolving situation, the officers did miss opportunities during the search for the vehicle to establish a leader, to develop at least a tentative plan of action, and to better communicate with each other.

Recommendation 14: The Commander's Review and Findings and Police Review Board should clearly explain the bases for their conclusions, and where a debrief is suggested on tactical concerns, should ensure that all potential areas are covered.

Decision to Deploy AR-15

The Training Review did not evaluate whether Officer Clary's decision to arm himself with the AR-15 was an appropriate choice in this scenario, or whether, once armed with the AR-15, it was appropriate to approach and challenge the suspects or whether he instead should have moved to cover. Given that the choice potentially limited his options, it would have been appropriate for the Training Review to include this in its decision point analysis.

When choosing a weapon, officers have to balance various pros and cons. At least one officer on scene believed that if a suspect is armed, the responding officers are always required to have a shotgun or AR-15 deployed. Bureau policy or training, however, does not mandate this. A Training Review of this decision could have benefited Bureau officers with a better understanding of the factors to consider in deciding whether to deploy an AR-15. More importantly, the fact that a responding officer misunderstood the expectations of the Bureau regarding deployment of an AR-15 suggests that Training should have evaluated whether this points to a need to re-train this officer in particular or a broader need for a Bureau-wide briefing or training.

Recommendation 15: Whenever an officer makes a choice between weapons to deploy, the Training Review should include analysis of that choice.

Recommendation 16: Whenever an investigation into a critical incident reveals that a Bureau member is not fully aware of policy or training doctrine, Training should evaluate whether that officer's misunderstanding signals a broader need for a Bureau-wide briefing or training.

Decision to Block in Suspects' Car

The first officer on scene articulated clearly his reasons for blocking in Mr. Simms's car – he is concerned that any danger from confronting Mr. Simms at this location is much less than the danger of allowing him to leave the location and engage in a subsequent pursuit. A number of the officers echoed these concerns about allowing Mr. Simms to drive away, specifically mentioning the erratic driving already reported about this vehicle. Blocking a vehicle, however, is inherently dangerous. In this situation it was made more dangerous by the location in front of an open business and the belief that there was an armed suspect in the car.

The Training Review, however, does not identify this important decision point in its analysis. The Bureau, and specifically the involved officers and supervisors could benefit from a training analysis of this decision that explains the factors to be considered in such a decision.

Training to Deploy Ballistic Shield

Both North Precinct sergeants who were on scene – both of whom had recently transferred to patrol assignments – stated they had never been trained in the use of the ballistic shield and that their lack of comfort with the shield and whether it could effectively protect officers contributed to their decision not to approach Mr. Simms's car or the apartment and to instead ask SERT to respond to perform these tasks. The Commander's Review and Findings noted that the Bureau needs to develop a protocol to ensure that supervisors have all appropriate training when they transfer positions. The Police Review Board Findings and Recommendations memorandum recommends that the Bureau develop such a protocol. We concur.

Critical Incident Management Course for Supervisors

The Commander's Review and Findings noted that neither North Precinct sergeant who was on scene had attended the Critical Incident Management course before transferring to patrol supervision responsibilities. The Commander recommended that Bureau review personnel as they transfer to new assignments to make sure they have the requisite training. The Police Review Board Findings and Recommendations memorandum recommends that the Bureau develop such a protocol. We concur.

Recommendation 17: The Bureau should review training for supervisors periodically, and when they transfer substantive assignments should ensure they have received all relevant training.

Quality of Investigation and Review

Internal Affairs Interview of Involved Officer

Officer Clary declined to provide an on-scene walk through or statement to Detectives on the date of the incident. He provided a statement to Internal Affairs investigators four days later on August 1, 2012. As we have stated repeatedly, this four-day delay is longer than ideal.

Internal Affairs Investigators' Interviews of Officers

The quality of the interviews conducted by the Internal Affairs investigators was, for the most part, good. Substantively they covered the requisite areas thoroughly. However, the interview technique was inconsistent. Most of the time the investigators were very careful to ask appropriate follow up questions. There were times, however, when they missed follow up questions and left ambiguities. In most of the interviews, the investigators' questions were simple and open, but on too many occasions, the investigators fell into the trap of asking overly complicated, compound questions where the investigators recited the facts as they understood them from other parts of the investigation, instead of allowing the interviewees to first provide the facts.

There was one point in his interview where the sergeant was part way through telling his recollection of the events when he was asked a very specific question about whether something happened immediately after the shooting. Instead of responding to the closed question, he stated to the investigators: "Maybe I should

continue the story.” And then continued based on his recollection of what occurred.

There were also a handful of questions where the investigators’ questions were leading and appeared to be providing the interviewee with an acceptable, in-policy, explanation for the decision made. To the credit of many of the interviewees, they did not just accept the answers provided them, but tried to honestly answer the questions based on their rationales for making the decisions they made.

It does not appear that the investigators asked the compound, closed, and sometimes leading questions for any improper purpose. Further, it is clear from all the interviews that these investigators do know how to properly formulate their questions. Therefore, it would be beneficial for them to receive feedback from their supervisors and to self-critique their questioning technique to help them be more vigilant to avoid this in the future.

One other issue that arose in the interviews was that the Internal Affairs investigators repeatedly ask the involved officers what their “probable cause” was for stopping Mr. Simms. One officer appropriately corrected them in his answer describing his “reasonable suspicion.” While this is a minor point, it is important that investigators use the proper terms because officers may mistakenly infer from a question about probable cause that they needed probable cause and then either feel pressure to overstate their suspicion, or be wrongly concerned they violated policy.

Recommendation 18: Internal Affairs supervisors, the Police Review Board, and anyone else reviewing the investigation should be vigilant in reviewing interviews not just to ensure coverage of all relevant subjects but also to monitor the form of the questions asked and to remind investigators to avoid compound, closed, and leading questions.

Timeliness of Training Review

The Training Division Review in this case was not completed until three months after completion of the Internal Affairs investigation. As we stated above, there were transitions of personnel that may have led to the confusion and issues with the assignment and completion of the Training Review. If issues still exist in the assignment and completion of the Training Review, the Bureau should address these.

Issues Raised by Involved Personnel

During the interviews by Internal Affairs and in after action reports, participants in the incident raised several systemic concerns. It is commendable that the investigators and Bureau procedures allow opportunities for participants to provide their input. With one exception, however, there is no indication whether the Review Board or another mechanism within the Bureau evaluated those concerns or implemented remedies when appropriate.

In his after action report, the North Precinct sergeant who took command of the incident after the shooting noted that the second suspect had been placed in a patrol car after he was arrested, but then that patrol car was used as cover for officers watching Mr. Simms's car. He noted that this suspect should have been moved to a safer location. This appears to be an appropriate topic for a debrief of the participants, however, there is no indication any of the officers received a debrief on this subject.

This sergeant further noted that the command post was difficult to reach for responding units and that the directions to reach it were confusing. This caused interruptions in his efforts to fulfill his responsibilities after the shooting because he and other officers on scene were distracted by the need to respond to requests to clarify how to reach the command post. He indicated this hindered his performance.

In his interview, the North Precinct sergeant who arrived first and was present for the shooting raised concerns about the difficulty of obtaining information from the Mobile Data Computer about the prior, related incidents in the East Precinct for which they were searching for Mr. Simms.

In another interview, one of the involved officers mentioned that a high level City official had come to the scene and was within the crime scene taking pictures. The officer felt there needed to be proper protocols for ensuring the integrity of the crime scene and that only appropriate personnel enter and document it.

In the Commander's Review and Findings, the Commander raised concerns, as mentioned above, about the lack of training of supervisors in critical incident management and in the use of ballistic shields, and the need for the Bureau to better ensure all supervisors have appropriate training. The North Precinct sergeant who took command after the incident mentioned in his interview that he

had not dealt with a situation like this recently and so as he was running the post-incident response, he was feeling “rusty.”

All of these are valid critiques and concerns worthy, at least, of further discussion. Except for the issues of reviewing training when personnel are moved to new assignments, there is no indication that the Bureau or the Police Review Board addressed any of them.

Recommendation 19: The Bureau should develop some mechanism to ensure that any systemic concern raised by a participant during the investigation or in after action reports is evaluated to determine whether or how to address it.

Surveillance Video of Shooting

As mentioned above in the discussion of Moffett, best investigative practices dictate that in order to obtain a pure statement of the officer’s state of mind and his or her own memory, it is imperative that officers provide a statement prior to watching any surveillance video. In this case, consistent with those practices, Officer Clary was not shown the video from the 7-11 surveillance cameras until after he had provided his independent recollection. In addition, investigators handled the video issue very well. They showed it to the officer in a non-confrontational way, allowing Officer Clary to offer comments, but not forcing him to feel defensive about differences. There were a few points in Officer Clary’s recollection that differed from the video, including how far south he had moved in the parking lot and where the car was relative to the windows of the 7-11 when he fired. When asked about the car being in front of the 7-11 windows when he fired, he simply explained that he thought he had described his perception as best he could. The video also jogged Officer Clary’s memory that he had considered the AR-15 to be a superior weapon in that situation because it minimized potential risk of over-penetration and striking the backdrop. The Internal Affairs investigators should be commended for using the video responsibly, promoting a culture that allows officers to feel confident in explaining their perception, and not fueling the fears that video will be used for “gotcha” games.

August 21, 2012 • Michael Tate

Portland Police detective Travis Fields was assigned to the U.S. Marshals Service Fugitive Apprehension Task Force where he served with members of other law enforcement agencies with the goal of locating and apprehending high risk violent offenders throughout the state. Michael Tate was the subject of an arrest warrant for felony domestic violence related offenses in Beaverton, as well as a warrant for probation violation. Following the domestic violence incident, he had cut off his GPS monitoring anklet that he was required to wear as a condition of his probation.

Detective Fields was working with a Washington County Sheriff's Office detective, who was the primary case officer assigned to Mr. Tate's apprehension. The Sheriff's detective had developed information that Tate may be staying in an apartment in Aloha, in Washington County, that had at one time been rented to Tate's aunt. A total of six officers watched the apartment for several hours to see if they could spot Mr. Tate through a window, or perhaps coming out or going in, but only could see a single female occupant moving about the apartment. Rather than continue to expend resources watching the apartment based on what seemed to be speculative information, Detective Fields and the Sheriff's detective decided to go knock on the door.

They opted for a low key approach with just two officers, because they needed the occupant's consent to enter the residence¹⁸ and a show of great police force can be intimidating and negate consent. The officers discussed, via radio from their various positions around the apartment building, plans for various contingencies, the most likely of which was that the female occupant would not let them in but may give them some indication through her body language or other response whether she had any connection to Mr. Tate. In that event, the detectives' plan was for one of them to drive away while the others continued to watch the location for additional movement. Getting the female occupant's consent to their entry and then finding Mr. Tate in the apartment was not considered to be a likely scenario. Nonetheless, when they knocked on the door, a woman answered and when they asked if Michael Tate was there, she let them in and indicated he was in the living room.

¹⁸ Though they had an arrest warrant for Mr. Tate, they would have needed a warrant to enter the apartment absent consent, because the apartment was not Mr. Tate's primary residence.

Mr. Tate was sitting on the couch and Detective Fields interpreted his demeanor to indicate that he was just going to give up. He stood up when the detectives asked him to, and then turned as though he was cooperating with being handcuffed. But then he spun to the opposite side of the couch and, according to Detective Fields, began digging in his pocket as he looked over his shoulder at the Sheriff's detective. Detective Fields then saw him pull a black object out of his pocket and yelled, "gun." He believed Mr. Tate was holding a small caliber handgun, though he could see just a small portion of something black protruding from Tate's hand. He then recalled seeing Mr. Tate raise the object up toward his eye as if he were lining up sights, acquiring a target, and turned his hand sideways, as if he were going to shoot in what he described as "gangster style." Detective Fields fired his weapon two times, missing both. Mr. Tate fled through the third-story apartment and jumped out the bedroom window. Though he was not struck by either of Detective Fields' bullets, he suffered significant injuries from the fall. Detectives staged outside quickly secured Mr. Tate and summoned medical personnel, who arrived promptly and transported him to the hospital.

Detectives found a black cell phone near where Mr. Tate had fallen. They searched the apartment but did not find a gun.

Investigators located both of Detective Fields' spent rounds. The first bullet passed through the dining room wall and into the adjacent apartment, through the dining area of that apartment, out the window and into an exterior balcony wall. No one in that apartment was impacted. The second bullet lodged in a wall of the apartment where they located Mr. Tate, near the doorway into the kitchen. The female occupant was in the kitchen at the time of the shooting.

The woman who lived in the apartment was Tate's cousin. She spoke with Sheriff's Department detectives as well as Bureau Internal Affairs investigators. She reported that Mr. Tate had arrived at her apartment earlier that day, upset and crying. He told her he had been in a fight with someone and then cut off his ankle bracelet because he did not want to go back to prison. He said that if police came looking for him he was going to act like he had a gun so they would shoot him because he wanted to die. She said he did not have a gun. She was getting ready for work when detectives knocked on her door, and said when interviewed that she had planned to call police when she got to work and tell them that Mr. Tate was in her apartment. She was in the kitchen when detectives confronted Tate in the living room. She heard a scuffle followed by gunshots but did not witness the shooting.

The Washington County District Attorney's office reviewed the investigation and determined there was no evidence of any criminal wrongdoing by Detective Fields and therefore no need to present evidence to a grand jury. The Bureau concluded the use of deadly force was within policy.

Timeline of Investigation and Review

8/21/2012	Date of Incident
10/17/2012	Washington County Sheriff's Office Detectives' Investigation completed
12/19/2012	Internal Affairs Investigation completed
1/29/2013	Training Division Review completed
3/22/2013	Commander's Findings completed
5/15/2013	Police Review Board convened

Analysis/Issues Presented

Tactical Planning

The detectives charged with apprehending Mr. Tate did not expect to gain consent to enter the apartment and actually find Mr. Tate there. Detective Fields described this as a very unusual experience and Mr. Tate's cousin's casual attitude about letting them in the door as surprising. The team of detectives had contingency plans for other, more likely scenarios, but no plan for how they would take Mr. Tate into custody if they found him in the apartment. Despite the fact that the mission of the task force is to locate and apprehend high risk violent offenders, Detective Fields stated they believed that Mr. Tate would just go with them willingly once they found him. Both Detective Fields and his Sheriff's Department partner said the low-key approach they employed with Mr. Tate often worked in getting suspects to accede to handcuffing and arrest. The cooperation and nonchalant attitude of Mr. Tate's cousin when she answered the door coupled with Mr. Tate's initial compliance and apparent calm confirmed this belief and further lulled them into thinking they could apprehend Mr. Tate without incident.

The Commander who reviewed this investigation and prepared the Commander's Review and Findings in this case recognized the dangers of this laid-back approach to arresting a high risk offender and did an excellent job of analyzing and evaluating the evidence he had and identifying ways that the detectives could have improved their performance to create a better outcome. For example, rather than just walking past Tate's cousin when she waved them into the apartment, they could have questioned her about weapons or Mr. Tate's state of mind, and perhaps elicited the information she later shared about Tate's plan to provoke officers into shooting him. The Commander also noted that the detectives could have used a greater degree of command presence when approaching Mr. Tate, physically putting hands on him to gain control rather than simply asking him to comply and giving him the opportunity to flee.

One issue not addressed by either Training or the Commander is the location of Mr. Tate's cousin. The detectives were not aware of her whereabouts and did not direct her to any location until after the shooting. For her safety and the safety of the officers, a better practice would have been to ask her to exit the apartment and to direct officers outside to approach and keep her secure while the detectives apprehended Mr. Tate.

Threat Recognition and Backdrop

Detective Fields described in great detail Mr. Tate's hand movements and his own thought process for identifying and responding to the perceived threat. As we have often heard officers describe when recounting their involvement in a shooting, Detective Fields said everything slowed down for him. He remembered thinking that he wanted to be able to positively identify the black object in Mr. Tate's hand as a gun, but could just see a small portion of it. When Mr. Tate raised the object to his eye level, Detective Fields recalled thinking that it would not make sense for a person to do that with any object other than a gun when confronting police officers who want to arrest him. That motion by Mr. Tate is what prompted the detective to fire his weapon, and was consistent with the statements Mr. Tate made to his cousin earlier that day about his intent to provoke officers into shooting him.

Detective Fields described the backdrop for this shooting as an exterior wall that faced an open field, for the first round, and the apartment's kitchen and possibly the refrigerator, for the second round. That was a misperception, as in reality his first round passed through a wall and into and through the adjoining apartment. The second round entered the wall near the doorway to the kitchen. Fortunately,

no one was present in the adjacent apartment at the time of the shooting, and no bullets impacted Mr. Tate's cousin, who was in the kitchen. Detective Fields' perception of his backdrop was addressed by the Commander in his findings memo, and his misjudgment is worth noting. However, as the Commander further noted, a poor backdrop should not preclude an officer from using deadly force when confronted with a serious or deadly threat.

Quality of Investigation and Review

Sheriff's Department Detectives Completed Criminal Investigation

A Memorandum of Understanding between the Police Bureau and the U.S. Marshals Service establishes the terms of Bureau detectives' participation in the Fugitive Apprehension Task Force. It provides that members shall comply with their own agency's use of force policies and, in the event of a shooting, the incident be investigated by the responsible agency in the jurisdiction of the shooting. In this case, the appropriate investigating body was the Washington County Sheriff's Office Major Crimes Team. Bureau officials were notified of the shooting and responded to the scene, but otherwise stood down as the Sheriff's Department completed a criminal investigation of the shooting and presented the evidence to the Washington County District Attorney.

The criminal investigation generally meets basic standards – the scene was thoroughly processed, searched, and documented; civilian witnesses were interviewed, including Mr. Tate's family members who might have knowledge of his mental state; evidence was handled properly; and investigators completed a thorough interview of Detective Fields.¹⁹ One very significant shortcoming of the Sheriff's Department investigation, however, was the failure to interview the Sheriff's detective present at the time of shooting. He produced a written report at the time of the incident, but was asked to answer questions about his actions

¹⁹ Pursuant to Bureau protocol, the Bureau Internal Affairs Captain served Detective Fields on the day of the shooting with a notice to appear for a compelled interview 48 hours later. Internal Affairs rescinded that notice when Detective Fields consented to a voluntary interview with a Sheriff's detective and a Beaverton Police Department detective that was conducted two days after the shooting.

and observations only when interviewed by the Bureau's Internal Affairs investigators, four months later.²⁰

One other, less significant, way we found the Sheriff's Department investigation to be below the standard we have come to expect of the Bureau Detectives Division is in the lack of transcriptions of the interviews with Mr. Tate's cousin or of Sheriff's Department contacts with Mr. Tate. Those contacts were recorded, but as we and other consultants have noted in the past, a transcription increases the likelihood that those responsible for a Department's executive-level review will thoroughly review all the relevant materials without relying on investigator's synopses.

Police Bureau Internal Affairs Investigation

The Bureau's Internal Affairs investigation was largely thorough and complete. It pulled together all the materials collected in the Sheriff's Department investigation, and filled the significant gap in that case by including an interview of the Sheriff's detective who led the task force team responsible for apprehending Mr. Tate and was present in the apartment during the officer-involved shooting. This interview was conducted by telephone, which we have noted in the past to be less than ideal. Here, however, the investigator articulated his reasons for doing a telephonic interview as his belief that an in-person interview would not have resulted in any more detailed information, particularly given that he did not need to reference diagrams or other visual cues in his questions. In addition, he noted the time pressure he was under to finish his report was a factor in his decision. In this articulation, the investigator implicitly acknowledges that in-person interviews are generally preferable, and we do not disagree.

Internal Affairs investigators did not attempt to interview Mr. Tate because he was represented by counsel and remained in Washington County jail awaiting trial. Mr. Tate had been largely uncooperative with Sheriff's detectives. We appreciate the investigator's justification for not attempting to speak with Mr. Tate, as well as his thorough documentation of his reasoning, but nonetheless believe an attempt to interview Mr. Tate could have been worthwhile. By the time of the investigation, significant time had passed since Mr. Tate's arrest. In

²⁰ A police report can never substitute for a full blown interview that allows for follow up questions and in which the area of inquiry is dictated by the investigator, not the report writer.

addition, Mr. Tate might have appreciated the difference between an Internal Affairs investigator from an agency outside the jurisdiction in which he had been arrested and a Major Crimes detective from the county in which he was incarcerated. Particularly given the extent to which the Bureau's understanding of how and why Detective Fields' formed the impression that a cell phone was a handgun hinged on Mr. Tate's statements to his cousin about wanting to provoke police to shoot him, an interview of Tate could have been particularly valuable. Ideally, investigators should have attempted to make this contact through Mr. Tate's attorney and documented any refusal to participate.

Thorough Review by Bureau Commander

The Commander's findings memorandum in this case was particularly detailed, thorough, and well-reasoned. While ultimately concluding that Detective Fields' use of deadly force and surrounding actions were not out of policy, the memorandum expresses concerns about the operational planning, some aspects of the detective's performance, as well as the supervision and operation of the Task Force in general. In particular, the memorandum discusses:

- Lack of specific planning for the possibility that Mr. Tate might be in the apartment.
- Failure to attempt to gather information regarding guns or Mr. Tate from Mr. Tate's cousin as the detectives entered the apartment.
- Failure to immediately assert physical control over Mr. Tate upon entry into the living room.
- Detective Fields' backdrop for shooting.
- Need for greater level of field supervision for U.S. Marshal's Fugitive Task Force.

The Commander addressed these issues in a documented debrief of Detective Fields after the Review Board meeting.

Training Division Review

The Training Division Review was not as rigorous as the Commander's findings memo. In an analysis that was shorter than the Division's typical reviews, Training found all aspects of this incident – planning, making contact, use of deadly force, and post-shooting processes – to be “desirable,” meaning that the “actions demonstrate sound and effective tactics.” The review did not address Detective Fields' backdrop or the presence of the cousin inside the apartment at

the time of the shooting, and did not acknowledge or discuss the tactical deficiencies noted by the Commander.

September 29, 2012 • Joshua Baker

On the date of the incident, East Precinct officers responded to a call for a welfare check from a woman who indicated that she and her boyfriend, identified as Joshua Baker, had gotten into an argument and that after she left their apartment she had heard a gunshot. As officers began to arrive and stage outside the apartment, the woman, who was still in the apartment building, additionally reported that she had heard a second gunshot. Shortly thereafter, dispatch received a 911 call from an unidentified male indicating that he was armed with a .22 caliber rifle and that he was “homicidal” and “suicidal.” Communications was able to trace this call to the same apartment building.

The woman subsequently reported that she observed Mr. Baker leave the apartment building carrying a rifle and enter his truck. Officers observed a vehicle matching the description provided by the woman and began to follow the truck. As they were following the truck, additional information was received and broadcast to responding units that a man had been shot in the chest in the same apartment building. At that time the on-scene sergeant in charge decided that he would conduct a high risk felony stop on the vehicle and prepared to tactically engage the suspect with other officers following behind. The vehicle momentarily stopped but then sped away at a high rate of speed. The sergeant allowed marked units to pass him as the lead cars in the subsequent vehicle pursuit while he visually monitored the chase. Officer Gary Britt drove the lead vehicle in the pursuit, and was accompanied by his partner, Officer Eric Strohmeyer.

During the pursuit, speeds reached an estimated 90 miles per hour with Mr. Baker speeding through several red lights, and at some point officers lost sight of the truck. As Officers Strohmeyer and Britt attempted to locate the vehicle, they began to enter a “T” intersection when they observed the vehicle they had been pursuing had apparently crashed into a fence. Immediately thereafter, the officers saw Mr. Baker get out of the truck in front of them carrying a rifle. Without having time to exit their patrol car, Officer Britt then fired 10 rounds from his handgun while Officer Strohmeyer fired 7 rounds from his AR-15 rifle that he had already been holding during the pursuit. Mr. Baker fell to the ground in a seated position with the rifle nearby. The involved officers reported that they believed the suspect had been struck by their gunfire.

As other officers and the sergeant arrived, responding officers instructed Mr. Baker to move away from the rifle so that they could have paramedics treat his

injuries. Baker declined to cooperate. Instead, he sat by the car sending text messages from his cell phone and at one point climbed into his truck and turned on the radio. The sergeant requested that the Special Emergency Reaction Team (SERT) be activated, and that team arrived approximately one hour after they were contacted and took Mr. Baker into custody without further incident. Mr. Baker was transported to the hospital where he was treated for the serious but non-life threatening head injury that he suffered as a result of being struck by one of the rounds fired by the officers. A further investigation revealed that Mr. Baker had in fact shot an individual at the apartment building and he was charged with attempted murder.

Mr. Baker was interviewed about the incident and indicated that he had grabbed his rifle immediately after crashing his vehicle and had hoped that the police would shoot him as a result of his actions. While Mr. Baker admitted that the rifle was pointing towards the street, he indicated that he had no intention of shooting the police and would not have had the capability of doing so because the rifle was in a protective sock that would have prevented him from operating the trigger mechanism. Mr. Baker's rifle was operational and loaded with ammunition, but covered with a protective sock.

The Bureau found the use of deadly force by the officers and the preceding vehicle pursuit were within policy.

Timeline of Investigation and Review

9/29/2012	Date of Incident
11/19/2012	Internal Affairs investigation completed
1/29/2013	Training Division Review completed
3/6/2013	Commander's Findings completed
5/15/2013	Police Review Board convened

Analysis/Issues Presented

Tactical Issues Not Addressed

The Training Division Review in this case is entirely complimentary and contains no criticism or reflection on how officer or supervisory decision-making might have been better. We agree that much of the tactical decision making and performance here was exemplary:

- Careful staging of the responding officers,
- Sergeant's instruction at the initial staging point to ensure that the responding officers were behind cover,
- Decision whether and when to conduct a high risk stop,
- Sergeant's decision to allow marked units to be lead in the pursuit,
- Sergeant's request for spike strips with the caution to keep distance because the suspect was armed,
- Sergeant's request to evacuate houses behind the truck.

Nonetheless, it is the rare deadly force incident that does not allow for helpful critique and introspection, regardless of whether the decision to use deadly force was within policy. In this case, the following issues could have been identified and more fully addressed during the Bureau's analytical review:

- **The decision by the sergeant to be involved in the high risk felony stop.** The Training analysis appropriately commends the sergeant for his decision to allow marked units to lead the pursuit once Mr. Baker drove away at a high rate of speed. Bureau tactics and policy prefer that marked units are tactically involved in vehicle pursuits and that any on-scene supervisor follows to manage the pursuit. However, prior to that, as Baker pulled out of the parking lot, the sergeant was the first to follow. While other marked units came behind him, the sergeant was involved in trying to confirm the license number and was the first to initiate the high risk felony stop. The Training analysis does not discuss whether it would have been preferable for the sergeant to have assigned these tasks to other officers on scene and for him to supervise and manage them, as he did when the incident transitioned to a vehicle pursuit.
- **The initial encounter in the intersection with Mr. Baker and the involved officers.** As indicated above, when the officers entered the intersection, they immediately saw the crashed vehicle and observed Mr. Baker come out of it with a firearm. From their narrative, it appears that

the immediacy of the threat presented caused them to believe that they needed to respond with deadly force. However, neither the Detectives nor Internal Affairs interviewers directly asked the officers whether they could have taken other action, such as tactically repositioning. Nor were the officers directly asked whether their speed while looking for the suspect caused them to end up too close to the crashed vehicle. Ultimately, the Bureau could well have concluded that the officers had no viable options other than the use of deadly force. However, fully probing the officers' states of mind by asking such questions and considering potential options would have produced a more robust and critical analysis of the incident.

- **The sergeant's entry into the intersection.** The sergeant indicated that he came upon the crash scene within moments after the use of deadly force. Responding officers stated they were concerned about the fact the sergeant stopped his car past their positions and too close to the suspect, who they still considered a threat, so much so that they asked the sergeant to back up and/or reposition to where they were. However, the Training analysis neither discusses nor critiques this issue.²¹
- **The decision by the sergeant to keep the shooter officers in lead tactical positions.** While officers waited for SERT to arrive to take Mr. Baker into custody, the sergeant decided to keep Officers Strohmeyer and Britt engaged in the incident, with Officer Strohmeyer designated to use lethal force and Officer Britt designated as the less lethal officer. He stated he did so because Strohmeyer was armed with the AR-15 and well-equipped should the suspect attempt to re-arm himself and aggress the officers. Investigators learned that the sergeant told the officers he was not going to pull them out and instead instructed them to "stay in the fight" since they were in "combat mode." According to the officers' interviews, they remained on point until the SERT team arrived, approximately one hour later.

The sergeant's decision to keep the shooter officers engaged as cover officers was certainly worthy of discussion, analysis, and critique. Officer-involved shooting protocols instruct field supervisors to pull shooter officers out of tactical or other responsibilities as soon as possible, in large part because of concern about their emotional state in having perceived a deadly threat and their subsequent use of deadly force. When

²¹ There was additional discussion in the interviews whether the sergeant had worn out his brakes during the pursuit as a potential explanation for his positioning in the intersection, but this was not fully assessed by Bureau experts or command staff.

interviewed, both officers admitted to perception and memory deficits as they used deadly force with regard to which officer fired first or how many rounds they fired. While the fact that Officer Strohmeyer was AR-15 certified and equipped could have been of some consequence to the sergeant's initial designation decisions, the report indicates that soon thereafter at least one other non-involved officer arrived on scene with an AR-15 and there is no apparent reason that he could not have then assumed the lethal force designation role.

Recommendation 20: The Bureau should provide a focused briefing to all supervisors reminding them of the Bureau's expectations and training regarding the advisability of assigning involved officers to tactical roles after a shooting incident.

Quality of Investigation and Review

Timely Completion

The six month time frame for completing the investigation and review of this incident was much improved from other shootings we have reviewed. Moreover, internal communications indicated a greater interest and dedication among both internal and external stakeholders in moving the process forward. For example, there are communications from both the Captain of Internal Affairs and the Independent Police Review Director noting that the Training Review was overdue and requesting the Training Division to complete its work. The fact that this investigation and review was completed within a reasonable time frame is the best indication that a determined Bureau can finish a thorough review process in a timely way.

Delay in Interviewing Involved Officers

The two involved officers were interviewed by detectives four and five days after the incident respectively. This delay in interviewing the officers runs contrary to investigative practices and leaves the Bureau without any information about the shooting incident from those most knowledgeable about the incident for days. We have repeatedly emphasized the importance of the Bureau obtaining interviews from involved officers before the end of their shifts, and again urge the Bureau to work to create protocols ensuring that it does so.

Commander Critiquing His Own Performance

The Commander's Review and Findings discusses the after incident decision making and praises the Bureau response. However, the Commander notes that he arrived on scene after the incident and made some of the operational decisions that he then assessed in the Memorandum, including taking control of the arriving SERT units and providing them instruction on how to separate the suspect from the rifle. Where a Commander played an operational and decisional role, that same Commander should not then assess the incident. Clearly, that review and critique should be made by a supervisor not involved in those on-scene decisions, perhaps the Commander's supervisor.

Recommendation 21: The Bureau should devise protocols instructing Commanders to defer to their supervisors any post-incident officer-involved shooting assessment in which they were operationally involved.

Failure to Use Visual Aids or Diagrams During Interview

In the cases we evaluate in this report, we have generally been impressed with the Bureau's use of diagrams or other visual aids to provide documentation of positioning or placement of individuals or other objects related to the incident. However, in this case, during one interview an involved officer was asked where the suspect fell in relation to the truck. In response, the officer said that if he had a picture he could show the interviewer where the suspect had fallen. Unfortunately, the investigator did not then provide a picture or utilize a diagram to aid in the officer's description.

Missed Opportunity to Assess Operability of Firearm

As noted above, the rifle retrieved from the crime scene that had been held by Mr. Baker was enveloped by a sock-like material. The officers who used deadly force indicated that they were not aware of the covering until after they used deadly force and Mr. Baker fell to the ground. The Commander's Review and Findings discusses this fact and discounts its importance, opining that the rifle could still likely have been successfully fired even with the covering intact. As noted above, in his interview, Mr. Baker disputed this and asserted that he would not have been able to fire the rifle with the sock covering over it.

The Bureau could have definitively resolved this dispute by testing the rifle's ability to be readily fired with a sock covering. This analysis was likely

inconsequential in assessing the threat initially perceived by the shooting officers since they said they did not notice the rifle was covered until after they had fired. Nonetheless, on a going forward basis, such a review could have provided helpful learning about the degree of threat a rifle covered with such material presents responding officers. Most importantly, instead of relying on the Bureau Commander's speculation about the operability of the rifle, an objective test by the Bureau's weapon experts could have either confirmed or refuted Mr. Baker's assertion.

Sergeant Questioning Efficacy of Ballistic Shield

Very soon after the 2010 shooting of Aaron Campbell, and in response to concerns about delays in providing medical treatment to injured subjects, the Bureau equipped all sergeants' cars with ballistic shields to allow officers to safely approach and take into custody injured subjects who may be armed. In this case, the sergeant had a ballistic shield available but he declined to use it because he said to do so would have been too risky, as he opined that the shield would not have adequately protected the officer from a rifle round.

The Bureau did not address this opinion by the sergeant during its analysis. It would have been helpful for the Bureau's experts to address this concern and gauge its legitimacy. If the sergeant is correct, it raises questions about the efficacy of ballistic shields for approaching downed subjects. If he is incorrect, his misperception and unwillingness to deploy the shield points to an inadequacy in the Bureau's training on this issue.

February 17, 2013 • Merle Hatch

Just before 9:30 p.m. on February 17, 2013, East Precinct officers were dispatched to Portland Adventist Hospital in response to a call of a man with a handgun at the hospital who had pointed the gun at a security officer. Dispatch also reported the man was a patient at the hospital and that he currently was in the employee parking lot. Two sergeants were the first to arrive on scene, quickly followed by numerous officers, who locked down the hospital, blocked traffic coming into the area, and began to set up a perimeter around the parking lot, which also was surrounded by a six to eight-foot fence. The sergeants requested an AR-15 rifle operator, a K9 officer, and air support, and asked for Project Respond to be called out.

The subject of the call, later identified as Merle Hatch,²² was quick to identify the sergeants and gave a “whoop,” seemingly to get their attention. One of the sergeants, Nathan Voeller, identified what he believed to be a gun in Mr. Hatch’s hand. Over the radio, he advised all responding units that the subject had a gun and instructed officers on the scene to find hard cover. Sergeant Voeller, along with Officers Andrew Hearst and Royce Curtiss, positioned himself at the entrance/exit point of the parking lot, which also was near a door to the hospital. The other sergeant and several other officers were in the same general area, along with a sergeant who was an acting lieutenant on that shift. Most were grouped around two patrol cars as cover. Officer Hearst, who was armed with an AR-15 rifle, and Sergeant Voeller moved up slightly and away from other officers to get a better view of the subject, taking cover behind another car in the parking lot. Mr. Hatch moved around frequently, walking around cars and behind vegetation, in and out of view. The lighting in the parking lot was poor, but officers generally could track Mr. Hatch’s movements through some ambient light and the occasional use of a spotlight. Mr. Hatch once approached a car that was pulling out of the lot,²³ but the car pulled away without incident.

Mr. Hatch then climbed atop an SUV near the parking lot fence, approximately 300 feet away from the officers’ position. Officers reported concern and surprise that Mr. Hatch did not use the vehicle as a means to climb over the fence and

²² The hospital staff member who called 911 gave officers a different name, because Mr. Hatch had provided a different name when he registered with hospital intake.

²³ This individual apparently had already been in the parking lot at the time the hospital was locked down.

escape. Instead it appeared as though he was using the SUV to gain a higher vantage point in an effort to spot officers' positions. Officers reported seeing what they believed to be a gun in Mr. Hatch's hand, and some reported seeing him raise it, seeming to point it in the officers' direction. Mr. Hatch was yelling throughout this incident, though officers could not understand what he was saying. In a cellphone video taken by a bystander who was closer to Mr. Hatch, but on the other side of the fence, Mr. Hatch can be heard repeatedly telling officers to, "come on play" or "come on in." He said, "Close as you gonna get? That ain't close enough." And, "Do somethin'" and, "you want some?"

Officers held their position at the parking lot opening. Sergeant Voeller was focused on containing and isolating Mr. Hatch, to keep him from getting back into the hospital and to keep others away. His emphasis was on not approaching, antagonizing, or further agitating the subject. Both he and the other sergeant on scene were thinking about calling in the Special Emergency Reaction Team (SERT), but were waiting for the initial activity to settle so they might have time to consult each other as well as the acting lieutenant who had arrived on scene.

A couple of minutes after Mr. Hatch climbed on the hood of the SUV, he got down and began walking toward officers. On the video, you can hear him, seemingly frustrated that officers have not approached him, say, "I'm coming to you then, pig. Let's go. Let's go." The officers only heard generalized shouting, but could not understand what he was saying. Officers reported that he walked purposefully toward them, weaving in between cars, with what they still believed to be a gun in his hand. As he got closer to officers, he began to jog, and then run. An officer yelled, "stop," and "hands up." Officers then heard Mr. Hatch shout, "one, two, three," and then something like, "fuck it all." Officers consistently reported that he was charging their position with what they believed to be the gun raised. When Mr. Hatch was 50-60 feet away from Sergeant Voeller and Officer Hearst's position, Sergeant Voeller fired 10 rounds from his 9mm handgun while Officer Hearst simultaneously fired his AR-15 rifle five times. At the same time, Officer Curtiss also fired three rounds from his 9mm. The three officers described seeing Mr. Hatch stop running, and then drop to the ground. Immediately after that, Officer Curtiss fired one additional round because he believed he saw Mr. Hatch move again, with the gun still in his hand. Six bullets struck Mr. Hatch, all 9mm rounds. The shooting occurred 12 minutes after officers arrived on scene.

Other officers on scene reported that they believed they would have been justified in firing, but did not, because they were positioned somewhat differently or further away than the officers who did shoot, and because Mr. Hatch went down quickly and there was no need for them to fire.²⁴

Officers could see what they believed to be the gun laying near Mr. Hatch. Instead of immediately approaching, the sergeant who had not been involved in the shooting planned to get a ballistic shield and assemble a custody team to approach the subject. A third sergeant, who had arrived just after the shooting with a K9, suggested that they instead send his dog to pull the subject away from the gun and then approach. Following this plan, the sergeant sent the dog, which bit Mr. Hatch on the shoulder and dragged his body several feet. There was no reaction from Mr. Hatch to the dog bite, indicating to officers that he was likely already deceased. They approached and secured him, but opted not to apply handcuffs. A medical team immediately moved in and pronounced Mr. Hatch dead at the scene.

The object that officers believed was a gun was, in fact, a broken black plastic phone handset. This is the same object that Mr. Hatch displayed to one hospital security guard, and pointed at another, prompting the initial 911 call. He went to the hospital seeking treatment for hallucinations and anxiety and had been placed in a locked psychiatric unit pending further evaluation. He escaped from that area of the hospital by telling the security officer he had a gun, lifting his shirt and placing his hand on a dark object sticking out of his waistband, and threatening to shoot her. She walked him out of the hospital while giving another employee a code she intended as a warning that the subject had a gun. Once at the exit, he took off through the parking lot and, when he saw another security officer patrolling in a vehicle, he pulled the black object and pointed it at him, prompting him to report that the subject had a gun.

Investigators later learned that Mr. Hatch had been in federal custody four days prior to the shooting. He was supposed to report to a halfway house but did not check in, prompting federal officials to issue a fugitive warrant for escape. Between that escape and the officer-involved shooting, Mr. Hatch allegedly robbed two banks.

²⁴ Given the number of “contagious fire” scenarios we have seen in our work with a variety of different agencies, the restraint shown by these other officers is a testament to the Bureau’s training to prevent situations in which officers shoot because they hear the gunfire of other officers and shoot without independently perceiving a justification to do so.

The Multnomah County Grand Jury met roughly two weeks after the shooting and determined the officers had no criminal liability for Mr. Hatch's death. The Bureau found the officers' tactics and use of deadly force to be within policy.

Timeline of Investigation and Review

2/17/2013	Date of Incident
3/6/2013	Grand Jury concluded
4/26/2013	Training Division Review completed
5/23/2013	Internal Affairs Investigation completed
7/18/2013	Commander's Findings completed
8/28/2013	Police Review Board convened

Analysis/Issues Presented

Sergeants' Command of Scene

Two sergeants arrived on the scene at nearly the same time. While they did a number of things well, as acknowledged by both the Training Division and Commander's Reviews – calling for needed resources, communicating with arriving officers to turn off lights and sirens and find cover, locking down the hospital, and providing updates on the subject's location – it was never clearly established which of these two was in charge, or whether the acting lieutenant was taking the lead. When each of the involved and witness officers was asked which sergeant was in command, they gave varying responses. This could have led to a greater degree of confusion had the standoff with Mr. Hatch lasted longer, when sergeants and officers would have been expected to implement a more coordinated plan. As it was, events unfolded so quickly that officers were left to react to Mr. Hatch's movements rather than plan their own.

Likewise, the sergeants' failure to establish clear command could have been detrimental if Mr. Hatch had attempted to run from the parking lot. All on scene

agreed that containing Mr. Hatch was a top priority, but it was not clear who was directing the containment. Instead, officers reacted on their own to do what they thought needed to be done and went to perimeter positions on their own initiative. Because Mr. Hatch did not test the containment by trying to flee, it is impossible to judge whether these independent decisions resulted in as robust a containment as would have been achieved through a clearly communicated plan.

The multiple supervisors on scene believed they were working cohesively, even though they did not communicate with each other on a supervisory level. According to one sergeant, it “felt like we were on the same page.” That seemed to be true, but we have seen in other incidents where a lack of communication and coordination between sergeants had undesirable consequences. For example, in the officer-involved shooting of Aaron Campbell in 2010, the involved sergeants’ disagreement over tactics and failure to work together created a great deal of confusion among officers. Acknowledging that this incident unfolded more quickly than the one involving Mr. Campbell, it is possible that the perceived cohesiveness between sergeants could have broken down in the absence of effective communication had the incident been more extenuated.

Training’s critique of the supervisory issues here was pointed, noting the sergeants’ failure to clearly establish a leader and communicate a plan to all officers on scene created identifiable risks. The Commander’s memorandum acknowledged and agreed with this critique but found the sergeants’ overall performance in this incident to be within policy because any communication failures were attributable to the very dynamic nature of this incident and did not in any way precipitate the use of deadly force. This conclusion employs flawed logic. The dynamic nature of an incident makes a supervisory presence even more important, so that officers understand their roles and can act as a unit as events unfold. Further, the question of whether performance is within policy should not be impacted by the consequences or outcome. Whether officers would have used deadly force even with a greater degree of coordination and communication by the sergeants should not be determinative of whether the sergeants’ performance met Bureau standards.

Sergeants in Tactical Roles

The two sergeants in this incident put themselves in tactical positions, despite the presence of numerous other officers on scene. This separated them, hindering their ability to communicate with each other to designate a leader or formulate a plan. As officers assembled and positioned themselves behind cover, Sergeant

Voeller noticed Officer Hearst moving slightly away from the group of officers to a position behind a civilian car from which he could better see Mr. Hatch. Knowing that AR-15 operators are trained to work in tandem with another officer who can act as a “spotter” while the rifleman keeps his eyes trained through the sights of his gun, Sergeant Voeller went with Officer Hearst to act as his partner. Sergeant Voeller then ended up involved as a shooter in the deadly force incident. As the sergeant in command of the scene, it would have been tactically preferable for him to assign another officer to go with Hearst and act as spotter.

Following the shooting, the other sergeant assumed command. He assembled a custody team to approach and secure Mr. Hatch, and assigned himself to a role where he physically secured the subject. Again, as the sergeant in charge, it would have been preferable for this sergeant to assign other officers to the custody team while he supervised the operation rather than going hands-on with the subject.

Neither the Training Division Review nor the Commander’s memorandum notes the sergeants’ tactical role or critiques the sergeants’ performance on this basis.

Post-Shooting Approach and Medical Care

The on-scene sergeants decided to use a K9 to approach and bite Mr. Hatch to drag him away from what they believed to be a gun, resulting in what the Medical Examiner’s report describes as “multiple, shallow lacerations and puncture marks . . . in the right upper chest and shoulder area” and a “rather deep, horizontally oriented laceration or sharp force injury.” A custody team then used a shield and quickly moved in to secure Mr. Hatch and allow medical personnel to treat him. Though it is standard practice to handcuff suspects even when injured, they did not do so here, because it was clear he was not a threat.

The use of the K9 to pull Mr. Hatch away from the “gun” was considered to be consistent with training and found to be within policy. While officers’ desire to move quickly to safely secure Mr. Hatch and get him medical treatment is commendable, we question whether this use of the K9 was necessary. Here, the dog bite injuries to Mr. Hatch were postmortem, as he had died almost immediately from gunshot wounds. Where a subject is down but still alive, however, the additional bite wounds, plus any adverse effects of dragging him across the ground, could be seen as unnecessary, particularly where, as here, there are a large number of officers and a ballistic shield available to assist officers in approaching a subject and separating him from a weapon.

Recommendation 22: The Bureau should evaluate whether it is appropriate to use a K9 to approach and bite an injured subject following an officer-involved shooting.

Quality of Investigation and Review

East County Major Crimes Team

The East County Major Crimes Team participated in the investigation in this case, though Portland detectives acted as the lead officers and did most of the investigative work, which we found to be thorough and complete. In one interview of a witness officer conducted by a detective from another agency, we noted that the Bureau Detective present during the interview stepped in to clarify the officer's positioning and to document the officer's use of a diagram to explain his statements about his position. We have made recommendations in prior reports regarding the use of diagrams in interviews and maintaining a clear record. The Bureau detectives in this case did a good job in their documentation of officers' positions through the use of diagrams, in general, and a particularly good job of ensuring that other officers from outside agencies who were conducting interviews did the same.

Training Division Review

With the exception of its failure to address the tactical roles assumed by both on-scene sergeants, the Training Division Review is thorough and complete. It is critical in a constructive way of the supervisors' failure to clearly establish a leader and communicate a plan to all officers on scene, and recommended that Bureau senior leadership reinforce with line-level supervisors and managers the Bureau's expectations that they take command of critical incidents as early as possible. It is unclear whether or how this recommendation was implemented.

Training also noted that all five of the AR-15 rifle rounds fired missed their mark and, referencing three other shootings where AR-15 operators firing at a moving suspect missed their target, recommended additional training for moving targets be added to the in-service training for AR-15 operators. The Bureau's new training facility gives it the ability to use moving targets on its rifle range, and this change is being incorporated into rifle qualifications beginning in 2016. In addition, all certified rifle operators have transitioned to an illuminate optic system that makes it easier for officers to shoot accurately in low light situations (as presented here) and at moving targets.

Role of Hospital Security

Two hospital security guards played critical roles at the outset of this incident, and held potentially valuable information about the subject. In addition, hospital security had an important role to play in locking down the hospital and ensuring that no one exited into the parking lot where officers were engaging with Mr. Hatch. Had this incident not unfolded and resolved so quickly, the sergeants on scene likely would have wanted to establish direct communication with security officers, both to gain information and to ensure that they were fulfilling their expected roles.

Based on the limited information available, the two guards and the hospital's security team, in general, performed well and met expectations. Part of the Bureau's after-action plan following this shooting ideally should have circled back to hospital security, to commend them for things done well, but also to help them examine their security plans and offer constructive criticism on ways they could improve in future similar incidents.

Recommendation 23: Following incidents that involve outside security personnel, the Bureau should consider ways to engage those security forces in the review process and include them in any after-action plans that impact their roles in such incidents.

March 4, 2013 • Santiago Cisneros

Shortly before 11:00 p.m. on March 4, 2013, North Precinct officers Michele Boer and Bradley Kula drove their separate marked patrol cars to the top floor of a seemingly empty parking structure at NE 7th Avenue and Lloyd – a spot where they and other officers frequently meet to talk and catch up on administrative duties in between calls. They stopped their cars facing opposite directions, with driver's sides adjacent, in a position where they could see the ramp as well as the stairway leading up. Almost immediately after they arrived, a sedan pulled up to the top floor of the structure and stopped a short distance from the officers' cars, in the middle of the lot and not in a designated parking space. The driver, later identified as Santiago Cisneros, turned off his headlights and sat in his car talking on the phone. The officers recognized this as unusual behavior, pulled their cars around to better position themselves relative to Mr. Cisneros' vehicle. Officer Boer pulled straight ahead and stopped slightly in front of and to one side of the vehicle, while Officer Kula did a U-turn and drove up toward the other side of the car, stopping slightly further back from Officer Boer's vehicle. The officers directed their spotlights onto Mr. Cisneros' car.

Mr. Cisneros got out of his car and walked to his trunk, where he withdrew a shotgun. He pointed it first toward Officer Boer and fired, and then turned toward Officer Kula and fired. Both officers moved to positions of cover behind their respective patrol cars, and Officer Boer fired two rounds at Mr. Cisneros while he was still near his car. Officer Kula could see Mr. Cisneros tracking Officer Boer with what he believed at the time was a rifle, and then saw him advance on her patrol car. Officer Boer attempted to maintain cover by dropping to her knees at the side of her car as Mr. Cisneros charged toward the car. He fired two more shotgun rounds at her and ultimately rounded the rear of her patrol car to point the barrel of his gun directly at her from two to three feet away. It is not clear what interrupted his fire – a malfunction, simple hesitation, or perhaps rounds fired by Officer Kula – but Officer Boer was able to crawl from her position beside her patrol car to a position of cover at the rear of Mr. Cisneros' car, and fired two more rounds from her 9mm handgun. (She also ejected three live rounds from her gun, but could not remember why she had done so.) Officer Kula was continuously firing his handgun throughout this time – a total of 18 rounds. He fired these all in succession, emptying his gun, because he did not get any indication that his rounds were striking Mr. Cisneros, and he saw Cisneros

continuing to move and track Officer Boer pointing and firing with what he still believed was a rifle.²⁵

Mr. Cisneros ultimately dropped to the ground, in manner that the officers described as slow rather than sudden. His shotgun fell roughly a foot and a half from where he laid near Officer Boer's patrol car. Neither officer was injured by gunfire. There were shotgun pellet strikes along the perimeter wall of the parking structure, and at the front of Officer Boer's patrol car.

At some point during the confrontation, Officer Boer began a radio transmission in which she did not identify herself but stated that someone was shooting at them, so cover officers and two sergeants had already begun heading in the direction of the parking structure when Officer Kula communicated that shots had been fired and gave their precise location. By the time any other officers arrived, the shooting had ceased and Mr. Cisneros had dropped to the ground. When the sergeants arrived they divided tasks. One took charge of the scene, assigning two officers to escort Officers Boer and Kula away from the scene. The other directed another group of officers to form a custody team to secure Mr. Cisneros, who was still breathing and moving slightly. The custody team assembled a ballistic shield and approached Mr. Cisneros, secured his shotgun, handcuffed him, and cleared a medical team to move in. Approximately 10 minutes passed between the time of the shooting and paramedics' arrival on the scene to treat Mr. Cisneros.

Mr. Cisneros was transported to the hospital, where he was later pronounced dead. He had nine separate gunshot wounds, seven to the lower extremities, one that grazed his torso, and one that perforated his jugular vein. Mr. Cisneros was a U.S. Army veteran who served in Iraq in 2006 and 2007 and was diagnosed with and treated for Post Traumatic Stress Disorder after he returned home. During the course of the investigation, detectives learned that he had been on the phone with his mother as he pulled to the top of the parking structure. His mother declined to speak with investigators but shortly after the shooting a friend of Cisneros' mother called 911 and stated that Cisneros told his mother that he loved her and that the police were taking him to a "high place" just before she heard loud noises that she believed to be gunshots.

²⁵ Officer Kula described seeing the barrel of a long gun and believing it was a rifle, which heightened his level of fear for his partner because of his awareness that rifle rounds can penetrate their vests.

A Multnomah County Grand Jury met just over two weeks later and determined that the officers acted lawfully in their own defense and had no criminal liability for Mr. Cisneros' death.

Timeline of Investigation and Review

3/4/2013	Date of Incident
3/22/2013	Grand Jury concluded
4/12/2013	Internal Affairs Investigation completed
4/30/2013	Training Division Review completed
7/15/2013	Commander's Findings completed
8/28/2013	Police Review Board convened

Analysis/Issues Presented

Tactical Decision Making

Because of the suddenness of the subject's aggression on the officers, there was no opportunity to create a tactical plan. The involved officers believed they were going to take a break, talk, and catch up on administrative duties. Instead, they were immediately confronted by a subject firing a shotgun at them. Fortunately, even though they were on break, they were strategic in the placement of their patrol cars, so they were quick to alert to the subject's arrival on their level of the parking structure. Once the subject retrieved and pointed his shotgun at them, the officers reacted to the threat, seeking cover and returning fire. When the subject went down, they held their fire and maintained cover while broadcasting their positions and request for backup officers. They were able to direct cover officers into the scene, letting them know which direction their guns were pointing to avoid a potential crossfire situation. Cover officers arrived and quickly secured Mr. Cisneros so that paramedics could safely respond to the scene and get him to the hospital.

The Training Division Review goes point-by-point through the decisions officers made during this encounter in a wholly complimentary way. Nonetheless, Training recognized that it is always possible to learn from an incident such as this, and held a debrief with the involved officers to discuss tactical theories and options. Reviewers also recommended that Training employ more tactical shooting scenarios that require officers to shoot at moving targets, something they identified as an area for improvement.

Holistic Approach to Mental Health Issues

Both the Detective Division and Internal Affairs investigations contain numerous references to Mr. Cisneros' PTSD diagnosis and possible depression. There is some reference to a history of mental health care in Portland as well as other jurisdictions where Mr. Cisneros had resided since his discharge from the Army. While Officers Boer and Kula had no way to know about Mr. Cisneros' mental health history, nor should it have changed their response to the deadly threat he posed, a complete and holistic review of this incident should have included some discussion of the mental health care Mr. Cisneros received.

In future events involving a subject with a history of mental health diagnoses and treatment, this review could be completed by the Behavioral Health Unit and included among the materials considered by the Police Review Board. This can serve two purposes. First, to identify whether there were deficiencies in the provision of mental health services that could be addressed, not necessarily by the Bureau but by other stakeholders. Given the scrutiny the Bureau is under for its responses to individuals in mental health crisis, it should be working to further its alliances with mental health care providers in any way it can. Second, a fuller understanding of a subject's mental health history can help guide the Training Division as it seeks to derive lessons from a particular incident.

Recommendation 24: When the subject of an officer-involved shooting has a history of mental health diagnoses and treatment, the Behavioral Health Unit should holistically review the mental health issues presented in an effort to further the Bureau's alliances with the City's mental health care providers and identify possible ways in which the subject's needs could have been more effectively addressed prior to the officer-involved shooting. This review should be included among the materials considered by the Police Review Board.

Common Themes and Issues

Subjects Intent on Provoking Officers to Shoot

In seven of the cases we examined in this report, there is some evidence that the subject made statements or took actions indicating an intent to precipitate a deadly force encounter with police. The subjects in a number of these shootings were in some type of mental health crisis, and the motivating intent for most appeared to be a desire to end their own lives. Although unknown to officers at the time, all but three of the subjects also lacked the capability to significantly harm the officers.²⁶

- Mr. Higginbotham ignored commands by Bureau officers and advanced on two armed officers while holding a large knife.
- After talking about his suicidal intent, Mr. Morgan told the 911 call taker that “I’d actually prefer for a police officer to shoot me at this point.”
- Mr. Potter left a suicide note for his wife and, in his car, a letter of apology to the officers, saying “I’m very sorry that I had to . . . make you do my dirty work. I tried to purchase a real gun to do it myself, but couldn’t.”

²⁶ Morgan, Tate, and Hatch all pretended to have functioning firearms, but did not; Potter had a pellet gun.

- Mr. Tate’s cousin reported to police after the shooting that Mr. Tate had told her earlier that if police came looking for him he was going to act like he had a gun so they would shoot him because he wanted to die.
- A reportedly suicidal Mr. Baker told police after the shooting that he had no intention of shooting at them, but had grabbed his rifle hoping that his actions would cause the officers to shoot him.
- Mr. Hatch can be heard on a bystander’s video recording shouting to police, “do somethin’” and “come on in,” and when officers held their positions, he said “I’m coming to you then,” and then ran toward the officers with a piece of plastic that he held up and sighted as though it were a gun.
- Mr. Cisneros was on the phone with his mother, and told her that he loved her and that the police were taking him to a “high place” or “higher place” just before he retrieved a shotgun and fired at two Bureau officers.

Situations like these are often referred to as “suicide by cop” in the popular lexicon. An entry in Wikipedia defines it as “a suicide method in which a suicidal individual deliberately behaves in a threatening manner, with the goal being to provoke a lethal response from a law enforcement officer.” The Police Bureau and many other law enforcement agencies use the term in their training, and media accounts following officer-involved shootings frequently use it to describe any situation in which an individual apparently provokes an officer into firing with the intent of having the officer kill him or her.

The problem with the term “suicide by cop” is that it suggests there was nothing the police could do to avoid the use of deadly force or prevent the individual’s death but instead were forced to shoot the subject, creating a temptation or tendency to be less rigorous in the analysis of the officers’ performance. This suggestion was articulated quite clearly in the Commander’s Review and Findings Memorandum in Morgan: “it is my belief Bradley Morgan was committed to his suicidal plan and no amount of negotiation would have prevented him from forcing the officers to take his life.” The inevitability of Mr. Morgan’s death was accepted by the Bureau and used to explain away the performance deficiencies noted by the Training Division in its review.

The Training Division response, in contrast, was notable for its willingness to acknowledge that officers retained the ability to impact the outcome, and could have done better. This acknowledgment was key to Training’s ability to use the incident to spur significant changes in the way it trains officers to communicate

with people in crisis. While it ultimately concluded officers were justified in using deadly force given the threat presented when Mr. Morgan produced and pointed his replica firearm, Training nonetheless seemed to understand, as the Commander did not, that Mr. Morgan's death at the hands of police was not inevitable.

The same "inevitability" perspective was unfortunately demonstrated in both the Training Review and Commander's Review and Findings prepared in Higginbotham, where both concluded that the incident was "driven" by the aggressive actions of Mr. Higginbotham but neither recognized how a wiser and more informed decision about whether and how to approach the likely armed, violent man in a confined space might have allowed the officers to avoid being in the position where they were "forced" to use deadly force. Simply because a suspect in crisis desires a certain outcome in his confrontation with law enforcement does not mean that skillfully trained and well equipped officers should necessarily accommodate him.

Unlike Morgan, where officers knew from the outset they were dealing with a suicidal individual, situations in which the subject has an intent to precipitate a deadly police response but does not express that to authorities, as in the remaining six cases listed above, present somewhat different challenges to officers. In three of those cases (Potter, Hatch, and Baker) officers had information that they were dealing with a subject in some type of mental health crisis, though Mr. Potter was also the suspect in an armed robbery, Mr. Hatch had reportedly pointed a gun at a security officer, and Mr. Baker was a suspect believed to have just shot another person. In the others, officers were simply confronting subjects accused of a crime (Tate and Higginbotham) or were responding to a deadly assault (Cisneros). As in any scenario, officers in these situations must call on training focused on preserving officer safety and minimizing the likelihood of the need to use deadly force.

In some of these cases, officers commendably observed principles of officer safety and force avoidance, but nonetheless found themselves compelled to use deadly force. In Potter, officers' initial plan to box Mr. Potter's car in was quickly aborted by the responding sergeant, who recognized the tactic was too dangerous, given the suspicion that Mr. Potter was armed. And the officers and sergeants who responded to the call involving Mr. Hatch all recognized the appropriate goal was to contain and isolate Mr. Hatch, with the hopes of stabilizing the situation so that SERT could be summoned to communicate with

him. Despite Mr. Hatch's stated desire to have officers come in and get him, officers all remained on the periphery of the parking lot and used deadly force only when Mr. Hatch ran at them. And in Baker, the on-scene officers staged responding officers in safe positions, controlled the pursuit, and only used deadly force when they suddenly came upon Mr. Baker pointing a rifle at them.

In Tate, however, the reviewing Commander was appropriately critical of the detectives' low key approach to their encounter with Mr. Tate, which he concluded allowed Tate to carry out his plan of pretending to have a gun to trigger the detective's use of deadly force. The Bureau, both Training Division and the Command staff, need to remain vigilant in scrutinizing these scenarios as closely as any officer-involved shooting, identifying both appropriate and inappropriate responses by officers.

With that vigilant scrutiny will come a better understanding of how these situations unfold and how officers can avoid being drawn into a position where the subject's actions could put them in jeopardy and make them feel like they have no options other than the use of deadly force.

Following its critique of these incidents, the Bureau now trains based on lessons learned from these types of encounters – to maintain distance and consider deploying in a manner where officers remain out of the subject's sight, with the goal of making it harder for subjects to force a confrontation – are main points in the curriculum for dealing with what it terms "suicide by cop" scenarios.

Training is also now teaching officers when it is appropriate to disengage from a call involving a suicidal person. When no one else is in danger and there is a chance the officers may get pulled into a deadly force scenario or the officers' presence may further provoke the person in crisis, officers now may leave a call and refer it for later follow up to the Bureau's Behavioral Health Unit, which pairs a social worker with an officer and is better equipped to deal with people in mental health crisis.

It is noteworthy that individuals involved in these scenarios are not, as sometimes assumed, people who will kill themselves regardless of what the police do, and therefore police are powerless to change the outcome. In fact, the opposite is true. Sometimes, these are people who have tried to kill themselves, but failed at doing it themselves and now are trying to get the police to do their "dirty work," as Mr. Potter wrote in his note. Mr. Monroe climbed into a position to jump to his death, but instead of jumping he called 911. As Mr. Monroe said to the dispatch operator, not only had he not been able to jump, he would "actually prefer for a

police officer to shoot me at this point.” Left to their own devices, these are not individuals who are necessarily going to succeed at suicide.

No one wants the police to take the life of a suicidal person, least of all the police officers who fire their weapons. It is a tragic and traumatic outcome for all. The Bureau needs to remain vigilant in its training of officers in how to communicate with people in crisis while observing sound tactics and principles of officer safety. Moreover, when deadly force is used, the Bureau must be rigorous in its evaluation of the officers’ performance and in particular in the tactical review of their actions. Finally, the Bureau also should guard against the language, culture, and mentality that suggests the death of a suicidal individual who appears intent on provoking a confrontation with police is always inevitable.

Recommendation 25: The Bureau’s training and review processes should continue to diligently train officers for their encounters with people in crisis; should maintain their rigorous standards for evaluating uses of deadly force, even when it is evident that the subject intended to precipitate the encounter with the desire to have officers end his or her life; and should guard against the language, culture, and mentality that suggests the death of a suicidal individual in such an encounter is inevitable.

Sergeants Assuming Tactical Roles

In four of the shootings we review in this report – Morgan, Baker, Hatch, and Higginbotham – on-scene sergeants assigned themselves to tactical roles despite the presence of officers to whom they could have delegated those tasks. This is a theme we have seen and commented on repeatedly in our reviews of Bureau critical incidents.

In Morgan, Sergeant Holbrook assigned himself to the communication team, approached Mr. Morgan, and ultimately used deadly force. The sergeant in command in Baker assumed a lead position in the initial attempt to bring Mr. Baker into custody. Shortly thereafter, perhaps remembering the proper role of a supervisor in such an operation, he allowed officers in marked units to pass him and lead the pursuit as Mr. Baker accelerated away, managing the pursuit from a position at the rear. Two sergeants involved in Hatch took tactical roles – Sergeant Voeller as a “spotter” for the AR-15 operator on scene who himself also used deadly force, and another on-scene sergeant as a member of the custody

team who secured Mr. Hatch following the shooting. In Higginbotham, the same sergeant involved in Baker arrived on scene post-shooting but became personally involved in securing the knife that Mr. Higginbotham was holding at the time of the shooting, dragging Mr. Higginbotham to a more open area of the car wash where he could be more easily treated, and performed another sweep of the car wash with two other sergeants and an officer.

As we have said in the past, a sergeant on the scene of a tactical incident should take command of the incident, direct resources, and delegate tactical assignments to officers. The Bureau's training curriculum for supervisors, in its Sergeant's Academy and in Critical Incident Management Class, is consistent with this view.

Of the four cases we noted here, however, the Training Division Review identified the sergeant's tactical role as problematic in just one, Morgan. In that case, Training cited Sergeant Holbrook's decision to put himself on the communication team as inconsistent with training, but the Commander's Review minimized the importance of this error. In Baker, Hatch, and Higginbotham, both Training and the reviewing Commander failed to mention the sergeants' tactical roles or recognize them as being contrary to training. The absence of acknowledgment of or accountability for sergeants' failure to delegate non-supervisory tasks minimizes the effectiveness of the training provided regarding management of critical incidents.

Therefore, we reiterate a two-part recommendation we made in our Second Report, with emphasis on the second part of that recommendation (Second Report, Recommendation 30, p. 106) and advance another recommendation for emphasis of this important doctrine that has largely escaped critique during the Bureau's review:

Recommendation 26: The Bureau should regularly assess the effectiveness of its Sergeant's Academy and Critical Incident Management training for field supervisors and consider whether they adequately instruct sergeants to maintain their supervisory perspective and avoid tactical involvement in incidents in which their officers are involved. **The Bureau should hold accountable those supervisors who fail to adhere to these training standards.**

Recommendation 27: The Bureau should direct the Training Division to include in its Review of each officer-involved shooting an examination of any supervisory issues presented, with an emphasis on identifying whether first level supervisors engaged tactically instead of assuming a command role.

Medical Care for Injured Subjects

In each of our reports, we have commented – mostly unfavorably – on the length of time it has taken Bureau officers to secure injured subjects so that paramedics can approach and provide medical care. In the cases we reviewed for this report, we saw some progress toward the goal of rendering aid to injured subjects as quickly as safely possible. The shooting of Mr. Campbell in 2010 was at the time described by the Bureau as a “catalyst for change” on this issue. It appears that change may be beginning to take hold. For example:

- After officers shot Mr. Potter, his gun fell several feet away. After careful review of the situation, Officer Wingfield was confident that with cover from on-scene officers he could retrieve Mr. Potter’s gun safely. Officer Wingfield moved quickly to secure the gun so that officers could take Mr. Potter into custody. While waiting for paramedics, Officer Wingfield examined Mr. Potter’s wound to see if it needed immediate attention.
- In the shooting involving Mr. Monroe, officers realized that Mr. Monroe did not present a threat and immediately moved paramedics in to the scene to provide medical attention to the injured subject.
- While we suggested that there should have been a Training analysis and Police Review Board discussion of the use of the K9 to pull Mr. Hatch’s body away from the presumed gun, officers in that case also used a ballistic shield and moved quickly to safely approach, secure and tend to Mr. Hatch.
- Officers formed a custody team and approached Mr. Cisneros with a ballistic shield within minutes of the shooting, safely securing the scene for medical personnel to respond, despite the fact that Mr. Cisneros’ shotgun was within his reach.

In two cases – Morgan and Simms – there were significant delays in getting to the injured or deceased subjects, but only as a result of difficult logistics or unusual circumstances.

- After officers fired at him, Mr. Morgan fell off the ledge of an elevator structure that demanded a significant amount of maneuvering and required officers to borrow a ladder from a nearby fire station in order to gain access.
- After the officers fired multiple rifle rounds at him, Mr. Simms crashed into an apartment building with his vehicle coming to rest partially inside the building so that officers could not see him or even determine if he was still in the vehicle, causing supervisors to conclude they could not safely approach his vehicle without a SERT team.

Two cases reviewed in this report, however, demonstrate continued room for improvement on this issue.

- In Simms, the decision to activate SERT was impacted at least in part by the on-scene sergeants' admitted lack of training and comfort with the use of the ballistic shield. Though shields were available, they told investigators that they did not feel confident their use would sufficiently protect officers, so they instead waited for a SERT response.
- Similarly, in Baker, the sergeant had a ballistic shield available but declined to use it because Mr. Baker was positioned with a .22 caliber rifle nearby and the sergeant did not know whether the shield would protect officers from a rifle round.

These two episodes are disappointing because following Mr. Campbell's death, the singular change touted by the Bureau to promote a quicker response to downed suspects was the equipping of all sergeants' cars with ballistic shields. In addition, the Bureau reported that every sergeant received two hours of training on their efficacy and how to deploy them. As to these three sergeants there was a potential disconnect between their understanding and Bureau expectations, yet the Bureau did not analyze whether the views of the sergeants signaled a need to retrain these sergeants in particular or a broader failure in training sergeants Bureau-wide. The fact that we have seen ballistic shields deployed appropriately and successfully in a number of other incidents suggests the problem may be limited, but the Bureau nonetheless should evaluate its training on this issue.

Recommendation 28: The Bureau should review its training on the use of ballistic shields to confirm that it accurately informs sergeants of the capabilities and limitations of the shield and to ensure that all sergeants receive this training.

Officers Involved in Multiple Shootings

Two of the officers involved as shooters in cases we review in this report – Sergeant Voeller and Officer Clary – have been involved as shooters in cases we reviewed in prior reports, and one officer – Officer Wingfield – was involved in two shootings covered in this report. We addressed a similar issue in our Third Report, where one officer had been involved in a prior shooting that revealed some patterns about his use of deadly force. There, we stated:

Every incident is different in its details and in the precise decisions that an officer makes based on those details. Nevertheless, officer-involved shootings are revealing events that show how the Bureau as a whole and its individual officers operate under high-risk conditions in the field. In this regard, it is appropriate and necessary to consider whether two shootings involving the same shooter officer reveal any patterns or parallels that could help inform corrective action or other reforms or remediation.

We recommended in our prior report that when reviewing an officer-involved shooting the Training Division Review and the Police Review Board examine any prior shootings by involved officers to consider whether there are significant parallels between the officer's tactical decision making in the incidents.

In a 2006 shooting involving David Hughes, then-Officer Voeller confronted a situation not dissimilar from the shooting involving Mr. Hatch in 2013. There, Mr. Hughes was attempting to escape apprehension on a warrant and essentially got trapped inside a parking lot. He had made prior statements about his intent to provoke officers into killing him, and pretended to have a gun. In that case, we criticized the Bureau's review process for failing to question why officers did not slow down their response, and attempt to contain Mr. Hughes rather than quickly confront him at a very close distance. Ironically, we also criticized the sergeant involved in that case for engaging in a tactical role and ultimately using deadly force rather than maintaining a supervisory position and managing available resources.

In this case, Sergeant Voeller, perhaps learning from the Hughes incident, expressly stated his goal was to contain Mr. Hatch and avoid a direct confrontation until SERT could be activated and assume management of the incident. Officers kept their distance and only engaged Mr. Hatch when he ran towards them. Sergeant Voeller made the same questionable tactical decision as

the sergeant in Hughes when he neglected his supervisory role and assigned himself to be a spotter for the AR-15 operator rather than delegating that task to another officer on scene. There is no record that those reviewing Sergeant Voeller's involvement in Hatch considered or were even aware of his involvement in the Hughes shooting.

The multiple shootings involving Officers Clary and Wingfield do not share such similarities. In Officer Clary's prior shooting, the incident involving Ralph Turner in 2011, he fired one round at Mr. Turner, who had fired at and struck another officer, and then followed a sergeant's direction to lay down cover fire so that other officers could rescue the injured officer. Officer Wingfield was involved in both the Higginbotham and Potter shootings reviewed in this report. Those incidents presented very different circumstances – one (Potter) serves as a model for good tactical planning and execution, while the other (Higginbotham) involved some questionable tactical decisions made based in part on insufficient fact gathering. Despite the lack of similarities between each officer's prior shooting, those earlier incidents should nonetheless be evaluated as part of a holistic review of their subsequent uses of deadly force.

This type of evaluation is necessary as well from a risk management perspective. When an officer has been involved in a prior shooting, that will necessarily be a central fact in any subsequent lawsuit filed against the City. If the Bureau did not consider the earlier use of deadly force in assessing the decision making of the officer in the more recent case, it fuels an argument that the Bureau's review process did not fully evaluate the officer's performance history.

We do not mean to suggest that multiple shootings by an officer necessarily points to a problem or concern, only that it is a fact that should be considered and evaluated as part of a thorough review of any critical incident. Moreover, in the days following an officer-involved shooting, the mere fact that an officer has been involved in multiple uses of deadly force should be considered in determining his or her readiness to return to active patrol duty. In addition, the Bureau should consider conducting a command-level debrief with any officer involved in multiple deadly force incidents as part of its regular review of such incidents.

Recommendation 29: When an officer uses deadly force, the Bureau's review of that incident – by the Training Division, Commander, and Police Review Board – should consider any prior uses of deadly force and evaluate whether there are significant parallels between the officer's tactical decision making in the incidents.

Recommendation 30: When an officer has been involved in more than one use of deadly force the Bureau should engage that officer in a command-level debrief of the incidents to help both the Bureau and the officer identify any patterns or parallels between the multiple events that should be addressed through training or other corrective action.

Timeliness of Investigation and Review Process

Our reviews of Portland Police Bureau critical incidents have often noted delays in the investigation and review process that have limited the Bureau's ability to take prompt corrective action, provide constructive feedback to members, or to hold officers accountable in a timely manner. For all of the incidents we have reviewed, the following tables show the length of time from the date of the incident to the Review Board meeting. The first table includes the cases discussed in this report; alongside is a table for all prior cases we have reviewed.

Subject's Name	Date of Incident	Time to Review Board
Moffett	1/1/2011	22 months
Higginbotham	1/2/2011	12 months
Monroe	6/30/2011	16 months*
Morgan	1/25/2012	14 months
Potter	3/26/2012	11 months
Blackmon	7/17/2012	10 months
Simms	7/28/2012	9 months
Tate	8/21/2012	9 months
Baker	9/29/2012	8 months
Hatch	2/17/2013	6 months
Cisneros	3/4/2013	6 months

* In Monroe, it took another 11 months before Officer Reister was notified of the Bureau's intent to terminate him, officially ending the administrative process.

Subject's Name	Date of Incident	Time to Review Board
Perez	3/28/2004	8 months
Vaida	10/12/2005	13 months
Gwerder	11/4/2005	18 months
Young	1/4/2006	13 months
Grant	3/20/2006	16 months
Goins	7/19/2006	12 months
Suran	8/28/2006	20 months
Hughes	11/12/2006	23 months
Carter	12/28/2006	14 months
Bolen	5/22/2007	16 months
Stewart	8/20/2007	15 months
Turpin	10/5/2007	15 months
Spoor	5/13/2008	17 months
Coady	5/15/2008	13 months
Lovaina-Bermudez	8/24/2008	8 months
Campbell	1/29/2010	7 months
Collins	3/22/2010	14 months
Otis	5/12/2010	16 months
Boehler	11/23/2010	19 months
Ferguson	12/17/2010	13 months
Lagozzino	12/27/2010	15 months
Turner	3/6/2011	21 months
Johnson	7/10/2011	13 months

The cases we reviewed in this report demonstrated a steady decline in length of time to investigate and review, largely as a result of the Bureau's response to the United States Department of Justice September 2012 findings letter about the length of the review and investigation process for the application of deadly force. The 2014 settlement agreement between the City and the Department of Justice (DOJ) sets a six month timeline for the Bureau to complete its review process. Investigation and review into the two 2013 cases we have reviewed were both completed in six months, clear evidence the Bureau can meet the new standard.

Many of the cases we considered here, however, were marked by significant delays. The longest of these, Moffett, was delayed every step of the way for unclear reasons – the Internal Affairs investigation took over a year, it was another four months for the Training analysis to be completed, almost two months for the Commander's findings, and four months before the Police Review Board was convened. The delay would have been even longer had the Bureau agreed with the District Attorney's request to postpone the administrative review until the completion of the criminal case against Mr. Moffett, but at the Independent Police Review Division's urging, the then Chief decided to proceed. This should be the Bureau's policy going forward; the internal review process in an officer-involved shooting should not be held up by criminal charges pending against the person at whom officers shot. In any event, the City's agreement with DOJ does not contemplate an exception to its timelines for such circumstances and calls for parallel criminal and administrative investigations in order to compress resolutions.

The delay in Monroe also suffered from unexplainable slowness; the investigation and review itself took 16 months to complete. Even after the Police Review Board met and recommended termination of Officer Reister, the letter informing him of the Chief's decision took almost a year to prepare. While cases in which the Chief determines that termination is the appropriate outcome will necessarily take longer to complete since a discharge letter informing the officer of the Chief's decision must be carefully crafted, it should not take nearly a year to do so.

The Morgan case also suffered delays at nearly every step of the process – Internal Affairs investigation, Training Division Review, and Commander's Findings. In other cases, the delay stemmed mainly from an inordinate amount of time spent by the Training Division preparing its reviews. Training ordinarily completes its analysis within about a month of the completion of the Internal

Affairs investigation, but in several cases that time period was prolonged – six months in Higginbotham, four months in Blackmon, three months in Simms, and two months in Baker.

We understand that at the time of these incidents, there were transitions of personnel that may have led to the confusion and issues with the assignment and completion of the Training Review. If issues still exist in the assignment and completion of the Training Review, the Bureau should address these.

In addition to requiring a 180-day deadline for investigation and review in administrative investigations, the settlement agreement between the City and DOJ places further obligations on the Bureau, set out in Paragraph 123: “If PPB is unable to meet these timeframe targets, it shall undertake and provide to DOJ a written review of the IA process, to identify the source of the delays and implement an action plan for reducing them.”

In the DOJ Settlement Agreement Compliance Status Assessment Report issued September 10, 2015, the Bureau was found to be in “Partial Compliance” with this paragraph. In setting out the progress that had been accomplished to date, the Report referenced a proposed solution to the timeline for officer-involved shooting cases proposed by the Bureau’s Professional Standards Lieutenant: “As we have previously discussed, my proposal to fix this issue is to eliminate the RU manager’s findings and many of the other redundant review stages. This is in line with OIR recommendations, and it would allow us to drastically reduce the time for this case track.” The DOJ Report observed that the Bureau could use these observations and suggestions in ultimately developing a plan as required by Paragraph 123 of the settlement agreement.

As a result of the settlement agreement with DOJ, the Bureau’s history of dilatory timelines for officer-involved shooting investigations and reviews that we have commented on frequently has now resulted in a contractual court-supervised obligation to comply with specific timelines. It is heartening that the more recent investigative history and DOJ’s first report card shows a move toward acceptable standards in this arena, though we caution the Bureau not to let an emphasis on timeliness cause it to compromise the quality and thoroughness of its investigations.

Interviews of Involved Officers – “48-hour” Rule

In each of the 11 shooting cases reviewed, no involved Bureau member provided an account of his actions and observations until at least 48 hours after the incident, and some even later. The “48-hour rule” dictated by the current Bureau labor contract with the Portland Police Association, the union that represents the line officers continues to impede the Bureau from obtaining from officers involved in a shooting an account of why they used deadly force until at least two days after the incident. The City made small progress toward the goal of doing away with the 48-hour rule last fall, when it entered into a collective bargaining agreement with the Portland Police Commanding Officers’ Association that no longer includes the requirement that the Bureau give 48 hours advance notice prior to an administrative interview. However, because the Portland Police Association represents the overwhelming majority of officers who have been involved in shootings, the change to the agreement with the commanding officers’ union does little to change the status of the Bureau’s ability to obtain contemporaneous officer interviews after a critical incident.

As we have stated repeatedly, beginning with our initial report to the City in May 2012, the inability of the Bureau to obtain a statement from the involved officers the night of an incident is inconsistent with best investigative practices. Bureau investigators are aware of the importance of obtaining contemporaneous statements from witnesses as evidenced by their tireless work in the hours after these incidents interviewing both officer and civilian witnesses. However, the officers who fired their weapons – those most knowledgeable and whose conduct is being reviewed – are not interviewed for at least two days and often longer.

By agreeing to a contract that requires this delay in the Bureau’s ability to compel an interview of the officers, the City requires the Bureau to forfeit the opportunity to obtain pure contemporaneous statements from the involved officers about what each did and why they did it. While the Bureau’s investigative machinery works hard to obtain contemporaneous and pure statements of observations from civilian witnesses and officer witnesses, the investigative protocols allowed the involved officers’ versions to be subject to contamination and recall issues as a result of the passage of time or exposure to other accounts of the incident from media sources, legal representatives or fellow officers. Moreover, any leads or further investigative guidance that might be derived from the involved officers’ version of events are hindered and perhaps lost because of the delayed acquisition of officers’ statements.

Some police officer advocate groups have pointed to memory studies which suggest memory improves after an individual has had an opportunity to de-stress, sleep, and process the event before being called upon to provide a recollection as a reason to afford officers up to a three day period before being interviewed. Those advocates, however, undervalue the competing factors detailed above, including the potential for conscious or unconscious contamination during the wait period. Moreover, if police agencies were to accept this premise as paramount, they should likewise delay the preparation of written police reports and the collection of witness, victim, or suspect statements after any event. This clearly would not be consistent with accepted police investigative practices, which teach that subjects, victims, and witnesses should generally be interviewed as soon as they are identified.

Some have questioned whether the real reason for a delay in interviewing officers is to afford the officers the opportunity to either consciously or subconsciously choreograph or tailor their responses with the help of external influences or exposure – in other words, “to get their stories straight.” The fact that this belief persists among community members is damaging to the credibility of the police agency and its investigative and review processes and should provide additional incentive for the City to eliminate the 48-hour rule.

In reality, the delay may not afford the officers any advantage whatsoever and may call into question the usefulness of their statements because of the likelihood of memory contamination or memory loss. In talking with officers involved in critical incidents, many have expressed their desire to quickly provide their account of what occurred and have reported that any delay may be counterproductive to their interest in giving their report in a timely fashion and their ability to provide an accurate and useful account. In fact, as noted in the discussion of the shooting involving Mr. Moffett, Sergeant Fort appeared willing to talk freely and candidly about his decision to use force but then declined to do so after consulting with his legal representative.

Ideally, officers involved in shootings would provide voluntary statements to Bureau detectives on the night of the shooting, as many officers routinely do across the country. However, if officers decline to provide such a voluntary statement, as they are entitled to do under the Fifth Amendment of the

Constitution, it is vital that the Bureau then has the ability to order them to provide a compelled statement in the hours immediately after the shooting.²⁷

In our First Report, in May 2012, we made the following recommendation regarding the 48-hour rule. In our final report pursuant to our current contractual engagement, we renew the recommendation here.

Recommendation 31: The Bureau and the City should begin as soon as possible a dialogue with the Portland Police Association to remove the 48-hour rule restriction on interviewing involved officers in shootings and in-custody deaths.

²⁷ To be clear, unlike a voluntary statement, a compelled statement cannot be used by the District Attorney or the grand jury to determine potential criminal liability. Indeed, any one with a role to play in any part of a potential criminal proceeding must be completely walled off from a compelled statement and may not be provided any opportunity to learn what the officer said. So while the Bureau can use the compelled statement during its Internal Affairs investigation and administrative review, the contents of that statement cannot be made public unless or until the conclusion of any criminal proceeding.

SECTION THREE Recommendations

- 1 The Bureau should ensure that command staff recognizes that it should be the overarching objective of every tactical engagement for the Bureau to influence the outcome. (Report, p.19)
- 2 The Bureau should ensure that its officers have not misinterpreted the principles behind the 21-foot rule and provide more contemporary training designed to ensure that officers recognize the appropriate considerations in determining whether and when to use deadly force against someone wielding an edged weapon. (Report, p.20)
- 3 When the circumstances surrounding an officer-involved shooting present Constitutional issues regarding the decision making of involved officers, the Bureau's review process should incorporate, discuss, and assess those decisions. (Report, p.23)
- 4 When the Chief's disciplinary determination is based on a rationale that contradicts conclusions made in either the Training Division Review or the Commander's Review and Findings, the disciplinary letter should explicitly address the contradiction and set out the reasons for the disagreement. (Report, p.27)
- 5 The Bureau should implement the recommendation made by the Police Review Board and outside experts following the shooting of Mr. Monroe and move to incompatible lethal and non-lethal weapons platforms so that an officer could not mistakenly load lethal rounds into a less lethal weapon. (Report, p.30)

- 6 In addition to any discipline imposed, the Bureau should include a targeted retraining component whenever it determines that a member has violated its performance policy. (Report, p.31)
- 7 The City should ensure that Police Bureau crisis communications instructors regularly provide training to dispatchers, either as part of the Police Bureau's Critical Incident Management Training or during the Bureau of Emergency Communications' annual in-service training. (Report, p.42)
- 8 The City and Bureau should consider ways to formally bring Bureau of Emergency Communications supervisors or decision makers into the Police Bureau's review process in cases where a dispatcher's judgment or performance is potentially at issue. (Report, p.42)
- 9 Specialized units performing planned operations in a patrol area that could require assistance from patrol personnel (or could be interfered with unwittingly by patrol personnel) should alert the patrol supervisors and personnel unless there is a documented reason why such an alert could jeopardize the operation. (Report, p.55)
- 10 The Bureau should continue with its rigorous scenario based training, and should ensure that when it decides on a change in tactics or techniques, that change is communicated to all personnel, not just those who attend more recent training. (Report, p.57)
- 11 When a K9 is used in a shooting incident, evaluation of the K9 deployment should be part of the Training Division Review, Commander's Review and Findings, and Police Review Board discussion. (Report, p.58)
- 12 When specialized units are involved in an incident along with patrol units, both Commanders should have a role in preparing the review and findings, based on the relative level of involvement of their personnel. (Report, p.59)

- 13 The Bureau should review critical incidents with neighboring jurisdictions and attempt to develop universal procedures and best practices for assisting units to alert the handling jurisdiction that they have arrived to assist, as well as radio communication protocols to ensure the most timely and complete sharing of information and to advance principles of officer safety. (Report, p.60)
- 14 The Commander's Review and Findings and Police Review Board should clearly explain the bases for their conclusions, and where a debrief is suggested on tactical concerns, should ensure that all potential areas are covered. (Report, p.66)
- 15 Whenever an officer makes a choice between weapons to deploy, the Training Review should include analysis of that choice. (Report, p.67)
- 16 Whenever an investigation into a critical incident reveals that a Bureau member is not fully aware of policy or training doctrine, Training should evaluate whether that officer's misunderstanding signals a broader need for a Bureau-wide briefing or training. (Report, p.67)
- 17 The Bureau should review training for supervisors periodically, and when they transfer substantive assignments should ensure they have received all relevant training. (Report, p.68)
- 18 Internal Affairs supervisors, the Police Review Board, and anyone else reviewing the investigation should be vigilant in reviewing interviews not just to ensure coverage of all relevant subjects but also to monitor the form of the questions asked and to remind investigators to avoid compound, closed, and leading questions. (Report, p.69)
- 19 The Bureau should develop some mechanism to ensure that any systemic concern raised by a participant during the investigation or in after action reports is evaluated to determine whether or how to address it. (Report, p.71)

- 20 The Bureau should provide a focused briefing to all supervisors reminding them of the Bureau's expectations and training regarding the advisability of assigning involved officers to tactical roles after a shooting incident. (Report, p.85)
- 21 The Bureau should devise protocols instructing Commanders to defer to their supervisors any post-incident officer-involved shooting assessment in which they were operationally involved. (Report, p.86)
- 22 The Bureau should evaluate whether it is appropriate to use a K9 to approach and bite an injured subject following an officer-involved shooting. (Report, p.95)
- 23 Following incidents that involve outside security personnel, the Bureau should consider ways to engage those security forces in the review process and include them in any after-action plans that impact their roles in such incidents. (Report, p.96)
- 24 When the subject of an officer-involved shooting has a history of mental health diagnoses and treatment, the Behavioral Health Unit should holistically review the mental health issues presented in an effort to further the Bureau's alliances with the City's mental health care providers and identify possible ways in which the subject's needs could have been more effectively addressed prior to the officer-involved shooting. This review should be included among the materials considered by the Police Review Board. (Report, p.100)
- 25 The Bureau's training and review processes should continue to diligently train officers for their encounters with people in crisis; should maintain their rigorous standards for evaluating uses of deadly force, even when it is evident that the subject intended to precipitate the encounter with the desire to have officers end his or her life; and should guard against the language, culture, and mentality that suggests the death of a suicidal individual in such an encounter is inevitable. (Report, p.105)

- 26 The Bureau should regularly assess the effectiveness of its Sergeant's Academy and Critical Incident Management training for field supervisors and consider whether they adequately instruct sergeants to maintain their supervisory perspective and avoid tactical involvement in incidents in which their officers are involved. The Bureau should hold accountable those supervisors who fail to adhere to these training standards. (Report, p.106)
- 27 The Bureau should direct the Training Division to include in its Review of each officer-involved shooting an examination of any supervisory issues presented, with an emphasis on identifying whether first level supervisors engaged tactically instead of assuming a command role. (Report, p.107)
- 28 The Bureau should review its training on the use of ballistic shields to confirm that it accurately informs sergeants of the capabilities and limitations of the shield and to ensure that all sergeants receive this training. (Report, p.108)
- 29 When an officer uses deadly force, the Bureau's review of that incident – by the Training Division, Commander, and Police Review Board – should consider any prior uses of deadly force and evaluate whether there are significant parallels between the officer's tactical decision making in the incidents. (Report, p.110)
- 30 When an officer has been involved in more than one use of deadly force the Bureau should engage that officer in a command-level debrief of the incidents to help both the Bureau and the officer identify any patterns or parallels between the multiple events that should be addressed through training or other corrective action. (Report, p.111)
- 31 The Bureau and the City should begin as soon as possible a dialogue with the Portland Police Association to remove the 48-hour rule restriction on interviewing involved officers in shootings and in-custody deaths. (Report, p.117)

Appendix

Table of Critical Incidents Reviewed by OIR Group
2004 – 2013

Subject's name	Date	# of involved/shooting officers	# of rounds fired	Officers' weapon(s)	Hit/non-hit	Fatal/non-fatal	Subject's weapon or instrument	Subject's Race	Mental health issues	Officer(s) disciplined?
James Jahar Perez	3/28/04	1	3	9mm	Hit	Fatal	Unarmed	African-American	No	No
Marcello Vaida	10/12/05	2	38	9mm	Hit	Non-fatal	Handgun	African-American	No	No
Raymond Gwerder	11/4/05	1	1	AR-15	Hit	Fatal	Handgun	White	Yes	No
Dennis Lamar Young	1/3/06	1	2	9mm	Hit	Fatal	Drove vehicle at shooting officer	White	No	Yes ^a
Timothy Grant	3/20/06	1	N/A	N/A	N/A	In-custody death	N/A	White	No	No
Jerry Goins	7/19/06	1	4	9mm	Hit	Fatal ^b	Handgun	White	Yes	No
Scott Suran	8/28/06	1	2	AR-15	Hit	Non-fatal	Unarmed	White	No	No
James Chasse	9/17/06	3	N/A	N/A	N/A	In-custody death	N/A	White	Yes	Yes ^c
David Hughes	11/12/06	3	15	9mm (2); AR-15 (1)	Hit	Fatal	Unarmed	White	Yes	No
Dupree Carter	12/28/06	1	2	9mm	Non-hit	Non-fatal	Handgun	African-American	No	No
Steven Bolen	5/22/07	2	10	9mm; AR-15	Hit	Fatal	Shotgun	White	No	No
Leslie Stewart	8/20/07	1	1	AR-15	Hit	Non-fatal	Unarmed	African-American	No	No
Jeffrey Turpin	10/5/07	1	4	9mm	Hit	Fatal	Handgun	White	Yes	No
Jason Spoor	5/13/08	2	2	9mm	Hit	Fatal	Handgun	African-American	Yes	No
Derek Coady	5/15/08	1	2	9mm	Non-hit	Fatal ^d	Handgun	White	Yes	No
Osmar Lovaina-Bermudez	8/24/09	1	3	AR-15	Hit	Non-fatal	Handgun	Latino	No	No
Aaron Campbell	1/29/10	1	1	AR-15	Hit	Fatal	Unarmed	African-American	Yes	Yes ^e

Table of Critical Incidents Reviewed by OIR Group

2004 – 2013

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Subject's name	Date	# of involved/shooting officers	# of rounds fired	Officers' weapon(s)	Hit/non-hit	Fatal/non-fatal	Subject's weapon or instrument	Subject's Race	Mental health issues	Officer(s) disciplined?
Jack Dale Collins	3/22/10	1	4	9mm	Hit	Fatal	X-acto knife	White	Yes	No
Keaton Otis	5/12/10	4	32	9mm	Hit	Fatal	Handgun	African-American	Yes	No
Craig Boehler	11/23/10	1	3	AR-15	Hit	Fatal ¹	Handgun	White	No	No
Darryll Ferguson	12/17/10	2	20	9mm	Hit	Fatal	Replica 9mm BB gun	White	No	No
Marcus Lagozzino	12/27/10	1	4	AR-15	Hit	Non-fatal	Machete	White	Yes	No
Kevin Moffett	1/1/11	1	1	9mm	Non-hit	Non-fatal	Handgun	African-American	No	No
Thomas Higginbotham	1/2/11	2	12	9mm	Hit	Fatal	Knife	White	Yes	No
Ralph Turner	3/6/11	2	4-5; then cover fire	9mm; AR-15	Non-hit	Non-fatal	Rifle	White	Yes	No
William Kyle Monroe	6/30/11	1	4	Less-lethal shotgun loaded with lethal rounds	Hit	Non-fatal	Unarmed	White	Yes	Yes
Darris Johnson	7/9/11	3	N/A	N/A	N/A	In-custody death	N/A	African-American	No	No
Brad Lee Morgan	1/25/12	2	5	9mm	Hit	Fatal	Replica handgun	White	Yes	No
Jonah Aaron Potter	3/26/12	4	7	9mm (2); M4 (1); M16 (1)	Hit	Non-fatal	Pellet gun	White	Yes	No
Juwan Blackmon	7/17/12	1	1	9mm	Hit	Non-fatal	Handgun	African-American	No	No
Billy Wayne Simms	7/28/12	1	6	AR-15	Hit	Fatal	Handgun (unloaded)	White	No	Yes ^g

Table of Critical Incidents Reviewed by OIR Group

2004 – 2013

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Subject's name	Date	# of involved/shooting officers	# of rounds fired	Officers' weapon(s)	Hit/non-hit	Fatal/non-fatal	Subject's weapon or instrument	Subject's Race	Mental health issues	Officer(s) disciplined?
Michael Tate	8/21/12	1	2	9mm	Non-hit	Non-fatal	Cell phone	Latino	Yes	No
Joshua Baker	9/29/12	2	17	9mm; AR-15	Hit	Non-fatal	Rifle	White	Yes	No
Merle Hatch	2/17/13	3	19	9mm (2) AR-15 (1)	Hit	Fatal	Plastic phone handset	White	Yes	No
Santiago Cisneros	3/4/13	2	22	9mm	Hit	Fatal	Shotgun	Latino	Yes	No

^aThe Bureau made the decision to terminate the shooting officer. The decision was overturned by the Arbitrator, and he was instead suspended for 30 days.

^bAfter being struck by the officer's gunfire, Mr. Goins raised his gun to his own head and shot himself. The Medical Examiner ruled the cause of death to be suicide.

^cThe Bureau determined the involved sergeant violated policy on medical care for subjects following the use of the Taser and ordered a debrief.

^dAfter both of the officers' shots missed, Mr. Coady shot himself in the head. The Medical Examiner ruled the cause of death to be suicide.

^eThe Bureau made the decision to terminate the shooting officer. The decision was overturned by the Arbitrator, and that decision was recently confirmed on appeal.

^fNone of three rounds fired were deemed fatal, but Mr. Boehler died of smoke inhalation in the ensuing fire in his house.

^gThe Bureau determined an on-scene sergeant violated policy regarding operational planning and supervision and ordered a command counseling.

-----Reviewed in OIR Group's Report Concerning the In-Custody Death of James Chasse, July 2010

-----Reviewed in OIR Group's Report on Portland Police Bureau Officer-Involved Shootings, First Report, May 2012

-----Reviewed in OIR Group's Report on Portland Police Bureau Officer-Involved Shootings, Second Report, July 2013

-----Reviewed in OIR Group's Report on Portland Police Bureau Officer-Involved Shootings, Third Report, November 2014

(no shading) Reviewed in OIR Group's Report on Portland Police Bureau Officer-Involved Shootings, Fourth Report, January 2016



INDEPENDENT REVIEW OF THE WESTMINSTER POLICE DEPARTMENT

JANUARY 2015

**MICHAEL GENNACO
OIR GROUP**

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INTRODUCTION

In February 2014, after a federal trial, the jury awarded \$3.5 million dollars to three Westminster Police officers who had alleged that they had been subjected to discriminatory practices and retaliation. As part of a comprehensive remedial plan, city officials solicited and eventually contracted with Michael Gennaco of OIR Group to conduct an independent review and assessment of the Westminster Police Department. The review requested that the review include practices potentially implicated by the result of the trial including selection processes and documentation of decisions with respect to special assignments and promotions, performance evaluations, internal investigations protocols, disciplinary processes, mentoring programs, training regimens, hiring practices, and other policies and procedures with recommendations for improvement of current practices. The specifications requested that the findings be incorporated into a public report to ensure that the process was transparent and to provide information to Westminster's residents about the results of the review. This report is intended to respond to the City's request and encapsulates the findings and recommendations of the independent review.

This review is not intended to again litigate issues raised by the three police officer plaintiffs that culminated in a federal trial verdict in their favor. Instead, this review examined the trial proceedings, testimony, and exhibits in order to learn whether there were processes and procedures worthy of examination, assessment, and improvement. The approach and scale of review authorized by City leaders is a bold and forward thinking approach to risk management. While a small fraction of jurisdictions may have some type of corrective action mechanisms built into their procedures after an adverse verdict, most cities undertake little or no self-examination and try to either undo the verdict in court and/or pay the judgment and move on. Instead, Westminster's leadership went beyond the inevitable post trial proceedings by proactively seeking and authorizing a set of independent eyes to examine the civil proceedings through a different lens. What Westminster determined to learn was what the evidence at trial could teach in order to improve current processes.

This orientation to use the trial proceedings and adverse result as a learning experience and potentially insulate itself from future liability places the City at the cutting edge of progressive risk management practices. The fact that City leadership initiated and the Chief of Police embraced such a review and empowered the reviewer to follow any trail that might lead to structural improvement is indicative of a City that is oriented toward improvement and reform.

While the report found a number of areas in the way in which the Police Department and the City does business that could be improved and makes a number of recommendations designed to

improve those processes systematically, our experience in reviewing similarly situated law enforcement organizations found nothing to suggest that Westminster was an outlier with regard to many of the policies and procedures currently in place. Many of Westminster's internal policies and practices, like other similarly situated police agencies, were informal, failed to require documentation, allowed too much discretion to command staff, provided insufficient and principled guidance to supervisors on decision making, did not ensure consistency, and did not have sufficient mechanisms in place to insulate the Department from allegations of arbitrariness or unfairness in dealing with employees. The recommendations here are intended to address these identified issues to increase the confidence among its employees that all will have the same opportunities for career advancement and will have their performance assessed similarly.

While mindful that the lawsuit focused on allegations of mistreatment of the Department's employees, a number of the Report's findings and recommendations either directly or indirectly address the way in which the Department interacts with its citizens since these issues also presented themselves in the trial proceedings and exhibits. Those recommendations are intended to improve the way in which Westminster provides police services to its residences consistent with progressive practices and principles of community policing.

Because of the notoriously slow pace of civil litigation, by the time a matter reaches trial the allegations that form the crux of the complaint are usually several years old. Moreover, matters that well pre-date the alleged harm to named plaintiffs can be brought to the jury's attention, dependent on their relevancy and the court's rulings. For example, in the instant matter, the placing of a "whites only" sign in a satellite office occurred almost two decades before the issues directly impacting the named plaintiffs in the litigation. More significantly, some of the matters that were the centerpiece of the trial had occurred years and several police chiefs and City Managers prior and City leadership had, in the intervening years, attempted to address some of those processes. Suffice to say that the trial portrayed to some degree an historical account of how the City dealt with issues, some of which had been subject to revision. That being said, in the same way that historical processes help define the culture of an organization, those same processes become relevant to this outside review. What this review determined was to be mindful of those historical issues but evaluated and made recommendations based on current Westminster procedures and protocols.

To the City and Police Department's credit, the independent review and its findings as set out here is not the sole remedial response to the adverse verdict. In addition, the City brought on two respected police leaders from other police agencies as interim deputy chiefs and provided them authority to both identify issues and develop recommendations for reform. This report will comment on some of those recommendations that most directly impact issues that were the centerpiece of the federal trial but the spectrum of reform spawned by the deputy chiefs and embraced by the Chief extend beyond those matters and have been remarkable. Moreover,

instead of waiting for this review process to be completed, the Chief and City leaders have appropriately moved forward on systemic change designed to improve the special assignment and promotion process as well as other improvements on how the Department interacts with its employees and the public.

To the degree that this Report provides insight into policies and procedures of the Westminster Police Department, the findings and recommendations would not have been possible without the complete and enthusiastic cooperation of the Westminster Chief of Police, City Council, the City Manager and the Department's command staff. All documents that were requested were timely provided and, more importantly, there was unfettered access to Department and City officials who provided candid insight into the issues in question. The degree of cooperation displayed by the City during the review process is a testament to an entity supportive of the process and cognizant of the need for the reviewer to have total access in order to conduct an impactful, candid, and meaningful review.

I. The Special Assignment Selection Process Was Informal, Providing a High Degree of Unfettered Discretion to Department Decision Makers and Subject to Successful Argument that It Was Influenced by Inappropriate Factors.

The Westminster Police Department created special assignments for officers that provided the ability to work in specialized units, provided additional pay for officers selected, and became stepping stones for career advancement within the organization. Categories included detectives, motorcycle, administrative, and mall assignments. At trial, plaintiffs argued that with the possible exception of the mall assignments, they were not awarded with special assignments in other areas of the Department because they were Hispanic.

In the past, when a special assignment opening became available, the Department sent out a communique to its officers indicating the opening and soliciting applications for any officer who might be interested in being considered for the assignment. Upon receipt of the application memorandum, the Department would then ask sergeants to comment on the suitability of the applicant officers to be considered for a special assignment. These comments would be collected and the supervisor of the special assignment unit's views would also be solicited. WPD command staff would then make recommendations to the Chief who could accept the recommendation or choose someone else for the special assignment position. Over the years, the process became somewhat more formal, with the Professional Standards Unit collecting evaluations, checking on disciplinary histories of the applicants, and providing somewhat more guidance to sergeants on how any input should be formatted. However, the decision on selection still rested within the discretion of the Chief who usually relied heavily on any recommendation made by the supervisor in charge of the special unit with the vacancy. With that reliance came the perception, if not the reality, that the special unit supervisors were selecting their "friends" or

those officers part of a “good old boy” network than choosing based on merit.

The special assignment selection process provided little information to officers about the selection criteria or the type of experience the Department was looking for among applicants. Because of its informality, the process could be easily changed to accommodate a particular officer who might otherwise not be eligible. For example, on one occasion an officer on probation¹ was selected despite prior announcements indicating that officers who were on probation were not encouraged to apply. Moreover, there was scant documentation that supported or explained the Chief’s ultimate selection decision.

While the informality of the special assignment process is not unique to Westminster and still likely exists in many similar sized agencies, the lack of guidance in the process allowed command staff unfettered discretion to choose who they wanted for the special assignments without a need to consider any objective criteria in comparing the attributes of the candidates. While there is merit to providing executives discretion on who to select for special assignments, the complete lack of written guidance for officers, supervisors, and command staff alike in learning ahead of the process the desirable traits of a candidate and how the selection was to be achieved left the Department vulnerable to concerns that the process was not performance-based and that decisions were being made based on inappropriate criteria. This phenomenon was confirmed at the federal trial where pages of testimony and attorney argument devolved around whether applicant “X” was better qualified for the assignment than applicant “Y” and how, in the plaintiffs view, the process ended up working to their disadvantage. The lack of criteria and documentation of the special assignment decisions ended up making the Department particularly vulnerable to these arguments at the federal trial.

Before this review commenced, the Chief already recognized the need for reform in the special assignment process. As a result, a six page indexed briefing was promulgated this summer that sets out minimal requirements for special assignment and collateral assignment² eligibility. For example, in order to be considered for a special assignment, written guidelines set out that an officer must have completed his probationary period and have three years of experience as a police officer. In order to be considered for special assignment, the officer must also have achieved at least an “acceptable” overall rating regarding performance evaluations over the previous eighteen months. To provide a higher level of objectivity, the new criteria transfer responsibility of processing and scoring the applicants to the Human Resources Division of the City. The Division of Human Resources is to provide the Chief of Police a band of the top five

¹ Officers newly hired to the Westminster Police Department serve a probationary period during which they do not accrue the full employment protections of a tenured officer.

² Collateral assignments are extra duty positions such as SWAT that while not the centerpiece of critique by plaintiffs in the federal trial, suffered from the same infirmities as the special assignment process. The Department should be credited for the increased processes and guidance provided regarding that selection process as well.

scoring applicants who will then choose from among them to fill the vacant position. The document also sets out a more specific and defined process for rotation, lateral transfers, and extensions of assignments.

The detailed criteria set out in the briefing provide significantly more information and guidance to the police officer applicant and Department decision-makers regarding the special assignment selection process. The process does eliminate the ability of the Chief to pick the “best” officer from whoever has applied for the position because Human Resources is only to provide the Chief with the top five applicants as determined by that Division. That being said, the reformed process still provides the Chief the ability to pick among the top five qualified officers, sets out automatic disqualifiers, and brings more objectivity to the process.

While the new criteria is a significant step forward in educating officers about the special assignment process and providing more objectivity to the process, there is even additional room for further guidance and objectivity. As this reviewer indicated in an internal communique to the Chief, consideration should also be given to making ineligible for special assignment consideration officers who have recently received discipline. For officers who have received discipline for integrity lapse issues, that ineligible time frame should be a longer period. Further consideration should also be given to whether higher levels of educational attainment by officers should be preferred in the process and whether there were other objective criteria that should also be built into the scoring process. The document could also set out with particularity the information that will be part of the special assignment consideration package and who is responsible for collecting and retaining that information. For example, the document should set out in writing that the applicant officer’s disciplinary history, commendations, uses of force, and training history is to be included in the review package. Finally, the process should indicate whether there is an opportunity for officers who are not selected among the top five to appeal, and if so, what that process involves.

Recommendation One: The special assignment selection process should consider whether recent disciplinary history and/or whether disciplinary history involving integrity issues should be automatic disqualifiers for special assignment consideration.

Recommendation Two: The special assignment selection process should consider whether objective criteria such as level of educational attainment should be built into the scoring and selection process.

Recommendation Three: The special assignment selection process should set out in writing what specific materials will be collected for purposes of evaluating and scoring the applicants and who is responsible for collecting and collating that information.

Recommendation Four: The special assignment selection process should set out in writing by whom and how long the special assignment application and review materials will be retained.

Recommendation Five: The special assignment selection process should set out in writing whether the scoring of applicants has an appeal process and if so, set out the details of that process.

II. The Need to Develop Additional Protocols to Ensure Consistency of Treatment of Employees.

Evidence was produced at the federal trial that while some officers were given considerable leeway regarding when they were required to turn in their daily activity logs, other officers were held strictly to the requirement that they be completed daily. Evidence was also produced that when officers did not meet the expectation of supervisors, similar violations were handled differently with regard to documentation and discipline. The source of this inconsistent treatment largely stemmed from first level supervisors and their approach toward supervision. Some sergeants found it crucial for officers to comply with Departmental expectations in completing paperwork while others either did not enforce or laxly enforced such requirements. Moreover, the way in which sergeants held their officers to account for such performance varied from verbal admonishments or written performance logs to formal discipline.

As a result of inconsistent approaches to these performance matters among sergeants, plaintiffs were able to argue at trial that officers similarly situated had not suffered the same level of review or accountability. Accordingly, plaintiffs could and did explain such differential treatment as retaliation against them for filing a complaint and lawsuit against the City. Because similarly situated officers were subjected to differential treatment by supervisors, it was difficult for the Department to disprove the plaintiffs' allegations.

Supervisor's Logs: A Need for Further Guidance.

Another source of contention raised at the federal trial was the alleged discriminatory use of supervisory logs against the plaintiff officers. At WPD, a supervisor's log is intended to document an officer performance issue but, unlike a written reprimand, is not intended to constitute formal discipline. Currently, supervisory logs can be but are not required to be incorporated into an employee's annual performance evaluation. The wide discretion afforded first level supervisors on the use of supervisors logs creates the reality of inconsistent use and impact on line officers.

If supervisory logs are not considered discipline, written policy should indicate such. Second, more guidance needs to be afforded supervisors on when they should create supervisor logs and second level supervisors should audit the type, frequency, and nature of the issuance of logs

among sergeants to promote consistency of use. Finally, WPD should consider whether every performance log should be referenced in the employee's performance evaluation in order to promote the principle stated in Department policy that employee assessments are an ongoing process and help ensure consistency of treatment. There is some logic supporting the idea that in cases in which the log caused the desired effect of improved employee performance there was no need to discuss the issue in the performance evaluation. However, inclusion of the log and the employee's self-remediation should be considered as a positive attribute of the employee's ability and inclination to self-correct and presents a fuller picture of the employee's progress over the year.

Recommendation Six: WPD should expressly articulate that Supervisory Logs are not considered discipline and indicate their intent.

Recommendation Seven: WPD should develop protocols requiring second level supervisors to audit the use of Supervisory Logs by sergeants to ensure consistency of use and treatment.

Recommendation Eight: WPD should consider whether written protocols should be developed requiring that all performance log entries are to be referenced in the employee's annual performance evaluation.

Accountability Guidelines Designed to Promote Consistency of Treatment.

A central issue at the federal trial was that WPD treated employees differently when they were involved in similar transgressions. Plaintiffs argued that this differential treatment demonstrated discrimination and/or retaliation. At trial, plaintiffs were able to make significant headway with regard to the allegation of differential treatment. For example, one plaintiff officer was disciplined for talking with two other officers at the workplace about sexual matters, but the other two officers received no discipline for also participating in the conversation. This differential treatment also extended to allegations that some officers were treated harshly for failing to timely complete reports while other officers received no adverse action for similar delinquent behavior.

In determining the appropriate remedial response to performance below Departmental expectations, command staff should strive for consistency so that similarly situated employees are treated similarly while recognizing that there is room for differential treatment depending on factors unique to the employee. One helpful device that law enforcement agencies have used successfully is the institution of accountability guidelines. Accountability guidelines set out a remedial range for sub-par performance or potential policy violations. More refined guidelines then note factors specific to the employee's situation that may be a basis for mitigating or aggravating the remedial action. For example, a complete acceptance of responsibility by the

employee is cause for mitigating the discipline and the obverse denial of responsibility may be a basis for aggravating the discipline. A past history of discipline could serve as a basis for aggravating the corrective action while an officer with no disciplinary history over a lengthy career may deserve discipline on the lower end of the scale. More refined accountability guidelines allow for decision-makers to depart upward and downward from the defined disciplinary range in unusual circumstances provided there is articulated justification for the departure. Another significant advantage to using an accountability guideline system is that it places employees on fair notice about what kind of discipline they may expect should they violate a particular policy provision and reduces the perception among officers that the imposition of accountability is completely arbitrary, based on inappropriate factors such as skin color or retaliatory. Finally, the use of a matrix or guideline system reduces the ability to have unprincipled factors such as favoritism enter into the decision making. An accountability guideline system works particularly well for certain transgressions such as failure to timely submit reports, book evidence, activate recorders, and off duty DUI's.

Recommendation Nine: WPD should consider adopting an accountability guidelines system to build more consistency into its decision making on accountability and discipline.

III. WPD's Performance Evaluation Program.

A review of numerous performance evaluations shows that, to its credit and unlike many similarly situated law enforcement organizations, the Westminster Police Department has a culture of supervisors candidly setting out the performance strengths and weaknesses of its officers. For many law enforcement agencies, performance evaluations have devolved to a mostly meaningless exercise where almost every officer gets an "outstanding" rating and only positive accomplishments are documented. While WPD endeavors to provide through its evaluative process a meaningful gauge of officer performance, there is room for improvement in a number of areas.

Acceptable Performance Ratings Should Have the Same Amount of Supporting Documentation as Any Other Category and Written Guidance to the Contrary Should Be Removed.

WPD's policy that provides guidance to its supervisors on how to prepare performance evaluations is detailed and helpful. Of particular commendable note is recognition in the policy that the evaluative process should be considered "ongoing". However, in discussing the various ratings that officers may receive, the policy indicates that the "acceptable" rating is what most officers should get and that the supervisor needs only minimal documentation to justify this rating.

Any guidance that discourages supervisors from setting out documentation to support a rating runs counter to best practices. Simply because an officer's performance lies in the "acceptable" range should not suggest that it is not as important for a supervisor to provide an illustrative narrative to that officer to give her or him greater insight into the bases for the rating. As with any evaluation, the narrative description of officer performance that supports the rating provides more helpful feedback to the officer than any conclusory "acceptable" rating could do.

Recommendation Ten: Westminster PD should revise its policy on performance evaluations that discourages setting out detailed supporting documentation for "acceptable" performance ratings.

The "Shift Average" Metric Should Be Eliminated From Performance Evaluations.

In an apparent attempt to introduce an objective metric into officer evaluations, performance evaluations of Westminster Police Officers generally contained information about whether the particular officer was above "shift average" with regard to police activity, usually regarding arrests or issuance of citations. While this easily calculable information provides some indicia of officer performance, to highlight this one aspect of officer activity overemphasizes activity that could produce unintended consequences. If officers recognize that their performance evaluations will be skewed toward how many arrests or citations they make, they may be motivated to effectuate arrests or issue citations where officer discretion suggests the better approach is not to do so or even worse, where elements supporting an arrest are questionable. Moreover, officers who emphasize principles of community policing such as positive citizen officer contacts, dialogue with youth, and visibility in the community may find themselves on the bottom of arrest/citation shift average because of their shift work in this area. During this review, this issue was discussed with the Chief and there has already been work done to discourage featuring this metric in performance evaluations.

Recommendation Eleven: WPD should discourage the use and articulation of arrest/citation shift averages in evaluating officer performance.

The Importance of Addressing "Needs Improvement" Evaluations, Developing Performance Improvement Plans, and Ensuring that Goals Are Meaningfully Fostered.

The review of performance evaluations often indicated that officers were rated as "Needs Improvement" in certain subcategories of performance. However, there was no systemic action designed to address officer performance that was so below Departmental expectations to warrant such an assessment. Related to this observation, a Performance Improvement Plan (PIP) is a managerial tool whereby the Department places a problematic employee on notice that his or her

performance is so substandard that a formal plan needs to be devised to attempt to improve officer performance. For employees under a PIP, if performance fails to improve, the officer could be subject to separation from the Department. While there were several instances where the evaluator indicated that the officer should be a candidate for a Performance Improvement Plan, no officer has been placed on a PIP since 2008.

Westminster's performance evaluations have a subcategory where the supervisor is to identify goals for the officer for the upcoming year in order to enhance career advancement. However, there is no mechanism to create and monitor an action plan designed to ensure implementation of officer goals; too many times the subsequent year's evaluation simply indicated in the "goals" section that the officer should work on achieving the goals that had been set out the previous year to no apparent good effect.

More attention needs to be placed when officer performance warrants a "Needs Improvement" assessment; namely, it is incumbent on the agency to develop strategies designed to improve performance to an acceptable range or sufficiently document Departmental efforts to do so. Any such rating should trigger a meeting with the rating sergeant and a WPD commander who should work together with the employee to devise a specific "action plan" designed to address and remediate the performance issue through intervention strategies. The action plan should require, at a minimum, that the sergeant and commander reevaluate the effectiveness of the plan and the officer's performance on a quarterly basis.

With regard to the establishment of goals, the sergeant should assume responsibility to ensure that a plan is devised with the officer to work toward achievement of those goals. Finally, a critical element of WPD sergeants' performance should be their performance evaluations of officers, the degree to which they identify performance issues and devise remedial strategies for those in need of improved performance, and the degree to which the officers under their command work meaningfully toward career enhancement goals set out during the evaluative process.

Recommendation Twelve: When an officer is rated as needing improvement in performance with regard to certain subcategories, the supervising sergeant and Department commander should work with the employee to devise a plan designed to address and remediate the performance issue.

Recommendation Thirteen: The Department should check in at least quarterly with regard to officers who are rated as needing improvement to gauge the effectiveness of the corrective action plan.

Recommendation Fourteen: Sergeants should be required to work with officers to devise plans intended to accomplish goals set out in the performance evaluation.

Recommendation Fifteen: A critical element of a sergeant's performance evaluation should be the skill with which he or she evaluates officers, the degree to which he or she effectively works with command staff to remediate performance issues or document attempts at doing so, and the success with which officers under her or his command achieve career enhancement and advancement goals.

Performance Evaluations Should Be Reviewed as Important Feedback to More Fundamental Issues That Might Be Impacting the Department.

In 2008, one of the plaintiff police officer's performance evaluations indicated that the officer should not be involved in "nonchalant negative banter", should "be cautious with his criticisms", should stop with the "trivial negativity" and "pick his battles". The evaluation proceeded to indicate that when the officer made such remarks in the workplace it would "taint" others perspectives of the officer and overshadow his otherwise good work. If, instead of merely being critical in a performance evaluation, the supervisor or other command staff had taken more time to tease out the source of the officer's criticism and address it with the officer to see whether strategies could be deployed to reduce the officer's discontent, the future civil proceedings that eventually resulted may have been potentially avoided.

Whenever an officer expresses unhappiness with his work environment, it is crucial that supervisors not automatically dismiss the comments as "trivial" and attempt to diagnose, evaluate, and address the source of the problem. This is not to say that all employees have legitimate complaints all the time and that all such complaints will be resolved to the satisfaction of the employee; however, in this case, other than including this passage in the employee's evaluation, there is no further documentable evidence that this supervisor or any other individual in the employee's supervisory chain attempted to address the officer's articulated concerns in a concerted or constructive way. It is recommended that supervisors be further trained on the need for heightened sensitivity regarding work place complaints by officers about perceived poor treatment and provide them tools designed to evaluate and address such complaints. At a minimum, first-line supervisors should be instructed to bring such officer complaints to the attention of WPD's chain of command.

Recommendation Sixteen: WPD should train its supervisors to be more attuned to complaints of poor treatment articulated by police officers and other staff and of the need to forward such complaints to command staff for careful consideration and handling.

IV. WPD Should Instill Mechanisms to Ensure Compliance with the Letter and the Spirit of Federal Law Protecting Rights of Persons on Active Military Duty.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a federal law that establishes rights and responsibilities for uniformed service members and their civilian employers. The Defense Department explains that USERRA is:

intended to ensure that persons who serve or have served in the Armed Forces, Reserves, National Guard or other uniformed services: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. The law is intended to encourage uniformed service so that the United States can enjoy the protection of those services, staffed by qualified people, while maintaining a balance with the needs of private and public employers who also depend on these same individuals.

Evidence was adduced at the federal trial that when an officer who had been deployed requested that WPD keep him informed of special assignment or promotional opportunities and requested that such information be sent to his military and/or private email addresses, he received an email indicating that WPD did not have to accommodate him any more than any other police officer on the Department. While evidence did indicate that this email response notwithstanding, WPD did eventually accommodate the officer's situation by sending him information over his military email address and allowing him to "interview" for a special assignment position via email, the one email communicate that suggested an initial inflexibility to accommodate the officer undercut the subsequent acts of accommodation. Whether the initial email response that WPD did not have to treat the deployed officer specially was consistent with the letter of USERRA, it does not appear to be consistent with the spirit of the law. On a going forward basis, it is recommended that WPD recognize the spirit as well as the letter of the law and take whatever reasonable measures exist to ensure that actively deployed members of the military remain informed about opportunities and developments within the police department and that any reasonable accommodations are made to ensure that deployed officers can advantage themselves of those opportunities to the extent feasible.

Recommendation Seventeen: WPD should interpret USERRA broadly and make any reasonable accommodations to ensure that officers who are militarily deployed are aware of and can compete for promotional opportunities or other career advancements to the degree feasible.

V. WPD's Accountability/Disciplinary Process

Employees Who Are the Subjects of Internal Investigations Resulting in Possible Termination Should Continue to Be Relieved of Duty During the Pendency of the Investigation.

WPD generally has a clear and astute policy that provides for assigning officers to inactive duty if they are the subject of investigations where the offense is so serious that, if founded, the disciplinary action may be termination. To his credit, the Chief is currently appropriately using this provision when officers have been alleged to have committed serious transgressions.

The wording of the policy indicates, however, that the decision to assign an employee to inactive duty rests with a "supervisor". Because of the significance of such a decision, unless there is real exigency where the Chief cannot be timely informed, the decision to relieve an employee of duty should lie with the Chief of Police and the policy should be revised to indicate such.

In addition, internal policies should ensure that investigations in which an employee has been relieved of duty should receive expedited treatment. While such investigations need be thorough in light of the potential consequences, they also should be expedited so that the time during which an officer has been relieved of duty is not unnecessarily attenuated.

Recommendation Eighteen: WPD policy should be revised to make clear that the decision whether to place an employee on inactive duty should rest with the Chief.

Recommendation Nineteen: WPD protocols should be adopted to ensure that investigations involving employees who have been placed on inactive duty should be expedited.

WPD should adopt investigative protocols with more timely completion expectations.

WPD's written internal investigative guidelines call for every administrative investigation to be completed within one year. The Department's one year time frame set out for administrative investigations is the maximum length of an internal investigation set out by state law. WPD should set out an investigation completion time frame that is more aspirational than one year such as 90 or 120 days. While such a written internal guideline would not confer additional rights to subject officers, it would signify the Department's interest in timely completed investigations and message supervisors regarding the Department's expectations.

Recommendation Twenty: WPD should set out investigative guidelines for completion of internal investigations that signify its interest in timely administrative investigations.

Performance Expectations Regarding Completion of Reports Are Not Always Clearly Set Out.

A topic of much discussion at the federal trial involved debate about what the performance expectations were for officers with regard to completion of necessary reports. Some officers testified that “daily” logs could be turned in before the end of the month, that officers had two weeks to complete citations, that evidence could be held rather than immediately booked. A review of WPD policies and protocols shows that with respect to daily activity logs, current policy does require that they be completed at the end of shift. The same is true with regard to the handling of evidence; current policy requires that evidence must be booked before an officer goes off duty unless a supervisor approves a variance. However, there is no similar written expectation regarding when citations and reports must be completed. The Department could set out different expectations for reports dependent on whether there is a suspect in custody or the nature of the report, but officers should be provided written guidance on when the Department expects reports to be submitted.

Recommendation Twenty-One: WPD should set out in writing its expectations for when reports should be completed.

WPD Has Made Positive Steps in the Implementation of an Early Identification System.

One effective risk management tool is the creation of an early identification or early intervention system. Such a system uses data searches to identify officer actions that might be indicative of concerning behavior worthy of remedial action. WPD has had little tradition of using such data to identify officer conduct. However, recently, WPD created a draft policy that set out the rubric of an early identification system. As the draft document indicated, the policy was intended to assist police supervisors and managers in identifying officers and other employees whose performance warrants review and, where appropriate, intervention in circumstances that may have negative consequences for the employee, fellow employees, the agency or the public. The draft policy then sets out a detailed procedure for what information the system will capture, who is responsible for processing the data, threshold activity warranting further review, and intervention strategies such as close monitoring of identified employees. Commendably, the policy sets out a basic structure for an early identification system for WPD.

During this review, the policy draft was shared for comment with this reviewer. As suggestions to further refine the policy, this reviewer indicated the following issues might be addressed in the final policy:

1. Some Early Identification Systems track employee absences or tardiness as potential indicators of officers having issues. Should absences or tardiness be included as a performance indicator?
2. Should internal affairs investigations be included as a performance indicator?
3. Should use of deadly force be included as a performance indicator?
4. Should the following identifiers also be included as thresholds?
 - X number of uses of force during the past 12 months?
 - X number of uses of deadly force during the past three years?
 - X number of employee absences or tardiness during the past 12 months?
5. Should there be a mechanism whereby first level supervisors are solicited to refer officers for intervention consideration?
6. At the end of the monitoring, is employee feedback solicited with regard to the effectiveness of the program?
7. Are first level supervisors subject to the EIS program? If so, what criteria should be used to identify supervisory candidates for intervention?
8. How will the EIS program interrelate to the Performance Evaluation process?
9. Will there be reporting on the progress of the EIS program to the City Manager? City Council?

Recommendation Twenty-Two: In finalizing its Early Identification System policy, WPD should consider questions of additional indicators, additional thresholds, solicitation of first level supervisors for candidates to the program, soliciting employee feedback on the success of the program, consideration of whether first level supervisors should be candidates for the program, how the system interrelates to employee evaluations, and how the progress of the program will be reported out to the City Manager and City Council.

Professional Standards Unit and Internal Affairs Investigations – Steps Forward and Recommendations for Improvement

Several years ago, WPD created the Professional Standards Unit (PSU) which was a positive step with regard to how the Department handled administrative issues. Prior to PSU, most internal investigations were conducted by the supervisors of the subject employee. After PSU was created, the more serious investigations were handled by a specialized unit, resulting in improved investigations. In addition, PSU created a template that regularized the way in which internal investigations were formatted and the information that was available for review by the decision maker. Moreover, the creation of PSU caused more systemic tracking and monitoring of internal investigations. PSU has also provided training for supervisors on how to conduct internal investigations.

While the creation of PSU has provided an entity that has taken over the more serious internal investigations, there is no written guidance regarding which cases are to be handled by PSU and which investigations will be assigned to PSU. Moreover, as perhaps a relic of the past, what written policy exists indicates that the primary responsibility for internal investigations remains with the employee's immediate supervisor.

Recommendation Twenty-Three: WPD should set out written guidelines regarding which internal investigations are to be handled by the Professional Standards Unit.

Recommendation Twenty-Four: WPD should examine current policy to determine whether it is consistent with current expectations regarding who should have primary responsibility for internal investigations.

WPD's Complaint Form: Removal of Language that Could Chill Complainants.

The Department has a form that is available for persons wanting to make a complaint against an officer. The complaint form asks the complainant to declare that the allegations are true and correct. The form then contains a reference to Civil Code 47.5 which provides that police officers can bring an action for defamation for filing a complaint alleging misconduct, criminal conduct, or incompetence if the complaint is false, made with knowledge that it was false and that it was made with spite, hatred, or ill will. The form then asks the complainant to sign the document immediately after the advisory. While the advisory is technically correct, there is no requirement that complaint forms inform complainants of defamation law. Moreover, having such language in a complaint form could serve to chill an individual's interest in complaining against an officer for fear of being subject to litigation if the complaint is deemed false. Persons who have had historical or language challenges in exercising their rights and filing complaints are particularly susceptible to such warnings. In order to ensure that the form does not impede Westminster's public from making complaints, the advisory language should be removed.

Recommendation Twenty-Five: The language on the Department's personnel complaint form advising persons who make false complaints that they could be subject to a defamation lawsuit by police officers should be removed from the form.

WPD's Laudable Practices for Internal Investigations.

At the federal trial, the Department was taken to task because of its insistence on proceeding with an investigation even when the complainant had indicated that she wanted to withdraw the complaint. However, best practices teach that internal investigations should not be automatically closed simply because the complainant indicates a desire not to pursue the matter. Rather, the Department should, as it did in the case discussed at trial, complete the investigation and determine whether the officer's conduct violated policy.

In addition, the Department was criticized at trial for conducting an investigation into a complainant's allegations and then discovering another violation that ended up being the basis for discipline. Again, criticism to the contrary, the Department performance was consistent with best practices. If, during an investigation, evidence is discovered that points to a different violation of policy, the Department should, as it did in the cited case, pursue the additional lead and make a finding on the additional information.

WPD's Concerning Practices re Internal Investigations.

One case that became a focal point at the federal trial involved an allegation of excessive force involving a Westminster Police officer. At the conclusion of the internal investigation, the Department concluded that the officer had violated its use of force policy and imposed a lengthy suspension on him. Other witness officers were also disciplined for performance issues in the way in which they reported the force. Key to the Department's determination was the account of a witness officer who asserted that the force she observed her fellow officer used was unnecessary. The officer who used force accepted responsibility for the force and entered into a settlement agreement with the Department rather than contest the discipline.

The individual upon whom force was used filed suit for injuries suffered as a result of the force. At trial, the jury found in favor of the City, finding no excessive force. According to the then Chief of Police's testimony at the discrimination trial, after the verdict came back on the excessive force trial, he requested the Professional Standards Unit to examine the evidence produced at that trial to determine whether any new evidence had been introduced warranting a second look at the Department's internal affairs investigation. However, instead of obtaining the excessive force trial transcripts and exhibits, the investigator simply re-reviewed information collected during the internal affairs investigation and came to a different conclusion based on the same information, namely, that the officer's force was consistent with Departmental policy. As a result and based on the investigator's recommendations, the discipline against the officer who used force was undone. The other witness officers who had been disciplined also had their discipline overturned.

The result of this case is troubling for a number of reasons. In addition to the apparent disconnect between what the Chief had requested be done and what was eventually undertaken, the mere fact that the jury had reached a decision based on evidence and testimony presented to them should not have been a sole basis to undo the discipline emanating from the internal affairs investigation. It would have been appropriate to have followed the Chief's stated instruction and examine the trial testimony and evidence to learn if new information had been presented that warranted a revisiting of the case internally. However, a reassessment based on no new evidence on a case in which the central officer eventually admitted culpability undermined the original

investigation and analysis for no legitimate reason. Moreover, the decision to undo the discipline failed to take into account the impact such a reversal might have on the officer who had come forward against a peer officer to say the officer's actions were unnecessary. The exoneration of the officer who used force of necessity suggested that the Department now undervalued the statement of a fellow officer who saw something she thought was wrong and had the courage to say so.

Recommendation Twenty-Six: WPD should set out in writing internal protocols noting that the mere fact that a different result is reached about a disciplinary matter in another forum is in and of itself no reason to revisit the Department's decision.

Recommendation Twenty-Seven: WPD should institute protocols that would allow revisiting of an original disciplinary decision only when there is new evidence presented warranting such additional review.

Officers Should Not Be Removed from Collateral Assignments Based on Unproven Internal Investigations.

In one case featured at the federal trial, a WPD police officer was initially terminated for what was believed to be not credible statements made during an internal affairs investigation regarding the officer's witnessing of a force incident. During the internal grievance process, the then Chief determined that there was insufficient evidence to sustain the discharge and changed the finding that the officer had violated policy. The Chief, however, because of his belief that the officer could not be trusted removed the officer from collateral assignments.

The Chief's decision to remove the officer from his collateral assignments after the discipline determination had been reversed was problematic. Once the disciplinary determination was reversed, the Chief should not have undertaken any additional adverse action against the officer based on the case.

Recommendation Twenty-Eight: WPD should create an internal protocol indicating that officers will not be removed from collateral assignments based on unproven internal investigations.

The DEFH investigation lacked sufficient breadth and scope.

After one of the plaintiff WPD officers filed a claim of discrimination against the City, the Police Department initiated an investigation into the allegations. The investigation resulted in a number of police witnesses being interviewed and identified a number of subject officers. The investigations also commendably reached back to historical incidents that were several years old

but unknown to command staff. The investigation was able to prove that officers and sergeants had made inappropriate comments that resulted in disciplinary actions against them.

While the investigation worked well in evaluating discrete incidents, the investigation lacked the breadth and scope necessary to address the essence of the officers' complaints presented at trial, namely that they had been unfairly treated with regard to decisions made about special assignments. While the two officers who cooperated in the internal investigation were asked about who they thought was being unfair to them, they candidly indicated that they did not really know who was responsible for the decisions on special assignments. And the Department's investigation did not attempt to catalogue how the process worked and who was responsible for such decisions. In order to do so, the highest level of the Department's current and former command staff would have needed to be interviewed, an extremely uncomfortable assignment for an investigator of lower rank. For this reason, it would have been prudent for the Department to have requested an outside investigator handle this inquiry.

Recommendation Twenty-Nine: When allegations of mistreatment extend to command staff decision makers, the Department should assign any subsequent investigation to individuals outside of the Police Department.

Performance to Standards Policy.

While current WPD policy has principles that touch on the topic, there is currently no succinct general performance policy in its manual. In our experience, there are frequently occasions in which a police officer will perform duties in such a way that there may be no specific policy which is violated by the actions but the acts or series of acts are markedly below the expectations of the Department. In force incidents, this arises most frequently when tactical blunders inconsistent with training end up causing the officer to use force. In these cases, the force may be in policy, but the officer, by his tactical deficiencies and disregard for officer safety may have placed him in a situation where he was then required to use force.

In these situations, the existence of a performance to standards policy affords police managers the ability to hold employees accountable for behaving incompetently. We recommend that WPD enact policy that informs its employees that they are expected to maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions and that they will be expected to perform their duties in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the functions and objectives of the Department.

Recommendation Thirty: WPD should adopt a "performance to standards" policy which can be used to hold officers accountable when an officer's performance is so below the

expectations of the Department's training that discipline is warranted.

WPD Should Make Additional Use of its Mission/Values/Vision Statement.

In its Mission/Values/Vision Statement (Mission Statement), the Westminster PD sets out appropriately lofty expectations for its officers particularly with regard to gaining and retaining the public's trust and the need to treat all with respect. One way progressive law enforcement agencies have made real use of similar statements is when a police officer has violated policy and betrayed the tenets of the Mission Statement, to include a violation of the statement as a separate policy violation in addition to the specific policy violation(s) at issue. WPD could ensure more recognition that its Mission Statement is a vibrant and meaningful code of aspirational conduct were it charged as a violation of Department policy when officers are found to have failed to live up to its expectations.

Recommendation Thirty-One: WPD should consider charging officers with violating the tenets of its Mission Statement in appropriate disciplinary matters.

The Appeal of Disciplinary Determinations to the City Manager Is of Little Utility.

Westminster has a novel practice whereby an employee may appeal an adverse disciplinary decision to the City Manager who has the authority to modify the determination of the Chief. If the City Manager does not modify the determination, the employee may then proceed to further levels of appeal including arbitration, the City Council and Superior Court. Because the City has had occasion to appoint former Police Chiefs as City Managers, there was one case discussed at trial whereby the City Manager was making a determination of a matter he had previously considered when he was Chief of Police and, not surprisingly, affirmed the decision he had made as Chief. The City should at least modify current protocols in cases where the City Manager had made the initial decision as Agency head. More fundamentally, considering the questionable utility of the City Manager review and the layers of post-disciplinary review that currently exists, the City should also consider eliminating the City Manager appeal process.

Recommendation Thirty-Two:

- (a) The City should further examine the utility of the City Manager disciplinary review process and consider eliminating it.***
- (b) Should the City determine to retain the City Manager appeal process, it should provide an alternative mechanism for review when the City Manager had been involved in the decision as an agency head.***

VI. The Need for Further Clarity and Guidance Regarding the Use of Digital Activated Recorders.

WPD policy requires officers to carry and activate a Department issued audio recorder when they engage in most police citizen contacts. The policy appropriately sets out an expectation that the recorder will be activated for all enforcement stops or field interviews. The policy also expressly sets out that any recording made is the property of the Police Department.

The policy has provisions in need of refinement. For example, there is a reference in current policy that discusses the use of personally owned recorders that is apparently a relic of past policies. In addition, the policy does not have but should include a discussion regarding the maintenance of digital recorders and the need to ensure that they are in working order at the beginning of the officer's shift. Moreover, the policy should indicate that in cases in which a contact or interview was not tape-recorded, the report should indicate the reasons why a recording was not successfully effectuated. Finally, WPD policy should indicate that all audio recordings will be reviewed and attached to any personnel investigation or force review.

Recommendation Thirty-Three:

- (a) WPD should delete the reference in current policy to personally owned recorders.***
- (b) WPD policy should include a reference toward the officer's responsibility to maintain their recorders in working order and check the batteries prior to going on shift.***
- (c) WPD policy should direct officers to include in their police report an explanation whenever a police contact or interview is not captured on tape.***
- (d) WPD policy should include a requirement that all audio recordings of an incident will be reviewed and attached to any personnel investigation or force review.***

VII. Progressive Mechanisms for Internal Evaluation of Departmental Functions.

WPD Should Increase Use of Performance Audits for Internal Assessments.

WPD has little tradition of systemically auditing the performance of its employees. The creation of an early identification system referenced in this report will be an important step toward a more systematic review of individual officer performance. However, WPD should also deploy systemic audits as yet another way to identify trends, performance issues, systemic strengths and weaknesses, and areas in need of individualized and Department-wide correction and remediation. More importantly, audits can also be effective barometers of the effectiveness of first level supervision. If an audit shows a particular shift is underperforming, examination should be directed at the supervisor rather than the individual officers. As examples of areas where the Department could and should perform regular audits:

- Qualitative assessments of police reports
- Timeliness of daily activity logs
- Email audits
- Audits of the use of digital audio recording devices
- Uniform and equipment audits
- Use of seatbelts
- Evidence booking and handling audits
- Informant audits
- Training compliance audits
- Audits comparing enforcement of rules/expectations among sergeants

Audits should be performed by individuals not within any particular chain of command such as the Professional Standards Unit. Considering the amount of responsibility already assumed by PSU, it may require greater devotion of resources for a robust auditing program to be successfully initiated and maintained.

Recommendation Thirty-Four: WPD should consider use of audits to detect individual and systemic performance issues.

Quality Assessment Outreach

Police Departments have long had mechanisms for receiving complaints and commendations from the public. However, it is the rare law enforcement organization that proactively and systemically seeks feedback from its community regarding how it is performing. As a result, unless a community member takes the trouble to affirmatively register a complaint or articulate a commendation, the agency's leadership has little knowledge about how its officers are engaging with their community.

Police agencies could increase their knowledge set by affirmatively reaching out to segments of the community to obtain feedback on how their work is being perceived by the community. Focused outreach could be on community segments that may not have the wherewithal, confidence, or trust to visit the watch commander at the station to voice a formal complaint; such as the recent immigrant community, the homeless, and the poor. Vulnerable businesses where officer misconduct has recently occurred could also be featured as part of this outreach such as the bars of Westminster. By not waiting on citizens to file formal complaints or send in commendations, the Police Department will have yet another way to gauge Departmental performance in the field and potentially identify problematic officer performance earlier rather than later.

Recommendation Thirty-Five: WPD should consider developing an outreach program whereby it systemically seeks out feedback from the community on the performance of its officers.

WPD Must Ensure that Corrective Measures Are Implemented.

The federal trial revealed at least one instance in which an officer had agreed as part of a disciplinary settlement to attend sexual harassment training. However, the Department did not ensure that the training was provided. Clearly, the Department felt it important enough for this officer to obtain such training as part of a remedial plan. WPD must ensure that mechanisms exist so that corrective actions are fulfilled. Instead of diffused responsibility which often ends up as no one having responsibility, it is recommended that one entity in the Department be assigned the responsibility of initiating and maintaining a system that ensures that remedial measures ordered for officers are in fact implemented.

Recommendation Thirty-Six: WPD should ensure that it has an effective system to ensure that remedial actions ordered for officers are, in fact, achieved.

VIII. Alternative Methods of Resolving Performance Issues

Mediation

One incident featured at the federal trial involved an officer who was held accountable for sarcastic comments he made to a juvenile. That decision became a point of contention for the officer who asserted that he had done nothing untoward during the contact. It is this type of dispute that might be best handled through mediation rather than the formal disciplinary process.

A growing number of law enforcement agencies successfully employ mediation as a way to resolve citizen complaints about officer conduct. While each organization operates the mediation process somewhat differently, the basic premise is that low level complaints about officer conduct can be better resolved short of a ponderous administrative investigation by simply bringing the complaining individuals and the officer together with a mediator. The citizen complainants and the officer both must agree to attempt to have the complaint resolved in this way; some Departments incentivize its officers by indicating that a successful mediation will obviate the need for there to be an internal affairs investigation involving the officer.

The most effective mediation programs have been those in which the mediator is a non-department member, neutral third party who has been trained in mediation techniques. Orange County has a number of volunteer mediators who have served as mediators to community/police

disputes and could serve to mediate similar disputes between WPD and community complainants.

In our experience, mediation is often effective because sometimes the complainant is mostly interested in having his concerns taken seriously. A neutral setting also provides an opportunity to educate the complainant about police procedures and provide better insight on why the officer took certain actions. Officers can benefit from going through the process as a result of the self-reflection prompted by the mediator and subsequent discussion to better learn how and why certain behaviors may be off-putting to citizens with whom the officer comes into contact.

WPD has no tradition of using mediation as a way to resolve concerns by the community regarding officer behavior. This tool should be added to the Department's arsenal as another way to potentially resolve disputes between its officers and its community.

Recommendation Thirty-Seven: WPD should develop a mediation system as an alternative way to resolve disputes among the community and its officers.

Pre-Investigative Resolutions

There are situations in which an officer's policy violation is evident, the employee recognizes his or her errors, but the matter still proceeds to a lengthy formal investigation. It seems as if the "bureaucracy" of administration takes hold and a rigid adherence to the system causes an unnecessary deployment of investigative resources when the facts and violation are not at issue. Some police agencies are beginning to develop alternative resolution mechanisms for these cases which hold employees accountable without the delay and expense of formal investigations.

Resolving a misconduct case by way of mutual agreement early in the case's lifecycle can be beneficial to both the Department and the employee. Early settlements can save the Department the time and resources necessary to conduct a complete investigation. Settlements also resolve the matter permanently, avoiding the cost and uncertainty of an appeal. The employee's benefits are also two-fold. The employee receives a speedy outcome of their case, thereby avoiding a long period of insecurity. The employee is also offered a discounted penalty for accepting responsibility and agreeing to an early settlement.

Settlements are, by their nature, voluntary. An employee should understand that he or she may opt instead for the traditional route, waiting for the outcome of a complete investigation and maintaining his or her right to appeal. WPD also should only offer these settlements to a clear category of well-suited cases. The facts should not be complicated, and there should be low potential that new information or violations would be revealed by conducting a full investigation. The violation should also be clear-cut. The types of violations should be those that would result in lower level discipline and should not be applicable to potential termination cases, excessive

force cases, or those involving potential integrity issues. The employee should readily admit to and take responsibility for the facts at issue and the policy violation.

Because these are agreed upon settlements and do not involve serious misconduct, they also provide an opportunity to create tailored remediation plans. In the end, through the use of pre-investigative settlements, the Department can document the truth in a fair process, resolve the matter promptly, expend fewer resources, protect employee's rights, and develop a tailored remedial plan to address the violation.

Recommendation Thirty-Eight: WPD should consider developing protocols and policy permitting the Department and the employee to address potential policy violations without the need to resort to a full, formal, and time consuming administrative investigation.

Alternatives to Standard Discipline

For situations in which the policy violation is not so severe that termination is the only acceptable remedy, the root purpose of any resulting discipline should be to remediate the employee and reduce the likelihood of future similar misconduct. Adopting this premise as a guiding principle, WPD can develop an alternative disciplinary system to better advance these concepts than the traditional disciplinary system. The tailored remedial system is predicated on the belief that the traditional disciplinary system anchored by reductions in pay is too simplistic in that it does not require management to engage with the employee in a meaningful way or consider remedial programs designed to reduce the likelihood that the misconduct will reoccur. Moreover, the imposition of reduced pay is essentially punitive, with deterrence as a result of financial loss the only possible benefit. Because of its strictly punitive nature, reductions in pay often leave the employee disgruntled with no remedial component. Moreover, a collateral consequence of any financial penalty is that the hardship suffered by the employee extends to his or her family.

Under the alternative disciplinary model, the employee would be able to choose either the traditional penalty or the alternative program which is more closely tailored to remediate the violation of policy. Specifically, employees in suitable cases can agree to take courses, receive training or counseling, make presentations to their peers, write apologies, or engage in other projects that can provide professional growth for themselves and their peers. In addition to the greater likelihood that such a tailored program will reduce the likelihood that the employee will reoffend, if there is a subsequent violation, the Department is better positioned to defend the award of progressive discipline, since the tailored remedial program has proven ineffectual. Finally, another beneficial consequence of the tailored remedial disciplinary system is that if an employee elects that disposition, he or she also relinquishes any right of grievance or appeal, thus eliminating challenges to the discipline imposed.

Recommendation Thirty-Nine: WPD should consider developing an alternative disciplinary system tailored to more artfully remediate the policy violation at issue.

IX. Use of Force

WPD's use of force policy provides important guidance to its officers on when force is authorized. During our review, we examined the Department's basic use of force policies and related policies and found them to be consistent with case law and current police practices and similar to most other law enforcement agencies in the State. This is due in part to the fact that WPD subscribes to Lexipol, a private service that provides sample policies for many law enforcement agencies in the State of California and around the country. Lexipol is staffed with former police practitioners and attorneys who work to ensure that the policies they promote stay consistent with current case law. When new case law warrants a change in policy, Lexipol advises its subscribers that a change in policy is required.

However, the managers of Lexipol recognize that there may be times in which a law enforcement agency may want to customize certain policies dependent on the mission or interests of the organization and designs its policies allowing for such customization. While the policies promoted by Lexipol provide a base line for law enforcement agencies to consider, each policy should continue to be considered individually by law enforcement managers to determine whether the policy should be modified to fit particular needs or interests of the agency and the community it serves.

Consistent with this philosophy, we recommend that WPD consider the following refinements to its current policies relating to use of force:

Language promoting "improvisation" should be removed.

The policy notes that only tools authorized by WPD should be used as force devices. However, there is language in the policy about how sometimes officers might need to have an "improvised response" to certain situations. Without further guidance, this language is, at best, unhelpful and could be seen as creating an exception for creative uses of force that could undermine the whole use of force regime. The verbiage should be removed from the policy.

Recommendation Forty: WPD should remove language in its force policy promoting improvisation in the way that officers use force.

Distraction Blows/Compliance Strikes

As noted above, featured in the federal trial was a use of force where the officer used what some might refer to as a "distraction blow" or "compliance strike" while bringing an individual into custody. The theory behind this technique is that distraction blows are strikes

inflicted on a part of the body of a suspect and is intended to “distract” him so that hands could be secured or handcuffs could be applied. In our reviews of other police agencies, we have found confusion about what was allowable as a distraction blow. The use of distraction blows has proved controversial and is in need of further review by WPD about what is meant by the use of force and what is permitted. As detailed above, the findings in the Westminster PD use of force case that the use of force was at first excessive and then after further review considered to be appropriate, suggests a diversity of opinion among supervisors about whether distraction blows are consistent with the Department’s use of force policy. If the Department is going to continue to authorize distraction blows, clear policy and training should be devised on their use regarding what is permissible and what is prohibited. Any written policy should prohibit the use of blows to the head as distraction blows.

Recommendation Forty-One: WPD should reconsider its training protocols and policy regarding the use of “distraction blows.” If distraction blows are to be authorized, officers should be provided more guidance on the allowable uses of force under such category. Any distraction blows policy should prohibit strikes to the head.

WPD Policy Should Incorporate Force Prevention Concepts.

The preamble to current WPD policy regarding use of force describing the Department’s philosophy contains some commendable phrases about the value of life:

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

Certainly, officers must have authority to use force to perform their duties to effectuate an arrest or to protect themselves or others from threats of harm. However, the goal of any progressive police agency should be to ensure that force is used only when necessary. While there will be occasions in which force is required, the objective should be to eliminate incidents in which officers may be “authorized” or “justified” in using force, but it is not “necessary” to use that force to complete their responsibilities. In accord with principles of progressive policing, WPD’s interest should be to eliminate these uses of discretionary force to handle a situation when other skills and tactics can be used in their stead. This objective requires a reorientation and culture change of police attitudes regarding the use of force. The goal is to eliminate force which is “lawful but awful”; force which is defensible but likely did not need to occur.

While WPD’s current language in its philosophy regarding use of force speaks somewhat to this concept, to help reinforce the idea that the Department’s interest is to reduce incidents of

force to a minimum, we also recommend that the Department consider reorienting its use of force policy to further promote the prevention of force. For example, the preamble might contain language such as below to assist in further articulating WPD's interest in reducing uses of force:

When time, circumstances, and safety permit, there may be alternatives to using force. When reasonable and safe under the totality of the circumstances, members should consider such alternatives as advisements, warning, verbal persuasion, and other tactics.

Recommendation Forty-Two: WPD should reorient officers' philosophy with regard to use of force by promoting alternatives to force to resolve situations in the field.

Ways to Promote Behavior that Resolves Situation Without Resorting to Force.

WPD policy and protocols should reinforce officers who handle situations in which force would have been justifiable but who found other ways to resolve the incident without resorting to force. One way in which this behavior can be encouraged is through the issuance of "commendable restraint" citations. Another way to positively recognize officers who find ways short of force to perform their duties is to include that assessment in WPD's performance evaluation as a metric of desirable behavior.

Recommendation Forty-Three: WPD should reinforce officers' conduct that resolve confrontations without resorting to force through formal means such as commendable restraint citations and by considering the amount of force an officer uses in assessing the officer's annual performance.

WPD's Force Reporting Policy Should Be Extended to any Employee Who Witnesses Force.

Current WPD policy appropriately requires any officer who uses force to immediately report the incident to a supervisor. We recommend that the reporting requirement extend to any WPD employee who witnesses another officer using force, including force by other police agencies. This requirement will help ensure that all force is reported and will help orient officers to make them better witnesses to the use of force by other officers.

Recommendation Forty-Four: WPD should enact policy that would require WPD personnel who witness force being used by a fellow officer or by another law enforcement agency to report the force to a supervisor.

WPD Policy Should Be Modified So That all Uses of Force Are Reported to Supervisors.

Current WPD policy appropriately defines force as the “application of physical techniques or tactics, chemical agents or weapons to another person.” However, it only requires that force be contemporaneously reported to a supervisor under certain specified conditions, allowing some uses of force to remain unreported to sergeants. It is advisable that supervisors be immediately alerted to all uses of force so that they can make inquiry of the circumstances surrounding the use of force. WPD’s policy should be modified to ensure such notification occurs.

Recommendation Forty-Five: WPD’s Force Policy should indicate that when officers use or witness force, they are required to immediately report such to a supervisor.

WPD Policy Should Be Modified So That Supervisors Are, Unless Exigent Circumstances Exist, Mandated to Respond to Use of Force Incidents.

Current WPD policy indicates that “when a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to”: followed by a list of tasks intended to ensure comprehensive scene management and collection of the initial facts. However, the policy provides no additional guidance on how a supervisor is to decide when he or she is “able” to respond. Any use of force by an officer in the field is a significant event with potential ramifications for community/police relations, officer conduct, and risk management and having a supervisor respond increases the likelihood of appropriate handling of the matter. For that reason, the policy should require that a supervisor respond to a reported force incident except when the most exigent of circumstances in the City prevent such a response.

Recommendation Forty-Six: WPD should require that supervisors respond to incidents in which force is used unless the most exigent of circumstances prevent such a response.

Further Policy Guidance on the Use of the Taser.

Current WPD policy is comprehensive and provides significant guidance regarding the application of the Taser. However, the Taser policy allows too much discretion for its use in certain situations. For example, current policy permits Taser use of persons on rooftops, pregnant persons, handcuffed persons, elderly persons, and obvious juveniles provided that the need to control the person outweighs the attendant risks. We believe that the inherent risk associated with Tasers for these limited categories of individuals will virtually always be too great to deploy a Taser on them and would recommend that WPD’s policy prohibit Taser use in

those situations.³

Studies of Taser use, including a study by the Department of Justice's National Institute of Justice, cautions against multiple and prolonged use of the Taser as presenting particular risks of dire injury. For that reason, we believe that the current WPD policy affords officers too much discretion to allow "multiple reasonable applications" of the Taser. We believe that after three unsuccessful applications, unless there are exceptional articulable circumstances, officers should be instructed to cease using the Taser and move to other control methods. We also believe that the Department's Taser policy should speak to the dangers of prolonged use of the Taser by prohibiting such use.

Recommendation Forty-Seven: WPD should modify its Taser use policy to prohibit use on persons on rooftops, pregnant persons, handcuffed persons, elderly persons, and obvious juveniles.

Recommendation Forty-Eight: WPD should modify its Taser use policy to rule out more than three applications of the Taser and to prohibit prolonged Taser applications.

Carotid Control Hold

As a particular result of recent controversy regarding the application of force to the neck area of individuals, police agencies should consider the potential risks and benefits toward continuing to authorize the application of carotid holds. Because the application of a carotid hold must be effectuated competently to avoid risk of severe injury, if it is going to continue to be authorized, annual certification and training should be required similar to the requirements for use of the Taser.

Recommendation Forty-Nine: If WPD determines to continue to authorize use of the carotid control hold, it should require certification and annual training of its officers.

Force Investigations and Review

To the degree that this review examined investigations of use of force, it found those investigations detailed and thorough. However, there was scant documentation or analysis regarding how the force was found to be in policy. The only decision the reviewer was required to make was whether the force was within the Department's force policy. The review involves a paper "check off" process up WPD's chain of command.

If WPD were to adopt a more holistic review that examines tactical decision making, force

³ One Taser use featured at the federal trial involved the application of a Taser on a 16 year old boy. It was unclear whether, during the use of force analysis, the fact that the use was on a juvenile should have been found to have ran afoul of WPD's policy regarding use on "obvious" juveniles.

options, equipment, and supervision, such a review could provide more insight into the force incident and help the Department devise strategies to better prepare its officers for similar incidents and reduce uses of force. While a holistic review can be accomplished through a paper review, we have found that a multi-faceted examination of force is more effectively accomplished through a panel approach. With regard to at least more significant force and a sampling of less significant force, a committee comprised of members with various types of expertise and responsibility could perform a more exacting and full ranging review.

Ideally, the “force review committee” would obtain a copy of the investigative reports for review before the meeting. At the meeting, the investigator would present a briefing of the facts gathered. Then, the committee would move into its review phase where issues such as the propriety of the force, tactical decision making, supervision, training, and policy would be discussed.

Robust force committees then devise written action plans intended to inform the officer about whether the force was in policy and make recommendations about briefing the incident to the involved officers or the Department as a whole or creation of a training bulletin. If concerns are raised about supervision or current policy, a member of the committee is assigned to conduct further research on the issue and bring findings and recommendations back to the committee at a later date. In sum, the force committee is designed to achieve the critical goal of ensuring the involved offices and the department as a whole benefit from a review of the incident with the dual objectives of better preparing officers on how to handle similar incidents and by increasing the confidence and competence of its officers reducing their need to use force in future incidents.

Recommendation Fifty:

(a) WPD should improve its force review process to ensure that not only is the incident centrally reviewed to determine whether the force used was in policy but also to examine whether there was tactical decision making that was consistent with Department policy and expectations.

(b) At the end of the force review, officers involved in every force incident should be debriefed regarding how the Department considered the handling of the incident including the tactical decision making.

(c) In addition to deciding whether the force was in policy, WPD should examine force incidents to determine whether there were issues of supervision, policy, or training that it should address.

(d) WPD should consider designing protocols whereby significant force incidents and a sampling of less significant force incidents are reviewed by a force review committee. The

force review committee should develop a written action plan for each force incident reviewed and ensure an effective feedback loop to present the results of any action plan back to the committee at a later time.

(e) WPD should use learning domains, such as training bulletins or briefings to ensure that information learned is exported back to the line officers and first level supervisors in a meaningful way.

X. Supervisor/Subordinate Relationships

WPD has a thoughtful policy with regard to supervisor/subordinate relationships. One central requirement is that employees are prohibited from directly supervising or being directly supervised by any other employee with whom they are involved in a personal relationship. However, as demonstrated in the federal trial, while there may have been compliance with this feature of the policy, with particular regard to training officers/trainees, once the supervisor/subordinate relationship ended, oftentimes a personal relationship would almost immediately ensue. For similar reasons that the Department finds it problematic for there to be supervisors and subordinates in personal relationships, the power, control, and influence that a training officer has over a trainee often extend beyond the training period. For that reason, it is recommended that the Department consider extending the prohibition on supervisor/subordinate relationships for a two year period beyond the existence of the actual relationship.

Recommendation Fifty-One: WPD should consider extending the prohibition on supervisor/subordinate personal relationships for two years after the termination of the actual supervisor/subordinate relationship.

XI. Purging of Documents

At trial, testimony was adduced that WPD irregularly “purged” its citizen complaints, force reports and internal affairs investigations. While state law only requires retention of most documents for a relatively brief period of time, there is no requirement that documents be purged after those minimal time periods. Repeatedly, WPD was disadvantaged at trial when unable to produce reports that had been purged. Plaintiffs could and did argue that the purged reports were indicative of the Department’s interest in shredding documents that would have been harmful to the City’s position. Without the documents available, the City was in a position of disadvantage to successfully argue otherwise.

The minimal retention law for law enforcement records should be seen as a floor rather than a ceiling for how long a law enforcement agency should keep such documents. Having such documents may prove helpful in unanticipated future litigation and fends off any allegations by litigants that the documents were destroyed because they were detrimental to the Department’s

interest.

More importantly, maintaining such documents can prove helpful in long-term assessment of the Department's employees. The career of many law enforcement officers span twenty or more years and it seems incongruous to destroy materials which might demonstrate a pattern of undesirable conduct that extend beyond a few years. The routine destruction of materials over a short period of time provides an information deficit, particularly for newer supervisors and decision makers who may not be aware of the older cases. It also limits a longer span review of WPD culture and conduct.

Allegations of misconduct, citizen complaints, force reviews, internal affairs investigations, and disciplinary records should be retained until at least five years after the employee is no longer employed by the Department. This longer retention time allows for the Department to continue to have available the complete history of an employee's prior investigations of misconduct. Finally, the retention time extending past the employment of the officer affords the City to fully respond to Brady requests and inquiries from other agencies should a separated officer seek employment with them.

As a result of the recent federal litigation, all purging of WPD documents has been placed on hold. Once however, the hold is lifted, WPD should create a longer period of document retention, particularly with regard to documents setting out officer conduct.

Recommendation Fifty-Two: WPD should develop protocols that would extend the purging of internal affairs investigations, citizen complaints, force reviews, and disciplinary records to at least five years beyond the employment end date of the employee.

XII. Confidential Information Remaining on Computers

During the discovery phase of the federal proceedings, reports that were requested and found to be officially "purged" were discovered on computer libraries of supervisors who had been involved in their preparation. Unfortunately, materials that should have been deleted from electronic libraries still existed on hard drives.

WPD should provide written guidance and training to its supervisors about the need to delete documents relating to confidential investigations once a report is completed. The Department should ensure that only "official" documents relating to the investigation survive and be centrally maintained. WPD should audit supervisor computer libraries to ensure that supervisors are regularly maintaining their document libraries consistent with Departmental expectations.

Recommendation Fifty-Three: WPD should develop written guidelines and training for its supervisors to ensure that “unofficial” electronic documents of confidential investigations and related matters are not retained on electronic databases.

XIII. Career Advancement Programs/The Establishment of a Viable Mentorship Program

There were two competing narratives that permeated the federal trial. One was the plaintiff officers’ view that their work and talents had gone unappreciated by Department leaders, and, as a result, did not receive coveted special assignments. The narrative offered by WPD present and past leaders is that these officers did not always apply for the positions, did not come forward to Department leaders with their feelings of being undervalued, and did not display initiative or sufficient interest in the special assignment positions. Under the auspice that both narratives may have been a little bit correct, WPD should strive to create mechanisms to ensure that the potential for career advancement for all of its officers are fostered and promoted. No longer should the entire onus on whether an officer is considered for collateral and special assignments and promotional opportunities be placed on the individual officers; the Department should be proactively working with each officer to ensure that the potential for career advancement is maximized.

One mechanism that could be used to assist in this goal is the development of an officer mentorship program. By assigning an experienced officer as a mentor to newer officers, the mentor would be expected to be responsible for providing encouragement, opportunities, advice, and guidance to the junior officer with a focus on career advancement. Mentors who perform well in this task should be acknowledged in their performance evaluations and their own career advancement. At one point in the recent past, WPD personnel spent a significant amount of time and effort into the development of a Detective mentorship initiative, however the program suffered from follow through and was never effectively implemented. It is incumbent upon the Department to develop a mentorship program, find incentives and resources to sustain it, thereby providing a device whereby officers can work with mentors to fulfill their potential.

Recommendation Fifty-Four: WPD should devise and sustain a mentorship program designed to promote career advancement opportunities for its officers.

XIV. Additional Training Initiatives

WPD Should Provide Additional Training and Guidance for Supervisors on How to Coexist During Pending Legal Actions.

Because the allegations by the officers in the federal trial included allegations that they were subjected to retaliation after filing their discrimination lawsuit, the Department has enlisted the support of outside experts to provide training designed to educate command staff on how to avoid actions that might be construed as retaliatory, ethics training, and presentations involving the rights of police officers. While the work being done in this arena is important and likely overdue, another area worthy of attention is the development of improved protocols designed to ensure that each of its officers are treated consistently.

One area deserving of special additional attention is to provide additional training and instruction to supervisors who are named in a lawsuit, grievance, or other formal action by subordinates. As brought out in the federal trial, one of the Westminster sergeants that had been named in the initial discrimination complaint by one of the three officers attempted to have an informal conversation with the officer. According to the supervisor, the intent of the conversation was to find a way in which the two could continue to work together despite the filing of the formal complaint. According to information adduced during the federal proceedings, the parking lot conversation was interrupted when another officer arrived on scene.

While the intentions of the supervisor as articulated by him were laudable, his idea to devise a course of action with the complaining subordinate officer in a private parking lot conversation was not ideal. Experts in how best for officers involved on both sides of a legal dispute to interact with each other during the pendency of the lawsuit can provide more effective strategies designed to ensure that an uncomfortable environment for both the police officer grievant and police officer defendant does not worsen. Westminster PD should consider providing training tailored to this eventuality to its supervisors.

Recommendation Fifty-Five: Westminster PD should provide additional training to its supervisors regarding effective strategies on how to coexist in the workplace in the event they are sued by a subordinate officer.

In Cases Which an Officer Makes a Complaint Against Another Employee, the Determination of Appropriate Action Should Not Be Entirely Dependent on the Desires of the Complaining Officer.

In one instance adduced at the federal trial, a police officer complained to another supervisor about a comment made to the officer by another sergeant. The supervisor discussed with the

officer potential actions and asked the officer what he would like the supervisor to do about the situation. As a result of this discussion, no formal investigation was initiated against the supervisor at that time.

A review of the incident indicates that, in all likelihood, the officer did not press for a formal investigation against the sergeant because of the influence by the supervisor he approached that there could be less formal ways to handle the situation. Eventually, the way in which this matter was initially handled became an issue supporting the officer's allegations at trial. In cases in which an allegation is made by an officer against a fellow employee (especially a supervisor), the supervisor who receives the allegation should not attempt to influence the officer regarding how the matter should be handled. Instead, the supervisor should consider whether the allegation calls for an administrative investigation and if so, begin the process of initiating such an investigation. The supervisor should also consult with the head of the Department's Professional Standards Unit and/or ranking command staff regarding the appropriate course of action.

Recommendation Fifty-Six: The Department should develop training protocols to instruct its supervisory staff that when they receive a complaint from an employee about a fellow employee, they should independently assess whether an investigation is warranted and consult with Professional Standards Unit and/or ranking command staff about the appropriate course of action.

Training for Supervisors Regarding the Grievance Process

A related issue presented itself in the federal trial when one of the plaintiff officers filed a grievance against a supervisor regarding her refusal to authorize him to take vacation time. While the issue eventually was resolved to no detriment of the officer, the supervisor initially rejected the grievance because the employee had neglected to include in the paperwork how he wanted the matter to be resolved. This formulaic response to the grievance did not prove helpful to a more effective and timely resolution of the matter, caused unnecessary delay and likely ill-feeling between the officer and the sergeant, and is indicative that more training for supervisors on how to better handle employee grievances may be warranted.

Recommendation Fifty-Seven: WPD should provide additional training to its supervisors on how to address employee grievances with an eye toward resolving them timely and efficiently.

WPD Needs to Further Promulgate to its Employees Expectations Regarding the Use of E-mail.

All employees of the Police Department have a work email account through which they are notified about important work-related information on a regular basis. The email account also

provides an efficient way for employees to communicate with each other about matters germane to their work responsibilities. For today's law enforcement organization, email has become an important tool by which the agency's work can be advanced.

That being said, email has certain features that must be considered in its use. First, emails can be facily captured, forwarded, printed, and saved without the sender's knowledge. Secondly, while an email may be part of a "confidential" communication, there is no guarantee that the email will remain confidential for all time. Finally, emails are so easily written and sent that they often create a sense of informality and "heat of the moment" thoughts are easily reduced to email and transmitted, sometimes with no sufficient aforethought.

Email communications better not sent have roiled both public and private organizations, including law enforcement, when they surface. For that reason, employees and particularly supervisors in police departments need be counseled and repeatedly reminded how an untoward and believed to be private email has potential devastating consequences on the individual and the organization. This review found supervisory email communications introduced at trial that had an emotionally laced word or two that had intended to be private venting and meant to display frustration but would have been better left uncommunicated through email. WPD should continually counsel its employees and supervisors on the need to consider the impact of email communications and provide guidance on how best to take advantage of the email system without deleteriously impacting the organization and individuals by reckless communiques. In essence, if you would be concerned if the work email you are considering sending was to find its way onto social media, it is likely an email better left unsent.

Recommendation Fifty-Eight: WPD should set out expectations for how the Department's email system should be used and provide guidance to its employees on how to avoid sending "emotionally laced" or other potentially detrimental communications.

Misidentification of Race or National Origin of WPD Employees

At trial, plaintiffs repeatedly referred to City records that had been produced during the discovery process that purportedly set out the race and national origin of WPD employees. Officers and supervisors repeatedly testified that the "records" did not accurately reflect their race or national origin. It is unclear how the determinations were made by City officials of the employee's race or national origin but the trial proved that those determinations often did not correspond to the employee's beliefs.

Recommendation Fifty-Nine: Any records prepared by the City that reflect the race or national origin of its employees should accurately do so and the City must develop better

mechanisms to ensure that the official records do correspond to the actual ethnicity and racial makeup of its employees.

XV. Background Investigations: The Need for Additional Inquiry

Perhaps the most important investigation that a police agency can conduct is the investigation into the background of an applicant interested in joining the organization. If the investigation fails to detect or thoroughly explore indicia of troublesome conduct, an individual unsuited to be a police officer might be hired with significant deleterious consequences for the agency and the public. Police officers are necessarily provided unique and awesome authority, including the authority to arrest and if necessary use force, including deadly force. Persons ill-equipped to handle such authority and who might have a proclivity to abuse that authority must be identified and kept from such employ. It is imperative that police agencies take advantage of carefully devised investigative strategies and other screening mechanisms to ensure the background investigation and review process works to its desired effect.

One of the processes used by police agencies, including WPD, involves the requirement that an applicant answer a detailed biographical questionnaire. In one questionnaire, the applicant admitted to the following:

- making a pipe bomb
- being convicted of a crime
- committing petty theft and vandalism
- attacking a person
- carrying a concealed weapon
- being involved in a fight
- killing an animal
- financial problems
- having problems with neighbors
- shoplifting
- being involved in hazing

In addition, during the polygraph investigation, the applicant admitted to stealing from his employer. Despite this negative history, the background investigator wrote that “all findings were positive” and the applicant was hired by WPD.

One process glaringly missing from the WPD background investigation process is an interview with the applicant and the background investigator in which the investigator confronts the applicant with any negative history the applicant admitted to or discovered as a result of the investigation. During this interview, circumstances surrounding the negative history are further

fleshed out by the investigator and then a careful evaluation is made regarding whether the admissions and subsequent explanations continue to make the applicant eligible for hire. Without this process, there are left too many unanswered questions about the applicant for a law enforcement organization to confidently determine that the applicant is suited for a career in policing.

Recommendation Sixty: WPD should include in its background investigation process an interview in which the investigator confronts the applicant with any negative history, documents any explanation or additional circumstances, performs additional investigation if necessary, and carefully evaluates whether the negative history should or should not disqualify the candidate and why or why not.

Independent Oversight

As noted above, this review is intended to initiate systemic reform based on issues that were presented at the federal trial with an eye toward improving current policies and practices. To the extent WPD agrees to adopt the specific recommendations, better systems will be in place to achieve these stated goals. However, police departments are round-the-clock operations and always subject to renewed public concern about the Department's actions. Moreover, without an independent entity to check on the progress of recommendations made, there can be no assurance that the recommendations are, in fact, implemented.

As a result of this concern, progressive police agencies have adopted various forms of oversight ranging from professional auditing to a more traditional civilian review board. Because a police agency is a busy organization, internal investigations have a complex set of rules set out by state law, and most importantly, access issues and recent interpretations of state law have hampered the ability of the civilian review boards to be transparent and effective. Different challenges have impacted oversight models which have endeavored to actually take over the internal investigations of police departments. While attractive in theory, a police board consisting of members of the community, without more, does not have the access to information, the time, or the expertise to impact police agencies in a meaningful way.

Provided it obtains a commitment to access of internal documents, as we have been provided during this study, a professional auditing/monitoring model can provide a meaningful outside voice in the way in which the Department continues to perform its functions. Auditors that check in on Departmental functions on a recurrent basis will readily be able to identify additional systemic issues and work with the Department to develop fixes through refinement in policy, training, or protocols.

Recommendation Sixty-One: The City should consider creating a mechanism for recurrent

independent review to help ensure that its Police Department is serving its community consistent with progressive Constitutional principles and best practices.

MARK BILLINGS
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EDUCATION

Bachelor of Arts – Biological Science, California State University Fullerton

Master of Arts – Behavioral Science: Negotiation Conflict Management, California State University Dominguez Hills

EXECUTIVE DIRECTOR, JOINT REGIONAL INTELLIGENCE CENTER (JRIC) , LOS ANGELES

July 2014 – Feb 2016 EXECUTIVE DIRECTOR, JRIC, LOS ANGELES

As Executive Director, Mark oversaw the Joint Regional Intelligence Center (JRIC) which was established in 2006 as a cooperative effort between federal, state, and local law enforcement and public safety agencies to centralize the intake, analysis, synthesis, and appropriate dissemination of terrorism-related threat intelligence for the greater Los Angeles region. In 2010, the JRIC merged with the Los Angeles Joint Drug Intelligence Group component of the Los Angeles High Intensity Drug Trafficking Area (LA HIDTA), Intelligence Support System (ISS), which includes the Los Angeles Regional Criminal Information Clearinghouse (LA CLEAR) and the Inland Narcotics Clearing House (INCH) to create a consolidated regional all-crimes intelligence fusion entity in accordance with the HIDTA mission. The JRIC also serves as the Regional Threat Assessment Center (RTAC) for the Central District of California as part of the California State Threat Assessment System (STAS). The center follows guidelines established by the US Department of Justice and US Department of Homeland Security, and contributes to the national Criminal Intelligence Sharing Plan.

The JRIC area of responsibility includes the counties of **Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura**. Covering nearly 40,000 square miles, and home to more than 18.5 million people, the region contains nationally critical assets and key resources whose smooth functioning directly affect the day-to-day health of the US economy, including national supply chains, logistics backbones, and energy security.

The Executive Director upholds the trust and support of all 24-agency partner representatives (over 85 officials from federal, state, and local law enforcement and public safety agencies assigned to the JRIC). The executive director is accountable to a seven member Executive Committee including chiefs and representatives from the Los Angeles Police and Fire Departments, the FBI, the County of Los Angeles Sheriff's, Fire and Health Departments, the Los Angeles Police Chiefs Association, and the Long Beach and Anaheim Police Departments. Functional areas of the JRIC include providing essential support and training, protecting critical infrastructure, and supporting our National Fusion Center Network.

ORANGE COUNTY SHERIFF'S DEPARTMENT ASSIGNMENTS

Oct 2011 – Feb 2014

May 2014 – June 2014 ASSISTANT SHERIFF

Field Operations and Investigative Services Command (Oct 2011 – Feb 2014)

- Direct Accountability to Undersheriff
- Oversight of an area commander and seven divisions consisting of Airport Operations, Emergency Management, Homeland Security, Investigations, North Operations, Southeast Operations and Southwest Operations. Attain a high level FBI Secret Clearance. Policy controller for the San Onofre Nuclear Generating Station Exercises. Involved in the City of Yorba Linda Police Services Contract. OC Executive Shield Executive Board Member. Travelled to the Major County Sheriff's Association Intelligence Unit Commanders Meeting and National Highway Intensity Drug Trafficking Area Conference in Washington DC. Chairman of the Field Operations Response Time Working Group. Implemented the Research Bureau which focuses Continuous collecting, analyzing and providing intelligence and research working closely with sheriff department personnel, federal, state and local members of the intelligence community. Formed the Field Training Bureau to focus on patrol training and procedures.

- Multiple Public Speaking Events for the Homeland Security “See Something Say Something” campaign, Rossmore State of the District event, Keynote speaker at various Basic Academy graduations, Orange County Emergency Managers Organization, Operational Area Executive Board Reports.

Feb - May 2014 ACTING UNDERSHERIFF

- Direct Accountability to Sheriff Sandra Hutchens
- Oversee four Assistant Sheriffs and their respective commands to ensure we follow the Department’s mission of maintaining a transparent and honorable department.
 - Administrative Services Command – Financial/Administrative Services, Communications and Technology Division, Research and Development and Support Service/Information and Technology Division.
 - Custody and Court Operations Command – Theo Lacy Jail Facility, James A. Musick Jail Facility, Central Men’s Jail, Central Women’s Jail, Intake and Release Center, Transportation, Inmate Services and Court Operations.
 - Field Operations and Investigative Services Command – Airport Operations, Emergency Management, Homeland Security, Investigations, North Operations, Southeast Operations and Southwest Operations
 - Professional Services – Coroner Division, Training Division, Strategy Accountability Focus Evaluation (SAFE) Division, Crime Lab and Professional Standards Division.
 - Community Programs and Services Division – Community Programs, Public Affairs, Community Services and the Reserve Bureau.
 - Research Bureau – Continuous collecting, analyzing and providing intelligence and research working closely with sheriff department personnel, federal, state and local members of the intelligence community.

Feb 2010 – Oct 2011 COMMANDER

Field Operations and Investigative Services Command

- Direct Accountability to Assistant Sheriff
- Oversight of Five Divisions
 - South Operations Division - Contract Cities include Mission Viejo, Lake Forest, Laguna Hills, Aliso Viejo, Laguna Niguel, Dana Point, San Clemente, San Juan Capistrano, Rancho Santa Margarita, Laguna Woods, and Unincorporated South, South Investigations, Traffic Investigations, Major Accident Reconstruction Team, Auto Theft, Juvenile Services Investigations, PRYDE program
 - North Operations Division - Emergency Communications Bureau, Unincorporated North Patrol, Stanton Police Services, Villa Park Police Services, Reserve and Volunteers Bureau, Security Bureau.
 - Airport Operations Division - John Wayne Airport
 - Investigations Division - Criminal Investigations Bureau, Special Investigations Bureau, Special Operations Bureau
 - Homeland Security Division - Special Weapons and Tactics, Crisis Negotiation Team, Hazardous Devices Squad, Air Support Detail, Mounted Enforcement Unit, K-9’s, Orange County Intelligence Assessment Center, Joint Terrorism Task Force, Joint Regional Information Center, Emergency Management, Homeland Security Grant Unit, County Mutual Aid Officer, Homeland Security Advisory Council Executive Board member, Secret Level Clearance

Aug 2008 – Feb 2010 CAPTAIN

Field Operations Command/Patrol Operations Division (Sept 2009 – Present)

- North Patrol Bureau, South Patrol Bureau and Reserve Bureau

Field Operations Command/Homeland Security Division (Aug 2008 – Sept 2009)

- First Department Operations Center (DC) Activations, Golden Guardian Exercise, Managed Freeway Complex Fires DOC Activation, SONGS Exercise Training, Preparation and Tabletop Activation, Travelled to Hurricane Gustav for Emergency Management information gathering, Homeland Security Advisory Council Executive Board member, Secret Level Clearance

Sep 2000 – Aug 2008 LIEUTENANT

Academy Commander, Orange County Sheriff's Basic Academy and Regional Training Academy (2006-2008)

- Collaborated with Rancho Santiago Community College District and Santa Ana College in planning, construction and grand opening of new Orange County Sheriff's Regional Training Academy in Tustin. Managed move from Garden Grove facility to new Regional Training Academy Facility. Recruited, interviewed, and selected tactical officers and tactical sergeants from Orange and Los Angeles County agencies. Basic Academy Training of recruits from Orange and Los Angeles County agencies. Special Officer Academy. Initiated Modular Academy. Reserve Academy.

City of Dana Point Police Services Chief of Police (2002-2006)

- Managed Law Enforcement Service Contract. Managed and supervised OCSD sergeants, employees, volunteers, and Neighborhood Watch. Cultivated relationships with local business leaders at events such as the Harbor Association and Chamber of Commerce. Organized, designed, planned, funded and executed move into new Police Services building and offices. Collaborated with county communications, city officials, Water District and HOA for installation of 800MHz communications tower.

Terrorism Early Warning Group (TEWG), County Law Enforcement Mutual Aid Coordinator (2001-2002)

- Selected for this position following terrorist attacks of September 11, 2001. Proposed and formally implemented OC TEWG in 2002. Acquired approval for ten positions by the Orange County Board of Supervisors.
- Multiple Public Speaking Events; City Councils, State Legislators, Assembly Persons, Town Halls, Red Cross Disaster Preparedness Academy, Rotary Clubs. Attendee State Strategic Committee on Terrorism, LA and Inland Empire Terrorism Early Warning Groups. Implemented Private Sector Terrorism Response Group. TEWG Evolved into current Orange County Intelligence Assessment Center. Orange County Emergency Managers Organization. Operational Area Executive Board Reports

Emergency Communications Bureau, Patrol Watch Commander (2000-2001)

- Responsible for patrol activities associated with contract cities and unincorporated patrol areas. Media and Press interactions. Dispatch Center and countywide communications.

Central Jail Complex (2000)

- Watch Commander responsible for daily activities of Intake Release Center, Central Men's Jail, and Women's Jail Facilities. Training and Use of Force Special Assignment. Contributed to Emergency Response Team Development. Contributed to Less Lethal Weaponry Implementation. Planned and coordinated a Civilian Employee Team Building seminar.

Mar 1995 – Sep 2000 SERGEANT

Training Division, Basic Academy Tactical Sergeant (1996-2000)

- Basic Academy Classes 129 – 146. Supervised the Video Production Unit, Arrest Control Techniques, Academy Classes, Graduation Ceremonies, Professional Staff, Tactical Officers, Recruits, Facility Maintenance, Scheduling. Orange County and Los Angeles County Agencies. Orange County Training Managers Association Member. Multiple POST training seminars and consortiums. POST Academy Assessment Committee member. California Academy Directors Association member. Gold Star Award Recipient.

James A. Musick Facility, Custody and Corrections (1995-1996)

- Responsible for Sworn and Professional Staff supervision. First on Sergeant Promotional Exam (1995); Approximately 120 applicants

Mar 1986 – June 1995 DEPUTY SHERIFF

City of Dana Point, South Patrol Division (1989 – 1995)

- Deputy of the Year 1993. Traffic Investigations, Field Training Officer, Special Enforcement Team, worked in all South County Contract Cities. Assisted Gang and Narcotics Teams. Drug Recognition Expert School. Acting Supervisor. Assistant Use of Force Instructor – Sheriff's Basic Academy.

Theo Lacy Jail Facility (1986 – 1989)

- Jail operations. Training Officer. Deputy I and Deputy II.

Nov 1985 – Mar 1986

- Deputy Sheriff Trainee Basic Academy Class #72

PROFESSIONAL TRAINING

- Orange County Executive Shield Executive Board member 2013, Certificate of Membership IACP, FBI Active Shooter Workshop – June 2013, FBI National Academy Jan – March 2013, OCIAC Emerging Threats Symposium – Oct 2013, Policy Controller for the SONGS Exercise – Sept 2013, Academy Instructor Certification Course (AICC) – April 2013, FBI National Academy – March 2013, National HIDTA Conference 2012, Decentralized Discipline – Sept 2010, Active, Bomber Course – Sept 2010, Asset Forfeiture/Money Laundering – Aug 2010, ADL Counter Terrorism Conference – Aug 2010, Case Law Updates – June 2010, Improvised Explosive Devices – June 2010, Enhanced Incident Management Unified Command – Feb 2010, Preventing Workplace Harassment – July 2009, Racial Profiling Update – July 2009, SONGS Management Training – June 2009, Restructuring Your Emergency Management Program – April 2009, Criminal Intelligence for Executives Course – March 2009, SB 719 Pursuit Policy Training Attestation – June 2007, Field Training Program/Supervisors, Administrators & Coordinator/Cal-State University at Long Beach – June 2006, Command Officers Response to Terrorism, Supervisors, Managers (CORT) November 2005, Scenario Evaluator Training – October 2005, Emergency Response to Terrorism Incidents – July 2004, Risk Assessment Course – National Emergency Response & Rescue Training Center – July 2002, 24-Hours Emergency Response to Domestic Biological Incidents Operations – October 2001, POST Management Course Modules A,B, C – March through May 2001, Supervisory Leadership Institute – Sept 1999 through Feb 2000, Commission on Peace Officer Standards and Training /Supervisory Certificate – March 1998, Field Training Officer – April 1994,
- Numerous POST and departmental course updates, ongoing professional training, and officer safety courses 1986-present.

CERTIFICATES

- FBI Active Shooter Workshop – June 2013, Certificate of Membership IACP, FBI Active Shooter Workshop – June 2013, FBI National Academy Associate, POST Management Certificate, Goldberg Charitable Trust Counterterrorism Conference August 2010, SONGS Management June 2009, POST Training Academy Instructor Certificate, Certificate of Merit, Speaker for Community Service to the Orange County Homeland Security Symposium – April 2002, Sherman Block Supervisory Leadership Institute Class 97 – April 2000, Police Olympics – 1988 and 1991
- Certified Open Water Diver – February 1987.

COMMENDATIONS

Divisional Commendation

- Hotel Security Terrorism Awareness Symposium – 2008

Letters of Commendation

- Numerous letters of appreciation and recognition 1986-present
- Chief of Police Services for Dana Point – 2006
- High Level of Excellence, Thomas W. Wilson, Supervisor, Fifth District 2000
- Orange County Sheriff's Department "The Bulletin" for Professionalism, Compassion and Helpfulness – 1994

AWARDS

- FBI National Academy "Yellow Brick" - 6.1 mile run and obstacle course

- FBI National Academy “Blue Brick” – 34 mile swim
- Gold Star Award /Employee Commitment to Excellence Award December 1999
- Dana Point Deputy of the Year, 1993

TEACHING EXPERIENCE

California Commission on Peace Officers Standards and Training Certified Basic Academy Instructor. Instructed courses included Conducting Preliminary Investigations, Courtroom Testimony, Evidence Collection and Courtroom Admissibility. Santa Ana College Faculty member – 1996 through 2014.

BRIAN RICHARD BUCHNER

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PROFESSIONAL EXPERIENCE

Policy Director

April 2015 – present

Office of Public Safety, Los Angeles Mayor Eric Garcetti

Prepare policy and provide strategic guidance to the Mayor on his top public safety priorities, including on law enforcement, fire, and homeland security issues. Establish the necessary partnerships to effectuate the Mayor's priorities by working with stakeholders at all levels. Plan and implement major policy initiatives.

- Spearheaded efforts to improve outcomes for the homeless and enhance public health and safety by developing homelessness policies for the Los Angeles Police Department and Los Angeles Fire Department. Established partnerships with other City departments and the County to respond to growing community concerns about homelessness, build relationships, and connect people to services and housing, where possible.
- Developed an innovative program combining police officers, outreach and engagement workers, sanitation employees, and prosecutors to respond to the complex and diverse needs of unsheltered homeless residents and implement data-driven strategies to keep public areas clean, safe, and accessible.
- Pioneered the creation of a national collaboration between the mayor's offices of public safety or criminal justice from the cities of Los Angeles, New York, and Chicago to facilitate information sharing and improve public safety in each jurisdiction.
- Facilitated the expansion of the LAPD's nationally leading mental health co-response model pairing police officers with trained clinicians, to achieve 70% coverage of the LAPD's crisis calls for service involving persons with mental illness.
- Coordinated the initial deployment of body-worn cameras for the LAPD, which, when completed, will make Los Angeles the biggest city in America with body-worn cameras on every officer in the field.
- Overhauled the LAPD's recruitment practices to improve efficiency and increase retention, with the goal of increasing diversity and inclusion throughout the Department.
- Collaborated to develop a national model social services and intervention program to address and prevent ideologically driven violence, particularly among young people.
- Expanded domestic abuse response teams citywide to address the increase in aggravated assaults and domestic violence crimes. Achieved full deployment six months ahead of schedule resulting in increased services for victims and arrests and prosecutions of abusers.

President

September 2013 – present

National Association for Civilian Oversight of Law Enforcement

Draft, develop, and promote national guidelines and standards for law enforcement oversight. Cultivate strategic partnerships, including with prominent academic institutions, policing organizations, and funders. Train and certify oversight agencies and practitioners

nationally. Regularly advise national and international governmental entities regarding best practices in oversight, including the White House and federal, state, and local agencies. Strengthen internal controls and established policies and procedures to improve efficiency and effectiveness.

- Managed full-time staff, contractors, and approximately 100 volunteers, with an annual operating budget of more than \$330,000.
- Achieved increases in membership of more than 20% each year for three years as President.
- Led the most comprehensive national survey of police oversight models ever attempted.
- Guided jurisdictions in establishing oversight, including in Memphis, Tennessee, Sonoma County, California, and St. Louis, Missouri.
- Testified before official task forces and commissions, including before the President's Task Force on 21st Century Policing, the Federal Interagency Working Group on Local Law Enforcement Equipment, the California State Legislature, and in Chicago and San Francisco.
- Regularly presented at national and international professional and academic conferences.

Police Special Investigator

October 2007 – April 2015

Los Angeles Police Commission, Office of the Inspector General

Analyzed complex police operations and prepared detailed written reports. Planned and directed complex systemic investigations. Corresponded with LAPD personnel, at all levels and ranks within the Department, regarding Departmental policies, disciplinary action, and other activities to encourage lawful and effective conduct.

- Investigated uses of deadly force by LAPD officers, analyzed officers' tactics, and prepared independent analyses and recommendations for the Police Commission.
- Helped stand up a new proactive investigative unit that focused on broader risk management issues, assessing compliance with policies and procedures, and testing the integrity and effectiveness of the Department's accountability systems.
- Conducted investigations into individual complaints of misconduct by LAPD employees.
- Planned training for police oversight practitioners and law enforcement investigators.

Re-Entry Program Manager

September 2006 – September 2007

Corporation for Supportive Housing, Returning Home Initiative

Managed the Los Angeles component of the Returning Home Initiative, a multi-million-dollar national effort to develop 1,000 units of permanent supportive housing for homeless ex-offenders. Administered grant funding and monitored sub-contractors. Managed all aspects of the program, including collecting and maintaining data for reporting and project evaluation purposes.

- Provided technical assistance, training, and support to community groups and affordable housing developers interested in building housing for criminal justice involved individuals.
- Partnered with the Los Angeles County Sheriff's Department to design and coordinate in-reach policies and procedures for connecting homeless inmates with housing and services immediately upon their release from jail.

Policing Specialist

Police Assessment Resource Center

July 2004 – September 2006

Assisted in monitoring all aspects of the Los Angeles County Sheriff's Department's operations, including reviewing deputy-involved shooting, use of force, and misconduct investigations. Evaluated the effectiveness of the Sheriff's Department's early intervention system. Analyzed policies and procedures and assessed training and supervision practices.

- Led study of police-community relations and co-authored a report on the study's findings.
- Evaluated a pilot police-complaint mediation program and co-authored a report on the study's findings.
- Surveyed police oversight agencies across the U.S. and published a report on the study's findings, which included a new system for classifying and understanding oversight models.
- Researched best practices for internal affairs divisions in collaboration with the U.S. Department of Justice and law enforcement agencies around the country.

EDUCATION

University of Southern California

Certificate, Public Safety Leadership, Sol Price School of Public Policy

Los Angeles, CA

Expected May 2016

University of Missouri, St. Louis

Master of Arts, Criminology and Criminal Justice

St. Louis, MO

August 2003

Bowling Green State University

Bachelor of Science, cum laude, Criminal Justice

Bowling Green, OH

December 2000

NOTABLE PUBLICATIONS, REPORTS, AND ARTICLES

Buchner, Brian. *The Need for Citizens to Police [the] Pasadena Police Department*, Guest commentary, Pasadena Star-News, Op Ed, May 12, 2014.

Police Assessment Resource Center. *Evaluation of a Pilot Community Policing Program: The Pasadena Police-Community Mediation and Dialog Program*. COPS Evaluation Brief No. 2. Washington, DC: U.S. Department of Justice, 2008.

Police Assessment Resource Center and Vera Institute of Justice. *Assessing Police-Community Relations in Pasadena, California*, Haynes Foundation, August 2006.

Stone, Christopher, Buchner, Brian and Scott Dash. *Crowd Control that Can Kill: Can American Police Get a Grip on Their New, "Less-Lethal" Weapons Before They Kill Again?* Rappaport Institute of Greater Boston; Kennedy School of Government, Harvard University, October 2005.

Curriculum Vitae

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Assistant Professor
Department of Sociology & Anthropology
University of Idaho

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Moscow, Idaho 83844-1110
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EDUCATION

- 2005 Ph.D., Sociology, New York University, *Disorder, Punishment and the Rehabilitation of Place: An Examination of the Drama of Criminal Justice and Redevelopment in Times Square, New York*. Committee: Ruth Horowitz (Chair), David Greenberg, David Garland, Jo Dixon
- 2000 Master of Arts, Sociology, New York University Comprehensive Exams: Sociology of Punishment, Criminology, and Urban Sociology
- 1995 Bachelor of Science, *Magna Cum Laude*, Sociology, Boise State University

ARTICLES & BOOK CHAPTERS

- 2015 De Angelis, J. "What do Citizens Think About Police Accountability Measures? Lessons from Community Attitudinal Surveys." *Criminal Justice Policy Review*. 0(0): <http://cjp.sagepub.com/content/early/2015/07/31/0887403415596773.refs>
- 2013 Schaible, L., De Angelis, J. and R. Rosenthal. "Denver's Citizen/Police Complaint Mediation Program: Evaluating Officer and Complainant Satisfaction." *Criminal Justice Policy Review* 24(5): 626-650.
- 2013 De Angelis, J. and B. Wolf. "Tasers and Community Controversy: Investigating Training Officer Perceptions of Public Concern Over Conducted Energy Weapons." *The Qualitative Report* 18(26): 1-20.

- 2012 Kupchik, A., J. De Angelis, and N. Bracy. "Order in the Court: Using Ethnomethodology in Juvenile Justice Settings." In D. Gadd, S. Karstedt, & S. Messner (eds.), *Handbook of Criminological Research Methods*. Thousand Oaks: Sage Publications.
- 2011 Wolf, B. and J. De Angelis. "Accountability and Less Lethal Force: Keying Processes in the Competitive Construction of Police Electroshock Technology." *Journal of Criminology and Social Theory* 4(2): 457-673.
- 2011 Wehrman, M. and J. De Angelis. "Citizen Willingness to Participate in Police-Community Partnerships: Exploring the Influence of Race and Neighborhood Context." *Police Quarterly* 14(1):48-69.
- 2009 De Angelis, J., and A. Kupchik. "Ethnicity, Trust, and Acceptance of Authority Among Police Officers." *Journal of Criminal Justice* 37: 273-279.
- 2009 De Angelis, J. "Assessing the Impact of Police Oversight and Procedural Fairness on the Attitudes of Citizens who File Police Complaints." *Police Quarterly* 12(9): 214-236.
- 2008 Castellano, U., J. De Angelis, and M. Clark-Ibanez. "Cultivating a Sociological Perspective Using Non-Traditional Readings." *Teaching Sociology* 36(3): 240-253.
- 2007 De Angelis, J. "Casebooks, Social Context, and Criminal Procedure for Law Enforcement." *Criminal Justice Review* 32(4): 423-430.
- 2007 De Angelis, J., and A. Kupchik. "Citizen Oversight, Procedural Justice, and Officer Perceptions of the Complaint Investigation Process." *Policing: An International Journal of Police Strategies and Management*. 30(4): 651-671.
- 2003 Kupchik, A., and J. De Angelis. "Legitimacy and Prisons." In *International Encyclopedia of Prisons*, Mary Bosworth (ed.). Thousand Oaks: Sage.

Invited Essays (Non-Peer Reviewed)

- 2015 De Angelis, J. "How systematic surveys can help cities to better understand community perceptions of police accountability." *London School of Economics, American Politics and Policy*. <http://blogs.lse.ac.uk/usappblog/2015/10/12/how-systematic-surveys-can-help-cities-to-better-understand-community-perceptions-of-police-accountability/>
- 2015 De Angelis, J. "Race, Police Accountability and the Value of Community Attitudinal Surveys." *NACOLE Review*. Summer: 9-16.

Under Review

- R&R De Angelis, J. and B. Wolf. "Perceived Police Accountability and Attitudes toward Local Police." *Criminal Justice Studies*.

POLICY AND TECHNICAL PUBLICATIONS

- 2014 Mitchell, N., J. De Angelis, G. Crittenden, N. Fehrman, and A Sesay. *2013 Annual Report*. Denver, CO: Office of the Independent Monitor.
- 2013 Mitchell, N. and J. De Angelis. "The Inmate Grievance Process." In *2013 OIM Semi-Annual Report*. Denver, CO: Office of the Independent Monitor.
- 2013 Mitchell, N., J. De Angelis, G. Crittenden, N. Fehrman, and A Sesay. *2012 Annual Report*. Denver, CO: Office of the Independent Monitor.
- 2012 De Angelis, J., G. Crittenden, and N. Fehrman. *2011 Annual Report*. Denver, CO: Office of the Independent Monitor.
- 2011 Rosenthal, R. and J. De Angelis. *2010 Annual Report*. Denver, CO: Office of the Independent Monitor.
- 2010-12 Rosenthal, R. and J. De Angelis. *OIM Quarterly Reports*. Denver, CO: Office of the Independent Monitor.
- 2008 De Angelis, J. *Assessing the Impact of the Office of the Independent Monitor on Citizen and Officer Satisfaction*. Denver, CO: Office of the Independent Monitor.
- 2007 De Angelis, J., and A. Kupchik. *Officer Satisfaction with the Denver Police Complaint Process: A Comparison of the Baseline and Post Implementation Surveys*. Denver, CO: Office of the Independent Monitor.
- 2006 De Angelis, J., and A. Kupchik. *Measuring Citizen and Officer Satisfaction with the Denver Police Complaint Process: Report on Baseline Results*. Denver, CO: Office of the Independent Monitor.
- 2004 De Angelis, J., and R. Rosenthal. *The City of Portland's Handling of Tort Claims Alleging Misconduct: A Need for Consistent Referrals to Internal Affairs*. Portland, Oregon: Independent Police Review Division, Office of the City Auditor.
- 2004 De Angelis, J., R. Rosenthal, L. Stewart, M. Hess, and C. Kershner *Independent Police Review Annual Report 2003*. Portland, Oregon: Independent Police Review Division, Office of the City Auditor.
- 2003 De Angelis, J., R. Ueland, and G. Blackmer. *Officer Use of the Hooper Sobering Program..* Portland, Oregon: Independent Police Review Division, Office of the City Auditor.

- 2003 De Angelis, J., R. Rosenthal, L. Stewart, M. Hess, and C. Kershner. *Independent Police Review Annual Report 2002*. Portland, Oregon: Independent Police Review Division, Office of the City Auditor.
- 2002-03 De Angelis, J., R. Rosenthal, and C. Kershner. *Independent Police Review Quarterly Reports*. Portland, Oregon: Independent Police Review Division, Office of the City Auditor.

BOOK REVIEWS

- 2010 De Angelis, J. Review of Richard Gendron and G. William Domhoff's, *The Leftmost City: Power and Progressive Politics in Santa Cruz*. *Teaching Sociology* 38(2): 68-69.
- 2007 De Angelis, J. Review of Robert Agnew's, *Pressured into Crime: An Overview of General Strain Theory*. *Teaching Sociology* 35(3): 291-293.
- 2003 De Angelis, J. Review of Michael Welch's *Punishment in America: Social Control and the Ironies of Imprisonment*. *Punishment and Society: The International Journal of Penology* 5(1): 111-112.
- 2000 De Angelis, J. Review of Alex Lichtenstein's, *Twice the Work of Free Labor*. *Punishment and Society: The International Journal of Penology* 2(4): 483-485.

GRANTS/ AWARDS

- 2014 Gianina Irlando (Principal Investigator), Nicholas Mitchell (Co-Principal), Abdul Sesay, Joseph De Angelis, Gerylann Castellano. *Office of the Independent Monitor Youth Outreach Project*, Justice Assistance Grant, State of Colorado. #2014-D3-14-003394. (\$60,000)
- 2010 De Angelis, J. (Principal), Castellano, U. and J. Gilliom. *Building the Center for Law, Justice and Culture: Creating a New Intellectual Community for Promoting Student and Faculty Research*. 1804 Fund, Ohio University (\$31,000)
- 2009 Co-Principal Investigator (with Brian Wolf, University of Idaho), "Police Use-of-Force and Tasers: Exploring Recent Developments in Adoption, Policy, Training, and Accountability." URO Seed Grant, University of Idaho (\$10, 900)
- 2006 Office of the Independent Monitor, City of Denver, Colorado, *Exploring the Influence of Police Oversight on the Attitudes of Community Members and Police Officer* (\$4,500)
- 2000-01 New York University, Graduate School of Arts and Sciences Teaching Assistantship

- 1996-99 Henry David Mitchell MacCracken Fellowship, New York University
- 1995 Designated an Honors Program Graduate with Distinguished Honors by the Boise State University Faculty Senate

CONFERENCES AND PRESENTATIONS

- 2015 M. Neuilly and J. De Angelis. "Models of Police Oversight." Monthly Meeting of the Spokane County Sheriff's *Citizen Advisory Board*. (Spokane County Public Safety Building, October 12, 2015)
- 2015 De Angelis, J. and B. Wolf. "Neighborhood Context and Police Accountability Initiatives." National conference: Academy of Criminal Justice Sciences 2015 Annual Meeting (Orlando, FL: March 3-7, 2015).
- 2015 De Angelis, J. "What do Citizens think About Police Accountability Measures? Lessons from Community Attitudinal Surveys." National Conference on Police Accountability, co-sponsored by the Seattle University School of Law and the National Association of Civilian Oversight of Law Enforcement (NACOLE) (Seattle, WA: February 6, 2015).
- 2015 Benz, T., J. De Angelis, and P. Gilham. "Arming Up: Threat Perceptions, Fear of Violence and Concealed Weapon on Campus." Pacific Sociological Association 2015 Annual Meeting (Long Beach, CA: April 1-4, 2015). (Presented by T. Benz)
- 2014 Mitchell, N., and J. De Angelis. "Citizen Oversight and Local Jails: Identifying Obstacles to Inmate Access to a Fair and Thorough Complaint Process." Conference of the National Association of Civilian Oversight of Law Enforcement (Kansas City, MO September 17, 2014).
- 2014 De Angelis, J. Session Moderator for *Citizen Oversight in Jails and Prisons: Common Issues in the Investigation, Monitoring, and Review of Inmate Complaints and Grievances*. Conference of the National Association of Civilian Oversight of Law Enforcement (Kansas City, MO September 17, 2014).
- 2014 De Angelis, J. and B. Wolf. "Exploring the Predictors of Public Satisfaction with Police Accountability Initiatives." Pacific Sociological Association (Portland, OR March 28, 2014).
- 2013 De Angelis, J., L. Schaible, and B. Wolf. "Exploring the Link Between Police Accountability Initiatives and Trust in Government." Pacific Sociological Association (Reno, NV, March 23, 2013).
- 2012 Schaible, L., J. De Angelis, and B. Wolf. "The Impact of Perceived Handling of Misconduct on General Trust in Government." American Society of Criminology Annual Meeting (Chicago, IL, November 17, 2012).

- 2012 De Angelis, J. and B. Wolf (Presenter). "Examining Individual and Group-Level Predictors of Public Satisfaction with Police Accountability Initiatives." Academy of Criminal Justice Sciences (New York, New York, March 15, 2008).
- 2011 Schaible, L., J. De Angelis, and R. Rosenthal. "Denver's Citizen/Police Complaint Mediation Program: Officer and Complainant Satisfaction." American Society of Criminology Annual Meeting (Washington, D.C., November 19, 2011).
- 2010 De Angelis, J. and M. Wehrman. "Citizen Willingness to Participate in Police-Community Partnerships: Exploring the Influence of Race and Neighborhood Context." Academy of Criminal Justice Sciences (San Diego, CA, March, 2009).
- 2009 De Angelis, J. and M. Wehrman. "Impact of Race, Class, and Neighborhood on Public Satisfaction with Efforts to Control Police Misconduct." American Society of Criminology Annual Meeting (Philadelphia, PA, November 6, 2009).
- 2009 De Angelis, J. "Exploring Keying Processes in the Competitive Construction of Police Electroshock Technology." New Directions Talk Series, Ohio University (May 29, 2009).
- 2008 De Angelis, J. "Influence of Oversight Professionalization on Officer Attitudes toward the Internal Investigations Process." Information and Public Policy Section of the Academy of Criminal Justice Sciences (Cincinnati, Ohio, March 14, 2008).
- 2008 De Angelis, J. "Exploring the Connection between Police Accountability Initiatives and Officer Job Satisfaction." American Society of Criminology Annual Meeting (St. Louis, MO, November 14, 2008).
- 2008 De Angelis, J. and B. Wolf (equal authorship). "Fear, Legitimacy Crises, and Invisible Violence: A Structural Analysis of the Proliferation of Police Energy Weapons." American Society of Criminology Annual Meeting (St. Louis, MO, November 13, 2008).
- 2008 Wolf, B. and J. De Angelis (equal authorship). "Tracing Out the Discursive Struggle over Tasers and the New Market in Police Energy Weapons." Pacific Sociological Association (Portland, Oregon, April 12, 2008).
- 2007 De Angelis, J. "Emerging Trends in Citizen Oversight of Police." Plenary Session on Police Accountability in Chicago, Midwestern Criminal Justice Association Annual Meeting with the Illinois Academy of Criminology, (Chicago, Illinois, September 27, 2007).

- 2007 De Angelis, J. and A. Kupchik. "Complaint Investigations and Governing Legitimacy: The Effect of Citizen Oversight on Officer Attitudes." American Society of Criminology Annual Meeting (Atlanta, Georgia, November 17, 2007).
- 2007 De Angelis, J. Session Chair, Thematic Panel on Police Knowledges, American Society of Criminology Annual Meeting (Atlanta, GA, November 16, 2007).
- 2007 De Angelis, J. Session Chair, Thematic Panel on Police Stress, American Society of Criminology Annual Meeting (Atlanta, GA, November 14, 2007).
- 2006 De Angelis, J and A. Kupchik. "Procedural Justice and the Impact of Citizen Oversight on the Attitudes of Police Complainants in Two Western Cities." American Society of Criminology Annual Meeting (Los Angeles, CA, November 2, 2006).
- 2006 Castellano, U. and J. De Angelis "The Novel as Sociological Narrative: Using Nontraditional Texts in Introductory Courses." American Sociological Association (Montreal, Quebec, Canada. August, 14, 2006).
- 2005 De Angelis, J. "The Impact of Citizen Oversight of Police on Perceptions of Legitimacy Among Police Complainants." American Society of Criminology Annual Meeting (Toronto, Ontario, Canada: November 18, 2005).
- 2003 Participant, Early Intervention State of the Art Conference and Roundtable. Phoenix Police Department (Phoenix, AZ, February 2003).
- 2000 De Angelis, J. "Community Courts and Redevelopment." Crime, Law and Deviance Workshop, New York University (December 2000).
- 2000 Peterson, R. and J. De Angelis. "Comparing the Processing of Domestic Violence Cases to Non-Domestic Violence Cases in New York City Criminal Courts." American Society of Criminology Annual Meeting (San Francisco, CA, November 2000).
- 1999 De Angelis, J. "Community, Disorder and the Contests of Place: An Examination of New York Cities Midtown Community Court and its Connection to the Discovery of Times Square." American Society of Criminology Annual Meeting (Toronto, Ontario, Canada, November 1999).
- 1998 De Angelis, J. "Advancing on the Margins: New York City's Midtown Community Court and the Struggle to Rehabilitate Perceptions of Criminal Justice Competence." American Society of Criminology Annual Meeting (Washington, D.C., November 1998).

PROFESSIONAL WORK HISTORY

2014-Present Assistant Professor, Department of Sociology & Anthropology, University of Idaho

2013-2014 Policy Director, Office of the Independent Monitor, City & County of Denver, Colorado

Fall 2012 Assistant Professor/Ranked Faculty, Department of Criminology, Regis University

2010-2012 Senior Research Analyst, Office of the Independent Monitor, City & County of Denver, Colorado

2005-2010 Assistant Professor, Department of Sociology and Anthropology, Ohio University

2001- 2004 Management Analyst, Independent Police Review Division Portland City Auditor, Portland, Oregon

Winter 2002 Adjunct Instructor, Portland Community College, Sylvania, Portland, Oregon

1998-2001 Junior Research Analyst/Research Assistant New York City Criminal Justice Agency, New York

PROFESSIONAL SERVICE

Co-Section Editor, Crime & Device Section, *Sociology Compass* (2010-2014)

Grant Reviewer, National Science Foundation, Law & Social Sciences Program (2010)

Grant Proposal Reviewer, Athens Police Department, *Law Enforcement Network* (2009)

Community Advisory Board, Hocking Valley Community Residential Center (2009-2010)

Athens County Police-Community Dialogues (2006-2008)

SERVICE TO UNIVERSITY/ AGENCY

IRB Prison Representative, Office of Research Assurances, University of Idaho (2015)

Faculty Sabbatical and Leaves Committee, University of Idaho (2015)

Faculty Council, College of Professional Studies, Regis University (2012)

Library Council, Regis University (2012)

Interagency Excited Delirium Workgroup, City of Denver, Colorado (2011-2012)

Use-of-Force Task Force, Denver Sheriff Department, City of Denver, Colorado (2011-2012)

Interim Director, Center for Law, Justice & Culture (2009-2010)

Co-Chair, Sponsored Research Workgroup, Center for Law, Justice & Culture (2009-2010)

Affiliated Faculty, Center for Law, Justice & Culture (2009-2010)

Organizer, Police Agility Run (2009)

Tutor, Honors Tutorial College (2007-2010)

Co-Organizer, Undergraduate Research Poster Fair, *Going Public: Communicating Social Science*, June 1, 2007

Participant, Ohio University Football Recruit Visits (2007-2010)

Ohio Up-Close Faculty Representative (2005-2008)

Welcome Week, Freshman Student Orientation Workshop (2006 with Dr. Ed Morris)

Bachelor of Specialized Studies (B.S.S.) Advisor (2006-2009)

MICHAEL J. GENNACO
7142 Trask Avenue
Playa Del Rey, CA 90293
323-821-0586
Principal: OIR Group
Michael.Gennaco@oirgroup.com

I have worked for over a decade as an oversight practitioner: reviewing, assessing, providing recommendations for reform, and monitoring numerous law enforcement agencies to ensure that police practices are consistent with the Constitution. In addition, I have provided training to law enforcement, reviewed officer-involved shootings, police tactics, and best practices. Prior to that work, I served as a federal prosecutor for fifteen years investigating and prosecuting criminal allegations of civil rights offenses for the United States Department of Justice, Civil Rights Division and United States Attorney, Central District of California.

Experience

- | | |
|-------------|---|
| 2015 | Independent Review of Use of Force and Internal Affairs Functions
Denver Sheriff's Department
Six month review of Denver's Sheriff Department focusing on force in the jails and offering recommendations for systemic reform. |
| 2015 | Training to Investigators: San Francisco Office of Civilian
Complaints
Provided training on effective internal investigations of police officers. |
| 2016 | Review of King County Sheriff's Department (OIM)
Conducted review of processes of oversight entity for King County Washington. |
| 2014 – 2015 | Instructor: Peace Officer Standards and Training
Regular instructor on Civil Liability and Risk Management issues. |
| 2001 - 2014 | Chief Attorney
LA County Office of Independent Review
Continual oversight and monitoring of LA Sheriff's Department internal affairs functions, including deputy-involved shootings, force, and misconduct allegations. |
| 2014 | Systemic Review of Westminster Police Department
Following an adverse verdict against City, performed systemic review of Westminster Police Department's force, performance evaluations, internal investigations, policies, early intervention system, and selection and promotion practices. |

2014- Present	Systemic Review of Santa Maria Police Department Following several controversial shootings, performed systemic review of Santa Maria Police Department's investigation and review of shootings, force, misconduct allegations, force training, and related matters.
2012	Auditor for City of Spokane Use of Force Committee Conducted independent review of Spokane Police Department's use of force investigations and review process.
2012	Glendale Police Department Provided independent review of remedial measures by Glendale Police Department as a result of settlement.
2010 - Present	In Custody Death Review: Fullerton Police Department Review of the Fullerton Police Department following the in-custody death of a homeless man, including conducting an internal affairs investigation and continual monitoring of implementation of systemic reforms stemming from review.
2010- 2012	California Department of Juvenile Justice Worked with Special Master to audit and develop recommendations for improvement of force policies and review of force incidents.
2011	Review of Criminal and Internal Investigation: Santa Monica Police Department Conducted review and critique of high profile criminal and internal investigations.
2009 - Present	Force and Misconduct Audits: Burbank Police Department Regular and ongoing monitoring the quality of investigations and appropriateness of outcomes with respect to force, bias based-policing, and misconduct investigations.
2009 - Present	Officer Involved Shooting Reviews: Portland Police Bureau Regular and ongoing analysis of the investigation and internal review processes of officer-involved shootings for the City Auditor's Office.
2006 – 2009/2014	Use of Force Audit for San Diego Sheriff's Department In depth analysis of deputy-involved shootings and jail uses of force resulting in numerous systemic recommendations. Audit of jail policies relating to force, suicide prevention, and medical delivery.
2006 - Present	Independent Police Auditor for Palo Alto Police Department Review and monitor all complaints, including bias-based policing

complaints, misconduct allegations, and use of Tasers in order to provide independent oversight. Special reports on quality of criminal investigations and concerns about bias-based policing.

- | | |
|-------------------|---|
| 2008 - 2009 | Force Evaluation and Review for Torrance Police Department
Review of officer-involved shootings and other uses of force relating to appropriateness of investigation and robustness of review process. |
| 8/2008 - Present | Independent Auditor for Anaheim Police Department
Ongoing review of officer-involved shootings, other uses of force, citizen complaints, and internal affairs cases. |
| 2006 | Review of Officer Involved Shootings: Inglewood Police Department
Conducted review of a series of officer-involved shootings with recommendations designed to improve investigative and review process. |
| 1/2009 - Present | Officer Involved Shooting Reviews for Pasadena Police Department
Reviews of officer-involved shooting protocols, investigation, and review processes. |
| 2005- 2008 | City of Oakland
Conducted internal misconduct investigations relating to allegations involving Oakland Police Department supervisors and command staff, including Chief of Police. Evaluated quality and appropriateness of criminal sexual misconduct investigation. |
| 10/2003 - 10/2005 | City of Oakland
At request of Independent Monitoring Team, reviewed delinquent Internal Affairs cases and made recommendations on how to address them. |
| 2003 - 2010 | Court Expert in Madrid v. Gomez
Appointed by Judge Thelton Henderson to develop an oversight body for the California Department of Corrections and Rehabilitation as part of the Court's remedial plan. At request of Court and Special Master, worked with parties to completely revise and reform use of force policy. Also provided Code of Silence Training at the CDCR Academy |
| 1986- 2001 | Federal Civil Rights Prosecutor, U.S. Department of Justice, Civil Rights Division and Office of United States Attorney, Central District of California
Prosecuted police officer misconduct, hate crimes, and human trafficking cases, first as a Trial Attorney with the Criminal Section of the Civil Rights Division and then as Chief of the Civil Rights Section of the United States Attorney's Office, Central District of California. Prosecuted and oversaw numerous investigations and prosecutions of police officers and law enforcement officials throughout the country. |

1984- 1986 **Trial Attorney, U.S. Department of Justice, Civil Rights Division,
Voting Section**
Conducted voting discrimination investigations and involved in voting
rights litigation.

Education **Stanford Law School, J.D. 1983**
Dartmouth College, B.A. 1975

EMPLOYMENT EXPERIENCE

Portland Police Bureau, Portland, OR, Training Division, 2007 - present **Training and Development Officer**

Department of Justice Agreement

In 2013, the Portland Police Bureau (PPB) reached a Settlement Agreement with the U.S. Department of Justice (DOJ) as a result of its investigation of the Police Bureau's use of force involving people in behavioral crisis. In response to the agreement:

- Contributed subject matter expertise and deep knowledge of the DOJ agreement during development and implementation of PPB's new Behavioral Health Unit (BHU).
- Advised PPB leadership and the City Attorney's Office regularly on community mental health system gaps.
- Collaborated in the expansion of PPB's mobile behavioral health response cars.
- Provide input and feedback on all new and revised PPB mental health-related policies and procedures.
- Led the design, development and delivery of PPB's new Enhanced Crisis Intervention Training (ECIT).
- Collaborate with newly formed Behavioral Health Advisory Council to improve crisis intervention training processes.
- Develop and deliver ongoing crisis intervention training for all new PPB Officers.

Officer Training and Program Development

- Design mental health-based training scenarios for annual mandatory in-service trainings.
- Designed and delivered crisis intervention training (CIT) to more than 1,000 sworn personnel, primarily assigned to patrol operations (2007 - 2009).
- Collaborated in the formation of PPB's mobile behavioral health response cars following high-profile officer-involved shootings.

Support to Officers, Community Members and Organizations

- Provide mental health and crisis communication consultation on PPB's Crisis Negotiation Team (CNT) call-outs and for monthly training scenarios.
- Respond to concerns of mental health advocacy groups and community members regarding police interactions with individuals in behavioral health crisis.
- Provided technical assistance for Washington DC-based Bazelon Center for Mental Health Law's multi-system performance improvement project in Portland, Oregon.
- Joined with Oregon Health Sciences University's law enforcement and behavioral health staff to design and provide their first-ever crisis intervention training to newly formed police force.
- Represent PPB on multi-agency workgroup involving behavioral health system issues in a health care setting.

Association of Oregon Community Mental Health Programs, Salem, OR, 2006 - 2007

Regional All-hazards Disaster Behavioral Health Planner

- Co-authored a Human Resources Services Administration (HRSA) funded, federally mandated behavioral health all-hazards response plan for six Oregon counties.
- Designed, delivered, and evaluated training modules for disaster behavioral health responders focusing on emergency response systems, special populations, psychological first aid, compassion fatigue, PTSD, and field-based behavioral health crisis triage and assessment.
- Conducted behavioral health response team needs assessment, identified gaps, and developed a strategy for disseminating competency-based training on behavioral health preparedness, response and recovery for six Oregon counties.
- Developed disaster mental health credentialing guidelines, using nationally and internationally recognized best practices, for licensed clinical providers in six Oregon counties.
- Solicited stakeholder input from, and facilitated discussion among, representatives within emergency management, hospitals, public health, community mental health centers, tribal entities, human service agencies, schools, the American Red Cross, and faith-based disaster volunteer agencies.

Cascadia Behavioral Healthcare, Inc., Portland, OR, 2001 - 2006

Supervisor, Mobile Mental Health Crisis Team (2004 - 2006)

- Trained Portland Police Officers in mental health crisis response.
- Provided direct clinical supervision to 10 full-time mental health crisis counselors.
- Provided consultation to private psychiatrists, social workers, county health clinics, and emergency room physicians in Multnomah County.
- Participated in inter-and intra-agency critical incident reviews, case consultations and service planning.
- Held primary responsibility for ensuring the effective and proper utilization of a city funded community-based housing grant for homeless citizens.
- Performed management responsibilities that included recruiting, hiring decisions, bi-annual performance evaluations, performance improvement plans, and daily scheduling.

Team Member, Mobile Mental Health Crisis Team (2002 - 2004)

- Made clinical decisions regarding acute mental health crisis situations at emergency rooms, county jails, juvenile detention facilities, schools, businesses, clients' homes and domestic violence shelters.
- Formulated clinical risk assessments and intervention strategies for individuals and families.
- Used diagnostic criteria as outlined in the DSM-IV for clinical evaluation.

ACADEMIC CREDENTIALS

Tilburg University, The Netherlands
Ph.D., Organizational Psychology, Degree confirmed 2006

University of Maryland at College Park
M.Ed., Education, Degree confirmed 1992

University of California at Berkeley
B.A., Architecture, Degree confirmed 1984

Michael D. James
28951 Glenn Ranch Way
Trabuco Canyon, CA 92679
Phone: 949.283.0910
Email: mdjames27@gmail.com

Education: Bachelor of Arts, Organizational Management Vanguard University, 1999.

Law Enforcement Experience: Retired Orange County Assistant Sheriff October 2012

1/1/15 – Current Executive Director – Integrated Law and Justice Agency Orange County. A JPA.

- Work with All Justice Agencies in Orange County of mutually beneficial County-Wide projects
- Interact with all agencies to resolve technical issues
- Create and prepare annual budget for the Agency
- Serve on California State Wide Data Sharing Task Force
- Serve as Coplink Node Administrator

1/1/14 – 2/19/14 Interim Executive Director – Integrated Law and Justice Agency Orange County.

- Guided the Agency during a leave of absence by the executive director
- Worked with all of the staff and started the budget process.
- Kept all aspects of agency moving in the right direction during this period
- Introduced new concepts jail booking forms

7/1/13 – 2/1/14

Chief Deputy – Monterey County Sheriff's Office Responsible for Jail and Court Operations

- Served Sheriff Scott Miller as he searched for a full time replacement.
- Primary responsibility for 500 staff members and 1500 inmates. Managed Jail and Court facilities

11/1/14 – Current

Owner Jamzclan Consulting LLC – Consulted to Chief of Police Tom Gazsi – Costa Mesa Police Department

- Oversaw RFP and bid proposals for CAD\RMS, new in car video, new broadband services and in car computers
- Serve as representative to ILJAO
- Currently managing 911 Police and Fire call center
- Managing jail operations

6/1/08 – 9/21/12

Assistant Sheriff, Orange County Sheriff's Department. Primary responsibility for day to day operation of the County's five jails, seven courts, inmate transportation and inmate services including: inmate programs, commissary and food services.

- Managed 300 Million dollar budget
- Oversaw Department of Justice Inspection
- Served as Liaison to Orange County Grand Jury
- Handled several high profile investigations including discipline and press
- Made numerous presentations to Inmates Rights groups, Orange County Board of Supervisors and Community groups
- Acted as the Emergency Management coordinator for several county-wide emergencies. Served as the liaison to all county groups and agencies in each of those events

Assistant Sheriff, Field Operations and Investigations. Primary responsibility for law enforcement services to over 700,000 residents. FBI Secret clearance.

10/1/05 – 6/1/08

Captain, Support Services Division. Orange County Sheriff's Department Chief Information Officer.

- ILJAOC Liaison for OCSD
- Responsible for OC Sheriff Data Center
- Records, Warrants and Property Bureau
- Primary responsibility for the entire Orange County Law Enforcement Data Network
- Managed Cad\RMS, Mobile Data Computers and In Car video
- Bid Contract and Oversaw Redesign and changes and daily operation of OCSD website and Intranet
- Served on CIO Councils for Microsoft, Apple and Dell.

3/1/99 – 10/15/05

Lieutenant, Chief of Police Services, City of Lake Forest. Primary responsibility for law enforcement services to 77,000 residents.

- Worked with city manager and city council on delivery of those services.
- Responsible for overseeing crime statistics and reporting
- Trained several new city lieutenants
- Covered several other contract cities during extended absences by their respective chiefs

3/1/85 – 3/1/99

Orange County Sheriff's Department – worked multiple assignments and ranks in all areas of the department including Internal Affairs.

Other

Experience:

Press Information Officer , SONGS Press Information Officer, Law Enforcement Mutual Aid Coordinator, Integrated Law and Justice Orange County, Orange County Community Corrections Partnership, Orange County Re-Entry Partnership, National Institute of Justice Large Jail Network, Supervisory Leadership Institute, FBI Law Enforcement Executive Development

Association, Represented County of Orange in recent negotiations with Association of Orange County Deputy Sheriff's, President, Association of County Law Enforcement Managers

Volunteer Work:

Board member Laura's House Board of Directors

Youth baseball, basketball and soccer coach

Walter W. Katz
P.O. Box 33094 • Los Gatos, California 95031
walter.katz@oirgroup.com | (408) 384-9235

EXPERIENCE:

City of San Jose, Independent Police Auditor (IPA), 2015-present.

Appointee of the City Council. I direct the mission and operations of the Office of the Independent Police Auditor.

Los Angeles County Office of Inspector General, Deputy Inspector General, 2014 -15.

Review & Analysis Section, conducted systemic reviews of the functions, procedures and operations of the Sheriff's Department.

OIR Group, Principal, 2011-present.

OIR Group provides specialized consulting services to communities and law enforcement agencies on critical incident review and analysis, policy and practice reform, and training initiatives.

Los Angeles County Office of Independent Review (OIR), attorney 2010-2014.

Conducted oversight of the LASD, including jail and patrol operations, critical incidents, administrative and internal criminal investigations, policy review and recommendations.

Law Offices of the Alternate Public Defender, Deputy Public Defender 1995-2010.

Felony trial attorney. From 2000-2002 was part of team that conducted post-conviction investigation and litigation of about 119 prior convictions that were part of the LAPD Rampart CRASH scandal.

Public Defender of San Diego County, Deputy Public Defender, 1992-1995.

CONSULTATION, PROJECTS AND PUBLICATIONS:

2016: Consulted with jurisdictions, ad hoc committees or task forces throughout the United States on police reform issues and accountability design.

2016: Member of working group consisting of IPA, SJPd and Mayor's Office of Innovation developing San Jose's participation in the White House Police Data Initiative.

2016: Outside interview panelist for jurisdiction hiring oversight office director.

2016: Member of committee engaged in developing and continued evaluation of body worn camera policies of the San José Police Department.

2016: Outside member of committee revising use of force policies and use of force investigation and evaluation of the San José Police Department.

2016: Committee member evaluating bids for body worn camera system the City of San José.

2015: Expert panel member for jurisdiction hiring oversight office director.

2015: Co-author, Los Angeles County Office of Inspector General, Body-worn camera pilot project evaluation and policy recommendation report.

- 2015: Primary investigator and author, Los Angeles County Office of Inspector General, Review of unintended discharges with newly issued handgun and related purchasing irregularities.
- 2014: Co-author, Los Angeles County Office of Inspector General, *Recommendation to the Los Angeles Sheriff's Department for Public Data Disclosure*.
- 2014: Co-author, OIR Group, report on Santa Maria Police Department (including review of two officer involved shootings and POST compliance audit).
- 2013: Editor: *OIR 11th Annual Report*.
 Author, "Part One: Sexual Misconduct Allegations against Deputies."
 Author, "Part Three: Video Cameras in Jail: An Effective Work in Progress."
 Author, "Addendum: Systemic Changes in MCJ Visiting."
- 2013: Co-author: *Allegations of Abuse in the Los Angeles County Jails: Status Report on Investigations and Outcomes*.
- 2012: Contributor: *OIR 10th Annual Report*.
 Co-author, "Part One: Violence in the County Jails: A Year of Turmoil and Reform."
- 2012: Primary author: *Report Reviewing the Investigation Regarding the Discovery and Recovery of the Remains of Mitrice Richardson*.
- 2011: Contributor: *OIR 9th Annual Report*.
 Author, "TASER Policy and Techniques: The Evolution Continues."
- 2011: Co-author, *OIR Report on Violence in the Jails*.

ACADEMIC PUBLICATIONS:

Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force, Harvard Law Review Forum, 128 Harv. L. Rev. F. 235 (2015)

PRESENTATIONS:

- 2016: Data presentation to NACOLE Regional Event (Oakland, CA)
- 2016: Panelist on oversight at NOBLE training event (Oakland, CA)
- 2015: Moderator and organizer of National Association for Civilian Oversight of Law Enforcement (NACOLE) panel on disclosure of law enforcement agency use of force and public complaints data (forthcoming in October).
- 2013: Moderator and organizer: NACOLE conference panel "Police Shootings of Unarmed Civilians" with specific on November 2012 Cleveland officer involved shooting.
- 2012: Panelist: NACOLE conference presentation on jail reforms in Los Angeles County.

EDUCATION:

McGeorge School of Law, University of the Pacific, Juris Doctorate 1992
University of Nevada, Reno, Bachelor of Arts, Political Science 1989

Robert Miller

80 N. Euclid Ave., Pasadena, CA 91101

626-808-2535

Robert.miller@oirgroup.com

Experience

- 2014 – present** **Assistant Inspector General**
Los Angeles County Office of Inspector General
Manage Review & Analysis Branch for new County office overseeing patrol and custody functions of LA Sheriff's Department.
- 2010 – 2014** **Deputy Chief Attorney**
Los Angeles County Office of Independent Review - Probation
Managed oversight and review of internal affairs and child abuse investigations at LA County Probation Department. Investigator training, internal evaluation processes and policy development.
- 2001 – 2010** **Deputy Chief Attorney**
Los Angeles County Office of Independent Review - Sheriff
Oversight and review of LA Sheriff's Department internal affairs functions, including review of in-custody deaths, deputy-involved shootings, major uses of force and misconduct investigations. Supervised staff attorneys.
- 1986 – 2001** **Special Assistant, Prosecution Support Operations**
Assistant Head Deputy, Environmental Crimes Unit
Deputy District Attorney
Los Angeles County District Attorney's Office
Trial attorney for murders and other violent felonies, environmental felonies, industrial death manslaughter, gang cases, juvenile crimes, fraud and other white-collar crimes and narcotics. Drafted new legislation.

Selected Projects

- 2010 – 2015** **Independent Review for City Auditor**
City of Portland, OR
Review of deaths in custody and officer-involved shootings by Portland Police Bureau.
- 2009 & 2014** **Independent Review, Recommendations**
City of Pasadena
In-depth review of two controversial officer-involved shootings. Recommended changes in policy and procedure.

2006 – 2012	Independent Police Auditor <u>City of Palo Alto</u> Reviewed internal affairs investigations, citizen complaints, and arrests involving the Taser for the Palo Alto Police Department.
2012 – 2014	Independent Consultant – Quality Control <u>State of Mississippi Department of Youth Services</u> Reviewed all internal affairs investigations at the state’s major youth detention facility. Mentored investigators.
2010 – 2011	Independent Review <u>City of Santa Monica</u> Review and evaluation of police department investigation of elected official.
2008 – 2009	Officer-Involved Shooting Review <u>City of Inglewood</u> Review of investigation and internal evaluation protocols for officer-involved shootings.
2005 – 2008	Special Investigator and Consultant <u>Oakland Police Department</u> Conducted investigation into allegations of misconduct by current and former members of Internal Affairs Division of the Oakland PD. Reviewed politically sensitive criminal investigation.
2006 – 2007	Use of Force Audit Project <u>San Diego Sheriff’s Department</u> In depth analysis of 3-year history of deputy-involved shootings and uses of force, including tactics, training elements, force policies and internal evaluation procedures. Worked closely with Department executives to implement recommendations.
2003 – 2006	Court Expert for Judge Thelton Henderson <u>United States District Court</u> Design and development of permanent oversight body for California Department of Corrections and Rehabilitation. Assisted Court’s Special Master to identify problems in use of force policies.
Education	UCLA School of Law, J.D. 1985 Stanford University, B.A. 1979
Affiliations	Member, California Bar, Bar No.123890 Peace Officers Association of Los Angeles County Conference Lecturer – National Association of Civilian Oversight of Law Enforcement

Constance L. Rice

1910 W. Sunset Blvd.
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Los Angeles, California 90026
(213) 989-1300
(213) 989-1309 (fax)
crice@advanceproj.org

Education: **NEW YORK UNIVERSITY SCHOOL OF LAW**
New York, New York
Juris Doctor degree, June 1984

HARVARD UNIVERSITY
Cambridge, Massachusetts
Bachelor of Arts, June 1978

Employment:

May 1998- **THE ADVANCEMENT PROJECT**
Present Los Angeles, California
Co-Director

ENGLISH, MUNGER & RICE
Los Angeles, California
Law Partner

Oct. 1990- **NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.**
April 1998 Los Angeles, California
Western Regional Counsel

Sept. 1992- **LOS ANGELES DEPARTMENT OF WATER AND POWER**
Jan. 1995 Los Angeles, California
President, Board of Commissioners

Nov. 1987- **UNIVERSITY OF CALIFORNIA, LOS ANGELES**
Oct. 1990 Los Angeles, California
Special Assistant to Associate Vice Chancellor

Oct. 1986- **MORRISON & FOERSTER**
Nov. 1987 San Francisco, California
Associate Attorney

July 1984- **UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**
1986 Detroit, Michigan
Law Clerk to the Honorable Damon J. Keith

Employment, continued:

June 1983- **NAACP LEGAL DEFENSE FUND**
May 1984 New York, New York
 Law Clerk

Sept. 1982- **STATE OF NEW YORK DEPARTMENT OF LAW**
May 1983 New York, New York
 Law Clerk

Summer 1982 **CONNECTICUT WOMEN'S EDUCATIONAL & LEGAL FUND, INC.**
 Hartford, Connecticut
 Law Clerk (half time)

Summer 1982 **CONNECTICUT TASK FORCE ON ABUSED WOMEN**
 Hartford, Connecticut
 Law Clerk (half time)

1978-1981 **HARVARD UNIVERSITY**
 Cambridge, Massachusetts
 Admissions Officer

1980-1981 **A BETTER CHANCE, INC.**
 Boston, Massachusetts
 New England Regional Director

Miscellaneous:

President's Task Force on 21st Century Policing 2015
First Degree Black Belt in Tae Kwon Do
1980 Gold Medal National Tae Kwon Do Championship in Form
1981 Silver Medal National Tae Kwon Do Sparring Championship
1974 Texas State Championship in Debate
Root Tilden Scholar
Vanderbilt Medal
Over 50 Awards for Public Interest Service

REFERENCES AVAILABLE ON REQUEST

Ilana B.R. Rosenzweig

8 Alexandra View #38-08
The Metropolitan
Singapore 158747
(65) 9711 6440
ilana_rosenzweig@yahoo.com

EDUCATION:

University of Michigan Law School, Ann Arbor, MI

J.D., *magna cum laude*, May 1993. Order of the Coif. The Michigan Law Review, Contributing Editor, 1992-93, and Associate Editor, 1991-92.

The College of William and Mary, Williamsburg, VA

B.A., with Honors, in Economics, Minor in English, May 1990. Phi Beta Kappa.

EXPERIENCE:

OIR Group

Principal, October 2005 to August 2007, November 2014 to present

Provide expert advice on law enforcement policies, procedures and training, including use of force, officer-involved shootings, interactions with the mentally ill, custody policies and in-custody deaths, internal investigations, accountability mechanisms, and external civilian oversight. Perform independent investigations into allegations of misconduct and high-profile incidents.

Representative work includes:

- Reviewed internal investigations and review procedures for uses of force and vehicle pursuits by the Burbank Police Department.
- Designed, implemented and audited a civilian oversight agency, the Bureau of Internal Review, for the California Department of Corrections and Rehabilitation. Drafted mission statements and proposed policies and procedures. Provided expert opinions to Federal Court Special Master in Madrid v. Tilton, Case No. C90-3094 TEH (United States District Court, N.D. Cal.).
- Investigated allegations of misconduct made against members of the Oakland Police Department Internal Affairs Division.

City of Chicago Independent Police Review Authority, Chicago, IL

Chief Administrator, September 2007 to May 2013

Led City Department that conducted internal administrative and criminal investigations of sworn and civilian members of the Chicago Police Department. Appointed to a cabinet-level position by Mayor Richard M. Daley, and re-appointed in October 2011 by Mayor Rahm Emanuel. Created a newly-authorized, one-of-a-kind civilian-staffed department with broad powers to investigate and impose discipline on police officers who commit misconduct; investigate officer-involved shootings; and conduct criminal investigations of police officers to refer for state and federal prosecution. Used strategic planning and organizational development to transform performance of legacy employees and build new capacity, while preparing and managing budgets during fiscal austerity. Managed a budget of \$8.3 million, with 99 budgeted personnel.

Initiated joint investigations of alleged criminal misconduct with FBI, United States Attorney, and Cook County State's Attorney's Office. Recommended changes to CPD policies and procedures to enhance CPD's effectiveness.

Established procedures to increase the quality of investigations. Instituted annual recurrent training in police policies and procedures and forensic investigative tools and created program of in-house training on investigative techniques.

Originated major policy initiatives to address systemic weaknesses. Working with CPD, implemented the CPD Force Analysis Panel to review officer-involved shootings for systemic issues relating to CPD policy, training, equipment, or supervision. Successfully recommended that CPD clarify its policies, including those for use of Tasers and officers taking police action when they may have a conflict of interest.

Improved coordination with U.S. Attorney's Office, FBI, and State's Attorney's Office to promote criminal prosecution when appropriate. Improved investigations to meet needs of prosecutors. Initiated joint investigations with the FBI. Efforts resulted in successful prosecutions of CPD members for on-duty and off-duty excessive force and perjury, and nullification of conviction of wrongfully convicted civilian.

Office of Independent Review, Los Angeles, CA
Attorney, October 2001 to August 2007

Counsel to the Los Angeles County Board of Supervisors, providing independent oversight of the Los Angeles County Sheriff's Department. Worked closely with members of the Sheriff's Department to ensure that the Department fairly, thoroughly, and timely investigated allegations of officer misconduct. Reviewed completed investigations and made recommendations to Sheriff's Department managers and executives to promote fairness and consistency in the outcomes of investigations, including any discipline imposed.

Reviewed existing policies and training and recommended changes to conform to best practices. Monitored implementation of any recommended changes adopted by the Department.

Munger, Tolles & Olson LLP, Los Angeles, CA
Associate, November 1994 to September 2001
(Leave of absence July 1998 to August 1999, to teach at UCLA School of Law)

Represented corporate and individual clients in civil and criminal matters, in federal and state courts and binding arbitration, including:

- Internal investigations of complex fraudulent financial schemes, in various industries, both for internal accountability and in support of litigation claims pursued by clients
- Antitrust representation of recorded music industry client in class action litigation, FTC investigation, and regulatory approval of significant merger
- Entertainment industry litigation involving invasion of privacy, First Amendment principles, and contract disputes
- False Claims Act representation establishing new Ninth Circuit law regarding release of claims by *qui tam* relators
- White-Collar criminal defense of theft of trade secrets charges involving multiple defendants in software industry
- Insurance coverage litigation, representing insureds

CLERKSHIP

Hon. John G. Davies, United States District Court, Central District of California
September 1993 to September 1994

BAR ADMISSIONS

California and Illinois State Bar Associations, Active Member

PROFESSIONAL TRAINING:

Various classes on law enforcement and investigative techniques by Los Angeles County Sheriff's Department Education and Training Division and Chicago Police Department Training Academy, Americans for Effective Law Enforcement, Illinois State Police Crime Lab, and Northwestern Center for Public Safety

Publications and presentations available upon request.

JULIE M. RUHLIN

321 Loma Avenue · Long Beach, CA 90814 · (562) 335-5443 · julie.ruhlin@gmail.com

PROFESSIONAL EXPERIENCE

OIR Group

August 2006 – present

Provide consultant services to law enforcement agencies for police-involved shootings, use of force incidents, investigative protocols, force policies, procedures, and training. Clients include:

- City of Portland, Oregon. Review Portland Police Bureau investigations into officer involved shootings and in-custody deaths, including controversial death of a mentally ill homeless man; prepare reports analyzing investigations, reviewing policies, and recommending systemic reforms.
- City and County of Denver, Colorado. Perform systemic evaluation of the Denver Sheriff Department's use of force policies and training, the way in which force incidents are investigated and reviewed, and its internal affairs function.
- City of Fullerton, California. Assist in investigation into use of force by officers that resulted in death of mentally ill homeless man; advise Police Department on issues related to training, policy, and other systemic reforms. Provide ongoing monitoring of use of force and internal affairs investigations.
- California Department of Correction and Rehabilitation. Court appointed expert to assist in design of internal civilian oversight entity for misconduct investigations of California prison system staff.

Los Angeles County Office of Independent Review

August 2006 – June 2014

Deputy Chief Attorney

October 2010 – June 2014

Monitor the Los Angeles County Sheriff's Department on behalf of the County Board of Supervisors to ensure that allegations of deputy misconduct, deputy-involved shootings, and force incidents are investigated and handled thoroughly, fairly, and objectively. Consult with investigators, review Internal Affairs investigations, and provide recommendations regarding appropriate discipline. Advise Department on policy and training issues. Work with Custody Division officials on issues regarding operation of the County's jails, including investigations of inmate deaths, force, and misconduct allegations.

Police Assessment Resource Center

August 2004 – July 2006

Consultant

With Special Counsel Merrick Bobb, conducted ongoing monitoring of the Los Angeles County Sheriff's Department. Prepared semiannual reports with observations and recommendations to improve the Department's ability to identify and manage the risk of negligence and reckless or willful misconduct. Investigated and drafted confidential report to County Board of Supervisors regarding inmate deaths at Los Angeles County Jail facilities. Worked with corrections expert to formulate recommendations for reform of inmate classification system and jail operations.

Overland Borenstein Scheper & Kim LLP

January 2001 – August 2004

formerly Overland & Borenstein LLP; Shapiro, Borenstein & Dupont LLP

Member

Opened boutique firm with colleagues representing clients in state, federal and appellate courts. Represented criminal defendants in state and federal pre-trial, trial and post-conviction proceedings. Interviewed witnesses and drafted pleadings, motions, jury instructions and appellate briefs. Litigated 42 U.S.C. §1983 police misconduct case on behalf of wrongfully incarcerated client. Investigated and prepared direct appeal and state habeas corpus petition on behalf of capital client. Assisted in successful appeal to Ninth Circuit on behalf of capital client in federal habeas corpus action.

Tuttle & Taylor

Summer 1996; October 1998 – November 2000

Litigation Associate

Practiced before state and federal trial and appellate courts. Drafted memoranda, pleadings, motions, appellate briefs, settlement agreements and discovery requests and responses; represented grand jury witnesses. Areas of practice included federal False Claims Act litigation, white collar criminal defense, intellectual property and general litigation.

**The Honorable Christina A. Snyder,
United States District Court for the Central District of California**

January 1999 – October 1999

Law Clerk

Assisted judge with Law and Motion calendar and trials. Drafted bench memoranda, jury instructions and tentative orders. Researched and analyzed legal issues, including 42 U.S.C. § 1983, Title VII, intellectual property, search and seizure, state immunity and jurisdictional issues.

EDUCATION

University of Southern California Law School

J.D., May 1997

Honors: Order of the Coif

Awards: National Association of Women Lawyers Outstanding Woman Law Graduate

Shattuck Award for Outstanding Service and Contribution to the Law School

Public Interest Law Foundation Summer Grant

Lesbian and Gay Lawyers Association's Donald L. Snow Scholarship

USC Law Merit Scholarship

Journals: *Southern California Law Review*, Staff, 1995-1996

Southern California Review of Law and Women's Studies,

Managing Editor, 1996-1997; Staff, 1995-1996

The American University

B.A., University Honors with Distinction, History, Minor in Criminal Justice, May 1992

Honors: Bruce Hughes Award for Leadership

College of Arts and Sciences Award for Outstanding Service to the University

Region II Women's Basketball Academic All-American Team

STEPHEN J. CONNOLLY

6230 E. Marita Street
Long Beach, CA
(562) 922-9337
sjconnolly6230@gmail.com

EDUCATION:

Loyola Law School, Los Angeles	1996-2000
Juris Doctor; Cum Laude, Loyola Law Review	
University of California, Irvine	1989-1991
Master of Arts in English Literature	
College of the Holy Cross (Worcester, MA)	1981-1985
Bachelor of Arts in Political Science	

LEGAL EXPERIENCE:

Principal, OIR Group	2003 – Present
Legal consultant conducting special review projects for various local law enforcement agencies, including the San Diego County Sheriff's Department, Torrance Police Department, Anaheim Police Department, Burbank Police Department, Inglewood Police Department, and Palo Alto Police Department	
Orange County (CA) Office of Independent Review	2008–2016
Executive Director of a civilian oversight entity monitoring critical incidents and allegations of misconduct involving the Orange County Sheriff's Department	
Los Angeles County (CA) Office of Independent Review	2001-2008
One of six attorneys providing full-time civilian oversight of the Los Angeles County Sheriff's Department	
Kirkland & Ellis (Los Angeles, CA)	2000-2001
Associate attorney specializing in white-collar criminal defense	

OTHER:

<i>Court Expert</i> assisting Special Master in federal	2003 - 2008
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suit addressing disciplinary system within the CA
Department of Corrections and Rehabilitation
Special Investigator hired by Oakland, California **2005, 2007**
on two occasions to review alleged misconduct by
Oakland Police Department

Counsel to Rampart Independent Review Panel **2000**
assessing the Los Angeles Police Department

PREVIOUS WORK EXPERIENCE:

English teacher/writing instructor at Saint Joseph **1987 - 1998**
High School (Lakewood, CA) and Cypress
Community College

Program aide for at-risk youth in Syracuse **1985 - 1987**
and Brooklyn, New York with the Jesuit Volunteer
Corps, a domestic service organization

REFERENCES:

President Brian Buchner, National Association for Civilian Oversight of Law
Enforcement (“NACOLE”)
brian.buchner@gmail.com
(310) 909-3433

Michael Gennaco
OIR Group
Michael.gennaco@oirgroup.com
323-821-0586

Deputy Chief Robert Beacom
City of Palo Alto police Department
Bob.beacom@cityofpaloalto.org
650-329-2555

CYNTHIA LYNN HERNÁNDEZ

chernandez90032@yahoo.com

EDUCATION

UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL

Juris Doctor, May 2000-Licensed to practice in the State of California

CLAREMONT GRADUATE SCHOOL: Master of Arts in Education, 1993

UNIVERSITY OF CALIFORNIA, SAN DIEGO: Bachelor of Arts: Sociology/History, 1990

UNIVERSIDAD DE GUADALAJARA, MEXICO: Spanish, History and Literature, 1990

UNIVERSITY OF NAIROBI, KENYA: Swahili, Sociology, Poetry, Literature, 1988-1989

EXPERIENCE

OFFICE OF INDEPENDENT REVIEW. Los Angeles County Probation Department

Chief Attorney

October 2010 to present

Monitor the Los Angeles County Probation Department to ensure that allegations of on-duty and off-duty misconduct involving Probation Department personnel are investigated in thorough, fair and effective ways. Provide recommendations to the Department regarding labor and employment issues, disciplinary action, risk management issues and policies. Work collaboratively with the Department of Justice monitors regarding custodial issues of juveniles/minor clients. Review and provide legal opinions regarding excessive use of force allegations.

OFFICE OF INDEPENDENT REVIEW, Los Angeles County Sheriff's Department

Attorney

February 2008 to June 2014

Conduct civilian oversight for the Los Angeles County Sheriff's Department.

Responsibilities include reviewing, monitoring, and consulting on internal affairs investigations; responding to deputy-involved shootings and inmate deaths; reviewing and consulting on deputy-involved shootings and significant force investigations; recommending discipline when internal policies are violated; proposing and drafting policies; attending town hall meetings on a variety of topics including specific community concerns and deputy-involved shootings.

INDEPENDENT POLICE CONSULTANT, Burbank Police Department, CA

Attorney

May 2012 to present

Conduct assessment of the quality of the Department's administrative investigations. Identify investigative strengths/shortcomings. Provide feedback to improve the investigative process.

INDEPENDENT POLICE AUDITOR, Spokane Police Department, WA

Attorney

August 2012 to December 2012

Assessed the Department's use of force practices, policies and procedures. Evaluated use of force incidents, including canine deployments, officer involved shootings and internal affairs investigations.

INDEPENDENT CONSULTANT, Fullerton Police Department, CA

Attorney

July 2011 to July 2012

Performed an independent review of a highly publicized in-custody death to determine whether any of the involved officers violated policies and practices of the Fullerton Police Department. Also, examined current FPD policies and practices and provide recommendations intended to improve on those policies and practices.

INDEPENDENT AUDITOR, Los Angeles Department of Children and Family Services

Attorney

August 2010 to March 2011

Conducted an examination of the quality and timeliness of DCFS Child Fatality, Internal Affairs, and Performance Management unit investigations. Also assessed the ability of those investigations to ensure individual accountability and systemic reform.

INDEPENDENT POLICE AUDITOR, Anaheim Police Department

Attorney

April 2008-present

Ongoing audit of the Department's force and critical incidents and misconduct cases/complaints. Assess the quality and completeness of the Department's internal investigations, to identify systemic issues and to make recommendations aimed at improving the investigative process.

INTERNATIONAL AUDITOR—Mérida Initiative Assessment Team, México

Attorney/Expert

July 2009

Participated in on-site meetings in Mexico City, México with senior management and other personnel from the Asuntos Internos (Internal Affairs) unit of the Secretaría de Seguridad Pública (essentially the Inspector General for Mexico's federal police). Assessed the organization's structures, responsibilities, and efforts to deter, detect, investigate, and punish corruption and administrative misconduct committed by members of the federal police.

GILBERT & SACKMAN, A Law Corporation

Attorney

April 2005-February 2008

Drafted legal memoranda, briefs and other legal documents. Advised unions about traditional labor laws, state and federal laws and regulations. Litigated wage and hour cases. Prepared and presented cases for arbitration hearings and other judicial forums. Negotiated contracts and settlement agreements. Presented educational trainings to union staff and labor attorneys.

HENAAC, INC. Non-Profit Organization, Los Angeles

Director of K-12 Educational Programming

February 2004-February 2005

Developed and managed national educational program. Oversaw research, evaluation data, and K-12 educational programming carried out by the organization. Presented research-based information to a variety of audiences including corporate sponsors. Negotiated contracts, drafted grants and developed training materials.

UNITED NATIONS INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Defense Attorney (Trials and Appeals)

November 2001-February 2004

Researched and drafted legal memoranda, motions and briefs (trials and appeals). Prepared cases for trial/appeals and conducted pre-trial interrogatory interviews of defense witnesses. Researched international case law and rules of the court, including discovery and evidentiary rules. Detainees were charged with genocide, crimes against humanity and war crimes.

NATIONAL LABOR RELATIONS BOARD, Region 21, Los Angeles

Trial Attorney

November 2000-March 2002

Investigated unfair labor practices committed by employers and labor organizations. Drafted complaints and negotiate case settlements. Litigated cases for hearings before an administrative law judge. Drafted legal memoranda and motions including requests for injunctive relief in Federal District Court. Acted as hearing officer in pre/post election hearings. Conducted NLRB elections in representation cases.

UNITED STATES DISTRICT COURT, Central District of Los Angeles

THE HONORABLE CONSUELO B. MARSHALL

Judicial Law Clerk Intern

January 2000-May 2000

Researched and drafted bench memoranda and judicial orders analyzing federal and state issues: evidentiary and procedural rules, preemption, jurisdiction, jury instruction, and preliminary injunctions. Drafted judicial rulings on pretrial motions.

LAW OFFICE OF TALCOTT, LIGHTFOOT, VANDEVELDE, MEDVENE & LEVINE

Law Clerk

June 1999-December 1999

Drafted legal memoranda and motions. Researched areas of federal criminal law. Drafted legal memoranda for war crimes case pending before the International Criminal Tribunal for Rwanda, Arusha, Tanzania, East Africa.

DIRECTORS GUILD OF AMERICA

Law Clerk

January 1999-May 1999

Drafted legal briefs analyzing labor, employment and contract law. Analyzed various provisions of collective-bargaining agreements and prepared legal documents for arbitration.

USC LAW SCHOOL POST-CONVICTION JUSTICE PROJECT

Law Clerk/Supervisor

August 1998-2000

Supervised other law students in clinical program. Represented clients at Terminal Island Federal Institution and California Institution for Women with post-conviction relief. Matters included immigration law, family law and criminal law (habeas petitions). Prepared court documents, translated legal correspondence, and appeared in court for oral argument. Represented Mariel Cuban Detainees in INS Panel Hearings at the Federal Penitentiary at Lompoc.

ENGLISH AND SPANISH INSTRUCTION

Bilingual Educator

1990-1997

Bilingual Educator. District specialist selected to instruct new teachers in literacy methods and techniques. Visiting lecturer at Claremont Graduate School and Occidental College.

COMMUNITY INVOLVEMENT

MENDING KIDS INTERNATIONAL

Board Member/Volunteer

2003-2009 and 2012-present

Board Member, volunteer translator and consultant for international charity organization that sends volunteer medical teams around the world to perform surgeries, on children.

ARIZONA STATE MUSEUM

Archaeological Assistant

Summer 1996

Homol'ovi Research Program, Winslow, Arizona. Assisted in the collection, mapping, and recording of artifacts used in the litigation of land disputes between the Hopi and Navajo Indians.

PEACE CONFERENCE IN MOSCOW, USSR

May 1986

Delegate to the First Soviet/American Women's Peace Conference in Moscow

COMMUNICATION SKILLS

Proficient in written and spoken Spanish and Swahili.

PUBLICATIONS

Office of Independent Review Seventh Annual Report (2009), *Editor and Contributor*

Office of Independent Review Seventh Annual Report (2010), *Editor and Contributor*

A Special Report—Evaluation and Recommendations Concerning Internal Investigations at the Los Angeles County Probation Department (2010), *Editor and Contributor*

Office of Independent Review Annual Report (Probation) (2011), *Editor and Contributor*

Office of Independent Review Annual Report (Probation) (2012), *Editor and Contributor*

VITA

Samuel Walker

2016

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University of Nebraska at Omaha
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WEB SITES

<http://samuelwalker.net>

Personal web site with research and commentary on policing and civil liberties.

<http://todayinclh.com>

Today in Civil Liberties History. A web-based calendar of civil liberties events for each day of the year.

EDUCATION

Ph.D., Ohio State University, December 1973, Department of History
M.A., University of Nebraska at Omaha, August 1970, Department of History
B.A., University of Michigan, May 1965, American Culture Program

EXPERIENCE

Department of Criminal Justice, University of Nebraska at Omaha

Professor Emeritus, 2005 -
Coordinator, Police Professionalism Initiative, 2002 -
Isaacson Professor, 1999-2005
Kiewit Professor, 1993 -1999
Professor, 1984-1993
Associate Professor, 1978-1983
Assistant Professor, 1974-1977
Research Director, Educational Development Consortium, 1974-1976

BOOKS

A Critical History of Police Reform: The Emergence of Professionalism. Lexington, Massachusetts: Lexington Books, 1977.

Popular Justice: A History of American Criminal Justice. New York: Oxford University Press, 1980.

Second edition, revised; 1998.

Japanese Translation. Institute of Comparative Law. Chuo University. Tokyo, Japan.

1999.

The Police in America: An Introduction. New York: McGraw-Hill, 1983.

2nd. ed., revised, 1991.

3rd. ed., revised, 1999

4th ed., revised, 2002, with Charles M. Katz

5th ed., revised, 2005, With Charles M. Katz

6th ed., revised, 2007, with Charles M. Katz

7th ed., revised, 2011, with Charles M. Katz

8th ed., revised, 2013, with Charles M. Katz

9th ed., revised, 2016, with Charles M. Katz

Unauthorized Chinese Translation. Circa. 2003. Publication information unknown.

Sense and Nonsense About Crime: A Guide to Policy. Monterey, CA: Brooks/Cole, 1985.

2nd ed., revised, 1989.

3rd ed., revised, Sense and Nonsense About Crime and Drugs, 1994.

4th ed., revised, 1998.

5th ed., revised, 2001.

6th ed., revised, 2006.

7th ed., revised, 2011

8th ed., revised, 2014

In Defense of American Liberties: A History of the American Civil Liberties Union. New York: Oxford University Press, 1990.

2nd ed., Revised. Southern Illinois University Press, 2000.

American Civil Liberties Union: An Annotated Bibliography. New York: Garland, 1992.

Taming the System: The Control of Discretion in Criminal Justice, 1950-1990. New York: Oxford University Press, 1993.

"Hate Speech": The History of and American Controversy. Lincoln, NE: University of Nebraska Press, 1994.

The Color of Justice: Race and Ethnicity in American Criminal Justice. [With Cassia Spohn and Miriam DeLone]. Belmont, CA: Wadsworth, 1996.

2nd edition, revised, 2000

3rd edition, revised, 2004.

4th edition, revised, 2011.

5th edition, revised, 2012

6th edition, revised, 2016 (forthcoming)

The Rights Revolution: Rights and Community in Modern America. New York: Oxford University Press, 1998.

Police Accountability: The Role of Citizen Oversight. Belmont: Wadsworth, 2001.

Civil Liberties in America: A Reference Handbook. Santa Barbara: ABC-CLIO, 2004.

The New World of Police Accountability. Newbury Park: Sage Publications, 2005.

2nd ed., Revised, with Carol Archbold, 2014

Presidents and Civil Liberties, From Woodrow Wilson to Barack Obama: A Story of Poor Custodians. New York: Cambridge University Press, 2012.

WEB SITES

Civil Liberties, Police Accountability, and Crime Policy

www.samuelwalker.net

Today in Civil Liberties History

<http://todayinclh.com>

GRANTS, FELLOWSHIPS, CONTRACTS

Developing and Early Intervention System. Contract, Royal Canadian Mounted Police, Ottawa, Canada. July 2015-2016. \$25,000.

Police Professionalism Initiative. U.S. Congress. \$1,000,000. July 1, 2002 - June 30, 2005.

Promoting Police Accountability: Technical Assistance to Law Enforcement Agencies for Developing Early Warning Systems. Office of Community Oriented Policing Services. October 1, 2000 - September 30, 2000. \$240,929.

Program Development in Mediation of Citizen Complaints. Office of Community Oriented Policing Services. Fall 1999 - December 2000. \$148,000.

Grant-in-Aid. University Committee on Research, UNO. Summer, 1999. "A Study of Police Interactions with Hispanic Citizens.

Analysis of the QSA Survey Forms. Minneapolis Civilian Review Authority. \$500. February - March 1999.

Follow-up Analysis and Report, January 2001. \$250.

Quality Service Audit Development. Minneapolis Civilian Review Authority. \$2,500. May-August, 1998

A National Evaluation of Early Warning Systems. Grant. National Institute of Justice. \$174,643. January, 1998 - June, 1999.

Fellowship. Center on Crime and Communities, Open Society Institute. \$49,000. Fall, 1997-August 1998. Renewed, 1998-1999. \$49,000.

Sub-contract. Buffalo (NY) Police Department. A Study of Stress Among Minority and Female Police Officers.

Consultant. City Council, Albuquerque, New Mexico. Evaluation of the Oversight for the Albuquerque Police Department.

Consultant. KPMG Peat Marwick. Evaluation of the Charlotte, North Carolina Police Department. March, 1997-1998.

A Survey of Public Perceptions of Racial and Ethnic Minority Employment in the Chicago Police Department. Contract. \$15,000. City of Chicago. 1996.

Summer Grant-in-Aid, UNO University Committee on Research. "An Evaluation of the Police Review Function."

Ford Foundation Fellowship, History and Analysis of the Survey of the Administration of Criminal Justice, September, 1987-December, 1988.

Summer Research Fellowship, University of Nebraska at Omaha, University Committee on Research, 1979, 1985.

Summer Research Travel Grant, University of Nebraska at Omaha, University Committee on Research, 1983.

HONORS, AWARDS

Langum Prize for Best Book in American Legal History 2012, for *Presidents and Civil Liberties From Wilson to Obama* (2012).

W. E. B. DuBois Award for contributions to the field of Criminal Justice on race and ethnicity. Western Society of Criminology, February 5, 2011.

Sense and Nonsense About Crime named one of the "Great Books" in Criminal Justice. The rating is in a survey by Gennare F. Vito and Richard Tewksbury published in the *Journal of Criminal Justice Education*, (V. 19, November 2008).

Tribute to Civil Libertarians Award. ACLU Membership Meeting. Washington, DC. October 16, 2006.

Outstanding Achievement Award. National Association for Citizen Oversight of Law Enforcement (NACOLE). December, 2005.

Academic Freedom Award, 2005. Academic Freedom Coalition of Nebraska. November, 2005.

Graduate Student Mentor Award. University of Nebraska at Omaha. April, 2002.

Faculty Member of the Year. Department of Criminal Justice. UNO. 2002.

Distinguished Alumni Award. College of Humanities. Ohio State University. June 2001.

Isaacson Professorship. University of Nebraska at Omaha. Fall 1999-present.

Bruce Smith Award. Academy of Criminal Justice Sciences (ACJS). 1998

MCB Publishing Award for Best Article Published in the American Journal of Police, 1996, for "Varieties of Cit

Gustavus Myers Award for the Outstanding Books on Human Rights, 1995.
For Hate Speech (University of Nebraska Press).

Fellow, Center For Great Plains Studies. University of Nebraska. Lincoln, NE

Peter T. Kiewit Professor, University of Nebraska at Omaha, 1993-96
Renewed for 2nd term, 1996-1999

Finalist, 1994-95 Outstanding Book Award, for Hate Speech, Society of Midland Authors.

American Library Association, Citation for "Best Bibliographies in History - 1994," for The American Civil Liberties Union: An Annotated Bibliography (1992)

Gustavus Myers Award For the Outstanding Books on Prejudice Published in 1990, Awarded in 1992 for In Defense of American Liberties, by the Gustavus Myers Center.

"You Made A Difference" Award, Nebraska Pro-Choice Coalition, 1992.

"Civil Libertarian of the Year," 1991. Nebraska Civil Liberties Union.

Award for Distinguished Research and Creative Activity, University of Nebraska at Omaha, 1989

Honorary Fellow, Institute for Legal Studies, University of Wisconsin Law School, 1987-1988.

Visiting Scholar, Woodrow Wilson School, Princeton University, May-November, 1985.

Frederick H. Kayser Professorship, University of Nebraska at Omaha, 1985-1991.

ARTICLES, BOOK CHAPTERS, and REPORTS

"Governing the American Police: Wrestling with the Problems of Democracy, *University of Chicago Law Forum* (forthcoming 2016).

"The History of Proactive Policing." Commissioned Paper, National Academy of Sciences, Panel on Proactive Policing. Presented at Panel Meeting, Washington, DC, April 4, 2016.

"The Community Voice in Policing: Old Issues, New Evidence, *Criminal Justice Policy Review* 10 (2015): 1-16.

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- “Evidence-Based Police Accountability: What We Know, What We Need to Know.” Presentation. American Society of Criminology, Annual Meeting. Toronto, Canada. November 17, 2005.
- “Race, Incarceration and Social Policy.” Presentation. Dana College. October 17, 2005.
- “DNA Sweeps by Police: An Ineffectual Investigative Tactic.” Presentation. Police Executive Research Forum, Annual Meeting. New York City. April 24, 2005.
- “The New World of Police Accountability.” Presentation. Crime, Law and Public Policy Lecture Series. University of Arizona Law School. Tucson, AZ. March 9, 2005.
- “Issues in Criminal Justice.” Omaha Public Schools, Improving Teaching Workshop. February 22, 2005. Omaha, NE.
- “Racial Profiling.” University of Nebraska - Lincoln, Martin Luther King Week Program. January 18, 2005.
- “Citizen Complaints as a Performance Measure for the Police,” American Society of Criminology, Annual Meeting. November 17, 2004. Nashville. TN
- Keynote Address, “The New World of Police Accountability.” Toronto Police Service, 4th Annual Professional Standards Conference. October 27, 2004. Toronto, Canada.
- Keynote Address: “Only One Part of the Picture: Traffic Stop Data Collection in Perspective.” Police Executive Research Forum By the Numbers Conference, August 24, 2004. Kansas City, MO.
- “Best Practices: Early Intervention Systems in Policing” (with Geoffrey P. Alpert). National Institute of Justice Annual Research and Evaluation Conference. July 17, 2004. Washington, DC.

- “Whistle Blower Protection for Police Officers: The Need and the Obstacles.” Presentation. Rutgers-Camden Law School. April 2, 2004. Camden, NJ.
- “The New World of Police Accountability.” Presentation. University of Houston Law Center. March 25, 2004. Houston, TX.
- “A Closer Look at the History of Policing in the U.S.” Workshop. Annual Meeting. Academy of Criminal Justice Sciences. March 10, 2004. Las Vegas.
- “Police Auditors in the United States: An Emerging Model of Oversight.” Conference, Comparative Perspectives on Police Accountability.” United Nations. New York, NY. December 3-4, 2003.
- “The Auditor Model of Citizen Oversight of the Police.” American Society of Criminology. Denver, CO. November 13, 2003.
- “Alternative Strategies for Citizen Oversight of the Police.” Citizens Investigative Panel. Miami, Florida. November 6, 2003.
- “The Hispanic Community and the Police: Research Opportunities.” National Latino Peace Officers Association Annual Meeting. Washington, DC. October 23, 2003.
- “New Directions in Police Accountability.” Police Executive Research Forum. Washington, DC. September 12, 2003.
- “Internal Benchmarking for Traffic Stop Data.” New Jersey Attorney General’s Stop Data Committee. Police Institute. Rutgers University. April 9, 2003.
- “Internal Benchmarking for Traffic Stop Data.” Dean’s Forum. School of Criminal Justice. Rutgers University. April 9, 2003.
- “Internal Benchmarking for Traffic Stop Data.” Racial Profiling Conference. Northeastern University. Boston, MA. March 8, 2003.
- “Best Practices in Early Intervention Systems.” Teleconference. U.S. Justice Department. February 13, 2003.
- “Is There Still No Justice?: Race and Criminal Justice 35 Years After the Kerner Commission.” On-line Teleconference. Wadsworth Publishing. January 24, 2003.
- “Is There Still No Justice?: Reflections on 40 Years of Struggle for Racial Justice.” Keynote Address. Texas Philosophical Society. Fort Worth, TX. December 7, 2002.
- “Early Intervention Systems for Police.” PATC Conference. Las Vegas, NV. December 3, 2002.

- “Models of Civilian Oversight.” Discussant. Annual Meeting, National Association for Citizen Oversight of Law Enforcement. Boston, MA. November 1, 2002.
- “Accountability and Police Ethics.” Presentation. Annual Meeting, International Association of Chiefs of Police. Minneapolis, MN. October 9, 2002.
- “Innovations in Handling Citizen Complaints.” Presentation, Conference on Community Policing Keeps America Safe.” Washington, DC. July 16, 2002.
- “Planning and Implementing Early Warning Systems.” Presentation, Conference on Community Policing Keeps America Safe.” Washington, DC. July 16, 2002.
- “Race, Ethnicity, and Police Accountability. Old Problems, New Approaches.” Presentation. California State University at Northridge. April 16, 2002.
- “The New World of Police Accountability.” Keynote Address. Conference on Police Accountability. St. Louis University Law School. April 5, 2002.
- “Strategies for Combating Racism in Criminal Justice.” Nebraskans for Peace, Annual Conference. Omaha, NE. February 16, 2002.
- “Covering the Police: Criteria for News Media.” Annenberg School. University of Southern California. Los Angeles, CA. December 5, 2001.
- “New Directions in Police Accountability.” Police Training Seminar. Las Vegas, NV. December 4, 2001.
- “Implementing Citizen Oversight.” Presentation. Annual Meeting, National Association of Civilian Oversight of Law Enforcement (NACOLE). Denver, CO. October 11, 2001.
- “Early Warning Systems and Racial Profiling.” Racial Profiling Report Implementation Conference. Police Executive Research Forum. August 6, 2001.
- “The New World of Police Accountability.” Presentation. Lawyers Committee for Human Rights. New York, NY. June 27, 2001.
- “Linking Internal and External Accountability Mechanisms.” Presentation. Performance and Accountability Summit for Law Enforcement. February 27, 2001. Washington, DC.
- “What Are Police Doing to Police Themselves?” Presentation. University of Illinois - Chicago. February 20, 2001. Chicago, Illinois.
- “Understanding Complaints Against the Police: A Theoretical Perspective.” Presentation. Center for the Study of Law and Society. University of California - Berkeley. January 25, 2001.

- “Early Warning Systems as a Best Practice.” Conference. U.S. Department of Justice, Washington, DC. November 29, 2000.
- “Citizen and Police Satisfaction with Civilian Review.” Presentation [with Leigh Herbst]. American Society of Criminology. Annual Meeting. San Francisco. November 17, 2000.
- “Early Warning Systems as an Accountability Mechanism.” Presentation. American Society of Criminology. Annual Meeting. San Francisco. November 15, 2000
- “Best Practices in Police Accountability.” Presentation. Justice Coalition of Greater Chicago. Chicago, IL. October 25, 2000.
- “The Auditor Model of Oversight as a Means of Promoting Police Accountability.” Seminar. New York University Law School. New York, NY. October 2, 2000.
- “Mediating Citizen Complaints Against the Police: A New Form of Community Justice?” Presentation. John Jay College of Criminal Justice. New York, NY. October 2, 2000.
- “Technology is NOT the Issue.” Presentation. American Bar Association. Council on Racial and Ethnic Justice. ABA Annual Meeting. New York City. July 8, 2000.
- “Citizen Oversight Procedures.” Presentation. Mayor’s Working Group. Portland, OR. June 8, 2000.
- “Mediating Citizen Complaints Against the Police.” Presentation. American Bar Association. Section on Dispute Resolution. Annual Conference. San Francisco. April 8, 2000.
- Workshop. Police Accountability. Academy of Criminal Justice Science. Annual Meeting. New Orleans. March 24, 2000.
- Chair. Panel on Police Misconduct. Academy of Criminal Justice Sciences. Annual Meeting. New Orleans. March 23, 2000.
- “A Historical Perspective on Police Accountability.” Hearings. Public Advocate of New York. New York City. November 15, 1999.
- “Early Warning Systems: An Overview.” Conference, “Building Accountability into Police Operations.” U.S. Department of Justice. Washington, DC. November 12, 1999.
- “Early Warning Systems.” Workshop. Kansas City Police Department. Kansas City. September 28, 1999.
- “Citizen Oversight of the Police.” Workshop. Mayor’s Police Oversight Task Force. Austin, TX. August 31, 1999.

"The False Dichotomy Between Individual Rights and Community." Presentation.
Communitarian Summit. Washington, DC. February 28, 1999.

"The Police and Race." Panel Discussion. American Society of Criminology Annual Meeting.
Washington, DC. November 11, 1998.

"Citizens in the POP Process: Ethical considerations." Presentation. Problem-Oriented Policing
Conference. San Diego, CA. November 1-3, 1998.

"Louisville's War on Crime." Panel Discussion. Louisville, KY. October 12, 1998

"External Oversight of Federal Law Enforcement Agencies: A Proposal." Presentation.
Commission on the Advancement of Federal Law Enforcement. Washington, DC. August
24, 1998.

"Zero-Tolerance Policing: Unanswered Accountability Issues." Conference. Albany, NY. April
24, 1998.

"Policing the Police: Who, How, and Why?" Public Forum. Albuquerque Law School.
Albuquerque, NM. March 12, 1998.

"Are the Police Changing?" Academy of Criminal Justice Sciences, Annual Meeting,
Albuquerque, NW. March 12, 1998

"Public Perceptions of Racial Minority Employment and its Perceived Impact on Police Service"
(with Vincent J. Webb). Presentation. Annual Meeting, ASC. San Diego. November 19, 1997.

Panelist. "Author Meets Critics: James B. Jacobs, 'The Pursuit of Absolute Integrity'." San Diego.
Annual Meeting, ASC. November 21, 1997.

"New Developments in Citizen Oversight of the Police." Presentation. Sand Diego County Citizens Law Enforcement

"New Developments in Citizen Oversight of Police." Presentation. Problem-Oriented Policing Conference. San I

"Best Practices in Citizen Oversight." Presentation. External Review Advisory Commission. Eugene, Oregon. O

"Future Directions in Citizen Oversight of Police." Presentation. National Association for
Civilian Oversight of Law Enforcement (NACOLE). Annual Meeting. Oakland, CA.
October 16, 1997.

"Revitalizing the New York CCRB: A Proposal for Change," Presentation, Open Society
Institute, New York City, September 26, 1997.

"Strategies for Combating Police Misconduct," Presentation, ACLU Biennial Conference, Santa Fe, New Mexico

"Citizen Review of the Police." Community Forum. Des Moines, IA. May 15, 1997.

"Hate Speech in America." Arizona State West University. Phoenix, AZ. April 23, 1997.

"Responding to Racist Incidents on Campus: Hate Crimes and Hate Speech. April 2 1997. University of Nebraska

"Best Practices in Citizen Review of the Police." City Manager's Task Force. Charlotte, North Carolina. February

"Police Reform and Human Rights," Keynote Address, Human Rights Day Observance,
University of Nebraska - Lincoln. December 10, 1996

"Police Misconduct and Citizen Complaints: The Results of a Victimization Survey." (with Nanette Graham). Ar

"Roundtable Discussion: The Future of Citizen Review." American Society of Criminology.
Annual Meeting. Chicago, IL. November, 1996.

"The Heart of Darkness: Crime and Social Control in Contemporary America." Organizer and Presenter. Loy Sch

"Comparative Studies of Citizen Review." Presentation. International Association for Citizen Review of Law En

"The Impact of External Forces on Police Integrity." Presentation. National Symposium on Police Integrity. Nati

"Sense and Nonsense About the Administration of Justice." Iowa Western Community College. Council Bluffs,

"Curbing Police Misconduct." Presentation. Criminal Law and Individual Rights Section
of the District of Columbia Bar Association. Washington, DC. February 28, 1996.

"The Constitution and First Amendment Rights." Nebraska LEAD Program. Nebraska
Agricultural Leadership Council, Inc. Lincoln, NE. February 10, 1996/

"The Police and the Race Crisis." Kennedy School of Government, Harvard University.
November 16, 1995.

"Citizen Review of the Police: Alternative Strategies." Boston, MA. November 15, 1995.

"Rethinking the Sustain Rate: New Perspectives on Evaluating the Success of Police Complaint
Procedures. American Society of Criminology. Annual Meeting. Boston, MA. November
15, 1995.

"Racial Justice and Policing: Where Do We Stand." Presentation. Police Executive Research
Forum. Semiannual Meeting. Miami, Florida. October 14, 1995.

"Wars on Crime/Struggles for Justice: Conflicting Trends in American Criminal Justice, 1965-
1995." Conference on Crime and Criminal Justice. Stanford University. October 7, 1995.

"The Differences Among Citizen Oversight Agencies -- And the Difference it Makes."
Presentation. International Association for Civilian Oversight of Law Enforcement.
Annual Meeting, Vancouver, Canada. September 27, 1995.

Workshop on "Hate Crime Legislation." Omaha Public Schools Curriculum Day. September 5, 1995. Omaha, NE.

"The Police and the Community: New Approaches." Presentation. Des Moines League of Women Voters. March 16, 1995. Des Moines, Iowa.

"Citizen Review of the Police- 1994: The Findings of a National Survey." Academy of Criminal Justice Sciences. March 1995. Boston, MA.

"The Treatment of Women in Introductory Criminal Justice Textbooks." [With Molly Brown]. Academy of Criminal Justice Sciences. March 1995. Boston, MA.

"A Theory of Criminal Justice." Presentation. Academy of Criminal Justice Sciences. March, 1995. Boston, MA.

Discussant. Session on "Twentieth Century Civil Rights Struggles." Conference on African Americans and the Great Plains. Center For Great Plains Studies. Lincoln, NE. February 24, 1995.

"A Classic Revisited: Justice Without Trial in History." Presentation. American Society of Criminology. November 11, 1994. Miami, Florida.

"Through the Looking Glass Ceiling: Gender and Race in Police Promotions." [With Susan E. Martin. American Society of Criminology. November 11, 1994. Miami, Florida.

"Crime and Community." Presentation. Omaha League of Women Voters. October 13, 1994. Omaha, NE

"Hate Speech: Historical Perspective on a Current Problem." Presentation. Author's Lecture Series. Prairie Lights Book Store and Iowa Public Radio. September 29, 1994. Iowa City, IA.

"Crime, Race, and Community." Presentation. Iowa Attorney General's Conference. July 28, 1994. Des Moines, Iowa.

"Hate Speech: American Policy and the Holocaust Connection." Presentation. The National Archives. July 19, 1994. Washington, DC.

"Law Enforcement." Paper. Conference on the 50th Anniversary of Gunnar Myrdal's An American Dilemma. Atlanta, GA. April, 1994.

"Communitarianism and Organ Donations," Presentation. Nebraska-Dartmouth Project Colloquium. February 18, 1994. Omaha, NE,

"Less Than Meets the Eye: Police Bias Crimes Units: An Exploratory Survey" (with Charles M. Katz). Academy of Criminal Justice Sciences. Annual Meeting. Chicago, IL. March 1994.

"Hijacked!: How the War on Drugs Co-opted the Idea of Community Policing." Presentation. Seventh International Conference on Drug Policy Reform. November 17-20, 1993. Washington, DC.

"Progress in Racial Minority and Female Employment in Policing: Thoughts on What Works and What Doesn't," Presentation, American Society of Criminology, Phoenix, AZ. October 1993.

Panelist, Authors Meet Critics: Skolnick and Fyfe: Above the Law. American Society of Criminology, Phoenix, AZ, October 1993.

"Trends in the Employment of African-American and Hispanic Police Officers, 1983-1992." Presentation, Police Executive Research Forum, Annual Meeting, Washington DC, May 5, 1993.

"The American Bar Foundation Survey of Criminal Justice: Origins and Impact." Presentation, American Bar Association, Annual Midwinter Meeting, Boston, MA, February 6, 1993.

"Between Two Worlds: The President's Crime Commission and the Police." Presentation, American Society of Criminology, New Orleans, November, 1992.

"Civilian Review of the Police: Recent Trends and New Questions." Presentation. American Society of Criminology, New Orleans, November, 1992.

"Are Civilian Review Boards the Answer?" Presentation. Southwestern Law Enforcement Institute, 13th Annual Contemporary Issues in Police Administration Conference, Dallas, TX, March 20, 1992.

"Revisionism and the First Amendment." Presentation. Conference on Revisionism and the Holocaust, Millersville University, Millersville, PA, April 5, 1992.

"History." Panel on Criminology: A Multi-Disciplinary Focus. American Society of Criminology, Annual Meeting, San Francisco, CA, November 21, 1991.

"Stress and the Hispanic Police Office." Presentation. Hispanic Institute of Law Enforcement. National Convention. Chicago, IL, July 3, 1991.

"Private Realms and Public Issues: Civil Liberties and the Changing American Legal Culture." Conference in Honor of Paul L. Murphy, University of Minnesota, May 5-7, 1991

"The Growth of Civil Liberties, 1890-1945." University of South Florida, St. Petersburg, Florida, February 4, 1991.

"The Drug War and Civil Liberties." Conference on Police and Community Responses to Drugs, Chicago, Illinois, December 7, 1990.

"Community Policing: Philosophy and Promise," Administration forum, John Jay College, New York City, September 25, 1990.

"Alternatives to Incarceration: The Good News and the Bad News." Iowa Correctional Association Annual meeting, October 18, 1990.

"Community Policing." Panel Discussion, Academy of Criminal Justice Sciences, Annual Meeting, April, 1990.

"Reflections on the History of Punishment," Nebraska Conference on Alternatives to Incarceration. Lincoln, Nebraska, October 20, 1991.

"Human Rights: America and the World," US West, Human Rights Month Seminar, Omaha, NE, January 30, 1990.

"The History of Police Corruption," FBI Public Corruption Conference, Tampa, Florida, November 14, 1989.

Presentation, Community Policing: Prospects and Problems, Washington Council on Crime and Delinquency, Seattle, WA, April 18, 1989.

Chair, Session on Douglas as Civil Libertarian, William O. Douglas Commemorative Symposium, Seattle, WA, April 15-17, 1989

Chair and Commentator, Session on Knowledge Utilization: The Use and Misuse of Academic Research by Criminal Justice Policymakers, Annual Meeting, Academy of Criminal Justice Science, March 29, 1989.

Presentation: "Paths to Police Reform." Annual Meeting, Academy of Criminal Justice Sciences, San Francisco, April, 1988.

Participant, Roundtable Discussion, "Controlling the Cops: Alternative Strategies," ACJS Annual Meeting, San Francisco, April, 1988.

Participant, Symposium on Miranda, Creighton University Law School, August 31, 1987.

"Responding to Hysteria: The Lessons From ACLU History," ACLU Biennial Conference, Philadelphia, June 18, 1987.

"The Library Bill of Rights, 1938, and the Des Moines Public Library," Presentation to the Des Moines Public Library, May 14, 1987.

"The ABA Committee on the Bill of Rights and the 150th Anniversary of the Constitution and the Bill of Rights, 1937-1941," Missouri Valley History Conference, Omaha, NE, March, 1987.

"The Police and Domestic Violence: Unanswered Questions," Austin, Texas, May, 1986.

"The President's Crime Commission" A Twenty-Year Perspective on Police Reform," Marquette University, April, 1986.

"Private Realms and Public Events: Towards a Reconstruction of American Social History," Ohio State University, April, 1986.

"The Historian's Perspective," Conference on Redefining the Crime Debate," Atlanta, GA, March 6-8, 1986.

"New Directions in Police Reform," Rutgers-Newark, February, 1986.

"Searching for a Middle Ground: Quantitative and Qualitative methodologies in Criminal Justice History," American Society of Criminology, Annual Meeting, Cincinnati, 1984.

"Controlling Police Misconduct: The Seattle Police Intelligence as a Model," Academy of Criminal Justice Sciences, Annual Meeting, Chicago, March, 1984.

"Achieving Affirmative Action: Observations on Black and Hispanic Police Officer Recruitment in the 50 Largest American Cities," Academy of Criminal Justice Sciences, Annual Meeting, Chicago, March, 1984.

"Broken Windows and Fractured History: The Use and Misuse of History in Recent Police Patrol Analysis," American Society of Criminology, November, 1983.

"Reform as History: The Dynamics of Change in American Criminal Justice," Conference on The Impact of Reform in Criminal Justice, sponsored by NCCD, November, 1983.

"The Varieties of Police History: Recent Work and Future Needs," Academy of Criminal Justice Sciences, forthcoming, March, 1983, San Antonio, Texas.

"Police-Community Relations, Social Science, and the Responsibility of Scholars." Paper, Conference on Moral Issues in Policing, November 19-21, 1981, Boston, Mass.

Commentator, Session on Criminal Justice History, Social Science History Association Meeting, October, 1980, Rochester, NY.

"Popular Justice: A Theoretical Framework for the History of American Criminal Justice." Paper, Academy of Criminal Justice Sciences, March, 1978.

"Research Opportunities in the Comparative Study of the American Police." Paper, Organization of American Historians, April, 1978.

"Neo-Conservatism and Criminal Justice Policy: Thinking About James Q. Wilson." Co-Authored with Vincent J. Webb. Paper, Western Social Science Association Meeting, April 30, 1976, Tempe, Arizona.

"The Rise of Women Police in the Progressive Era." Paper, Missouri Valley History Conference, March 13, 1976, Omaha, Nebraska.

"Powderly, The Knights of Labor, and Temperance Reform." Paper, Ohio Academy of History, April 28, 1973, Dayton, Ohio.

"Terence V. Powderly and the Social Contest of the Early American Labor Movement." Paper, Missouri Valley History Conference, March 8, 1973, Omaha, Nebraska.

"Abolish the Waste System: The Rhetoric of Labor Reform,," Centennial Conference on the Knights of Labor, May, 1979, Chicago, Illinois.

Moderator. Session on "America in the Late 19th Century." Missouri Valley Historical Conference, March 10-12, 1977, Omaha, Nebraska.

Commentator. Session on "Law Enforcement: A Look into the Future." Academy of Criminal Justice Sciences,, March 25, 1976, Dallas, Texas.

Curriculum Vita

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Education

Ph.D. in Social Ecology, University of California, Irvine (May 1987). Dissertation Title: "Diversion Programs for Intrafamilial Child Sexual Abuse Offenders: The Clients, the Referral Decision and the Resumption of Prosecution."

M.A. in Social Ecology, University of California, Irvine (1983). Thesis Title: "Community Attitudes Toward Police Use of Deadly Force."

B.A. in Psychology, Magna Cum Laude and Honors, Linfield College, McMinnville, Oregon (1980).

Professional History

Associate Professor. Department of Criminology, University of South Florida, August 2005 to present.

Director of Research. Police Executive Research Forum, August 1999 to 2005.

Associate Professor. School of Criminology and Criminal Justice, Florida State University, August, 1993 to 1999.

Associate Director. Florida Law Enforcement Research Coalition (FLERC). 1995 to 1999.

Assistant Professor. School of Criminology and Criminal Justice, Florida State University, 1989 to 1993.

Instructor/Assistant Professor. Department of Criminal Justice, University of Nebraska at Omaha, 1985 to 1989.

Work in the Area of Fair and Impartial Policing

Dr. Lorie Fridell is a national expert on biased policing. She has authored and co-authored a number of chapters and books on the topic. While at the Police Executive Research Forum (PERF) she co-authored with colleagues *Racially Biased Policing: A Principled Response*, which guides law enforcement executives on how to respond to the issues of racially biased policing and the perceptions of its practice. Concerned about the very high expectations that stakeholders had with regard to the data collected on police stops, she wrote *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops* and the companion book, *Understanding Race Data from Vehicle Stops: A Stakeholders' Guide*. A chapter on this topic is entitled "Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association." In press is her 2016 book entitled: *Producing Bias-Free Policing: A Science-Based Perspective*.

Dr. Fridell is a keynote speaker at conferences on this important topic and has been invited on a number of occasions to speak to various chiefs/sheriffs associations and police accountability groups around the country and in Canada. She has trained for and/or consulted with a number of agencies/entities including the Chicago PD, San Francisco PD, Los Angeles PD, Toronto Police Services, Austin PD, Seattle PD, Massachusetts Chiefs Association, Piedmont PD, Oakland PD, Berkeley PD, La Crosse PD, Madison PD, Prince William County PD, Kansas Racial Profiling Task Force, Wisconsin Bureau of Justice Assistance, Institute for Law and Justice, Rhode Island Chiefs' Association, Wisconsin Chiefs of Police, and RAND Inc., to name a few.

With over \$1.7 million in funding from the U.S. Department of Justice and with assistance from national experts on law enforcement and the social psychology of bias, Dr. Fridell has produced model Fair and Impartial Policing curricula for (1) command level personnel, (2) recruits and patrol officers, (3) first-line supervisors, (4) mid-managers, and (5) trainers. For more information about the science-based Fair and Impartial Policing perspective, go to www.fairandimpartialpolicing.com

Books and Monographs

Lorie Fridell (Forthcoming, 2016). *Producing Bias-Free Policing: A Science-Based Approach*. New York, NY: Springer Publishing and the George Mason University Center for Evidence-Based Criminology.

Josh Ederheimer and Lorie A. Fridell, Eds. (2005). *Chief Concerns: Exploring the Challenges of Police Use of Force*. Washington, DC: The Police Executive Research Forum.

Lorie Fridell and Mary Ann Wycoff, Eds. (2004). *Community Policing: Past, Present and Future*. Washington, DC: The Police Executive Research Forum and the Annie E. Casey Foundation.

Lorie Fridell (2004). *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*. Washington, DC: The Police Executive Research Forum.

Lorie Fridell (2005). *Understanding Race Data from Vehicle Stops: A Stakeholder's Guide*. Washington, DC: The Police Executive Research Forum. (This guide summarizes key points from *By the Numbers*.)

Lorie Fridell, Bob Lunney, Drew Diamond and Bruce Kubu with Michael Scott and Colleen Laing (2001). Racially Biased Policing: A Principled Response. Washington, DC: The Police Executive Research Forum.

Antony Pate and Lorie Fridell (1993). Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences, Volumes I and II. Washington, DC: The Police Foundation.

Geoff Alpert and Lorie Fridell (1992). Police Vehicles and Firearms: Instruments of Deadly Force. Prospect Heights, IL: Waveland Press.

Articles and Chapters

*Denotes graduate student or former graduate student

Donner, C.M.,* Maskaly, J.,* Fridell, L.A. (Forthcoming). Social bonds and police misconduct: An examination of social control theory and its relationship to workplace deviance among police supervisors. *Policing: an International Journal of Police Strategies & Management*.

Fridell, L.A. (2016). Racial aspects of police shootings: Reducing both bias and counter bias. *Criminology and Public Policy*, 15(2): 481 – 489.

Donner, C.M.*, Fridell, L.A. & Jennings, W.G. (2016). The relationship between self-control and police misconduct: A multi-agency study of first-line police supervisors. *Criminal Justice & Behavior*, TBA.

Fridell, L.A. & Lim, H. (2016). Assessing the Racial Aspects of Police Force Using the Implicit- and Counter-bias Perspectives. *Journal of Criminal Justice*, 44 (March), 36 – 48.

Jennings, W.G., Lynch, M.D.* & Fridell, L.A. (2015). Evaluating the impact of police officer body-worn cameras (BWCs) on response-to-resistance and serious external complaints: Evidence from the Orlando Police Department (OPD) Experience utilizing a randomized controlled experiment. *Journal of Criminal Justice*, 2015: 480 – 486.

Donner, C.* Maskaly, J.* Fridell, L.A., & Jennings, W.G. (2015). Policing and Procedural Justice: A State-of-the-Art Review. *Policing: An International Journal of Police Strategies & Management*, 38(1), 153 – 172. doi:10.1108/PIJPSM-12-2014-0129.

Jennings, W.G., Fridell, L.A. & Lynch, M.D.* (2014). Cops and cameras: Officer perceptions of the use of body-worn cameras in law enforcement. *Journal of Criminal Justice*, 42 (6), 549 – 556.

Lim, H., Fridell, L.A. & Lee, H. (2014). The impact of supervision and neighborhood context on police use of less-lethal force: A multi-level analysis. *Journal of Police Science*, 14(2), 155-182.

Blumenstein, L.* , Fridell, L.A. and Jones, S. (2012). The Link between Traditional Police Sub-culture and Police Domestic Violence. *Policing: An International Journal of Police Strategies & Management*, Vol 35(2), pp. 147-164.

Fridell, L.A. (2010). "Deadly Force Policy and Practice: The Forces of Change." In Candace McCoy (Ed), To Protect Life: Readings on Police Accountability. Washington, DC: Urban Institute Press, pp. 29-51.

Fridell, L.A. (2010). "Use-of-Force Policy, Policy Enforcement and Training." In Dunham, Roger and Geoff Alpert, Eds, Critical Issues in Policing: Contemporary Readings, fifth edition. Prospect Heights, IL: Waveland Press, pp. 513-531.

Fridell, L.A. & Scott, M. (2010). "Law Enforcement Agency Responses to Racially Biased Policing and the Perceptions of its Practice." In Roger G. Dunham and Geoffrey P. Alpert (Eds). Critical Issues in Policing Contemporary Readings, sixth edition. Prospect Heights, IL: Waveland Press. Reprint of chapter published in 2005, pp. 343-360.

Fridell, L.A., Faggiani, D., Rees, C., Taylor, B., Brito, C.S., & Kubu, B. (2009). "The Impact of Agency Context, Policies and Practices on Violence Against Police." *Journal of Criminal Justice*, Vol. 37(6): 542-552.

Jordan, W.T., Fridell, L.A., Hurt, S., & Kubu, B. (2009). Attracting Females and Racial/Ethnic Minorities to Law Enforcement." *Journal of Criminal Justice*, Vol. 37: 333-341.

Fridell, L.A. (2008). "Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association." In Lynch, Michael, E. Britt Patterson, and Kristina K. Childs, Eds, Racial Divide: Race, Ethnicity and Criminal Justice. Monsey, NY: Criminal Justice Press, 39-59.

Fridell, L.A. (2007). "Building Community Trust Around Issues of Force." In Josh Ederheimer (Ed). Chief Concerns: Strategies for Resolving Conflict and Minimizing Use of Force. Washington, D.C.: The Police Executive Research Forum, 13-45.

Johnson, W., Warren, M., Ederheimer, J., & Fridell, L.A. (2007). "Conducted Energy Devices: PERF's National Studies and Guidelines for Consideration." In Josh Ederheimer (Ed). Chief Concerns: Strategies for Resolving Conflict and Minimizing Use of Force. Washington, D.C.: The Police Executive Research Forum, 99-132.

Fridell, L.A. (2005). "Improving Use-of-Force Policy, Policy Enforcement, and Training." In Josh Ederheimer and Lorie A. Fridell (Eds). Chief Concerns: Exploring the Challenges of Police Use of Force. Washington, DC: The Police Executive Research Forum, 21-55.

Fridell, L.A. and Scott, M. (2005). "Law Enforcement Agency Responses to Racially Biased Policing and the Perceptions of its Practice." In Roger G. Dunham and Geoffrey P. Alpert (Eds). Critical Issues in Policing, 5th Edition. Prospect Heights, IL: Waveland Press, 403-321.

Fridell, L.A. (2004). "The Defining Characteristics of Community Policing." In Lorie A. Fridell, and Mary Ann Wycoff (Eds). Community Policing: Past, Present and Future. Washington, DC: PERF and the Annie Casey Foundation, 3-12.

Fridell, L.A. (2004). "The Results of Three National Surveys on Community Policing." In Lorie Fridell and Mary Ann Wycoff (Eds). Community Policing: Past, Present and Future. Washington, DC: PERF and the Annie Casey Foundation, 39-58.

Fridell, L.A. (2001). "Responding to Racially Biased Policing Through Collaborative Problem Solving." In Reuland, Melissa, Corina Sole Brito and Lisa Carroll (Eds). Solving Crime and Disorder Problems: Current Issues, Police Strategies and Organizational Tactics. Washington, DC: PERF.

Fridell, L.A. & Pate, A.M. (2001). "The Other Side of Deadly Force: The Felonious Killings of Police Officers." In Dunham, Roger G. and Geoffrey P. Alpert (Eds). Critical Issues in Policing: Contemporary Readings. Fourth edition. Prospect Heights, IL: Waveland Press, 636-663.

Fridell, L.A. & Pate, A.M. (1997). "Death on Patrol: Killings of Police Officers." In Dunham, Roger G. and Geoffrey P. Alpert (Eds). Critical Issues in Policing: Contemporary Readings. Third edition. Prospect Heights, IL: Waveland Press, 580-608.

Fridell, L.A. & Pate, A.M. (1997). "Use of Force: A Matter of Control." In Mark Dantzker (Ed). Police Today and Tomorrow: Contemporary Personnel Issues and Trends. Butterworth-Heinemann, pp. 217-256.

Pate, A.M. & Fridell, L.A. (1995). "Toward the Uniform Reporting of Police Use of Force: Results of a National Survey." *The Criminal Justice Review*, Vol.20(2), Autumn: 123-145.

Crew, R.E., Fridell, L.A. & Pursell, K. (1995). "Probabilities and Odds in Hot Pursuit: A Benefit/Cost Analysis." *Journal of Criminal Justice*, 23 (5): 417-424.

Crew, R.E., Kessler, D. & Fridell, L.A. (October, 1995). "Compliance with Hot Pursuit Policy." *Evaluation Review*, 19(5): 513-519.

Crew, R.E., Kessler, D., & Fridell, L.A. (1994). "Changing Hot Pursuit Policy: An Empirical Assessment of the Impact on Pursuit Behavior." *Evaluation Review*, 18(6):679-689.

Fridell, L.A. & Pate, A.M. (1993). "Death on Patrol: Killings of Police Officers." In Dunham, Roger G. and Geoffrey P. Alpert (Eds). Critical Issues in Policing: Contemporary Readings. Second edition, pp. 568-596. Prospect Heights, IL: Waveland Press.

Walker, S. & Fridell, L.A. (1992). "Forces of Change in Police Policy: The Impact of Tennessee v. Garner on Deadly Force Policy." *American Journal of Police*, 11(3):97-112.

Fridell, L.A. & Binder, A. (1992). "Police Officer Decision-making in Potentially Violent Confrontations." *Journal of Criminal Justice*, 20(5):385-399.

Fridell, L.A. (1991). "Prosecution Following Expulsion from Intrafamilial Child Sexual Abuse Treatment." *Child Abuse and Neglect*, 15:587-592.

Fridell, L.A. (1990). "Decision-making of the District Attorney: Diverting or Prosecuting Intrafamilial Child Sexual Abuse Offenders." *Criminal Justice Policy Review*, 4(3):249-267.

Fridell, L.A. (1989). "Justifiable Use of Measures in Research on Deadly Force." *Journal of Criminal Justice*, 17(3):157-166.

Fridell, L.A. & Webb, V. (1987). "The Confinement of Juveniles in Nebraska's Jails and Lockups." In Russell Smith (Ed). Nebraska Policy Choices: 1987, pp. 235-271.

Binder, A. & Fridell, L.A. (1984). "Lethal Force as a Police Response." *Criminal Justice Abstracts*, 16(2):250-280.

Funded Projects

Dr. Fridell has received over \$8 million in funding for research and other activities. The funded projects are listed below in categories based on her role on the funded project.

Project Director, Co-Project Director, or Assistant Project Director

Project Director (2015 – 2017). Developing Fair and Impartial Policing curricula for the USDOJ federal law enforcement agencies. Funded by the US Attorney General's Office, US Department of Justice (\$302,000).

Project Director (2015 – 2017). Advancing Fair and Impartial Policing Through Training. Funded by the US DOJ Office of Community Oriented Policing Services (\$320,000).

Project Director (2013 – 2014). Advancing Fair and Impartial Policing Through Training. Funded by the US DOJ Office of Community Oriented Policing Services (\$200,000).

Project Director (2012 - 2014). Advancing Fair and Impartial Policing through Training. Funded by the US DOJ Office of Community Oriented Policing Services (\$400,000).

Co-Principal Investigator (2012 - 2015). Advancing Knowledge and Practice in Policing: A Longitudinal Platform for National Research. Funded by the US DOJ National Institute of Justice to the University of Chicago with a subcontract to USF (\$50,000).

Project Director (2010 - 2012). Implementing Train-the-Trainer Sessions for Police on the Model Fair and Impartial Policing Curriculum. Funded by the DOJ Office of Community Oriented Policing Services (\$200,000).

Assistant Project Director, Co-Principal Investigator (2008 - 2012). Advancing Knowledge and Practice in Policing: A Longitudinal Platform for National Research. Funded by the DOJ, National Institute of Justice to the University of Chicago (\$1.8 million) with subcontract to USF (\$386,700).

Project Director/Consultant (2008). Promoting fair and impartial policing in the San Francisco Police Department. Funded by the SFPD (\$80,000).

Project Director (2007). Racially Biased Policing Training for Recruits and First-Line Supervisors. Funded by the DOJ Office of Community Oriented Policing Services (\$370,000).

Project Director (2005). Developing a Comprehensive Response to Racially Biased Policing and the Perceptions of its Practice. Funded by the City of Chicago.

Project Director (2004). Developing the Emergency Operations Plan for the City of Chicago. Funded by the City of Chicago (\$500,000). (Served as project director for the second half of project implementation.)

Project Director (2000). "Assessing the Training Needs of Law Enforcement in the Latin American Region." Funded by the U.S. Treasury Department through the Federal Law Enforcement Training Center (\$20,000).

Co-Project Director (2004). "Developing State of the Art Responses to the Critical Issues Facing Law Enforcement." Funded by Motorola, Inc. (\$500,000).

Project Director (2003). "Guidance on the Analysis and Interpretation of Racial Profiling Data." Funded by the Office of Community Oriented Policing Services (\$253,000).

Project Director and Principal Investigator (2003). "Conducting the 2003 Sample Survey of the LEMAS." Funded by the Bureau of Justice Statistics (\$290,000).

Project Director and Principal Investigator (2002). "2002 Census of Law Enforcement Training Academies." Funded by the Bureau of Justice Statistics (\$160,000).

Project Director and Co-Principal Investigator (2002). "Violence in the Workplace: Law Enforcement Officers Assaulted and Killed in the Workplace." Funded by the Centers for Disease Control (\$393,726).

Project Director (2001). "The Cop Crunch: Identifying Strategies for Dealing Effectively with the Recruiting and Hiring Crisis in Law Enforcement." Funded by the National Institute of Justice (\$211,000).

Project Director (2000). "Collaborative Leadership Project." Funded by the Office of Community Oriented Policing Services (\$200,000).

Project Director (2000). "Vehicle Stop Data Analysis Project." Funded by the Office of Community Oriented Policing Services (\$250,000).

Co-Project Director (2000). "Assessing the Training Needs of Law Enforcement in Sub Saharan Africa." Funded by the Department of the Treasury through the Federal Law Enforcement Training Center (\$20,000).

Project Director (2000). "Measuring What Matters: Designing, Implementing and Evaluating a Comprehensive Model of Police Performance." Funded by the National Institute of Justice (\$350,000).

Co-Project Director (1998). "Assessing the Needs of Law Enforcement in Central Asia and Eastern Europe." Funded by the Department of the Treasury through the Federal Law Enforcement Training Center (\$18,000).

Project Director (1999). "Developing Guidelines for Agencies to Address the Issue of 'Racial Profiling.'" Funded by the Office of Community Oriented Policing Services (\$447,980).

Co-Project Director (1998). "Assessing the Needs of Law Enforcement in Southeast Asia". Funded by the Department of the Treasury through the Federal Law Enforcement Training Center (\$10,272).

Principal Investigator or Co-Principal Investigator

Co-Principal Investigator (2006). A Multi-Method Evaluation of Police Use of Force Outcomes. Funded by the National Institute of Justice (\$647,387). Partners are the University of South Carolina and the Police Executive Research Forum.

Co-Principal Investigator (2004). "Good to Great: Developing Effective and Efficient Law Enforcement Agencies." Funded by the Office of Community Oriented Policing Services (\$150,000).

Co-Principal Investigator (2000). "Community Policing and Youth Study." Funded by the Office of Juvenile Justice and Delinquency Prevention through the COSMOS Corporation with a Subcontract to PERF (\$229,896).

Co-Principal Investigator (1999). "Putting the Florida Model Policies on the Streets: Policy Promulgation, Training and Facilitation–Part II." Funded by the Prevention of Domestic and Sexual Violence Section of the Florida Department of Community Affairs (\$180,000).

Co-Principal Investigator (1998). "Improving the Law Enforcement Response to Domestic Violence in Kyrgyzstan." Funded by the U.S. State Department (\$639,650). [Project stayed with FSU when I left in 1999.]

Co-Principal Investigator (1997). "Putting the Florida Model Policies on the Streets: Policy Promulgation, Training and Facilitation." Funded by the (Florida) Governor's Task Force on Domestic and Sexual Violence (\$142,224).

Co-Principal Investigator (1997). "The Florida Law Enforcement Research Coalition: Securing the Vision." Continuation funding for FLERC from the National Institute of Justice (\$136,755).

Co-Principal Investigator (1996). "Developing a Model Domestic and Sexual Violence Policy for Florida Law Enforcement." Funded by the (Florida) Governor's Task Force on Domestic Violence (\$44,457).

Co-Principal Investigator (1996). "Designing Process and Outcome Evaluations of the Domestic and Sexual Violence Training for Florida Law Enforcement." Funded by the (Florida) Governor's Task Force on Domestic Violence (\$32,263).

Co-Principal Investigator (1995-1997). "Forging a Florida Law Enforcement Research Coalition." Funded by NIJ (\$120,000).

Principal Investigator for the Police Foundation (1992-93). "Killings of Police Officers: A Comprehensive Analysis." Project funded by the National Institute of Justice (\$195,000).

Co-Principal Investigator for the Police Foundation (1991-1993). "Process and Outcome Evaluation of a School-based Drug Prevention Program." Project funded by the Scaife Family Foundation (\$300,000).

Project Research Associate

Senior Research Associate (2002). "Community Policing in a Security Conscious World." Funded by the Office of Community Oriented Policing Services (\$600,000).

Senior Research Associate (2002). "Learning from 9-11: Comparative Case Studies of the Law Enforcement Response in New York City and Arlington County." Funded by the National Institute of Justice (\$281,000).

Research Associate (1997). "Evaluation of the Police Corps Program." Funding from the National Institute of Justice to Weststat Inc. with FSU subcontract (Subcontract: \$117,187).

Project Associate (1997). "Policing in the 21st Century." Funded by the State Attorney's Office, Central Florida (\$90,160).

Research Associate with the Police Foundation (1992-1993). "Police Use of Excessive Force." Project funded by the National Institute of Justice (\$250,000).

Principal Consultant with the Police Foundation (1992-3). "An Analysis of Police Use of Less than Lethal Force." Project funded by the National Institute of Justice (\$150,000).

Presentations at National Meetings*

*Includes only presentations at national academic conferences, not presentations made around the country to police and stakeholder audiences on fair and impartial policing and/or use of force.

Lorie Fridell and Hyeyoung Lim (2014). "Police Use of Force against Blacks: testing the Impact of Neighborhood Crime Using Implicit Bias Theory. Presented at the Annual Conference of the American Society of Criminology in San Francisco, November.

Lorie Fridell, Jon Maskaly and Chris Donner (2014). "A Multi-Agency, Multi-Level Examination of Officer Amenability to Workplace Deviance. Presented at the Annual Conference of the American Society of Criminology in San Francisco, November.

Mathew Lynch, Lorie, Fridell, and Wes Jennings, W. G. (2014). *Evaluating the impact of police officer body-worn cameras*. Paper presented at the meeting of the American Society of Criminology, San Francisco, CA, November.

Mathew Lynch, Wes Jennings, and Lorie Fridell (2014). *Evaluating body-worn cameras in policing: Preliminary evidence from the Orlando experience*. Paper presented at the meeting of the Southern Police Institute Alumni Association (SPIAA) Training Conference, Tampa, FL, July.

Lorie Fridell, Jon Maskaly, Joshua Lovelace, and Dennis Rosenbaum (2013). "The Relationship between Empathy and Willingness to Use Force: Recruit Data from the National Police Research Platform." Presented at the Annual Conference of the American Society of Criminology in Atlanta, November.

Lorie Fridell and Jack McDevitt (2012). "Attitudes Toward Misbehavior and Perceptions of Agency Accountability: Results from the National Police Research Platform." Presented at the Annual Conference of the American Society of Criminology in Chicago, November.

Chris Donner and Lorie Fridell (2012). "Analyzing Organizational Commitment as a Mediator Between Procedural Justice and Burnout and Cynicism in Police Supervisors." Presented at the Annual Conference of the American Society of Criminology in Chicago, November.

Jen Lanterman, Jon Maskaly, Megan Alderden, Dennis Rosenbaum, and Lorie Fridell (2012). "Community Cynicism Trajectories in New Officers." Presented at the Annual Conference of the American Society of Criminology in Chicago, November.

Chris Donner, Lorie Fridell, and Wes Jennings, W.G. (2011). "Analyzing the Relationship between Procedural Justice and the Desire for Career Advancement among Police Sergeants." Presented at the Annual Conference of the American Criminal Justice Society in New York City, March.

Hyeyoung Lim, Lorie Fridell, and Hoon Lee (2011). "Multi-Level Analysis of Police Use of Force: The Impact of Incident Characteristics, Supervision, and Neighborhood Context." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Jon Maskaly, Chris Donner, Gerald Banfield, Jenifer Lanterman and Lorie Fridell (2011). "Herding Cats: Response Rate Challenges in a Longitudinal Study of Law Enforcement Supervisors." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Lorie Fridell, Stephen Mastrofski, Gary Cordner (2011). "Police Subordinates Rate Their Supervisors: A View from Below." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Jennifer Lanterman, Lorie Fridell, Chris Donner, Jon Maskaly, Gerald Banfield (2011). "Assessing the Impact of Bureaucracy on Job Satisfaction Using a Multi-Agency Sample." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Chris Donner, Wesley Jennings and Lorie Fridell (2011). The Relationship between Organizational Commitment and Aspirations for Career Advancement among Police Supervisors. A presentation made at the Annual Meeting of the American Society of Criminology, November.

Lorie Fridell, Stephen Mastrofski, Gary Cordner, Jon Maskaly and Chris Donner (2010). "A Longitudinal Study of Police Supervisors." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Ruth Zschoche and Lorie Fridell (2010). "An Integrated Theory of Police Corruption: Decoupling, Anomie and Moral Disengagement." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Jon Maskaly and Lorie Fridell (2010). The Effects of Different Types of Force Continuums on Authority to Use Force." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Lorie Fridell, Stephen Mastrofski, and Gary Cordner (2009). "Studying the Life Course of Supervisors." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Lorie Fridell and Don Faggiani (2008). "Violence Against Police: An Application of Routine Activities Theory." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Ruth Zschoche and Lorie Fridell (2008). "The Relative Placement of Types of Force on Linear Continuums: Results From a National Survey of Law Enforcement Agencies." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Don Faggiani, Lorie Fridell, and Dan Bibel (2008). A multi-level analysis of a criminal opportunity model of violence against law enforcement officers. A presentation made at the Annual Meeting of the American Society of Criminology.

Lorie Fridell, Geoff Alpert, and Bruce Kubu (2007). "Results from a National Survey on Less Lethal Force Technologies." A presentation made at the Annual Meeting of the American Society of Criminology, November.

Donald Faggiani, Daniel Bibel, and Lorie Fridell (2007). "A Spatial and Contextual Effects Analysis of the Causes and Correlates of Law Enforcement Officers Killed and Assaulted in the Line of Duty." A paper presented at the Crime Mapping Research Conference, March.

Lorie Fridell, Geoffrey Alpert, and Bruce Kubu (2006). "Results from a National Survey on Less Lethal Force Technologies." Paper presented at the Annual Meeting of the American Society of Criminology, November.

Ruth Zschoche and Lorie A. Fridell (2006). "Accountability and the Use of Force." Paper presented at the Annual Meeting of the American Society of Criminology, November.

Donald Faggiani, Daniel B. Bibel, Lorie A. Fridell (2006). "A Contextual Effects Model for Understanding the Causes and Correlates of Law Enforcement Officers Killed and Assaulted in the Line of Duty." Paper presented at the Annual Meeting of the American Society of Criminology, November.

Lorie A. Fridell (2005). "Search Hit Rates as an Indicator of Bias in Searches." Paper presented at the Annual Meeting of the American Society of Criminology, November.

Don Faggiani and Lorie A. Fridell (2005). "Organizational Factors Affecting Violence Against Police." Paper presented at the Annual Meeting of the American Society of Criminology, November.

Lorie A. Fridell and Don Faggiani (2005). "Organizational Factors Affecting Violence Against Police." Paper presented at the 2005 National Conference of the Bureau of Justice Statistics and Justice Research and Statistics Association, October, St. Petersburg.

Lorie A. Fridell, Don Faggiani, and Corina Sole Brito (2004). "Organizational Factors Affecting Police Victimization." Paper presented at the Annual Meeting of the American Society of Criminology, November.

Tom Jordan, Lorie A. Fridell, and Bruce Kubu (2004). "The Cop Crunch: The Law Enforcement Struggle to Hire Quality Personnel." Paper presented at the Annual Meeting of the American Society of Criminology, November, 2004.

Antony M. Pate and Lorie Fridell (2002). "Community Oriented Policing and Youth Programs: Toward a Comprehensive Strategy." Paper presented at the Annual Meeting of the American Society of Criminology, November, 2002.

Lorie A. Fridell, Jerry Murphy, Tom Jordan and Bryan Vila (2002). "The Cop Crunch: Identifying Strategies to Deal with the Recruiting and Hiring Crisis in Law Enforcement." Paper presented at the Annual Meeting of the American Society of Criminology, November, 2002.

Lorie A. Fridell, Arlen Rosenthal, and Mark Dantzker (2001). "The Changing Face of Community Policing: A Comparison of 1993 and 1997 National Survey Results." Paper presented at the Annual Meeting of the American Society of Criminology, November, 2001.

Tony Pate and Lorie Fridell (2001). "Community Policing and Youth: Innovative Practices." Paper presented at the Annual Meeting of the American Society of Criminology, November, 2001.

Lorie Fridell and Bruce Kubu (2001). "Racial Profiling: The Law Enforcement Response to the Problem of Biased Policing and Perceptions of Biased Policing." Presentation at the Annual Meeting of the Academy of Criminal Justice Sciences in Washington, DC, April 2001.

Lorie A. Fridell and Antony M. Pate (1999). "The Nature, Extent and Response to Domestic Violence In Kyrgyzstan." Presented at the annual meeting of the American Society of Criminology in Toronto in November.

Lorie A. Fridell, Antony M. Pate and David Jenks (1998). "Felony Killings of Police: An Assessment of Statistical Models for Identifying Jurisdiction-Level Predictors." Presented at the annual meeting of the American Society of Criminology in Washington, DC in November.

Lorie A. Fridell and Antony M. Pate (1997). "Trends in the Receipt and Disposition of Excessive Force Complaints in the Largest U.S. Cities." Presented at the annual meeting of the American Society of Criminology in San Diego in November.

Lorie A. Fridell and Antony M. Pate (1997). "Lessons in Developing a Collaboration: The Florida Law Enforcement Research Coalition." Presented at the NIJ Local Initiated Partnership Program Conference in Washington, DC in January.

Antony M. Pate and Lorie A. Fridell (1996). "Forging a Florida Law Enforcement Research Coalition." Presented at the Annual Meeting of the American Society of Criminology in Boston, Massachusetts, November.

Lorie A. Fridell and Antony M. Pate (1995). "The Felonious Killing of Police Officers: A Comparison of Incidents Across Agency and Assignment Types." Presented at the Annual Meeting of the American Society of Criminology in Boston, Massachusetts, November.

Lorie A. Fridell (1995). "Is the Collar Worth the Cost: An Empirical Look at the Costs and Benefits of Pursuits." Presented at the Annual Meeting of the Transportation Research Board in Washington, DC, January 1995.

Lorie A. Fridell, Antony M. Pate and Edwin E. Hamilton (1994). "Death on Patrol: A Multivariate Analysis of Killings of Police Officers." Presented at the Annual Meeting of the American Society of Criminology in Miami, FL, November 1994.

Antony M. Pate, Lorie A. Fridell, and Edwin E. Hamilton (1994). "Police Use of Force: A Multivariate Analysis." Presented at the Annual Meeting of the American Society of Criminology in Miami, FL, November 1994.

Robert E. Crew, Jr., Lorie A. Fridell, and Karen Purcell (1994). "Is the Collar Worth the Costs? Pursuit Outcomes for Various Types of Precipitating Events." Presented at the Annual Meeting of the American Society of Criminology in Miami, FL, November 1994.

Antony Pate and Lorie Fridell (1993). "A National Survey of Police Use of Force." Presented at the Annual Meeting of the American Society of Criminology in Phoenix, AZ, November 1993.

Antony Pate, Lorie Fridell, and Sampson Annan (1993). "Complaints of Police Use of Excessive Force: A National Study." Presented at the annual meeting of the Academy of Criminal Justice Sciences in Kansas City, MO, March 1993.

Lorie Fridell and Antony Pate (1992). "Killings of Police." Presented at the annual meeting of the Academy of Criminal Justice Sciences in Kansas City, MO, March, 1993.

Elizabeth Cass, Lorie Fridell, and Antony Pate (1992). "An Evaluation of a School-Based Drug Prevention Program." Presented at the annual meeting of the American Society of Criminology in New Orleans, LA, November, 1992.

Lorie Fridell and Antony Pate (1992). "Death on Patrol: Killings of Police Officers." Presented at the annual meeting of the American Society of Criminology in New Orleans, LA, November, 1992.

Antony Pate and Lorie Fridell (1992). "Police Use of Excessive Force." Presented at the annual meeting of the American Society of Criminology in New Orleans, LA, November, 1992.

Arnold Binder and Lorie Fridell (1991). "Socio-political Factors and Young Offenders." Presented at the annual meeting of the Academy of Criminal Justice Sciences in Nashville, Tennessee, March, 1991.

Lorie Fridell and Arnold Binder (1990). "Reaction to Officers' Decisions to Shoot or Not Shoot in Armed Confrontations." Presented at the annual meeting of the American Society of Criminology in Baltimore, Maryland, November, 1990.

Sam Walker and Lorie Fridell (1989). "The impact of Tennessee v. Garner on Deadly Force Policy," Presented at the annual meeting of the American Society of Criminology in Reno, Nevada in November, 1989.

Lorie Fridell and Arnold Binder (1989). "Racial Aspects of Police Shootings revisited." Presented at the annual meeting of the American Society of Criminology in Reno, Nevada, November, 1989.

Lorie Fridell and Arnold Binder (1988). "Police Officer Decision-making in Armed Confrontations." Presented at the annual meeting of the American Society of Criminology in Chicago, Illinois, November, 1988.

Lorie Fridell (1987). "The Disclosure of Intrafamilial Child Sexual Abuse: The Flow of Information to Authorities." Presented at the annual meeting of the Academy of Criminal Justice Sciences in St. Louis, Missouri, March, 1987.

Lorie Fridell (1985). "Justifiable Use of Measures in Research on Deadly Force." Presented at the annual meeting of the Academy of Criminal Justice Sciences in Las Vegas, Nevada, April, 1985.

Journal Reviewer

Criminology

Journal of Criminal Justice

Justice Quarterly

Justice Research and Policy

Police Quarterly

Editorial Board Member, *Justice Research and Policy* (1/2006 –12/2008)

Journal Co-Editor

Policing: An International Journal of Police Strategies and Management. (With Wes Jennings)

Awards

Alumna of the Year. Linfield College, 2004.

University Teaching Award (\$2,000). Florida State University (FSU), 1997-98.

Teaching Incentive Program Award (\$5,000 raise). FSU, 1997.

Teaching Incentive Program Award (\$5,000 raise). FSU, 1994.

University Teaching Award (\$2,000). FSU, 1991-1992.

Finalist for the Panhellenic Association 1992 Faculty Member of the Year, FSU.

University Excellence in Advising Award (\$3,000). FSU, 1990-91.

Finalist for the Panhellenic Association 1991 Faculty Member of the Year, FSU.

Excellence in Advising Award (\$2500). School of Criminology, FSU, 1989-90.

Excellence in Teaching Award (\$1500). University of Nebraska at Omaha 1988-89.

Outstanding Teaching Assistant of the Program in Social Ecology, University of California at Irvine, 1983-1984.

CURRICULUM VITAE

Johnny G. Jurado
10262 Meredith Drive
Huntington Beach, Ca 92646
Phone: (714) 964 – 8758 (home)
Phone: (714) 742 - 1850 (cell)
E-Mail: Jurados@socal.rr.com

EMPLOYMENT HISTORY

During his 33 years in law enforcement Commander Jurado (Retired) supervised, managed and commanded a vast number of police personnel and units covering a wide comprehensive range of assignments. During his career with the Los Angeles County Sheriff's Department Commander Jurado was assigned as a manager and executive level administrator in the areas of field patrol, jail and custody supervision, and criminal investigations.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT 1974 – 2008 (Retired)

Commander Assignments - 2000

Leadership and Training Division – Supervised the Training Bureau, Professional Development Bureau and S.T. A.R. Unit.

Field Operations Region II - Supervised Lomita, Carson, Lennox and Marina Del Rey Stations, as well as the Community College Bureau.

Captain Assignments - 1995

Safe Streets Bureau, East Los Angeles Station

Lieutenant Assignments - 1990

Century Station, Lynwood Station, Biscailuz Center Jail

Sergeant Assignments - 1983

Recruit Training Bureau, Safe Streets Bureau, Carson Station

Deputy Assignments - 1974

Special Enforcement Bureau, Norwalk Station, Firestone Station, Bailiff's Bureau, Men's Central Jail, Hall of Justice Jail, Academy

CALIFORNIA STATE UNIVERSITY – LONG BEACH, CA. 2005 - 2007

Lecturer, Professional Studies Department

PROF-456, Attitude Awareness in Education and the Workplace (3 units) - Introduction to and application of the principles of communication, human relations, understanding

other people, attitude recognition and development, and mental steps to motivation. Contributions of the behavioral sciences to more effective teaching will be examined and plans for their implementation will be prepared.

PROF-485, Identifying Management Competencies (3 units) - A lecture and discussion course focusing on the identification of competencies requisite for effective management of occupational education programs. These competencies are categorized in three domains, including, but not limited to: the interrelationships on concepts, things and people.

PROF-486, Emergency Management Operations and Techniques (3 units) – Management operations and techniques in contemporary emergency service organizations. The role of supervisors, managers, and executives in the leadership process.

PROF-488, Case Studies of Critical Incidents (3 units) – Case studies to illustrate commonly encountered problems and issues in the management of human caused and natural disasters. Incidents will be studied for the purpose of learning best practices and for the development of mitigation, response, and recovery plans.

UNION INSTITUTE AND UNIVERSITY – LOS ANGELES, CA. 2007 - Present

Lecturer, Criminal Justice Department

CLE 409 - Contemporary Issue in Criminal Justice (4 units) - This course presents a comprehensive management perspective and overview of contemporary issues and problems associated with the criminal justice system. The course provides an in-depth examination of current and vital issues in criminal justice such as current research trends, policy development, implementation and review, liability issues, personnel as well as political and ethical obligations involving social justice.

CLE 408 – Management of Criminal justice Programs (4 units) - This course examines management and delivery of criminal justice services from the historical, theoretical and practical points of view. It includes an analysis of current programmatic delivery models such as community policing, problem oriented policing, community courts and community corrections. Additional topics will include the management of conflict and cooperation between services, programs, other criminal justice service providers as well as between criminal justice service providers and other government services.

RIO HONDO COMMUNITY COLLEGE – WHITTIER, CA. 1985 – 1990

Lecturer, Administration of Justice Department

Advanced Officer Training – “Continuing Professional Training” (CPT) requirements; including Street Gang Training, Narcotics Update and Cultural Diversity.

PROFESSIONAL HIGHLIGHTS

Chair Executive Force Review Committee 2004 - 2008

Reviewed and evaluated in excess of 500 Use of Force cases including all deputy-involved shootings, all bites by Department police service dogs, and a percentage of other serious patrol and custodial force cases (usually involving significant injury to the inmates.) The details of each case were presented to the Committee and a determination was made regarding policy, procedure, supervision, equipment, and/or training. Depending on the circumstances of the case the outcomes could included individual accountability (up to and including discipline) for the officers, designated individualized or department level training, individualized or station level briefings, proposed reforms to policy and procedure, and/or further study regarding questions about tactics, equipment, or other relevant issues.

Chair Less-Lethal Committee (LLC) 2008

The LLC was tasked to revise all less lethal policies with a focus on standardization of training, equipment, munitions, and threshold for deployment.

Taught “Leadership” at Field Training Officer’s School 2004 - 2008

Taught “Use of Force” at Sergeant Field Operations School 2004 - 2008

Facilitated Sergeant and Lieutenant Promotional Exam Seminars 1995 – 2008

Incident Command Team (ICT) Commander 2002 - 2006

The ICT Commander is responsible for all law enforcement incident activities, including the development of strategies and the coordination of tactics (broad perspective), as well as the acquisition and release of resources. The ITC Commander has complete authority and responsibility for the management of overall operations, consistent with the mission of the Department.

Field Operations Region II Use of Force Analysis 2000- 2004

Responded to or reviewed 86 FOR II Deputy Involved Shootings and assisted in the review of over 2500 Use of Force reports. Designed a Use of Force analysis system that enabled each FOR II station to conduct a three year retrospect of their Use of Force.

Chair Community College Merger Committee 2003

County Wide Gang Strategy 1999 – 2000

Developed and implemented a multi-strategy approach to reduce gang violence at all Los Angeles County Sheriff’s Department patrol stations.

Chair Los Angeles County Coordinating Council Inter-Agency Gang Task Force	1999
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EDUCATION

Masters of Public Administration California State University, Long Beach	2001
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Bachelors of Science (Criminology) California State University, Long Beach	1978
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Associates of Arts Los Angeles Harbor Community College	1973
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COURSES DEVELOP 1992 - 1993

Los Angeles County Sheriff's Department - Cultural Diversity Training Course designed, developed and delivered course for Deputy Sheriff's.

Cultural Diversity Training – Delivered mandated training to Rialto, Pasadena, Downey and Torrance Police Departments.

AWARDS RECEIVED 2001

California State University, Long Beach – J. Julien Baget Outstanding Research Project: Reducing Gang Violence in the New Millennium: A Multi-Strategy Approach

CREDENTIALS/LICENSES

Vocational Education Teaching Credential (CSULB)	1985
Community College Credential	1985

CERTIFICATIONS

P.O.S.T. Management
 P.O.S.T. Middle Management
 P.O.S.T. Supervisory
 P.O.S.T. Advanced Peace Officer
 Tactical Science
 Special Weapons and Tactics
 Teaching Techniques
 Career Integrity Facilitator
 Cultural Diversity Facilitator
 Criminal Investigation
 Positive Thinking for Law Enforcement
 Ethnic Street Gangs and Sub-cultures

PROFESSIONAL AFFILIATIONS

Board Member of the Los Angeles County Hispanic Manager Association
Member of Hispanic American Police Command Officer Association
Member of Latino Peace Officer Association
Member Los Angeles County Management Council
Member California State Sheriff's Association

Johnny G. Jurado
10262 Meredith Drive
Huntington Beach, Ca. 92646
(714) 964 – 8758
(714) 742 - 1850 (cell)

FEE SCHEDULE

Original Consultation \$750.00

This fee includes the preliminary case review and assessment, use of library and research materials, office costs, and operating expenses. This is a one-time non-refundable fee and should be submitted with the original letter of engagement.

Case Review and Preparation \$125.00

This hourly fee applies to all direct activities associated with case review, analysis, research, and preparation. Included in this category are interviews, site inspections, client meetings, and documentation. Specialized photography and production of complex or sophisticated exhibits will be billed separately based on bid proposals pre-approved by the client.

Case Presentation \$ 250.00

This hourly fee applies to depositions, hearings, and court appearances and is predicated on a three-hour minimum. Costs involving travel, lodging, and meals will be billed separately.

Out-of-County Consulting \$125.00 / \$1,000.00

This hourly/daily fee applies to all work requiring out-of-county travel or an overnight stay. Messenger expenses, FAX, phone, and secretarial services will be billed separately.

Direct Travel Actual Costs

All travel-related expenses including transportation, insurance, lodging, and meals will be billed at cost. Travel time and non-activity days away from home office will be billed at the reduced hourly rate. Automotive costs such as rental, fuel, parking and cleaning will be billed at cost.

Statement of Account

Itemized billings will be prepared and submitted on a periodic basis consistent with the activity of the account. Payment is due upon receipt of the billing. Late charges may be assessed on overdue accounts at a rate of 1.5 percent interest per month on the unpaid balance.

EUGENE A. PAOLINE III

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University of Central Florida
12805 Pegasus Drive
Orlando, Florida 32816-1600

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FAX: (407) 823-5360
E-mail: eugene.paoline@ucf.edu

EDUCATION

Ph.D., Criminal Justice, University at Albany, State University of New York, 2000.

M.A., Criminal Justice, University at Albany, State University of New York, 1996.

M.S., Criminology/Criminal Justice, Florida State University, 1994.

B.S., Criminology/Criminal Justice, Florida State University, *Cum Laude*, 1991.

PROFESSIONAL EMPLOYMENT

8/15 – Present Professor, Department of Criminal Justice, University of Central Florida.

8/07 – 8/15 Associate Professor, Department of Criminal Justice, University of Central Florida.

8/01 – 8/07 Assistant Professor, Department of Criminal Justice and Legal Studies, University of Central Florida.

8/00 - 8/01 Assistant Professor, Department of Sociology, Anthropology, and Criminology, University of Northern Iowa.

1/99 - 5/00 Instructor, School of Criminal Justice, The University at Albany, State University of New York, Albany, New York.

1/96 - 1/99 Research Assistant, “Project on Policing Neighborhoods (POPAN),” Hindelang Criminal Justice Research Center, University at Albany, State University of New York, Albany, New York. National Institute of Justice (Grant 95-IJ-CX-0071).

5/97 - 8/97 Field Supervisor, “Project on Policing Neighborhoods (POPAN),” St. Petersburg, Florida.

5/96 - 8/96 Field Supervisor, “Project on Policing Neighborhoods (POPAN),” Indianapolis, Indiana.

RESEARCH

Journal Articles

- Terrill, William and Eugene A. Paoline III (Forthcoming). "Police Use of Less Lethal Force: Does Administrative Policy Matter?" *Justice Quarterly*.
- Lambert, Eric G., Nancy L. Hogan, and Paoline, Eugene A. III (2016). "Differences in the Predictors of Job Stress and Job Satisfaction for Black and White Jail Staff." *Corrections: Policy, Practice and Research*. 1 (1): 1-19.
- Paoline, Eugene A. III, Eric G. Lambert, and Nancy L. Hogan (2015). "Job Stress and Job Satisfaction among Jail Staff: Exploring Gendered Effects." *Women & Criminal Justice*. 25 (4): 339-359.
- Terrill, William and Eugene A. Paoline III (2015). "Citizen Complaints as Threats to Police Legitimacy: The Role of Officers' Occupational Attitudes." *Journal of Contemporary Criminal Justice*. 31(2): 192-211.
- Paoline, Eugene A. III, William Terrill, and Michael T. Rossler (2015). "Higher Education, College Degree Major, and Police Occupational Attitudes." *Journal of Criminal Justice Education*. 26(1): 49-73.
- Terrill, William, Michael T. Rossler, and Eugene A. Paoline III (2014). "Police Service Delivery and Responsiveness in a Period of Economic Instability." *Police Practice & Research: An International Journal*. 15(6): 490-504.
- Ingram, Jason R., Robert R. Weidner, Eugene A. Paoline III, and William Terrill (2014). "Supervisory Influences on Officers' Perceptions of Less Lethal Force Policy: A Multilevel Analysis." *Policing: An International Journal of Police Strategies & Management*. 37 (2): 355-372.
- Ingram, Jason R., Eugene A. Paoline III, and William Terrill (2013). "A Multilevel Framework for Understanding Police Culture: The Role of the Workgroup." *Criminology*. 51(2): 365-397.
- Terrill, William and Eugene A. Paoline III (2013). "Less Lethal Force Policy and Police Officer Perceptions: A Multisite Examination." *Criminal Justice & Behavior*. 40(10): 1109-1130.
- Terrill, William and Eugene A. Paoline III (2013). "Examining Less Lethal Force Policy and the Force Continuum: Results from a National Use of Force Study." *Police Quarterly*. 16(1): 38-65.
- Gau, Jacinta M., William Terrill, and Eugene A. Paoline III (2013). "Looking Up: Explaining Police Promotional Aspirations." *Criminal Justice & Behavior*. 40(3): 247-269.

Journal Articles (cont.)

- Paoline, Eugene A. III and Eric G. Lambert (2012). "Exploring Potential Consequences of Job Involvement Among Jail Staff." *Criminal Justice Policy Review*. 23(2): 231-253.
- Paoline, Eugene A. III, William Terrill, and Jason R. Ingram (2012). "Police Use of Force and Officer Injuries: Comparing Conducted Energy Devices (CEDs) to Hands and Weapon Based Tactics." *Police Quarterly*. 15(2): 115-136
- Paoline, Eugene A. III and Eric G. Lambert (2012). "The Issue of Control in Jail: The Effects of Professionalism, Detainee Control, and Administrative Support on Job Stress, Job Satisfaction, and Organizational Commitment Among Jail Staff." *American Journal of Criminal Justice*. 37(2): 179-199.
- Terrill, William and Eugene A. Paoline III (2012). "Conducted Energy Devices (CEDs) and Citizen Injuries: The Shocking Empirical Reality." *Justice Quarterly*. 29(2): 153-182.
- Lambert, Eric G. and Eugene A. Paoline III (2012). "Exploring Potential Antecedents of Job Involvement: An Exploratory Study Among Jail Staff." *Criminal Justice & Behavior*. 39(3): 264-286.
- Paoline, Eugene A. III and William Terrill (2011). "Police Use of Force: Varying Perspectives." *Journal of Crime & Justice*. 34(3): 159-162.
- Paoline, Eugene A. III and William Terrill (2011). "Listen to Me: Police Officers' Views of Appropriate Use of Force." *Journal of Crime & Justice*. 34(3): 178-189.
- Lambert, Eric G. and Eugene A. Paoline III (2010). "Take This Job and Shove it: An Exploratory Study of Turnover Intent Among Jail Staff." *Journal of Criminal Justice*. 38(2): 139-148.
- Lambert, Eric G. and Eugene A. Paoline III (2008). "The Influence of Individual, Job, and Organizational Characteristics on Correctional Staff Job Stress, Job Satisfaction, and Organizational Commitment." *Criminal Justice Review*. 33(4): 541-564.
- Terrill, William, Eugene A. Paoline III, and Jason R. Ingram (2008). "Nonlethal Use-of-Force Policy: Perceptions from the Front Line." *Law Enforcement Executive Forum*. 8(4): 7-19.
- Lambert, Eric G., Nancy L. Hogan, Eugene A. Paoline III, and Michael T. Stevenson (2008). "I Want to Know and I Want to be Part of It: The Impact of Instrumental Communication and Integration on Private Prison Staff." *Journal of Applied Security Research*. 3(2): 205-229.
- Applegate, Brandon K. and Eugene A. Paoline III (2007). "Jail Officers' Perceptions of the Work Environment in Traditional Versus New Generation Facilities." *American Journal of Criminal Justice*. 31(2): 64-80.
- Terrill, William and Eugene A. Paoline III (2007). "Non-Arrest Decision Making in Police-Citizen Encounters." *Police Quarterly*. 10(3): 308-331.

Journal Articles (cont.)

- Paoline, Eugene A. III and William Terrill (2007). "Police Education, Experience, and the Use of Force." *Criminal Justice & Behavior*. 34(2): 179-196.
- Terrill, William and Eugene A. Paoline III (2007). "Force Continuums: Moving Beyond Speculation and Toward Empiricism." *Law Enforcement Executive Forum*. 7(4): 27-31.
- Lambert, Eric G., Eugene A. Paoline III, Nancy L. Hogan, David N. Baker (2007). "Gender Similarities and Differences in Correctional Staff Work Attitudes and Perceptions of the Work Environment." *Western Criminology Review*. 8(1): 16-31.
- Paoline, Eugene A. III, Eric G. Lambert, and Nancy L. Hogan (2006). "A Calm and Happy Keeper of the Keys: The Impact of ACA Views, Relations with Coworkers, and Policy Views on the Job Stress and Job Satisfaction of Jail Staff." *The Prison Journal*. 86(2): 182-205.
- Lambert, Eric G., Eugene A. Paoline III, and Nancy L. Hogan (2006). "The Impact of Centralization and Formalization on Correctional Staff Job Satisfaction and Organizational Commitment." *Criminal Justice Studies: A Critical Journal of Crime, Law and Society*. 19(1): 23-44.
- Lambert, Eric G., Nancy L. Hogan, Eugene A. Paoline III, and Alan Clarke (2005). "The Impact of Role Stressors on Job Stress, Job Satisfaction and Organizational Commitment Among Private Prison Staff." *Security Journal*. 18(4): 33-50.
- Paoline, Eugene A. III and William Terrill (2005). "The Impact of Police Culture on Traffic Stop Searches: An Analysis of Attitudes and Behavior." *Policing: An International Journal of Police Strategies & Management*. 28 (3): 455-472.
- Lambert, Eric G., Nancy L. Hogan, Eugene A. Paoline III, and David Baker (2005). "The Good Life: The Impact of Job Satisfaction and Occupational Stressors on Correctional Staff Life Satisfaction - An Exploratory Study." *Journal of Crime & Justice*. 28(2): 1-26.
- Lanier, Mark and Eugene A. Paoline III (2005). "Expressed Needs and Behavioral Risk Factors of HIV Positive Inmates." *International Journal of Offender Therapy and Comparative Criminology*. 49(5): 561-573.
- Bernard, Thomas J., Eugene A. Paoline III, and Paul Pare (2005). "Criminal Justice and General Systems Theory." *Journal of Criminal Justice*. 33(3): 203-211.
Reprinted in Peter B. Kraska and John J. Brent (eds.)(2011). *Theorizing Criminal Justice: Eight Essential Orientations*. Long Grove, Illinois: Waveland Press, Inc.
- Lambert, Eric G. and Eugene A. Paoline III (2005). "The Impact of Medical Issues on the Job Stress and Job Satisfaction of Jail Staff." *Punishment and Society*. 7(3): 259-275.

Journal Articles (cont.)

- McCluskey, John D., William Terrill, and Eugene A. Paoline III (2005). "Peer Group Aggressiveness and the Use of Coercion in Police-Suspect Encounters." *Police Practice & Research: An International Journal*. 6(1): 19-37
- Paoline, Eugene A. III and William Terrill (2004). "Women Police Officers and the Use of Coercion." *Women & Criminal Justice*. 15: 97-119
- Paoline, Eugene A. III (2004). "Shedding Light on Police Culture: An Examination of Officers' Occupational Attitudes." *Police Quarterly*. 7(2): 205-236.
- Lambert, Eric G., K. Michael Reynolds, Eugene A. Paoline III, and R. Cory Watkins (2004). "The Effects of Work Stressors and Pay Perceptions on Jail Staff Job Satisfaction." *Journal of Crime & Justice*. 27(1): 1-32.
- Paoline, Eugene A. III and John J. Sloan III (2003). "Variability in the Organizational Structure of Contemporary Campus Law Enforcement Agencies: A National Level Analysis." *Policing: An International Journal of Police Strategies & Management*. 26(4): 612-639.
- Paoline, Eugene A. III (2003). "Taking Stock: Toward a Richer Understanding of Police Culture." *Journal of Criminal Justice*. 31(3): 199-214.
- Terrill, William, Eugene A. Paoline III, and Peter K. Manning (2003). "Police Culture and Coercion." *Criminology*. 41(4): 1003-1034.
- Paoline, Eugene A. III, Stephanie M. Myers, and Robert E. Worden (2000). "Police Culture, Individualism, and Community Policing: Evidence from Two Departments." *Justice Quarterly*. 17(3): 575-605.
Reprinted in Chris W. Eskridge (ed.)(2004). *Criminal Justice Concepts and Issues: An Anthology*. Los Angeles, California: Roxbury Publishing Company.

Grants & Contracts

- Co-principal Investigator (with Robert E. Worden, Sarah J. McLean, Christopher J. Harris, and KiDeuk Kim). "Police Early Intervention Systems: The State of the Art"; \$486,485 from the *National Institute of Justice* (Grant 2013-IJ-CX-0018), January, 2014 - Dec, 2016.
- Co-principal Investigator (with William Terrill). "Assessing Police Use of Force Policy and Outcomes"; \$376,255 from the *National Institute of Justice* (Grant 2005-IJ-CX-0055), January, 2006 - May, 2010.
- Co-principal Investigator (with Kenneth M. Reynolds and Cory Watkins). "Orange County Jail Personnel Study"; \$15,490 from the *Orange County Jail Oversight Commission*, November, 2001 - April, 2002.

Books

Paoline, Eugene A. III and William Terrill (2014). *Police Culture: Adapting to the Strains of the Job*. Durham, NC: Carolina Academic Press.

Reviewed (by Frank Fuller & Howard Smith) in *Criminal Justice Review*. 26(2): 464-465.

Reviewed (by Michael J. Jenkins) in *Rutger's Criminal Law and Criminal Justice Books*. July, 2014.

Reviewed (by Colin Atkinson) in *Policing and Society: An International Journal of Research and Policy* (forthcoming).

Paoline, Eugene A. III (2001). *Rethinking Police Culture: Officers' Occupational Attitudes*. New York, New York: LFB Scholarly Publishing Company LLC.

Reviewed (by John Crank) in *Criminal Justice Review*. 26(2): 285-286.

Book Chapters

Terrill, W., Paoline, E. A. III, & Gau, J. M. (2016). "Three Pillars of Police Legitimacy: Procedural Justice, Use of Force, and Occupational Culture." In M. Deflam (Ed.), *The Politics of Policing: Between Force and Legitimacy*. Sociology of Crime, Law, and Deviance (vol. 21). Bingley, UK: Emerald

Paoline, Eugene A. III and John J. Sloan, III. (2013). "Community-Oriented Policing (COP) on College Campuses: New Directions?" In Bonnie Fisher and John J. Sloan (Eds.), *Campus Crime: Legal, Social, and Policy Perspectives* (pp. 324-342). Springfield, IL: Charles C. Thomas, LTD.

Terrill, William and Eugene A. Paoline III (2010). "Non-Lethal Force by Police: The Various Lenses by Which Appropriateness is Assessed." In Joseph B. Kuhns and Johannes Knutsson (Eds.), *Policing Around the World: Police Use of Force, Firearms, and Non-Lethal Weapons* (pp. 6-13). Westport, CT: Praeger-Greenwood-PSI.

Paoline, Eugene A. III and Suzanne G. Devlin (2009). "Hillsborough County, Florida." In Edward R. Maguire and William Wells (Eds.), *Implementing Community Policing: Lessons from 12 Cities*. Washington, DC: U.S. Department of Justice.

Paoline, Eugene A. III. (2006). "The Myth of a Monolithic Police Culture." In Robert Bohm and Jeffrey Walker's *Demystifying Crime and Criminal Justice* (pp. 81-88). California: Roxbury Publishing Company.

Encyclopedia Entries

Paoline, Eugene A. III. (2014). "Police Culture." In J. Bruinsma and D. Weisburd's (eds). *Encyclopedia of Criminology and Criminal Justice*. New York: Springer.

Book Reviews

Review of Edward R. Maguire (2003). *Organizational Structure in American Police Agencies: Context, Complexity, and Control* (Albany, New York: State University of New York Press). *Policing: An International Journal of Police Strategies & Management* (2006). 29(1): 182-184.

Research Reports

Terrill, William, Eugene A. Paoline III, and Jason Ingram (2011). *Assessing Police Use of Force Policy and Outcomes*. Final Report to the National Institute of Justice (Grant 2005-IJ-CX-0055). Washington, DC: U.S. Department of Justice.

Research Reports (cont.)

Reynolds, Michael K., Eugene A. Paoline III, and Cory Watkins (2002). *Orange County Corrections Department Personnel Survey Report*. Report to the Orange County Jail Oversight Commission (Grant 18-65-809). Orlando, Florida, University of Central Florida.

Paoline, Eugene A. III, Stephanie M. Myers, and Robert E. Worden (1999). *Police Culture, Individualism, and Community Policing: Evidence from Two Police Departments*. Report to the National Institute of Justice (Grant 95-IJ-CX-0071). Albany, NY: Hindelang Criminal Justice Research Center, University at Albany.

Invited Presentations

Paoline, Eugene A. III. "Conducted Energy Devices (CEDs) and Injuries." Department of Criminology, University of South Florida, Orlando, Florida, January, 2012.

Terrill, William and Eugene A. Paoline III. "Conducted Energy Devices (CEDs) and Injuries: An Empirical Examination." National Institute of Justice Conference, Washington, DC, June, 2010.

Paoline, Eugene A. III. "A Multimethod Study of Police Use of Force." College of Health and Public Affairs, University of Central Florida, Orlando, Florida, October, 2008.

Terrill, William and Eugene A. Paoline III. "Assessing Police Use of Force Policy and Outcomes." National Institute of Justice Conference, Washington, DC, June, 2008.

Professional Conference Papers

Paoline, Eugene A. III, Robert E. Worden, Sarah J. McLean, and Julie Krupa. "Varieties of Police Early Intervention: The Structure of Contemporary EI Systems." Paper presented at the annual meeting of the American Society of Criminology, Washington, DC, 2015.

Lambert, Eric G., Eugene A. Paoline III, Nancy Hogan, James B. Wells, Kevin I. Minor, and Marie Griffin. "Correlates of Role Strain Among Jail Staff." Paper presented at the annual meeting of the American Society of Criminology, Washington, DC, 2015.

Paoline, Eugene A. III and William Terrill. "Citizen Complaints as Threats to Police Legitimacy: The Role of Officers' Occupational Attitudes." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Orlando, FL, 2015.

Lambert, Eric, Eugene A. Paoline III, Nancy Hogan, Kevin I. Minor, James B. Wells, and Shannon Barton-Bellessa. "Correlates of Perceived Dangerousness among Jail Staff." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Orlando, FL, 2015.

Professional Conference Papers (cont.)

Paoline, Eugene A. III, Eric Lambert, Nancy Hogan, Marie Griffin, and Bitna Kim. "A Career and Life Stage Analysis of Jail Staff Outcomes." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Orlando, FL, 2015.

Terrill, William, Eugene A. Paoline III, and Michael Rossler. "Higher Education and Police Officers' Perceptions of their Work Environment." Paper presented at the annual meeting of the American Society of Criminology, Atlanta, Georgia, 2013.

Weidner, Robert, Jason Ingram, Eugene A. Paoline III, and William Terrill. "Supervisory Influences and Less-Lethal Force Policies: Examining the Sergeant-Officer Attitudinal Relationship." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, New York, NY, 2012.

Terrill, William and Eugene A. Paoline III. "Police Use of Force Practices and Policies: A Multi-City Examination." Paper presented at the annual meeting of the American Society of Criminology, Philadelphia, Pennsylvania, 2009.

Paoline, Eugene A. III and Heidi S. Bonner. "Patrol Officers' Perceptions of Non-Lethal Force Policies: Assistance, Restrictiveness, and Guidance." Paper presented at the annual meeting of the American Society of Criminology, St. Louis, Missouri, 2008.

Terrill, William and Eugene A. Paoline III. "Police Use of Force Policy Types: Results from a National Agency Survey." Paper presented at the annual meeting of the American Society of Criminology, Los Angeles, California, 2006.

Applegate, Brandon K. and Eugene A. Paoline III. "Jail Staff Perceptions of the Work Environment: Traditional Versus Direct Supervision." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Baltimore, MD, 2006.

Terrill, William and Eugene A. Paoline III. "Police Discretion: Examining Inaction." Paper presented at the annual meeting of the American Society of Criminology, Toronto, Canada, 2005.

Lambert, Eric G., Michael Bryant, Eugene A. Paoline III, and Nancy Hogan. "The Good Life: The Issue of Life Satisfaction for Correctional Staff and the Impact of Job Satisfaction and Occupational Stressors - An Exploratory Study." Paper presented at the annual meeting of the Midwest Criminal Justice Association, Chicago, IL, 2004.

Paoline, Eugene A. III. "Patrol Officer Background Characteristics, Occupational Attributes, and Police Culture." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Las Vegas, NV, 2004.

Lambert, Eric G. and Eugene A. Paoline III. "The Impact of Centralization and Formalization on Correctional Staff Job Satisfaction." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Boston, MA, 2003.

Professional Conference Papers (cont.)

Paoline, Eugene A. III. "An Empirical Examination of Attitudinal Fragmentation in Police Culture." Paper presented at the annual meeting of the American Society of Criminology, Chicago, IL, 2002.

Reynolds, Kenneth M., Paoline, Eugene A. III, and Cory Watkins. "Correctional Staff Perspectives on the Work Environment: A Multidimensional Assessment." Paper presented at the annual meeting of the American Society of Criminology, Chicago, IL, 2002.

Paoline, Eugene A. III and John J. Sloan III. "Contemporary Campus Law Enforcement Agencies in the United States: Assessing Variability in Organizational Structures." Paper presented at the annual meeting of the American Society of Criminology, Atlanta, GA, 2001.

Terrill, William, Paoline, Eugene A. III, and Peter K. Manning. "Police Culture and Coercion." Paper presented at the annual meeting of the American Society of Criminology, Atlanta, GA, 2001.

Bernard, Thomas J. and Eugene A. Paoline III. "Criminal Justice and General Systems Theory." Paper presented at the annual meeting of the American Society of Criminology, San Francisco, CA, 2000.

Worden, Robert E., Stephanie M. Myers, and Eugene A. Paoline III. "Dimensions of Patrol Officers' Performance and Behavior: Conceptualization and Measurement." Paper presented at the annual meeting of the American Society of Criminology, San Francisco, CA, 2000.

Worden, Robert E., Stephanie M. Myers, and Eugene A. Paoline III. "Police Behavior and Police Performance: Theory and Measurement." Paper presented at the annual meeting of the American Society of Criminology, Toronto, Canada, 1999.

Paoline, Eugene A. III. "An Examination of Cultural Attitudes of Police." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Orlando, FL, 1999.

Myers, Stephanie M., Eugene A. Paoline III, and Robert E. Worden. "Patrol Officers' Characteristics, Attitudes, and Performance." Paper presented at the annual meeting of the American Society of Criminology, Washington DC, 1998.

Paoline, Eugene A. III, Stephanie M. Myers, and Robert E. Worden. "Officer Background Characteristics and Outlooks." Paper Presented at the annual meeting of the American Society of Criminology, San Diego, CA, 1997.

Other Conference Participation

Author meets critics, author (with William Terrill), "Police Culture: Adapting to the Strains of the Job." Conducted at the annual meeting of the Academy of Criminal Justice Sciences, Orlando, FL, 2015.

Roundtable co-chair & discussant (with William Terrill), "Police Use of Force: Various Perspectives from a Special Issue of the Journal of Crime & Justice." Chaired at the annual meeting of the American Society of Criminology, Washington, DC, 2011.

Other Conference Participation (cont.)

Panel chair, "The Police Decision to Arrest, Cite, Warn, or Take No Action." Chaired at the annual meeting of the American Society of Criminology, Toronto, Canada, 2005.

Panel chair, "Issues in Police Culture, Ethics, and Stress." Chaired at the annual meeting of the Academy of Criminal Justice Sciences, Las Vegas, NV, 2004.

Panel chair, "Police Culture: Origins and Effects." Chaired at the annual meeting of the American Society of Criminology, Chicago, Illinois, 2002.

Discussant, "Police Culture and Behavior." Discussant at the annual meeting of the American Society of Criminology, Atlanta, Georgia, 2001.

Panel chair, "Statistical Issues in Data Analysis." Chaired at the annual meeting of the American Society of Criminology, San Francisco, California, 2000.

Panel chair, "Perspectives on Police Culture." Chaired at the annual meeting of the American Society of Criminology, Washington DC, 1998.

Discussant, "Perspectives on Police Culture." Chaired at the annual meeting of the American Society of Criminology, Washington DC, 1998.

Consulting

Consultant, "The Role of Community Policing in the Occupy Movement – Tampa Police Department (TPD), Tampa, Florida," American University, Office of Community Oriented Policing Services, January, 2014.

Certified Study Reviewer, "Crime Solutions," Office of Justice Programs, U.S. Department of Justice, April, 2011 – present.

Consultant, "National Study of Police Innovation - Hillsborough County Sheriff's Office (HCSO), Hillsborough County, Florida," George Mason University, U.S. Department of Justice, December, 2002.

Consultant, "National Study of Police Innovation - Albany Police Department (APD), Albany, New York," University of Nebraska at Omaha, U.S. Department of Justice, June, 2000.

TEACHING

Courses Taught

At the University of Central Florida:

Seminar in Criminal Justice Theory (Doctoral class)

Foundations of Law Enforcement (Graduate class)

Police Socialization and Culture (Graduate class)

Police and Society

Crime in America

Emergent Issues in Criminal Justice: Police Socialization and Culture (Scholars Track)

At the University of Northern Iowa:

The Sociology of Policing
Police Socialization and Culture

At the University at Albany, State University of New York:

Policing in a Free Society
Introduction to the Nature of Crime & Its Control
Ideology and Crime
Systematic Social Observation
Introduction to Criminal Justice Administration

Teaching Development

Workshop: *Designing a Meaningful Early Assignment to Document Academic Activity*. Faculty Center for Teaching and Learning, University of Central Florida, 2015.

Workshop: *How to Create a Culturally Sensitive Learning Environment*. Faculty Center for Teaching and Learning, University of Central Florida, 2014.

Workshop: *Using Gradebook to Prepare Final Grades*. Faculty Center for Teaching and Learning, University of Central Florida, 2014.

Workshop: *Ethics in the Scholarship of Teaching and Learning*. Faculty Center for Teaching and Learning, University of Central Florida, 2013.

Workshop: *Nonverbal Communication*. Faculty Center for Teaching and Learning, University of Central Florida, 2013.

Workshop: *Turnitin.com*. Faculty Center for Teaching and Learning, University of Central Florida, 2012.

Workshop: *Capturing Narrated Powerpoints*. Faculty Center for Teaching and Learning, University of Central Florida, 2012.

Workshop: *101 Tips for Teaching Large Classes*. Faculty Center for Teaching and Learning, University of Central Florida, 2006.

Dissertation and Thesis Committees

Chair, Laurie A. Gould, *Perceptions of Risk and Need in the Classification and Supervision of Offenders in the Community Corrections Setting*, University of Central Florida, Public Affairs Ph.D. Program, 2008.

Committee Member, Robert Lord, *Falling Behind in Pay: A Longitudinal Test of Equity Theory Among Florida Municipal Police Agencies' Salaries by Metropolitan Statistical Areas for the Years 2000-2011*, University of Central Florida, Public Affairs Ph.D. Program, 2013-present.

Committee Member, Erika J. Brooke, *Military and Combat Experience Among Prison Inmates*, University of Central Florida, Public Affairs Ph.D. Program, 2015.

Committee Member, William T. Cail, *The Effect of Video Surveillance Cameras on Less Lethal Police Use of Force Decisions*, University of Central Florida, Public Affairs Ph.D. Program, 2014.

Committee Member, David A. Rhinehart, *The School Resource Officer in Public Schools: A Deterrent Effect on Juvenile Crime*, University of Central Florida, Public Affairs Ph.D. Program, 2011.

Committee Member, Michael E. Miller, *Examining the Effectiveness of Taser Use by Police*, University of Central Florida, Public Affairs Ph.D. Program, 2008.

Chair, Matthew Ceriale, *Early Intervention Systems in Review*, Undergraduate Honors in the Major Thesis, University of Central Florida, Criminal Justice, 2015-2016.

Committee Member, Thiago Coelho, *Citizens Policing the Police: An Evaluation of Citizens' Recording Police Officer and Wiretapping Laws*, Undergraduate Honors in the Major Thesis, University of Central Florida, Legal Studies, 2013.

Committee Member, Evelyn Botero, *The Effects of Distress on Motivation in the Police Force*, Undergraduate Honors in the Major Thesis, University of Central Florida, Psychology, 2007.

Committee Member, Paul A. Sanchez, *Coming of Age: A Look at Minimum Age Requirements in Professional Sports*, Undergraduate Honors in the Major Thesis, University of Central Florida, Legal Studies & Criminal Justice, 2005.

PROFESSIONAL SERVICE

Editorial Board for *Journal of Crime & Justice* (2010 - present) and *Race and Justice: An International Journal* (2014 – present)

Associate Book Review Editor for *Police Practice & Research: An International Journal* (2004-2006).

Ad hoc reviewer for:

Criminology

Justice Quarterly

Social Problems

Journal of Experimental Criminology

Journal of Quantitative Criminology

Journal of Research in Crime and Delinquency

Crime & Delinquency

Police Quarterly

Policing: An International Journal of Police Strategies and Management

Police Practice and Research: An International Journal

The Journal of Criminal Justice

Australian and New Zealand Journal of Criminology

Women and Criminal Justice

Gender Issues

Race and Justice: An International Journal

International Criminal Justice Review

International Journal of Comparative and Applied Criminal Justice

Journal of Crime & Justice

Criminal Justice and Behavior

Criminal Justice Review

Criminal Justice Policy Review

American Journal of Criminal Justice

Security Journal

Public Administration Review

International Journal of Occupational Medicine and Environmental Health

Media Interviews for:

Orlando Sentinel (Orlando, Florida), “Taser Use Down at Orlando Police Department, Other Local Agencies,” June 7, 2016.

FOX35 News (Orlando, Florida), “Some Call for More Women in Policing,” November 23, 2015.

Orlando Sentinel (Orlando, Florida), “UCF Professor to Study How Orlando Cops Use Force,” November 10, 2015.

The Daytona Beach News-Journal (Daytona Beach, Florida), “No One in Florida Tracks Police Shootings,” November 7, 2015.

The Huffington Post, “All Over the Country, Kids are Getting Shocked with Tasers and Sprayed with Chemicals in School,” April 3, 2015.

Let’s Talk About It (Miami, Florida), “A 16-year old Shot by the NYPD and a Community Outraged,” March 13, 2013.

The Daytona Beach News-Journal (Daytona Beach, Florida), “Tasers in Schools a ‘Non-Issue’,” September 4, 2012.

Central Florida Future/UCF Newspaper (Orlando, Florida), “Stun Gun Use Protects Officers, Harms Suspects,” June 20, 2012.

Poughkeepsie Journal (Poughkeepsie, New York), “Two Men Die: Do Tasers Kill?,” June 17, 2012.

Orlando Sentinel (Orlando, Florida), “Man’s Death Spurs More Questions on Police Taser Use,” June 2, 2012.

WESH2 News (Orlando, Florida), “Study Looks at Stun Gun Injuries,” May 30, 2012.

Omaha World-Herald (Omaha, Nebraska), “Police Zapped Man, 79, with Taser,” May 23, 2012.

TBO.com & *WFLA8 News* (Tampa, Florida), “Pregnant Mother Hit with Stun Gun, Claims Excessive Force,” May 5, 2012.

Tampa Bay Times (Tampa, Florida), “Experts say Trooper’s Use of Taser on Woman Raises Questions,” February 18, 2012.

The Journal Times (Racine, Wisconsin), “Proof of Insurance—Local Law Enforcement Agencies Have Varying Plans on New Law,” October 8, 2011.

Public Affairs Today/UCF TV (Orlando, Florida), “Police Culture,” November 12, 2010.

UNIVERSITY SERVICE

At the University of Central Florida:

University Level

Member, Downtown Academic Programs Committee, 2015-present.

Member, COACH Strategy Subcommittee on Departmental Leadership, 2016-present.

Member, Associate Dean in the College of Graduate Studies Search Committee, 2016-present.

College Level

Member, Faculty Council, College of Health and Public Affairs (COHPA), 2003-2005; 2007.

Member, Research Coordination Committee, College of Health and Public Affairs (COHPA), 2005-2009.

Member, COHPA Dean Search Committee, College of Health and Public Affairs (COHPA), 2007 - 2008.

Member, COHPA Research Incentive Award Committee, College of Health and Public Affairs (COHPA), 2010.

Member, COHPA Teaching Incentive Award Committee, College of Health and Public Affairs (COHPA), 2011 - 2012.

Member, COHPA Research Council, College of Health and Public Affairs (COHPA), 2014-2016.

Chair, COHPA Research Incentive Award Committee, College of Health and Public Affairs (COHPA), 2015.

Member, COHPA Research Incentive Award Committee, College of Health and Public Affairs (COHPA), 2016.

Member, COHPA Graduate Council Committee, College of Health and Public Affairs (COHPA), 2016-present.

Department Level

Library Liaison, Department of Criminal Justice, 2001-present.

Member, Ph.D. Development Committee, Department of Criminal Justice, 2001-2003; 2007-2013.

Member, Faculty Governance Committee, Department of Criminal Justice, 2004-present.

Member, Graduate Program Committee, Department of Criminal Justice, 2005-2016.

Member, Criminal Justice & Legal Studies Chair Search Committee, Department of Criminal Justice and Legal Studies, 2005-2007.

Member, Graduate Affairs Committee, Department of Criminal Justice, 2008-present.

Member, Faculty Search Committee, Department of Criminal Justice, 2009-2010.

Member, Faculty Search Committee, Department of Criminal Justice, 2012-2013.

Chair, Ph.D. Police Concentration Area Committee, Department of Criminal Justice, 2014-present.

Member, Ph.D. Core Curriculum Committee, Department of Criminal Justice, 2014-present.

Member, Doctoral Program Committee, Department of Criminal Justice, 2014-2016.

Member, Doctoral Admissions Committee, Department of Criminal Justice, 2014-present.

Member, Criminal Justice Chair Search Committee, Department of Criminal Justice, 2014.

Chair, Faculty Search Committee, Department of Criminal Justice, 2014-2015.

Member, Faculty Search Committee, Department of Criminal Justice, 2015-2016.

Department Level (cont.)

Chair, Graduate Admissions Committee, Department of Criminal Justice, 2016-present.

Chair, Graduate Program Committee, Department of Criminal Justice, 2016-present.

Member, Criminal Justice Bylaws Committee, Department of Criminal Justice, 2016-present.

At the University of Northern Iowa:

Member, Master's Degree Development Committee, Department of Sociology, Anthropology, and Criminology, 8/2000-5/2001.

AWARDS

2014 Research Incentive Award (RIA), University of Central Florida

2007 Research Incentive Award (RIA), University of Central Florida

2006 Teaching Incentive Program (TIP) Award, University of Central Florida

PROFESSIONAL MEMBERSHIPS

American Society of Criminology

Academy of Criminal Justice Sciences

Southern Criminal Justice Association

Midwestern Criminal Justice Association

REFERENCES

Available Upon Request

SETH W. STOUGHTON

701 Main Street
Columbia, SC 29208
swstough@law.sc.edu

ACADEMIC APPOINTMENTS

University of South Carolina School of Law

Assistant Professor, July 2014 – present

Courses: Criminal Law, Criminal Procedure, Regulation of Vice, Advanced Topics in Criminal Law

Awards: Eboni S. Nelson Award, 2015 (presented by BLSA)

Service: Rule of Law Collaborative Associate
Faculty Senator (2014-present)
Academic Technology Committee (2014-present)
Academic Self-Study Committee (2014-present)

Harvard Law School

Climenko Fellow & Lecturer on Law, August 2012 – June 2014

Courses: Legal Research & Writing, Regulation of Vice

EDUCATION

University of Virginia School of Law

J.D., Order of the Coif, 2011

Articles Editor, Virginia Law Review (Managing Board)

Thomas Marshall Miller Prize

Elsie Hughes Cabell Scholar

Supreme Court Litigation Clinic Participant

Florida State University

B.A. English (Literature), 2008

Rohrmann Scholar

Certificates in Emergency Management and Public Administration

BAR ADMISSIONS

Virginia (Associate Member)

PROFESSIONAL EXPERIENCE

The Honorable Kenneth F. Ripple

United States Court of Appeals for the Seventh Circuit

Clerk, August 2011 – August 2012

McGuireWoods, Charlottesville, Virginia

Legal Intern (Part Time), February 2010 – May 2010; June 2011 – July 2011

Brooks Pierce, Greensboro, North Carolina

Summer Associate, July 2010 – August 2010

Jones Day, Atlanta, Georgia

Summer Associate, May 2010 – July 2010

Charlottesville Public Defender's Office, Charlottesville, Virginia

Pro Bono Intern, January 2010

**PROFESSIONAL
EXPERIENCE
(CON'T)**

McKenna Long & Aldridge, Atlanta, Georgia
Summer Associate, May 2009 – July 2009

Florida Dept. of Education, Office of Inspector General, Tallahassee, Florida
Investigator, November 2005 – July 2008

Activities

Conducted complex criminal and administrative investigations
Directed multi-agency investigations into tuition voucher fraud
Led a state Whistle-Blower investigation into the state's allegedly unlawful
garnishment of \$10 million from student loan borrowers in default

Awards

Prudential–Davis Productivity Commendation, 2008
Meritorious Performance Award, 2007

Certifications & Specialized Training

Certified Fraud Examiner, Ass'n of Certified Fraud Examiners, 2007
Certified Inspector General Investigator, Ass'n of Inspectors General, 2007

Tallahassee Police Department, Tallahassee, Florida

Police Officer, March 2001 – October 2005 (part time until June 2006)

Activities

Uniformed Patrol Officer, March 2001 – October 2005
Special Response Team member, 2003 – 2005
Reserve Officer, November 2005 – June 2006
Taught report writing and technology to sworn and civilian employees
Developed policies related to new technologies
Prepared and taught self-defense courses
Developed and implemented an children's abduction/molestation prevention
program

Awards

City of Tallahassee Formal Achievement Award, 2004

Certifications & Specialized Training

Instructor Certifications:

Baton, Chemical Aerosol Projector, Specialty Impact Munitions,
Chemical Munitions, and Riot Response/Crowd Control techniques
Operator Certifications (selected)
Patrol Rifle, Pepper-ball, and Breath Alcohol Testing

**ACADEMIC
PUBLICATIONS
& WORKS IN
PROGRESS**

Moonlighting: The Private Employment of Off-Duty Officers, Work in Progress

A Tactical Fourth Amendment, Work in Progress (with Brandon Garrett)

Law Enforcement's "Warrior" Problem, 128 HARV. L. REV. FORUM 225 (2015)

Evidentiary Rulings as Police Reform, 69 MIAMI L. REV. 429 (2015)

The Incidental Regulation of Policing, 98 MINN. L. REV. 2179 (2014)

Policing Facts, 88 TUL. L. REV. 847 (2014)

*Modern Police Practices: Arizona v. Gant's Illusory Restriction of Vehicle Searches
Incident to Arrest*, 97 VA. L. REV. 1727 (2011)

**OTHER
PUBLICATIONS**

What A Police Expert Calls The Most Ignored Cause Of Cop Violence, TALKING POINTS MEMO, June 15, 2015

A Former Cop On What Went Wrong in McKinney, TALKING POINTS MEMO (cover feature), June 9, 2015

8 Things We Still Get Wrong About Policing, TIME, May 15, 2015

Police Warriors or Community Guardians? WASHINGTON MONTHLY, Apr. 17, 2015

Police Shouldn't Ask if a Shooting is Justified, But If It's Avoidable, THE NEW YORK TIMES, Apr. 9, 2015

How Police Training Contributes to Avoidable Deaths, THE ATLANTIC, Dec. 12, 2014

Trust Is a Police Officer's Greatest Protection, THE NEW YORK TIMES, Nov. 26, 2014

A Windfall for the Government, Take 2: Seth Stoughton on Arizona v. Gant, EVIDENCEPROGBLOG, Oct. 6, 2014

What Would a Better Ferguson Response Have Looked Like?, VERDICT JUSTIA, Sept. 12, 2014

Supreme Court Has Myopic View of Police Chases, BRENNAN CENTER FOR JUSTICE, June 16, 2014

**SELECTED
PRESENTATIONS
& SPEAKING
ENGAGEMENTS**

Police Technology, University of South Carolina School of Law, Apr. 1, 2015

Vice, Pornography, and American Culture, University of South Carolina School of Law, Mar. 19, 2015

Police Officer Use of Deadly Force & Shootings: Analysis of Training, Investigation, and Review, Cuyahoga County Prosecutor's Office, Mar. 12, 2015 (6 CLE hours)

Tactical Fourth Amendment, Law of the Police Works-in-Progress Roundtable, University of Virginia School of Law, Mar. 5-6, 2015

Law Enforcement's "Warrior" Problem, The Thin Blue Line: Policing Post-Ferguson, St. Louis University School of Law, Feb. 20, 2015 (4.5 CLE hours)

And Justice For All, Martin Luther King Day Commemoration Panel Discussion, University of South Carolina School of Law, Jan. 15, 2015

Strengthening Communities by Improving Police Training, 2015 Rally for Unity: Building Stronger Communities in South Carolina, Jan. 10, 2014

**SELECTED
PRESENTATIONS
& SPEAKING
ENGAGEMENTS
(CON'T)**

Policing & Immigration Colloquium, University of South Carolina College of Social Work, Oct. 10, 2014

Evidentiary Rulings as Police Reform, CrimFest Conference, July 2014
Domestic Policing & the Rule of Law, Emerging Scholars in Rule of Law Workshop, University of South Carolina School of Law, April 2014

Leading From Below: Trial Courts & Criminal Procedure Symposium, University of Miami School of Law, February 2014

The Incidental Regulation of Policing, Faculty Workshop, Harvard Law School, October 2013

Policing the Constitution, Law & Society Association Conference, May 2013

Regulating Police, Climenko Workshop, Harvard Law School, March 2013

A Meta-Analysis of Fiscal Loss and Fraud Prevention in Disaster Recovery Consumer and Victim Populations, The International Emergency Management Society Conference, Prague, Czech Republic, June 2008

**SELECTED MEDIA
INTERVIEWS &
APPEARANCES**

Rebuilding the Trust, CHRISTIAN SCIENCE MONITOR, June 28, 2015

Radio Interview, *Breaking News Consumer's Handbook: Bearing Witness Edition*, ON THE MEDIA, June 12, 2015

La policía de EEUU, cuestionada por múltiples casos de agresiones a negros, AGENCE FRANCE-PRESSE, June 11, 2015

John Marshall, *A Few Thoughts on Policing*, TALKING POINTS MEMO, June 10, 2015

Renee Lewis, *Experts Question Aggressive Tactics in Video of McKinney Officer*, AL JAZEERA AMERICA, June 8, 2015

Radio Interview, *WORLD HAVE YOUR SAY*, BBC, June 8, 2015

Policing Specialists Defend Officers Who Fatally Shot Terror Suspect, THE BOSTON GLOBE, June 6, 2015

Radio Interview, *MORNING WAVE IN BUSAN 90.5* (Busan, South Korea), May 31, 2015

White House Embarks on a Community Policing Balancing Act, THE PHILADELPHIA TRIBUNE, May 22, 2015

Radio Interview, *Why Do US Cops Keep Killing Unarmed Black Men?*, THE INQUIRY, BBC, May 19, 2015

**SELECTED MEDIA
INTERVIEWS &
APPEARANCES
(CON'T)**

Stopping Some Military Equipment Transfers to Police is a Start, But Only a Start, THE WASHINGTON POST, May 18, 2015

Fewer Complaints Filed Against Police Officers, but Review is Mixed, WALL STREET JOURNAL, May 14, 2015

The Increasing Isolation of America's Police, THE WASHINGTON POST, May 11, 2015

2 Shootings Caught on Video, 2 Young Black Victims, and Zero Charges Against the Police, MOTHER JONES, May 5, 2015

Complaints in Baltimore About Law Offering Protections for Officers, THE NEW YORK TIMES, Apr. 30, 2015

Police-Involved Shootings Highlight Problem with Law Enforcement Culture, ALL THINGS CONSIDERED, NATIONAL PUBLIC RADIO (radio interview), Apr. 10, 2015

CNN NEWSROOM WITH BROOKE BALDWIN, CNN (television interview), Apr. 10, 2015

Gap Remains in Video Record of Fatal SC Police Shooting, THE NEW YORK TIMES, Apr. 10, 2015

USA: Kritik an Ausbildung von Polizisten, DER SPEIGEL, APR. 9, 2015

ANDERSON COOPER 360, CNN (television interview), Apr. 8, 2015

WORLD HAVE YOUR SAY, BBC WORLD SERVICE (radio interview), Apr. 8, 2015

In Utah, Police Learn to Defuse Conflict But Are Warned of Risks, THE SALT LAKE TRIBUNE, Mar. 29, 2015

A Chance to Reduced Police Killings of the Disabled, AL JAZEERA AMERICA, Mar. 23, 2015

CNN INTERNATIONAL (U.S., U.K., & Europe), CNN (television interview), Mar. 22, 2015

We're Asking the Wrong Questions about Police Shootings, WASHINGTON POST, Mar. 18, 2015

The Neighborhood That Policed Itself, THE DAILY BEAST, Jan. 28, 2015

CANADIAN BROADCASTING CORPORATION, (radio interview: multiple stations) Nov. 26, 2014 and Aug. 15, 2014