

Tenth Office of Independent Review **Annual Report**

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Foreword

For centuries, society has punished those who offend its laws and mores by depriving them of liberty in jails and prisons. These inmates historically have lived in conditions of confinement ranging from substandard to inhumane, with most of the general populace showing little regard for either the conditions of those jails and prisons or the offenders who must live in them. In general, the inmate in America is better off than his historical predecessors. The Eighth Amendment to the United States Constitution prevents “cruel and unusual punishment,” which has been interpreted to provide base line protections and minimal standards of care to inmates, and judges have stepped in when those minimal standards have not been met. However, by and large, the criminally confined still engender little sympathy for or attention to their conditions of confinement.

That being said, those entrusted with securing, maintaining, and protecting inmates must set aside any inclination to consider them only as criminals and therefore less worthy of humane treatment. In addition to ensuring that basic human needs are met, they must refrain from abusing their authority through infliction of inappropriate force. As importantly, those providing security should, whenever practicable, maintain that security through means other than physical force and resort to use of force only when there is no other viable alternative.

Last fall, controversy surrounding the jails in Los Angeles erupted and generated concern about the conditions of the County’s jails. When OIR first started its work in 2001, the jails were overfilled with inmates. Cells designed in the 1960’s for two non-violent inmates were housing four inmates with violent histories, and cells designed for four inmates were crammed with six. It was not uncommon to have inmates do their time as “floor sleepers,” or crowded into “day rooms.” Using the day rooms as housing made it virtually impossible for deputies to monitor and was a contributing cause in at least one horrific jail homicide.

Jail overcrowding also caused delays and undesirable situations at the intake stage. For instance, inmates being processed into the jail waited for days before being medically evaluated while

spending time sleeping on the floor or hard benches. The situation was even worse in the 1980's, when inmates were required to sleep on the roof of the old Hall of Justice Building because there was nowhere else to house them. Mental health treatment for inmates in those days was almost non-existent. Because of pressure from the United States Department of Justice, mental health services for inmates have improved. Litigation by the ACLU and other public interest groups have been the motivating force behind some of the Department's changes to improve jail conditions.

The use of inappropriate force by jail custodians has also been an intractable problem for centuries. Jails and prisons are closed societies where the custodians have sometimes felt they had authority to inflict physical punishment with impunity. Because it is only the inmates and jail guards who "live" in that society, in which the outside world has little interest in or ability to view, centuries of mistreatment have gone unaddressed.

Considered in this context, the recent attention drawn to the jails in Los Angeles County over the past year is remarkable. Whatever the reasons, the fact that there has been attention to the issues is, in our view, a welcome phenomenon. It has been too long that too few have been focused on the issue of the treatment of inmates. Outside eyes and interest always provide an opportunity for inspection, introspection, and reform. We have used the attention of the past year to push harder on programs, initiatives, and policies that are designed to check and decrease the use of inappropriate force. We have used the attention introspectively to see whether we can increase our efforts, reorient our resources, and focus our attention to the jails to make our impact more effective.

And while more needs to be done, we are optimistic about some of those reform efforts taking root. The Department finally has cameras in Men's Central Jail (MCJ) and there is promise that the other jails will soon have them as well. The presence of cameras cannot be understated – those lenses provide an objective window to the cloistered jail community and have already provided an invaluable tool for objective accountability and insight. It is unfortunate that it took years of discussion and delay before they were installed and operational at MCJ. While cameras have also been installed at Twin Towers and the Inmate Reception Center, "infrastructure" issues have prevented them from going on line. The Department has advanced other reforms as well, many of which we discuss in Part One of this Tenth Annual Report.

We are not going to use these pages to further the debate about how the Los Angeles County Jail system stacks up to other correctional systems. We have seen how the same sets of numbers have been used by advocates on both sides to make their point about whether or not the jails in Los Angeles County are the "worst of the worst." Suffice it to say that our collective experience touring other jails and prisons and working on past cases has taken us to prisons and jails where inmates are housed in tents; where inmates until recently were crammed in spaces intended to be workshops or gymnasiums; where inmates were receiving medical care so substandard that there were large numbers of unnecessary inmate deaths as a result; where investigations of

inmate abuse did not result in accountability because 40 percent of the investigations were not completed during the statutory deadline; where guards provably instructed inmates to beat up other inmates on a systemic basis; and where jail custodians routinely abused inmates in open and provable ways. The conditions in other correctional facilities suggest that inmate abuse and substandard conditions are not unique to Los Angeles County, with comparable sized jail facilities in the United States each having their share of allegations of abuse. That said, the fact that many in the Los Angeles County community have now focused attention on the County jails is a good thing, and the internal and external efforts to address the problems are welcoming.

While force numbers have risen and fallen, sometimes inexplicably, a rise in numbers should be a cause for concern, in the same way that a rise in deputy-involved shootings should be a focus of attention. However, OIR believes that it is the individual cases and analyses that provide more insight into what is going on than force numbers overall. That is why we were dismayed to learn that we had been shut out of some of those analyses over the years that we have provided oversight for the Sheriff's Department.

We have identified contributing causes to the use of force by deputies in the jail in the past, but it cannot hurt to reiterate them here:

1. At Men's Central Jail the physical plant itself presents a challenge. The linear design of the jail in old fashioned cell blocks makes it difficult for deputies to monitor the inmates. The age of the jail makes plumbing, temperature, and other housing conditions difficult to maintain. The configuration of inmate housing eliminates the opportunity for direct supervision or other more progressive housing configurations.
2. The deputy/inmate relationship needs continual work. Leadership needs to strive to ensure that all deputies assigned to Custody understand the importance of their work and the need for vigilance, and accept that their main responsibility is to keep inmates housed in decent conditions, with proper medical care and other necessities of life, and to keep them safe from each other.
3. Deputies need to recognize how force is never a desirable outcome in resolving issues with inmates. Certainly, in some situations it is a necessary outcome. Except in situations in which they are required to intervene to stop an assault, however, deputies should be smart about ways they can resolve conflict without resorting to force.
4. Sergeants must understand their role of modeling conduct for their deputies. In any potential emergent incident that could lead to force, a sergeant should be at the ready to assist deputies in finding non-force solutions to the situation. Jail managers must find ways to reward the vigilant first level supervisors and hold accountable those who are not.
5. When force does occur, the Department must ensure that the investigations of such force incidents are thorough, fair, and objective. Objectivity is critical; those entrusted with the investigations must not immediately accept as true the deputies' version of events

and, as with any fair investigation, collect the facts in a thorough and dispassionate way. Supervisory checks and review must be in place to ensure that the investigative work is done consistent with principles of fairness and objective fact gathering.

6. When force incidents are reviewed, the Department's reviewing body needs to consider not only whether the force was "in policy" but whether there were other actions taken by deputies that prompted the need for force, whether the sergeant was on scene, and if not, why not, and whether the incident suggests performance by deputies that are inconsistent with tactical principles or the overarching core values of the organization.
7. The Department must continue to rid itself of deputies who abuse their authority and inflict physical punishment on inmates. When such abuse can be proven, the Department must continue to take action to separate those deputies from their badges.
8. Deputies should recognize the implications of mistreating inmates because they believe they can get away with it. Searches of cells should not result in unnecessary disrespect to inmate property. Deputies should communicate respectfully with inmates. Sergeants and peers who see deputies conduct themselves in ways inconsistent with these precepts should step in and explain why such behavior only increases mutual disrespect, contributes to a feeling of malaise in the jail, and presents officer safety issues to other deputies.
9. The Department's leaders must speak consistently about principles aligned with the Sheriff's vision of how he expects personnel to conduct themselves in the jail setting. Contrary to what we have seen in the recent past, no one at any level of the Department's command structure should be confused about what that vision is, and the command staff must not communicate inconsistent messages.
10. The Department should be continually reviewing force trends and individual cases to interrupt problematic incidents and reward those responsible for reducing the numbers of such incidents. In order to facilitate this work, force packages, inmate complaints, and internal investigations must be timely completed and entered into a unified database. Systems should be developed that ensure that those in the highest command push their personnel to complete essential work. Those who do not comply with reasonable deadlines should be held responsible for non-compliance.
11. Inmates who have difficulty coping with jail conditions because of mental illness should be identified and receive the treatment they need to maintain functionality. Systems should prevent inmates with a history of mental illness from finding their way into the general population where they can create a risk factor for themselves, deputies, and other inmates.
12. The Department should continue to find ways to shift the jails from simply warehousing people to providing a more productive experience. Rehabilitation, recreation, and education should be the cornerstone to reducing tensions in the jail, decreasing idle time, and reducing inmate-on-inmate violence.

Our report is intended to provide insight and transparency into how the Department has attempted to address violence in the jails and to explain initiatives that we have developed or supported over the past year. The report also sets out additional recommendations for reform to prevent reoccurrence of past mistakes and to further improve deputy conduct and institutional accountability.

While OIR has given a great deal of attention to issues surrounding the jail during the past year, we have, of course, been busy with other work as well. As one of the largest law enforcement agencies in the world, the Sheriff's Department has other responsibilities that OIR regularly monitors and reviews. Our Tenth Annual Report begins with further discussion of the jails, but also discusses trends and challenges faced by the Department outside of the jail setting. As we do every year, we look forward to any feedback from our readers as we move forward into the months ahead.

Changes in Jail Policies and Practices

Violence in the County Jails: A Year of Turmoil and Reform

The Sheriff's Department's operation of the County's jails has been the source of a great amount of controversy and concern over the past year. Beginning with the news in August 2011 that the FBI had an inmate informant in Men's Central Jail (MCJ) who enticed a deputy to smuggle a cell phone to him, and followed shortly thereafter by an American Civil Liberties Union (ACLU) press conference announcing the filing in its longstanding litigation against the Sheriff's Department¹ of a total of 78 declarations alleging deputy abuse of inmates, the Department's jails have been under intense scrutiny. Even before those two events, the media had begun to focus on MCJ following a highly publicized fight between deputies at the jail's 2010 Christmas party and subsequent allegations that some of the deputies involved were part of a gang-like clique that routinely abused inmates.

The Department responded to the scrutiny by establishing a task force of Internal Criminal Investigations Bureau (ICIB) investigators to thoroughly examine all allegations of excessive force by jail deputies as well as the Commander Management Task Force, a group of commanders charged with inspecting and reforming jail conditions, policies, supervision, and training.

¹ In 1975, the ACLU filed *Rutherford v. Block*, a class action lawsuit challenging conditions of confinement in County Jail. Following trial, the court ordered various forms of injunctive relief and ongoing monitoring of the jails by the ACLU. Over the years, there have been numerous further orders by the court and stipulations between the parties, generally regarding overcrowding, medical care, and other issues affecting the welfare of inmates.

The Board of Supervisors also responded, assembling a Citizens' Commission on Jail Violence made up of a distinguished group of former judges, attorneys, community leaders, and a local police chief. The Commission is served by a General Counsel, Executive Director, and a large team of pro bono lawyers. The Commission's task is to review the root causes of the problem of deputies' inappropriate use of force in the jails and to recommend corrective action.

OIR has been active in the work of all these groups, meeting regularly with the Department's various task forces and assisting the Citizens' Commission on Jail Violence with background information and testimony whenever called upon. The scrutiny has been uncomfortable for the Department and, at times, for OIR, but we have always believed that bringing outside perspectives in to examine problems and explore solutions is essential to moving an organization forward. The past year has been particularly productive for reforming the Department's jail operations, policies, and procedures as OIR has tried to capitalize on all of the scrutiny of the jails and push reforms we believe will improve the way the Department handles the use of force by deputies as well as other issues affecting the well-being of inmates. We highlight a number of these reforms and changes below.

Internal Criminal Investigations Bureau's Jail Investigations Task Force

When the Department discovered in August 2011 that a deputy had smuggled a cell phone to an inmate at MCJ and that the inmate was working as an informant for the FBI in its investigation of allegations of deputy misconduct inside the jails, the Department created a Jail Investigations Task Force (JITF or Task Force) within its ICIB. The JITF initially was tasked with looking at the smuggled cell phone case and some additional allegations that emanated from it. When additional allegations surfaced, including those contained in the 78 declarations of inmates, former inmates, and civilian witnesses filed by the ACLU in September 2011, each of those allegations was assigned to the JITF, which by then was staffed with roughly 30 sergeants, detectives, crime analysts, and personnel on loan from other units. In all, the Task Force has been tasked with completing well over 100 investigations into allegations of potentially criminal conduct by deputies and custody assistants working the jails.

The greatest amount of interest from the public and the County has been focused on the 78 declarations filed by the ACLU in September 2011. Several of those declarations contained allegations of impropriety but no allegations of criminal conduct, and were forwarded to the Internal Affairs Bureau (IAB) for investigation. The vast majority – roughly 70 cases – did allege potential criminal conduct and were assigned to the JITF. Between the filing of those declarations and the end of January 2012, only a handful of these investigations had been completed and sent to the District Attorney for review and a decision about whether to file charges against any involved deputies. OIR repeatedly expressed its dissatisfaction with the

pace of these investigations. In recent months, ICIB has shifted its priorities, stepped up the pace of its investigations, and committed to completing all of the ACLU declaration cases by October 2012. As of July 2012, the JITF had completed roughly 30 of the ACLU declaration cases. We are confident that ICIB will continue this focused effort and are hopeful it will meet its October deadline.

OIR has been involved with the Task Force since shortly after its creation. As the group came together and began its work, the Task Force held weekly briefings attended by OIR attorneys to discuss the status of cases. We are regularly consulted by investigators as they encounter issues in their investigations and need to make decisions about strategy or how to best focus their investigative resources. For example, one challenge of these investigations has been the length of time between the alleged incident and the initiation of the investigation. As a result, many of the inmates who may have been present and witnessed an incident are no longer in Sheriff's Department custody. Some have been released and may no longer reside at their last known address, and many are in various prisons throughout the state. In any given force incident, there may be as many as 60 to 100 other inmates housed in the area who may have seen or heard all or part of the event. Tracking down each of those individuals just to determine whether they may be witnesses is an enormously burdensome task. OIR has helped investigators decide when it is critical to locate and interview each potential witness or, conversely, when it is appropriate to conduct a "sampling" of inmates within a given housing location – that is, to identify cases where investigators can locate and interview a limited number of former inmates and, where their accounts are relatively consistent, eliminate the time and effort it would take to try to find all potential witnesses.²

OIR also reviews each investigation when it is completed. Initially, ICIB was sending OIR the investigative "books" at the same time it was forwarding them to the District Attorney (DA). After OIR raised significant concerns about the quality and fairness of one investigation that already had gone to the DA's office, the Task Force agreed to send us all investigations prior to considering them completed and forwarding them for a prosecutorial decision. Now, we review each investigation with the opportunity to provide input before the case is completed. Individual investigators and the Task Force as a whole have been receptive to our concerns and have completed additional investigative work when we have requested it.

Perhaps most importantly, OIR has participated in framing some bigger picture issues for the

² This challenge would have been less acute had LASD done a better job in the reported force cases of identifying and interviewing potential inmate witnesses at the time of the force incident. Unfortunately, in too many cases, the initial investigative response was underwhelming and there was no consistent practice of identifying and interviewing potential inmate witnesses. This poor "at the scene investigation" by the unit has hopefully been ameliorated on a going-forward basis as a result of LASD adopting more robust investigative protocols requiring the identification and interviewing of potential inmate witnesses, and a more critical oversight and review of these investigations by the Custody Force Review Committee.

Task Force and its investigators. For example, when we became concerned about the way in which investigators wrote summaries of interviews, we proposed that all interviews be transcribed, so that all reviewers, including the DA's office, would have the ability to read an entire interview rather than just a summary.³ Because Internal Affairs investigators routinely had these interviews transcribed as soon as the ICIB case was completed and transferred to IAB, this did not create a real resource issue for the Department, but was simply a matter of shifting resources for transcriptions from IAB to ICIB. The ICIB Captain and JITF Lieutenant agreed, and we expect that very soon transcriptions of all interviews completed by the JITF will be included in investigative materials.

OIR also has worked with the JITF on the timing of investigations. For example, some investigators were concerned – based on their conversations with the DA's office – that their investigative work may interfere with the prosecution of an inmate for the inmate's alleged assault on a law enforcement officer. (Many of these cases stem from reported force incidents, where a deputy alleges that an inmate punched or otherwise attacked the deputy, and the inmate denies this charge, alleging instead that the deputy used unlawful force and falsified the assault charge to cover his wrongdoing.) OIR argued that both criminal matters could proceed simultaneously and that to prioritize one over the other would be unjustified. If investigators uncover witnesses or evidence that tends to show deputy misconduct and it is useful to the defendant/inmate, then that information should be turned over to the defense so that inmates are not wrongfully prosecuted or convicted. Again, JITF leaders agreed and instructed their investigators to proceed with investigations regardless of the status of any criminal charges against the inmates alleging unnecessary force.

Another resource OIR has provided is to encourage inmate witnesses to participate in the LASD investigative process. For example, in one allegation of excessive force, the attorney who was representing the complaining inmate had reservations about having his client interviewed by Task Force investigators. As a result of discussions with us, the attorney agreed to make his client available for an interview provided that we sit in on the interviews with the witness and the attorney, which we agreed to do. This accommodation gave JITF and the District Attorney the benefit of being able to consider the inmate's version of events along with all the other evidence gathered by investigators.

As is expected when the work of as many as 20 different investigators is at issue, the quality of the completed investigations is varied. Generally, OIR has been satisfied that the investigative books provided to us summarize complete, thorough, and fair investigations. Where we have

³ ICIB investigators record all their interviews. While it has always been possible to listen to these taped interviews, that is quite time-consuming, and it is our understanding that the District Attorney's office did not generally request or receive these recordings.

found shortcomings, we have made recommendations to remedy them that almost always have been accepted and implemented. To date, in only one case have we considered the investigation to be insufficient and biased. Unfortunately, as mentioned earlier, the Task Force forwarded that case to the assigned OIR attorney only after it also sent it to the District Attorney's office. Because the problems with that investigation could not be remedied by additional investigative work, OIR noted its concerns but focused its conversations with JITF leaders on ways to avoid similar problems in the future.

After each of these cases is fully investigated by the JITF and sent to the District Attorney for review, it is sent to IAB for administrative investigation. In some cases, we anticipate that the only additional work for IAB investigators to complete are interviews of the involved employees because, in most cases, deputies and custody assistants directly involved in the force have followed their union attorneys' advice and invoked their Fifth Amendment right not to speak with criminal investigators.⁴ In administrative investigations, deputies have no such right, and IAB sergeants can compel them to provide statements. At the time of this report, only one case stemming from the September 2011 ACLU declarations has made it all the way through the ICIB, DA review, and IAB investigative processes. A summary of that case follows.

Case One

An inmate alleged in his declaration that a deputy called him out of his cell and, for no reason, shoved him against the wall and roughly twisted his hands behind his back. When the inmate objected, the deputy slammed him into the wall and down to the floor where the deputy then started punching and kicking him in the ribs. Three other deputies came over and also started to kick and punch the inmate. One deputy put his arm around the inmate's neck and choked him, causing the inmate to lose consciousness. Deputies reported a use of force involving this inmate in an account that varied widely from the one presented by the declaration. Their written documentation was completed on the day of the incident. Those reports stated that the inmate – classified as a keep-away from other inmates – was being removed from his cell for transport when he attempted to run down the hallway toward another inmate. A deputy grabbed onto the inmate's waist chain to prevent the assault and then pushed him into the wall in an effort to control him while also attempting to handcuff him. Two other deputies saw the struggle and came to assist, forcing the inmate to the floor. At the time of this incident, there were no cameras located in the area.

⁴ The deputies' union provides blanket advice to its members not to speak with ICIB investigators if they are the subject of a criminal investigation. Therefore, we have been surprised to see that in a number of these JITF investigations, involved deputies have cooperated fully with investigators. That being said, most deputies directly involved in the force have followed their unions' advice and declined to be interviewed.

The JITF investigators interviewed the declarant inmate, the other inmate whom the declarant had allegedly attempted to assault, and one of the involved deputies. The inmate who was the intended assault victim stated he had been in protective custody because he was charged with a sex crime and because he was a gang drop-out. While the details of his statement do not exactly line up with the deputies' reports, he did state that the declarant inmate tried to rush him, but that the deputy blocked him and then hit the other inmate, taking him to the ground. In his interview with JITF investigators, the declarant inmate reiterated his allegations, although he mixed up the numbers and nationalities of the deputies his declaration had stated were involved.

After OIR received the investigative book, we recommended that investigators attempt to interview two additional deputies who were involved in or witnessed the incident. In addition, OIR recommended that the declarant inmate be re-interviewed to ask him some more specific questions about his alleged assault on the other inmate. Investigators complied with these requests. During his follow-up interview, when asked whether he had attempted to assault the other inmate, the declarant inmate stated he did not want to "pursue any of this" and that the deputies "were probably doing their job."

The District Attorney's office completed its review of the allegations and declined to initiate criminal proceedings against the deputies involved in the use of force. The DA concluded the inmate had attempted to assault another inmate and had physically resisted the deputies who tried to handcuff him. His memo concluded the deputies acted reasonably and lawfully in their use of force against the inmate.

IAB investigators interviewed two of the three deputies involved in the use of force against the inmate (the third involved deputy died in a tragic accident after this incident but before the investigation), as well as the witness deputy who was guarding the other inmate. All accounts were consistent with what they wrote in their initial use of force reports.

OIR then discussed the ICIB and IAB investigations with the involved unit, and concurred that the use of force by the deputies was within policy and the allegations unfounded. OIR did identify two systemic issues that it has addressed with the involved unit. First, the deputy should have fully restrained (handcuffed and waist-chained) the declarant inmate prior to removing him from his cell, and deputies should not have been moving two keep-away inmates at the same time in such close proximity. At OIR's urging, the unit has briefed the deputies involved in this incident regarding the handling and transport of keep-aways, and the topic of keep-away inmates has been and will continue to be a recurrent topic for briefing by unit supervisors.

Second, OIR asked the unit to address the issue of the supervisor's inadequate identification and interview of potential witness inmates at the time of this incident. According to all of the memos, other inmates were present at the end of the hallway when the use of force occurred, but none were identified as being present, interviewed, or eliminated as possible witnesses regarding the use of force. Nine months later, when Task Force investigators attempted to identify these inmates, they identified 157 inmates who might have been among the handful to witness this incident, whereas those witnesses who were actually in a position to see the incident would have been readily identifiable at the time of the incident. The sergeant responsible for investigating this use of force incident immediately after it occurred has since been counseled and re-trained on the importance of conducting thorough force investigations and ensuring that potential inmate witnesses are identified and interviewed. In addition, force investigation protocols are in the process of being enhanced to create an expectation that inmate witnesses will be identified and interviewed at the time the force incident is reported.

Because either criminal or administrative investigations into the other ACLU declaration cases are still pending, it is premature for OIR to report further on the specifics of these cases.

Reviewing Force in Custody

OIR published a report in October 2011 addressing violence in the County's jails in which we made a number of recommendations aimed at addressing deficiencies in the Department's investigations of Custody force cases. Our focus was on reported force incidents in which the injuries and/or force used were not so significant as to trigger IAB rollouts and review by the Executive Force Review Committee⁵ but which generally would be resolved through completion of a "Supervisor's Report on Use of Force" or "force package"⁶ by a sergeant and lieutenant at the jail facility where the incident occurred.

As early as 2003, in our Second Annual Report, OIR noted concerns about the quality of these

⁵ According to LASD policy, when a force incident results in death, a fracture, a laceration requiring stitches, or a hospital admission, or involves a head strike with an impact weapon or, in certain circumstances, deliberate kicks or knee strikes to an individual's head, the incident triggers an immediate roll out by Internal Affairs Bureau (IAB) investigators and eventual review by a panel of three Commanders who form the Executive Force Review Committee.

⁶ This report consists of a narrative written by the investigating sergeant, summaries of all witness and inmate interviews, a statement about any injuries to the inmate/suspect and treatment provided, a review of training and tactical issues, statement by the watch commander with a conclusion about the reasonableness of the force, and the written reports of involved deputies. Also included with the report are photographs of the scene and any injuries to inmates or deputies, as well as video recordings of all witness and inmate/suspect interviews and any video of the incident.

unit-level reviews of lower-level force incidents, and produced a training bulletin to address some of the shortcomings we saw. Second Annual Report, pp. 14-17. Since then, OIR attorneys have regularly discussed these issues at Sergeant Supervisory School – a training course for newly-promoted sergeants – and at Custody Incident Command School – a required course for all Custody sergeants and lieutenants. Nonetheless, when we periodically reviewed force packages during the course of our work,⁷ we continued to note problems, including a failure to identify all relevant witnesses, deputy reports that apparently were copied and pasted from another deputy’s report, biased interviews of inmates, interviews of inmates conducted at inappropriate times, and a failure to gather complete medical information regarding an inmate’s injuries. We would address these issues with investigators and the involved unit (jail facility or patrol station) on a case-by-case basis.

OIR learned for the first time through media coverage at the end of October 2011 that supervisors in the Sheriff’s Department had performed analyses and audits of MCJ unit-level force packages in 2009 and 2010. The work and findings documented in these memos is commendable. Unfortunately, as happens too often in the LASD, there was insufficient follow-through on these excellent analyses of the problems with force and force documentation at MCJ. Who received these memos and what response, if any, they made has been the subject of conflict and debate; what is evident is that no one took sufficient action to remedy the serious problems they presented.

From our perspective, what is perhaps most disturbing is that no one in the Department shared these memos or findings with OIR. Obviously, it would have been very useful for us to have had an opportunity to review these memos, to dialogue with their authors and to ensure that those higher in the chain of command, including the Sheriff himself, were aware of the problems. Armed with the memos, we could also have pushed for implementation of the recommendations that naturally flow from them, some of which, as discussed here, are finally being implemented two or three years later. While we have touted our unfettered access to records, we cannot access those records if we are not aware of their existence. In an effort to avoid having essential information shielded from OIR in the future, we have requested that Department leaders require in writing that their subordinate supervisors copy us on any further analyses, findings, statistical compilations, or studies relating to the use of force by Department members.

Additionally, we believe that such internal studies of force are too important for them not to find their way to the highest levels of the Department. As a result, we recommended that the Department develop policy to require that copies of any such systemic reports prepared by

⁷ OIR reviews every investigation emanating from the Internal Affairs Bureau and actively participates in EFRC evaluations, but does not have the resources to carefully scrutinize the hundreds of force packages generated by the Department each year. We do, however, have access to these documents, and will review all force incidents brought to our attention by an inmate, complainant, or third party with information about or interest in a particular incident.

supervisors be forwarded to the Office of the Sheriff, the Undersheriff, and OIR. Such a policy will reinforce the importance of the study and help ensure the flow of such information upward to the highest levels of LASD.⁸

When the ACLU filed 78 declarations alleging inmate misconduct in September 2011, the Department learned that many of those incidents had been reported by the deputies who used force and had been reviewed by the respective jail facilities at the time. The Task Force investigators also realized that the quality of many of these unit-level reviews was poor and that the criminal investigators who are now looking into these incidents would have significant additional work because the initial investigation and documentation was inadequate. This climate provided OIR the opportunity to address our concerns about the quality of force packages completed by Custody facilities on a more systemic basis.

Over the past year, OIR attorneys have met regularly and frequently with members of the Commander Management Task Force (CMTF) and others to discuss how best to implement these recommendations. Some of these issues are recognized best practices and have been encompassed within the Department's expectations of its investigating sergeants and lieutenants. Nonetheless, they are not always uniformly followed and we believed they should be the subject of more formal policy. OIR made the following recommendations in our October 2011 report:

- Involved deputies should never be present when the inmate is being interviewed.
- All witnesses or potential witness, including all civilians and third parties (i.e., inmates, medical or mental health staff, visitors, chaplains, and volunteers) should be identified and interviewed.
- Deputies should be separated after a significant use of force and not share computers to write their reports.
- Unit level investigators should receive ongoing training in conducting force interviews of inmates and witnesses.
- A sergeant who is involved in a force incident, whether using force or directing it, should not interview the involved inmate or write the force package.
- Where practical, inmates should not be interviewed while in the clinic, either waiting for treatment or during treatment. When an inmate is obviously in pain or distress, the interview should be conducted after treatment.

⁸ Another important policy development that is nearing completion relates to creating written policy that reaffirms OIR's role in monitoring internal investigations. The new policy will set out in writing what most Department executives already have been doing – namely, to consult with OIR prior to making any important investigative or disciplinary decision. The policy provision will affirm in writing the Department's commitment to dialogue with OIR prior to making such decisions.

- Investigators should be required to confer with medical staff to learn the outcome of the evaluation of an inmate's injuries following a force incident.
- Investigations into unnecessary force and other misconduct allegations should include inquiries into the role that supervisorial deficiencies may have played in the incidents.
- Force incidents witnessed by third parties, where the third party account differs from the deputies' reports, should receive a heightened level of review requiring taped administrative interviews of involved deputies.

The majority of these recommendations have been adopted by the Department. Others are still being discussed; none have been flatly rejected.

Custody Force Review Committee

Foremost among our recommendations was the suggestion that “significant force incidents that do not meet the standard for an Internal Affairs review should be investigated and reviewed by a specially-trained group of sergeants and lieutenants and should be reviewed by a panel of jail commanders, with OIR’s participation and input.” OIR attorneys held frequent meetings with members of the Commander Management Task Force to flesh out the details of this plan and create policy to implement it. OIR’s original vision was to have sergeants and lieutenants not assigned to the involved jail facility complete force packages, to add a degree of professionalism and neutrality we saw as lacking in this process. Through our discussions with the CMTF, however, we were persuaded to test the effectiveness of an alternative plan, in which sergeants and lieutenants from the involved unit would continue to be primarily responsible for force packages, but a team of more experienced sergeants would roll out to each incident and oversee and assist in the investigation. This Custody Force Review Team (CFRT) is headed by a lieutenant who signs off on every force package before it is sent to the Custody Force Review Committee (CFRC), a panel of three commanders modeled on the Department’s Executive Force Review Committee, for review and findings. The benefits of keeping the primary responsibility for force packages with the unit are twofold: It conserves Department resources and provides new Custody supervisors the opportunity to gain experience conducting force investigations under the watchful eye of more tenured Department members. While we have seen much improvement in the way force packages are completed, it is premature to say whether this approach will prove successful or whether OIR will revert to its initial recommendation to have a separate team of investigators conduct these investigations.

After the CFRT approves a force package as complete, the handling CFRT sergeant presents it to the CFRC. Both the commanders and OIR receive and review the force packages, including copies of any video of the incident and all video recorded interviews, in advance of the CFRC meeting. At the meeting, the CFRT sergeant makes an oral presentation to the commanders’ panel, after which the commanders generally ask a number of questions to the facility captain as well as the sergeant

and lieutenant who were on duty at the time of the incident. OIR has a seat at the table, and has the opportunity to ask questions and provide opinions. The commanders then make three findings: 1) whether the tactics employed prior to the force incident are consistent with the Custody Division's Force Prevention Policy (discussed below); 2) whether the force used was consistent with the Department's force policy; and 3) whether the response to the use of force was appropriate. The commanders also decide whether the case warrants the initiation of an administrative investigation or any discipline for the involved personnel.

Since February 2012, the CFRC has met seven times to review 23 use of force incidents from eight different units (six custody facilities, the Inmate Reception Center, and the Transportation Bureau). In two of those cases, the incident either already had been referred by the unit for an administrative investigation or the panel ordered one following its review. In most cases, even where the panel finds the force to be within policy, it orders some kind of remedial action. For example:

- In a case where deputies were called upon to restrain an inmate so a nurse could give him an injection, the panel required the unit to prepare updated training plans for these scenarios.
- In a case where deputies became involved in a force incident with an inmate they were attempting to handcuff to a hospital bed, the panel ordered the captain to prepare a unit order requiring a sergeant to be present anytime an inmate was to be restrained in this manner.
- Following a case in which an inmate got out of his wheelchair and assaulted another inmate during transport, the panel ordered a feasibility study be conducted with respect to a restraint device for inmates in wheelchairs.
- In a case involving a dorm disturbance involving numerous inmate participants and/or witnesses, the Sergeant preparing the force package chose to first speak with the dorm representative (or "shot caller") to seek permission to interview the uninvolved inmates. The panel ordered an end to this practice and instructed the supervisors to always pull each potential witness out of the dorm for an interview regardless of the dorm representative's permission.
- In a case where an inmate was injured when deputies used an unusual method to remove the uncooperative inmate's handcuffs out of fear that if they left her handcuffed in the cell until she became cooperative she might use the cuffs to break the glass on the cell door, the panel ordered that the glass in the doors at the facility be replaced with Plexiglas.

OIR attorneys attend and participate in each CFRC meeting. We have been impressed by the level of scrutiny and review which the commanders bring to each case. The commanders clearly emphasize the Department's Force Prevention Policy and repeatedly discuss their desire that

deputies contact a sergeant before they engage with an inmate in a way that may result in a use of force. The commanders also place great emphasis on punches that deputies deliver to inmates' faces and heads, telling captains, lieutenants, sergeants, and Custody Training staff present that the commanders expect them to continually brief deputies on the expectation that they consider other force options before throwing punches. The following case exemplifies these issues.

Case Two

An inmate had one hand secured to a bench while waiting for a medical assessment when he threw a cup of water at a deputy. Deputies immediately moved toward the inmate with the intent of securing his free hand. The inmate resisted and swung his elbow at one of the deputies. A violent struggle ensued, with deputies repeatedly punching the inmate's face while the inmate kicked and swung his free hand at the deputies. Additional deputies arrived and the inmate was eventually handcuffed and secured. The only inmate injuries noted were superficial scratches and redness to the inmate's face, neck, and arms.

At the CFRC meeting, the first question asked by one commander following the sergeant's presentation had to do with why the deputies believed they needed to immediately approach the inmate. The inmate was secured to the bench, did not have access to anything else to throw, posed no apparent risk to any deputies or other inmates, and clearly was agitated. Both OIR and the commanders noted that the deputies had time on their side. They could have stepped back, called a sergeant, attempted to speak with the inmate and diffuse the situation prior to attempting to further restrain him. The commanders found the deputies' pre-incident tactics to be inconsistent with the Force Prevention Policy. While they found the use of force itself to be in policy, they directed the captain to re-emphasize through training and briefings the undesirability of punching inmates in the head and face.

Another point of emphasis for both OIR and the commanders is the quality and nature of the interviews conducted by sergeants and lieutenants following force incidents. Because the individual supervisors who responded to the incident are present at the CFRC meeting, it provides an ideal opportunity for OIR to raise questions and for the commanders to counsel the supervisors regarding their expectations. Among the issues commonly raised are the following:

- Sergeants are trained to interview inmates as soon as possible after a force incident. However, in some cases, sergeants have questioned inmates who clearly are in pain and distress. While it may be important to document the condition of an inmate immediately after an incident, it sometimes is more appropriate to delay an interview a short period

of time until after the inmate has received some medical treatment for his injuries.

- Some sergeants have engaged in argumentative and leading questioning of inmates, seeming to press the inmate with the deputies' point of view rather than simply letting the inmate provide his account.
- Video recordings of interviews are not always clear or intelligible. Personnel must make sure their equipment is functioning properly during interviews.

Policy Requirements Related to Force Investigations

Creation of the CFRT and CFRC represented a profound change in the way Custody units investigate and review lower-level, non-EFRC, uses of force. While the CFRT does not respond to or monitor every use of force incident, the Department's expectation is that focusing on the most serious of the non-EFRC cases will increase the skill level of the line sergeants and lieutenants conducting these investigations, which will in turn raise the level of professionalism with which all custody force packages are completed. OIR is optimistic that this may prove true, but also has pressed for some basic investigative standards to be included in formal policy. Unfortunately, implementation of some of these changes has been delayed while the Department completes wide-ranging amendments to its use of force policy (see below). As a result, the exact language of these changes is still being finalized, but OIR expects to see the following formal requirements included in the supervisors' responsibilities and enumerated in the amended policy:

- Ensure that no deputy or other personnel who participated in a use of force incident is present during the interview of the involved inmate.
- Where a sergeant uses or directs a use of force, that sergeant shall not interview the inmate or prepare the force package.
- Ensure inmates are not interviewed while receiving medical treatment or while in obvious need of treatment.

In addition, the Custody Training unit has prepared training bulletins and briefings for sergeants and lieutenants to emphasize points raised by the CFRC panel in specific incidents and to address ongoing issues of concern regarding the thoroughness and integrity of force incident investigations.

Civilian Witnesses to Uses of Force

OIR saw too many force incidents initially investigated by staff at the jail facilities – including some of those incidents included in the ACLU's October 2011 declarations – where sergeants failed to identify and interview all possible non-sworn witnesses to the event. For example, in one case raised by the ALCU declarations, a number of inmates came forward as witnesses to a force event. At the time of the incident, however, the sergeant responsible for the force package had decided

not to interview these inmates because he concluded they were not in a position to have been able to see the deputy's interactions with the subject inmate. If he had interviewed these inmates at the time, he might have learned that they did witness the event and that there was some indication of inappropriate conduct by the involved deputies and custody assistant. Conversely, if they truly could not have seen the incident, he could have documented that at the time and made it more difficult for them to later come forward claiming to have witnessed the event.

The Use of Force Reporting and Review Procedures Policy (MPP 5-09/430.00) has for a long time required that a supervisor shall: *“Locate and interview all potential witnesses, including Department personnel, and document their statements, including those who could have witnessed but claim not to have witnessed the incident.”* Though it has not been formally adopted, OIR has requested that the policy be amended to specify that, in Custody force cases, “all potential witnesses” expressly include “medical staff, chaplains, and any other civilians who may have been present.” We anticipate this change will be adopted shortly.

Role of Medical Staff

Staff assigned to the LASD's Medical Services Bureau – doctors, nurses, pharmacists, nurse practitioners, nursing assistants, and others – play a unique role in the identification and investigation of force incidents in Custody. First, because they are frequently working inside inmate housing areas for “pill call” and “sick call,” they are sometimes in a position to witness uses of force. Second, because inmates are taken to the clinic following a use of force, medical personnel is almost always the first non-sworn individual to speak with an inmate after an incident. Third, a medical assessment of an inmate's injuries is critical when addressing the questions of whether deputies fully reported their force, whether that force was reasonable, and whether the injury is significant enough to require an IAB or CFRT response. As noted above, the revised force policy will include language explicitly directing that supervisors interview medical staff who may have witnessed an incident. OIR also has pushed the Department to address the remaining two of these issues through improved policy and training.

Medical Staff's Duty to Report

In some of the ACLU declarations, inmates have alleged that they reported to medical staff that they were assaulted by a deputy, but there is no indication of this in the medical record. While there are case examples in which medical staff has reported a suspected or claimed use of force, both OIR and the Department recognized there was a deficiency in the Medical Services Bureau policy in that it did not include any mandatory reporting provisions. The unit's policy on Inmate Injury Reports has been amended to include the following language:

Any injury claimed by the inmate or suspected by medical staff to have been committed by a Sheriff's Department member or any Law Enforcement personnel shall with extreme priority be telephonically or in person reported by the

identifying provider or nursing personnel to the Watch Commander. An email will be sent by the reporting person to the facility Clinical Nursing Director and the employee's immediate supervisor regarding the notification. The reporting of this incident should not interfere with necessary or emergent medical care.

Obtaining Medical Assessments

Another issue with respect to medical staff is the jail supervisor's need to obtain a diagnosis of an inmate's injuries and learn whether that diagnosis is consistent with the force reported by Department personnel. In the past, investigators had been stymied by Medical Services Bureau staff's reliance on the federal Health Insurance Portability and Accountability Act (HIPAA) and the California counterpart, the Confidentiality of Medical Information Act, to sometimes deny a request for even basic information about an inmate's medical condition. In our Seventh Annual Report, we discussed this problem and OIR's efforts to break through this logjam with County Counsel's assistance. A new policy regarding access to inmate medical information was drafted, making it clear that investigators could obtain information from an inmate's medical record, "to protect the health and safety of the inmates, and to ensure the safety and security of jail operations." As a result of this policy and communication to medical staff of the Department's expectations for information sharing, this problem has been largely solved with respect to LASD medical personnel.

A related problem persists with respect to the staff members at outside medical facilities – most often Los Angeles County/USC Medical Center (LAC/USC) – who sometimes still refuse to talk to LASD supervisors or investigators regarding an inmate's medical condition, citing HIPAA or state confidentiality laws. OIR became aware of this issue largely as a result of several calls from inmates, former inmates, or their relatives. Those callers indicated that an inmate had suffered a broken bone or other serious injury as a result of a force incident in custody, yet OIR had never learned of the incident because it did not prompt an IAB rollout or presentation to EFRC as it should have pursuant to policy. Upon further inquiry, we learned that the jail supervisors in these cases never realized the extent of the inmates' injuries because they did not follow up with LAC/USC staff. When we talked to jail supervisors about this issue, we often heard that when they try to follow up on an inmate's injury, LAC/USC staff refuses to provide any information because of HIPAA. This problem is unique to Custody. In the field, when deputies use force on a suspect, they have to take the suspect to the hospital to get an "OK to book" before taking the suspect to jail. The deputies who accompany the suspect to the hospital stay with him or her until the suspect is diagnosed and released, and the deputies are in position to learn whether the suspect has a broken bone or has been admitted to the hospital. When an inmate is injured and sent to the hospital from one of the jails, the transporting deputies generally drop him off at the LAC/USC jail ward and then return to their regular duties. It takes extra effort on the part of the supervisor completing the force package to determine the inmate's ultimate diagnosis.

We have pursued a two-pronged solution to this problem. First, we have asked the CFRT and Custody Training to place extra emphasis on the importance of supervisors' responsibility to learn an inmate's diagnosis, and we follow up on this issue in all the cases we review. While we do not doubt that hospital staff sometimes still tell supervisors they are not entitled to information about an inmate's diagnosis, it is also clear that the more persistent and resourceful supervisors generally find a way to get the information they need. The Use of Force Reporting and Review Procedures Policy (MPP 5-09/430.00) currently provides that the immediate supervisor shall:

Interview the attending physician or other qualified medical personnel, when the suspect is taken to a medical facility for examination, as to the extent and nature of the suspect's injuries, or lack thereof, and whether the injuries are consistent with the degree of force reported.

The policy places additional responsibility on the Watch Commander:

If the suspect is taken to a medical facility for examination or treatment, the Watch Commander shall ensure that a supervisor interviews the examining physician or qualified medical personnel as to the extent of the injuries, or lack thereof, and whether the injuries are consistent with the degree of force reported.

OIR has proposed additional language which we expect to be included in a new version of this policy in the near future, which would further provide:

If the suspect is subsequently admitted to a medical facility or requires further medical treatment, it is the supervisor's responsibility to follow up with medical staff to ascertain if the injury was more serious than initially believed and make any necessary notifications in a timely manner.

The second part of OIR's solution to this problem was to work with County Counsel to ensure that LAC/USC staff better understand why jail supervisors need to know an inmate's diagnosis and understand the parameters of their legal obligations to keep patient records confidential. Following a meeting with OIR, County Counsel agreed to provide this training. We will continue to follow up on this issue to ensure that jail supervisors and medical staff recognize the importance of medical evidence in evaluating force incidents, and that the Department's policies and protocols ensure the availability of that information.

Video Cameras and Related Policy Issues

Perhaps the most significant change in the way force in Men's Central Jail is reviewed is the result of the addition of approximately 700 cameras in that facility alone.⁹ The vast majority of MCJ force incidents that have been reviewed by the CFRC have been captured on video.

The video of these incidents provides a neutral perspective on the force – what we have referred to as an evidentiary tie-breaker between conflicting accounts provided by inmates and deputies. 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. The recent reduction in uses of force at MCJ, while attributable to many different factors, may be the best evidence of the effectiveness of cameras in this regard. We were pleased to see cameras finally installed in MCJ and hope that the Department soon overcomes the delays in making the cameras installed in the Inmate Reception Center and Twin Towers operational.

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 investigations. For example, we have provided input into amendments to the Department's policy regarding use and retention of portable and surveillance camera footage. Most of the discussion surrounding video cameras, however, has been about policy governing the viewing of video by deputies who are involved in or witness an event. In almost all of our policy discussions with the Department on various subjects, we historically have been able to find common ground and guide the Department to policy decisions that we believe are in accordance with sound, progressive police practices. Finding that common ground on a video policy, however, has proven difficult.

Proposed language in a draft policy presented by some Department executives would have allowed in most cases for LASD personnel involved in a use of force to review video footage before providing a written account of the incident. Over the past few years, OIR has consistently opposed allowing LASD personnel to view video footage of force incidents before writing reports or being interviewed about the incident. Instead of immediately showing LASD personnel video evidence, we have advocated a policy that would have personnel document their actions or be interviewed about them first. Once the report or interview is completed, LASD personnel would then be provided an opportunity to watch the video evidence and to supplement the initial report or interview if the video has refreshed his or her recollection about the incident.

⁹ The Department also has installed hundreds of cameras in the Inmate Reception Center and Twin Towers, but infrastructure issues have prevented those cameras from becoming operational.

The proposed policy advanced by the Department executives, in our opinion, potentially could have hampered the ability to investigate possible policy violations. Some members of the Department have argued that it is unfair to prevent personnel from watching video. They claim that because memory is imperfect, there will almost always be discrepancies between written reports and video evidence, and these discrepancies will be exploited both by defense counsel in criminal prosecutions and plaintiff's counsel in civil lawsuits when they cross-examine deputies. Allowing deputies to watch video evidence prior to writing reports, the argument goes, will create more accurate reports and limit the Department's civil liability. Some Department members argued that concerns about deputies writing their reports to be consistent with video evidence to cover up misconduct could be alleviated by requiring deputies to provide an oral report to a supervisor, who would then view the video and determine whether the deputy should have the opportunity to watch the video prior to writing a detailed report. We believe this approach will not sufficiently protect the integrity of the investigation because it provides too much unguided discretion to supervisors and because statements made to supervisors would not be recorded in any way.

While OIR is not insensitive to the Department's concerns about civil litigation and prosecutions, we believe that having deputies routinely review video of an incident prior to writing a report could do even more damage to the Department's litigation positions since opposing attorneys would be able to argue that the "accuracy" of the report was because of that early opportunity to view the video that then allowed the deputy to tailor his account of the incident to match what was on tape. Even putting aside concerns about litigation, a view-first policy could create the impression that the Department is attempting to clean up its reports so they appear consistent with each other and the video evidence, reducing confidence in the Department's ability to investigate incidents of force in the jails by its personnel.

More importantly, there is a difference between consistency and accuracy; providing deputies an opportunity to view the video before writing will promote consistency, but may actually harm accuracy since deputies' memories and observations will necessarily be impacted consciously or subconsciously as a result of that exposure to the video recording. If consistency were the sole goal of an investigation into a force incident, LASD personnel should also be privy to each other's accounts of the incident, inmate interviews, medical records, photographs, and other forensic evidence. There is no principled reason to create an exception for video evidence when the investigative norm is to not provide such early access to evidence to those whose actions are being assessed. Likewise, a view-first policy is not consistent with other current investigative practices the Department employs. For example, bank employee victims of a robbery are not shown videos of the incident prior to being interviewed. To create an exception for its own personnel is inconsistent with best investigative practices long accepted by the Sheriff's Department.

OIR has consulted and conferred with experts on use of force investigations from other law enforcement agencies as well as experts in the field of eyewitness memory. Across the spectrum,

with the exception of some representatives of law enforcement unions and some attorneys who represent law enforcement agencies in court, a policy allowing the viewing of video before documenting uses of force is seen as problematic for the reasons articulated above.

In the short time that video has been in extensive use at Men's Central Jail, there has been no uniform practice for whether deputies are permitted to view the video footage prior to writing reports or submitting to interviews. In several incidents, misconduct on the part of Department personnel did not become apparent until a more thorough investigation occurred. In these cases, OIR believes a different result may have been reached had the Department's proposed policies been in force and deputies had been permitted to watch the video prior to writing their reports.

Case Three

A contact between deputies and two visitors to the main visiting area was recorded. The account of two of the involved deputies proved to be inconsistent with that given by the detained visitors. The discrepancy initially seemed insignificant and was not apparent until Department executives reviewed the recordings. Had the deputies been allowed to view the footage before writing their reports, an important aspect of the investigation may have been lost.

Case Four

A force incident took place in an area of Men's Central Jail where an older camera happened to be installed. (This was before the mass deployment of cameras.) While the use of force was significant and the injuries sustained by the inmate required hospitalization, it was not until both the fixed surveillance and Taser camera footage were reviewed by OIR that the account given by the deputies proved problematic.

That particular incident led to several deputies receiving significant discipline. Had a watch commander used his own judgment, and provided the video evidence to the deputies prior to them writing reports, it is possible that the deputies would have written an account which would still have attempted to justify the extensive use of force, but would have done so in a manner to appear consistent with what appeared on the footage.

Case Five

A deputy was preparing high-security inmates for court early in the morning. While the deputy was handcuffing an inmate, two other inmates were already cuffed and waiting

in a hallway running parallel to the module. Video footage showed the first inmate suddenly turn and charge one of the other inmates.

The deputy noticed the assault and responded by tackling the attacking inmate to the floor and delivering one punch to his face, effectively ending the inmate's assault. The deputy immediately reported and documented the assault and the force used. The on-duty sergeant reviewed the video and thought it depicted the deputy delivering a knee strike to the inmate's upper body. The sergeant then sat down with the deputy and they reviewed the incident together. The deputy explained that after he tackled the inmate he straddled him and punched him as the inmate was still struggling. The deputy stated that he could see his knee moving forward as he straddled the now prone inmate, but his knee did not make contact with the inmate. The deputy's account was consistent with the inmate's version of what occurred and with the inmate's injury.

The CFRC panel found the force to be in policy. OIR has used this incident as an example of how our proposed policy is supposed to work. A sergeant carefully viewed the surveillance footage, read the deputy's report, and allowed the deputy to review the video. Then, after discussion, the sergeant asked the deputy to supplement the original memo to clarify something that seemed evident on the video recording. The documentation of this clear chronology assisted fact finders in determining the need to use force and the thoroughness of the investigation.

We discussed the issue of the video policy at length with members of the Commander's Management Task Force and other LASD executives. When these discussions reached an impasse, the Sheriff convened a meeting to hear from all sides. Ultimately, the Sheriff concluded that, consistent with OIR's view, Department personnel should be required to write reports prior to viewing video evidence of an incident. The details of the video policy are still being finalized.

Overdue Force Packages

Last fall, the Department learned that scores of force packages from Men's Central Jail had not been timely completed and entered into Personnel Performance Index (PPI), the Department's tracking system. Initially, the Department believed that the sergeant's and watch commander's review of the reported uses of force had never been completed, but it subsequently discovered that many of them had indeed been completed by the assigned sergeants. However, they had not been approved by MCJ command staff nor found their way into LASD's tracking system. A smaller subset of force packages had not ever been completed by the assigned sergeant and/or lieutenant. The Department opened an IAB investigation to examine the scope of the problem and determine whether anyone could be held accountable for the late and incomplete work, naming as subjects sergeants, lieutenants, and captains. The final outcome of this investigation is

still pending.

Force packages are not prepared in response to complaints of inappropriate force nor do they constitute formal administrative investigations. They are simply an inquiry into and review of a deputy or custody assistant's reported use of force, with a supervisor's determination of whether the force was in policy. In the relatively small number of cases where a supervisor determines the force used was questionable, the supervisor then sends the force package up the chain of command with a recommendation that the matter be elevated to a formal administrative investigation.

It is important to note that the failure to formally complete these force packages does not mean that the use of force itself was not recorded or tracked. In fact, the initial report on each use of force had been entered into the Department's tracking system. Proactive efforts by the Lieutenant in the Discovery Unit, using reports generated by PPI, were the basis for the Department's knowledge that the final force packages had not been completed. That being said, the fact that scores of force packages had not been approved or entered into the Department's system for tracking force is a major deficiency. When the data in the Department's tracking system is neither current nor complete, it calls into question the integrity of the whole system and makes less effective any supervisorial use of the data.

We also must note that this is not the first time we have had to report about delays in LASD's review processes or entry of data. In fact, in our very first report in 2002, we discussed hundreds of claims investigations that had either not been completed or had not been timely entered into PPI. Since that time we have reported on delays in the process for reviewing inmate deaths, delays in completing Internal Affairs investigations, delays in completing reviews of critical incidents such as deputy-involved shootings, and delays in investigating and entering into PPI the results of citizen complaints. After we report on such delays, the pattern generally has been that the Department makes improvements in the timeliness of completion or data entry, but we then learn that there has been slippage in another important area regarding timely completion or timely data entry. These delays can have tremendous implications for the integrity of the organization – IAB investigations, for example, must be completed within statutory deadlines or deputies who are found to have violated policy cannot be held accountable. Moreover, the fact that internal deadlines are breached as often as they are honored calls into question how effectively the Department is managing and tracking its work in these important areas.

The Department has currently focused attention on the timely completion and entry of Custody force packages. Every month we meet with custody managers to review lists of overdue administrative investigations and use of force cases. While this current effort is commendable and the emphasis on this issue means that cases are being completed in a timely manner, our past experience with the Department causes us concern about whether this effort will be effectively sustained.

One particular challenge for the larger units that make timely completion of administrative paperwork difficult is the mere size of those units and the volume of business. Interestingly, every unit in the Department has a virtually identical staffing model for “operations.” As a result, whether the unit involves a station with 50 deputies or a jail unit with multiple times that number of assigned personnel, the operational staffing size for each is virtually unchanged. As a result of the recent attention to the jails and the overdue force packages, we have recommended that the Department reconsider its operational staffing model so that proportionally more operational resources can be dedicated to the larger units.

We are also not persuaded that the Department has figured out a way to ensure that each of these important investigative and review processes are timely completed, nor that the resulting information is uploaded to its tracking system on a sustained and continual basis. In order to accomplish this, the Department must establish reasonable internal deadlines and find ways to meet those deadlines. LASD must also ensure that there are sufficient resources for each of the investigative units, reviewers, and data entry so that internal deadlines can be honored. The Department also has a rather labyrinthine way in which, for example, an Internal Affairs investigation is routed from the investigators to the reviewers, then on to the grievance process and the data entry process. Systems experts should examine ways to streamline these processes. Finally, the Department must emphasize to its managers the importance of meeting internal deadlines, impose consequences on those managers who do not comply with them, and commend those who do.

Holding Deputies Accountable for Improper Force

Investigating all allegations of force and holding people accountable when appropriate is an important element in the Department’s efforts to improve the culture in the jails and ensure its members perform consistently with Department standards. Among the topics we discussed in our October 2011 report, we wrote about the difficult task the Department has in sorting out the seemingly justified and necessary force incidents – where deputies are called upon to quell violence between or among inmates or defend themselves from assaults – from those times in which deputies use unnecessary, unjustified, and inappropriate force on inmates. We noted that even when force reports or allegations are well-investigated, it is often difficult to learn the truth about what happened, and impossible to prove that any misconduct occurred. Too often, there are two competing views – one told by the deputies and one by the inmates. With no other evidence to break the tie, the Department generally is forced to accept the deputies’ version of events, a position reinforced or even mandated by the Civil Service rules protecting deputies’ due process rights. While this may lend some truth to the perception that the Department “always sides with the deputy,” in cases where independent evidence exists – uninvolved deputy witnesses, non-inmate third parties, video, or forensic evidence – the Department’s investigative and review processes have held deputies accountable for using unjustified force.

OIR regularly reviews troubling force incidents where we question whether the amount of force used was truly necessary, or whether any force was justified at all. While our intuition tells us the incident may not have unfolded as the deputies reported, we are nonetheless stuck with the inability to prove anything improper occurred. We openly discuss these concerns with Custody leaders and press around the edges for discipline or additional training for the concerned deputies. For example, deputies have been disciplined for failing to report using force or for violating the Department's policy requiring them to contact a supervisor before engaging a recalcitrant inmate, or sent to additional defensive tactics training to practice techniques for more quickly and effectively controlling combative inmates.

In our October 2011 report, we discussed 10 cases in which deputies or custody assistants received discipline for their participation in what were deemed inappropriate or unnecessary uses of force. Since that report, the Department has imposed discipline on several other employees for their role in unnecessary force incidents.

Case Six

An inmate appeared to be in an argument with another inmate during movement from a cell to a lock-up area of a courthouse. A deputy told the inmate to be quiet. The inmate became verbally uncooperative and the deputy asked him to step out of the line of movement. A second deputy overheard the inmate being verbally uncooperative and approached the inmate and held him while the first deputy handcuffed the inmate. The second deputy then sprayed the inmate with pepper spray in the head/facial area and struck the inmate several times in the back of the head while clutching the pepper spray can in his fist. The deputy again sprayed the inmate and punched him several more times in the head. The inmate was then forced to the ground and struck several more times in the upper torso and head area by the deputy. The first deputy did not use any force against the inmate. Subsequently, both deputies wrote reports about their actions that contained false information and made false statements to investigators during the investigation of the case. Five witnesses, including three sworn deputies, a witness inmate, and the victim inmate gave consistent accounts of the incident that indicated the deputy's use of force was unreasonable. That deputy was discharged and the first deputy was given a significant suspension.

Case Seven

A deputy was transporting inmates from a basement lock-up area to the holding tanks connected to the court for their court appearance. The deputy and an inmate became involved in a disagreement over the inmate's paperwork, which he wanted to take to court with him. The inmate stated that he dropped his file to the floor while the deputy

stated the inmate threw his file to the floor. When the inmate refused to pick up the folder, the deputy grabbed him by the neck area, pushed him to the wall, and held him there for several seconds before releasing him. The inmate was secured to two other inmates by an inmate movement chain during the incident. The deputy then directed the inmates to walk onto the elevator; however, they all protested this order and demanded to see a supervisor. The deputy then pushed the inmate from behind, causing him to start walking. This caused the other two inmates to be pulled toward the elevator. Once they were all on the elevator, the deputy yelled profane statements at the inmates, who shouted profanities back at the deputy. A witness deputy intervened and stopped the deputy as he started to move toward the inmates. The deputy was suspended for using unreasonable force and derogatory language, and for failing to request a supervisor's response when the inmate became uncooperative.

While investigating all allegations of force and holding people accountable when appropriate is an important element in the Department's efforts to improve the culture in the jails, effective line-level supervision is another key to ensuring the fair treatment of inmates and preventing questionable force incidents. Although the Department has not always made sufficient staffing commitments or held supervisors accountable when they did not perform up to standards, it has in the past 10 months dramatically increased the number of sergeants assigned to MCJ and has noticeably increased its focus on and scrutiny of the sergeant's role in use of force incidents. These sergeants did not fill newly-created or funded positions, but rather were pulled from other assignments, raising questions about the continued viability of these sergeant positions absent a significant budgetary increase.

The increased emphasis on the role of the sergeant is not an entirely new phenomenon, however. The following example demonstrates how a Department leader's attention to how areas of a jail are staffed and supervised can lead to significant reform.

Case Eight

In 2010, a newly promoted sergeant was assigned to supervise Visiting, the area where inmates' families and friends go to arrange visits. The sergeant was responsible for supervising the team of deputies assigned to process requests for visits and run the visiting lobby. He brought what deputies described as an aggressive, go-getter attitude, encouraging deputies to keep a tight rein on visitors and to make arrests whenever possible. During an approximate nine month period, a number of incidents took place which seemed to indicate that the aggressive attitude was leading to troubling detentions, arrests and uses of force.

In one case, a female visitor was arrested for possession of a cell phone in a local correctional facility. The deputy read text messages on the phone, which led her to information about a possible crime. The sergeant developed a plan to take jail deputies out into the field to make an arrest. While effectuating the arrest, the deputies used force, resulting in a head injury to the suspect. The sergeant was later disciplined for a violation of the Performance to Standards policy by putting subordinates – jail deputies who had no patrol training to perform patrol-related functions – in an unsafe position, and failing to perform his duties in a manner established for his position. The same team of deputies was later involved in another use of force incident following another legally questionable arrest for possession of a cell phone.

The sergeant transferred to a different unit and a new sergeant was assigned to Visiting. OIR learned that in a three month period when the sergeant of concern was assigned to Visiting, 68 arrests were made in that area. After a more seasoned sergeant took over, the arrests went down to 25 over a five month period.

Shortly after the original sergeant transferred, but while almost all the same deputies were still assigned to Visiting, a particularly troubling incident took place involving a foreign embassy consul official attempting to visit a foreign national inmate. An outside video camera showed that the official presented documents to a deputy who was working the door assignment and was let into the lobby. Another consular employee was waiting outside. According to the deputy, she twice told the person to move away from the door. He ignored her orders and, when threatened with arrest, protested that he was a consular employee and had diplomatic immunity. The deputy nonetheless handcuffed him with the assistance of another deputy and led him inside. The other consular employee saw his colleague's predicament and tried to assist, but was also handcuffed – ostensibly for the same offense. As soon as supervisors arrived and saw the major faux pas that had occurred, they immediately ordered the removal of handcuffs and apologized to the diplomats.

During the subsequent investigation, the deputy insisted that no one showed her any diplomatic papers and that the consular official refused to follow her orders to move. Surveillance footage, however, from one of the few cameras that was in place at the time showed he displayed his identification, moved away from the door and was merely trying to see through the glass where the other consular official had gone when the deputy moved in to arrest him.

As a result of the incident, the two deputies received discipline for failure to perform to standards for handcuffing the officials even though they identified themselves as diplomatic employees. In addition, one of the deputies received further discipline for

making false statements during the investigation by claiming that the first consular employee had not shown her any diplomatic documentation. Following this incident, the Unit Commander received permission to install a full set of recording surveillance cameras inside the Visiting lobby. The installation project was completed within five weeks.

OIR expressed concerns about the number of incidents involving deputies assigned to Visiting, and a perception by deputies that visitors were an extension of the inmates who should or could be treated with less patience and respect. The Unit Commander took those concerns seriously, assigned a more seasoned Sergeant, and moved deputies with a history of problems out of Visiting. The Department conducted vigorous investigations, installed cameras, briefed employees on how to recognize diplomatic workers and turned around deputies' negative attitude about visitors.

Additional Recent Changes in Jail Policies and Procedures

OIR continually looks for ways to make the Department's policies clearer, more concrete, more effective at expressing the Department's intended message, and more responsive to the goal of providing guidance to deputies regarding the Department's expectations and then holding deputies accountable when they do not meet those expectations. When the Commander Management Task Force formed with the enumerated task of evaluating policies and procedures, OIR saw this as an opportunity to advocate for changes to the Department's Manual of Policies and Procedures, Custody Division Manual, and custody practices that we believed would improve operations and the way in which investigations into force incidents are conducted. As a result, in addition to the changes to the way in which Custody Division units investigate lower-level force discussed above, this past year brought a number of other changes to LASD policy, particularly applying to the jails.

Revised Use of Force Policy

In the wake of the firestorm of media coverage regarding problems in the County's jails, the Sheriff penned a "Force Prevention Policy" on a napkin in the middle of the night. That document was formalized into a new policy in the Custody Division Manual (3-02/035.00, a copy of which is attached at the end of this section). In our experience with other law enforcement agencies, we have never before seen such an explicit expression of an agency's desire to prevent the use of force:

Our collective and individual goal is to prevent force through effective communication emphasizing safety, respect, and professionalism as emphasized in

the Department's Core Values.

The Force Prevention Policy shifts the orientation away from standard use of force policies adopted by thousands of law enforcement agencies that presume that force will be used by their officers. Instead, the Force Prevention Policy instructs deputies that they are to conduct themselves in a way to prevent the use of force from occurring whenever possible.

In addition to the Force Prevention Policy for the jails, the Department has made significant revisions to its Manual of Policy and Procedures relating to the use of force, unreasonable force, and force reporting Department-wide. The new section containing force-related policies begins with a statement echoing the values expressed in the Force Prevention Policy. Other significant changes include the following:

- Creation of a third category for classifying force. Previously, force was either “significant” or “less significant.” “Significant” force included any use of force which resulted in a complaint of pain by an inmate. The range of seriousness of force within the “significant” category was so large that it made meaningless the term “significant.” The new policy creates three Categories – 1, 2, and 3 – where Category 3 force is that which requires an IAB response and presentation to EFRC; Category 1 force includes the use of OC spray, resisted handcuffing, control holds, and take downs, where there is no identifiable injury; Category 2 force is essentially all other force that does not belong in one of the other two categories.
- Under the new policy provisions, additions to the list of force uses that are prohibited unless circumstances justify the use of deadly force now include:
 - o striking an individual’s head against a hard, fixed object;
 - o kicking an individual in the head while he or she is lying on the ground; and
 - o kneeling an individual in the head with the intention of causing his or her head to strike a hard, fixed object.
- Modification of the rollout criteria for IAB to include an IAB response to the uses of deadly force listed above.
- Changes to supervisors’ list of responsibilities, to include following up on medical diagnoses, ensuring that deputies involved in a use of force are not permitted to transport a suspect/inmate or be present when the suspect/inmate is interviewed; and ensuring that a sergeant or lieutenant who did not use, direct, or witness the force incident is assigned to interview the suspect/inmate and complete the force package.

OIR was consulted throughout the editing process and made numerous suggestions for strengthening the policies, almost all of which were adopted by the Department. Some

final changes are being made to the entire group of force-related policies. While there are some remaining sticking points and issues of contention between OIR and the Department's representatives regarding these final changes, we are confident our views will be considered and hopeful that the Department will ultimately implement policies reflecting those views.

As we reviewed certain cases involving allegations of unreasonable force over the past year, and in light of some of the allegations made regarding deputies' conduct in the jails, OIR concluded that the disciplinary guidelines for violations of the unreasonable force policy may set the minimum discipline for such violations too low. The current range of discipline in an unreasonable force case is a five-day suspension to discharge. Given the seriousness of an unreasonable force case, we believe five days is simply too lenient and have recommended to the Department that the guidelines be amended to reflect a 15-day minimum. Of course, there may be mitigating circumstances in any given case that justify deviating downward from the minimum to a suspension of less than 15 days (honesty during the course of an investigation, acceptance of responsibility, and willingness to take appropriate remedial action, for example). Conversely, there may be aggravating circumstances that justify discharge, such as prior discipline, the severity of the injuries, failure to report the force, or making false statements during an investigation. The Department has accepted our proposal, but is still discussing the matter with the deputies' union prior to implementation.

Rotation of Deputies Assigned to Custody

In the aftermath of the fight among deputies at the MCJ Christmas party at Quiet Cannon in 2010 (see Part Two below for further details), the Department acknowledged that a clique of deputies may have formed within MCJ. OIR learned shortly before the 2010 incident that in 2006, a prior Captain had tried to implement a policy where deputies would rotate to new assignments on a regular basis. Seemingly due to the resistance of deputies, the policy was scratched.

It has been widely reported that some of the deputies involved in the Quiet Cannon fight had formed a gang-like clique known as the "3000 Boys," so-named because they worked on the 3000 floor of the jail. According to reports, these deputies had a tattoo memorializing their membership in the group, and some suggestion has been made that a deputy could only earn the right to bear this tattoo by involving himself in a force incident with an inmate. While it is clear that there have been other such exclusive groups or cliques within the Department (the "Vikings," "Regulators," and "Jump Out Boys," for example), the extensive investigation into the conduct of the deputies at the Quiet Cannon party did not reveal that the deputies from the 3000 floor shared a common tattoo, nor was any evidence discovered that they referred to themselves under any common name, let alone "3000 Boys."

Nevertheless, it was apparent that when deputies had the same job assignment for years at a time, they would form bonds and possible cliques that could undermine the core values of the

Department whereby their affinity to their work assignment trumped any allegiance to the unit or to the Department's tenets. In fact, as set out in Part Two of this report, the Quiet Cannon investigation revealed that some of the participants in the fight were depicted in photographs flashing three fingers like a gang sign. As a result, following conversations with his executive staff and OIR, in early 2011 the Sheriff ordered the Custody Division to implement a policy mandating the rotation of job assignments for deputies no less than every six months. The only exception to the policy is that Unit Commanders can use their discretion to exclude from rotation "key positions" that required additional training or experience that "may impact the effectiveness of their command." Such a deviation can only occur with the concurrence of the Chief of Custody Division. The directive is still in effect as of the time of this report; however OIR is concerned because it recently learned a Commander designated entire sections of Men's Central Jail as key positions, in effect making the rotation policy far less robust than initially envisioned. OIR will continue to monitor both the implementation and adherence to the directive as well as its effectiveness and impact on tactics and operations within the jail.

Anti-Retaliation and Inmate Complaints

In early summer 2011, the Department and the ACLU were embroiled in a litigious battle over the Department's response to inmates' claims of retaliation. The federal judge overseeing the *Rutherford* case requested that OIR mediate this dispute and after a series of meetings between the parties, OIR helped the Department draft an anti-retaliation policy and revise its inmate complaint policy to the apparent satisfaction of the ACLU. The Department originally included an anti-retaliation clause in a broader Treatment of Inmates policy contained in its Custody Division Manual, but has since created a stand-alone Anti-Retaliation Policy (CDM 5-12/005.05, a copy of which is attached at the end of this section).

Changes to the Inmate Complaint Policy took longer to implement. This was due in part to the need to accommodate further input from the Department of Justice relating to its role monitoring mental health issues in the jail, in part due to the complexities of the mechanisms for retrieving, investigating, and responding to inmate complaints, and in part due to bureaucratic delay. Amendments to this policy were finally implemented this spring, making a number of changes to the ways in which the Department investigates certain complaints, and when and how it communicates the dispositions to inmates.

During the course of this summer (2012), we have gained a great deal more concrete knowledge about the inmate complaint processes as a result of the jail project we staffed with a volunteer lawyer and law student interns (see below for further details). For example, we have noted ongoing problems at MCJ with the lack of availability of inmate complaint forms. We also have been made aware of significant tracking issues with respect to inmate complaints and the Department's responses. We also spent time talking with staff about these issues and are developing some ideas about how to solve these problems. We look forward to continuing to

work with the Department on these issues and will report further on the outcome of that work.

Data Keeping Issues

Tracking Inmate Complaints

The Sheriff's Department employs a bewildering number of databases and various ways of tracking different sorts of events and employee performance issues. The Personnel Profile Index (PPI) is the main source for Department employees' personnel records – tracking uses of force, citizen complaints, lawsuits, claims, and a host of other important information. However, units and divisions throughout the Department have developed their own individual databases and tracking systems for various uses. For example, the FAST (Facility Automated Statistical Tracking) system is used in Custody to record inmate complaints as well as a multitude of other data, including force, housing area searches, inmate-on-inmate assaults, disturbances, and administrative issues such as the numbers of employees who have been injured on duty.

FAST has been the center of much attention in the past year, as the Board of Supervisors, the Citizen's Commission on Jail Violence, and the ACLU have focused on the fact that the database does not track inmate complaints by deputy name. Because FAST is the only Department database to record inmate complaints (unless the complaint is elevated to an administrative investigation reflected in PPI), this deficiency means that it is difficult to learn how many inmate complaints have been lodged against any given deputy. This was not an oversight by the Department, but a conscious decision made thirty years ago based on a belief that encounters between deputies and inmates in jail are more inherently contentious and that groups of inmates might be motivated to submit frivolous complaints that would saddle a deputy throughout his or her entire career if they were included in personnel records.

For at least the past eight years, OIR has recognized that the failure to track inmate complaints by deputy creates a problematic gap in the Department's ability to monitor deputies' performance and hold them accountable when necessary. Indeed, in 2004, the Department agreed with OIR and reported that it would begin tracking inmate complaints in this way. The Department obviously did not fulfill its 2004 representation to us, and this failure has now presented a problem for the Department in litigation that is finally being rectified.

Ideally, the Department would track inmate complaints in PPI, just as it records citizen complaints against a patrol deputy. We have been told that the existing PPI database may not be able to support an extra module that would record the volume of data that inmate complaints would present. The Department is exploring options for creating an entirely new system with greater capacity and more technologically modern features to replace PPI, but this fix is years away. In the interim, the Department finally understands it has no choice but to use FAST to track complaints by deputy name and has developed in FAST the capability to do so.

Tracking Uses of Force

Both the Custody Management Task Force and the individual custody units have recently done an admirable job tracking use of force trends and statistics. These have been made readily available to OIR in the form of tables, spreadsheets and reports. In particular, the CMTF has created a Monthly Management Report (MMR) which provides an easy-to-review snapshot of use of force incidents in a particular custody facility each month.

For example, the MMR for Men's Central Jail for June 2012 shows that there were a total of 10 uses of force. Of the 10, six were classified as less significant (five uses of OC spray and one takedown) and four were classified as significant uses of force (use of a personal weapon like a foot, hand, a hobble, or TARP restraint). In May 2012, MCJ had a total of seven uses of force, of which two were less significant and five were significant.

Another useful feature of the MMR is that it addresses the historical use of force for deputies who were involved in force in that particular month. For example, at MCJ, three deputies had used force five or more times in the prior 24 months; one deputy had used force five or more times in the past 12 months; and two deputies had used force three times in the prior six months. In addition to deputies who use force in a particular month, the MMR also keeps track of force frequency of a particular deputy over the previous 24 months and the last time that he or she used force. While the frequency does not indicate anything about whether the uses of force were necessary or objectively reasonable, the Department is nevertheless paying attention to those deputies who get involved in force incidents more frequently than others.

The CMTF and jail operations staff are also paying attention to where, when and under what circumstances force incidents are occurring. For example, they track how many force incidents were precipitated by an assault on jail staff; how many are deemed "rescue force," where a deputy intervenes in an inmate-on-inmate fight; and whether the force occurred under particular circumstances, for example pill call or the declassification process. This data allows the jail leadership to determine whether a particular area needs extra attention and to identify ways to reduce force.

Using Volunteers to Increase OIR's Presence in the Jails

While we have no formal complaint intake staff or procedure, OIR has over the years received complaints from inmates and other members of the public regarding jail personnel and housing conditions. However, finite resources have limited OIR's ability to be physically present in the jails on a regular basis. In the past, we have relied on referrals by representatives of the ACLU, inmate letters and telephone calls, attorneys for inmates, judges, and other sources to obtain

some information about those complaints, but those referrals are relatively random and episodic. Moreover, while the Department was responsive to our efforts to resolve those complaints, our lack of continual physical presence reduced efficiencies as we tried to handle the matters telephonically or through email. In addition, we did not have the insight that could be gained from individuals who are walking the rows on a regular basis. As a result, we decided that this summer we should attempt to use available resources of a volunteer attorney and unpaid law school interns to learn what impact a continual physical presence in the jail might have on our oversight role.

Another reason for OIR's interest in establishing a physical presence in the jails was the ACLU's shift in focus from monitor to litigator. In the past, ACLU's frequent walks through housing modules provided inmates with quick and efficient resolutions to complaints. While the chaplains have attempted to fill the void, their primary role is to provide spiritual guidance rather than systemically address inmate complaints about conditions or personnel.

OIR recruited six law students and a volunteer attorney to assist in this effort. OIR reached an agreement with the Captain of Men's Central Jail that two interns and the supervising attorney would be at the jail every business day for a period of eight weeks. Jail employees were informed that OIR's volunteers had "unfettered" access to most sectors of the jail, and the interns were encouraged to speak to deputies and inmates alike. That said, some deputies or other employees made it explicitly and implicitly clear that OIR's presence was burdensome to them. Other employees welcomed the opportunity to speak with OIR's volunteers and explain to them the nature of their duties.

OIR's volunteers scheduled their presence in the jail for two main purposes: to familiarize themselves with as many employees as possible and to be present during times of inmate movement, e.g. to and from court, school, doctor's lines, clinic, visiting, etc. OIR has noted that most force incidents appear to occur during such times. Most days the interns' schedules overlapped with both the morning shift and the afternoon shift of the deputies. Some days started very early so that they could observe specialized training; some days ended quite late so they could observe, for example, the initial classification of new inmates at the Inmate Reception Center during its busiest hours.

The interns spent the majority of their time visiting housing modules, discipline modules, classrooms, chapels, clinics, interview rooms, and other administrative offices. OIR volunteers spent hours meeting inmates, talking to them about their concerns and complaints, and then attempting to address those complaints. Every day, the volunteers learned more about how the jail works from the points of view of both employees and inmates.

The OIR volunteers were able to solve problems quickly because of their capacity to move freely

and their evolving rapport with MCJ's command structure. The relationship OIR's volunteers developed inside the jail meant that they were able to make formal and informal use of their connectivity with many different jail departments. They could resolve issues more rapidly than a deputy, who might be constrained or feel frustrated by assignment, rank, or lack of initiative or authority to effectuate a change. In other words, after eight weeks of immersing themselves within MCJ, OIR's volunteer interns felt that they made an important contribution by facilitating conversations between inmates and employees that we believe would not have occurred had they not been there.

For example, one Friday afternoon, an inmate brought a volunteer's attention to "black worms" crawling or leaking into the cell from behind the four-person cell's toilet. The intern informed the Operations Lieutenant and the Captain about the complaint. The Captain and Lieutenant verified that a work order for this cell's toilet had been placed several times over the past fifteen days and yet had not been executed. They told OIR that they then visited the cell to verify the authenticity of the complaint and observed "leech-like creatures." OIR then followed up with the inmate, who was grateful that the toilet had been fixed and the "black worms" had disappeared; however, he said, the sink was now clogged. (Such is the whack-a-mole dilemma for MCJ's plumbers.)

In several cases, OIR responded to complaints from inmates who were visibly frustrated with the apparent reluctance of jail staff to address their requests. In one instance, an inmate wanted to apply for money from the Victim Compensation Fund. He asked an intern for the Fund's contact information. When she returned with the information, he was delighted that someone had actually listened to his complaint and followed up on his request. In another instance, an inmate was frustrated in his efforts to get "orthopedic" shoes. He said his feet were in pain due to him gaining more than 60 pounds while residing in a single-person cell. The OIR team was able to follow through on his request by using its evolving, shared knowledge of the jail's staff, policies, and system procedures, as well as the cordial and cooperative relationships it developed with the facility's administrators. The OIR volunteer attorney facilitated a conversation between the inmate and the facility's Commander, who expedited the approval process and ultimately presented the inmate with a pair of shoes the Commander believed conformed with existing policies and presented no imminent safety issues.

Another problem OIR was successful in resolving was that of an incessantly flickering "night-light" on a cell row. The interns spoke to the Custody Assistant on that row who said he put in a request for the light to be fixed, but confessed to feeling exasperated by the work order bureaucracy, i.e. the process by which requests for repairs or maintenance are entered into a computer and ultimately handled by someone on the other end of the pipeline. He said he did not know who saw the request or whether there was a system in place for communicating the status of the complaint back to the Custody Assistant, who must interact with those inmates on a

daily basis. In other words, he felt as in the dark about the complaints as the inmates. The OIR interns were able to inform the Operations Lieutenant, who resolved the issue and had the light fixed within days.

After eight weeks in the jail, OIR's volunteers were familiar faces to inmates and employees, who recognized that they could be useful to them in resolving issues that arise in the course of their role as jail monitors. The OIR volunteers repeatedly visited 3400 B, the school row for higher security inmates, and came to develop a rapport with the inmates residing there. After becoming familiar with OIR and coming to understand the nature of OIR's volunteers inside the jail, inmates started to share more concerns.

Some deputies learned that OIR's interns wanted to help make their jobs easier, and not to impugn their credibility or accuse them of misconduct. Some deputies came to trust and confide in the OIR interns. Others remained reticent in the presence of OIR, but even when a deputy appeared to be mistrustful of OIR's oversight, they acted with professionalism and respect. Some deputies saw the volunteers as potential resources. For example, a deputy asked the volunteer attorney to translate for a Spanish-speaking inmate in the medical clinic. The deputy spoke no Spanish and had been at an impasse until he could find someone who could assist with translation. The inmate said he had vomited numerous times in the last 24 hours; both inmate and employee were grateful for the volunteer attorney's assistance.

The interns and volunteer attorney collectively logged nearly 600 hours at the jail. In the time in which the interns were physically present at the jail, they neither witnessed a force incident nor did they receive a complaint from an inmate that he had been subjected to or witnessed inappropriate force. This is not to say that force incidents did not occur during this eight-week tenure, because we know they did. It simply means that during their walks down the rows, the interns heard no complaints about the use of force.

OIR interns were escorted by a deputy for the majority of their time working at MCJ. It was not until late in the summer that the OIR interns were finally approved for "non-escort" badges. Up until that point, the OIR interns were told that they must announce to the Watch Commander's office the sectors of the jail they intended to visit. Furthermore, certain areas of the jail remained off limits to the OIR interns, such as the 1750 module, where the Department houses high security inmates under administrative segregation "lock down."

We are continuing to assess why the law student interns' presence in the jails garnered no complaints regarding inappropriate force. One possibility is that the inmates may not have felt sufficiently comfortable with the interns to confide in them regarding force concerns, or had concerns about retaliation if they did make such a complaint. While we certainly hold this premise as a possible explanation, this theory is somewhat belied by the fact that the

inmates were not shy about reporting to the interns concerns regarding other conditions of their confinement. However, all of the complaints the interns heard pertained to conditions and not personnel, except where the complaints related to nursing staff and access to medical treatment. One intern did receive a complaint from an inmate whose finger was injured in a sliding cell door. MCJ quickly responded to that complaint and investigated the allegation that a deputy might have caused that injury.

One continual problem observed by the interns is the jail's inability to have inmate complaint forms regularly available to inmates. Some deputies explained that they had observed that when they stocked the inmate complaint boxes, one inmate would grab all of the forms, essentially controlling who in the housing location would have access to the forms. Even if this sometimes happens, it is critical that jail authorities find a way to ensure that inmate complaint forms are available to all inmates housed in their facilities. There must be an effective way for inmates to complain about conditions of confinement and staff. The Department has determined that the inmate complaint system and the forms is the way for inmates to have their issues addressed. If the forms are not available, then the inmates do not have the ability for effective redress. We have raised this issue directly with the Sheriff and have some ideas we will explore with the Department to ensure complaint form access to all inmates housed in their custody.

The volunteers also helped OIR gain greater insight into the inmate disciplinary system. With the interns' regular presence in the jail and attention to this issue, we were able to learn more about the way in which inmates are disciplined and how jail staff tracks those cases. Again, we have some ideas for improving this system that we will explore with the Department with the goal of producing a fairer and transparent means of meting out discipline for violation of jail rules, and to ensure that inmate discipline complies with legal requirements.

The eight-week intern project provided OIR with valuable feedback it would not normally have had. Moreover, the physical presence of interns who could raise issues immediately with command staff allowed for immediate fixes of those conditions in some circumstances. In sum, the experiences by the interns demonstrated the value in having independent individuals physically present in the jails to hear inmate grievances. Furthermore, OIR's presence inside MCJ has enhanced its understanding of that facility's complexity and laid bare the jail's ever-changing strengths and weaknesses.

Unfortunately, OIR's intern project lasted only for the summer. Because of its short duration, it focused almost exclusively on MCJ. We will continue to press relevant stakeholders to consider the concept of regularly having non-LASD individuals in the jails on a more permanent basis, tasked to listen to inmate complaints and chronicle and evaluate jail.

5-12/005.05 ANTI-RETALIATION POLICY

Inmates shall not be subject to retaliation through threats, intimidation, or mistreatment for any reason. When inmate conduct requires a response from Department members, it shall be handled through the criminal justice system, inmate disciplinary system, or other methods consistent with the Department's Core Values, policies, and procedures.

Inmates are part of a community inside the jail system and should be encouraged to express complaints, requests, or recommendations to Department members. Inmates shall also have the right to communicate with legal representatives or inmate advocacy organizations about complaints or personal legal matters. Members shall not ask inmates for details of their communications, or interfere with the intent to discourage complaints.

Department members shall not remove or deprive an inmate from correspondence, including names, phone numbers, contact information, or any information that is used for legitimate and lawful purposes.

Any allegation of retaliation by an inmate will be objectively and thoroughly investigated by the Sheriff's Department. The allegation will be documented by the supervisor receiving the complaint on a SH-AD 32A and submitted to the unit commander of the involved facility for review. The unit commander will forward a copy of the complaint to Internal Affairs Bureau, Internal Criminal Investigations Bureau, and the Office of Independent Review. The Captain of Internal Affairs Bureau will determine which unit will conduct the investigation.

3-02/035.00 FORCE PREVENTION POLICY

It is the Sheriff's Department's responsibility to provide a safe custody environment for the inmates and a safe working environment for Sheriff's personnel. All employees shall view their professional duties in the context of safety for themselves, other employees, and inmates.

All jail personnel should maintain a professional demeanor, according to each situation, keeping in mind the Department's Core Values.

Department members shall only use that level of force which is objectively reasonable to uphold safety in the jails and should be used as a last resort. Reasonable efforts, depending on each situation, should be made by jail personnel to de-escalate incidents by first using sound verbal communications when possible. If verbal communications fail, reasonable efforts should be made to call a supervisor to assist in seeking compliance from disruptive inmates ([Refer to CDM 5-05/090.05, Handling Insubordinate, Recalcitrant, Hostile or Aggressive Inmates](#)).

In cases where Sheriff's Department personnel must take action to conduct lawful duties where there is not necessarily an immediate physical threat, such as prolonged passive resistance or cell extractions, there shall be a tactical plan predicated on preventing the use of force whenever possible. Supervisors shall be present during planned tactical operations.

All inmates are issued a copy of jail rules and regulations and subject to discipline for violating those rules. All Department members shall focus on upholding safety, respect and professionalism, even in situations where force is required.

When force must be used, deputies and staff shall endeavor to use restraint techniques when possible, and use only that level of force required for the situation, consistent with Department's Situational Use of Force Options Chart (as defined in [Manual of Policy and Procedures, Use of Force Categories, section 3-01/025.20](#)).

Our collective and individual goal is to prevent force through effective communication emphasizing safety, respect, and professionalism as emphasized in the Department's Core Values.

Drugs, Fraternization & Off-Duty Violence

Drug Smuggling Into Jails

A few years ago, LASD's Internal Criminal Investigations Bureau (ICIB) initiated a large scale investigation into allegations of Department personnel smuggling drugs into county jail facilities. The task force began its investigation based upon confidential informant information. As the investigation unfolded, the task force followed numerous tips leading them to investigate several personnel in county jail facilities and courts in LASD's jurisdiction. Over a span of approximately two years, the task force investigated nearly 40 Department personnel.

During the investigation it became evident to the Department that deputies were being lured by inmates into performing inappropriate and criminal "favors" for inmates. Although drug smuggling and cell phones was amongst the most serious of the favors, some of the favors included bringing in special clothing or food or sending messages to inmates' loved ones. The investigations revealed that some personnel had developed inappropriate personal relationships with the inmates of whom they were entrusted to safeguard. The Department was perplexed with many questions, such as: Why would someone jeopardize their career in law enforcement? How do these inappropriate relationships develop? What can the Department do to best protect itself from hiring people who fall prey to inmates' persuasion to follow a criminal lifestyle, and for those who are hired, how can the Department best prepare its new deputies to handle entreaties by inmates that could potentially compromise them?

The ICIB Captain, determined to make further use of the information the task force received throughout the many months of investigation, broached the idea of making a training video. The idea was to develop a training video that would focus on new deputies and academy cadets and demonstrate “lessons learned” by showing how deputy personnel had made poor decisions, resulting in prosecution, incarceration, and loss of law enforcement careers. While several of the investigations revealed serious administrative violations, such as Fraternalization or Prohibited Association, most did not reveal criminal conduct. However, there are two notable cases which resulted in felony criminal filings and convictions.

Drug Smuggling Training Video

While the criminal investigation captured hundreds of audio recordings of interviews with inmates and deputies, ICIB wanted to do video interviews with inmates specifically for training purposes. ICIB decided to contact some of the inmates who had lured a deputy into smuggling drugs. ICIB explained the idea of making a training video to the inmates.

Surprisingly, and to the credit of the ICIB investigators who had developed very professional and respectful relationships with the inmate witnesses, two inmates agreed to participate in making the training video. Additionally, the ex-deputy turned convicted felon also agreed to participate in the training video. The well-produced video consisted of the two inmates who were

The inmates explain how they developed a falsely caring friendship with the deputy, tested and exposed his limits and eventually convinced him to smuggle drugs.

instrumental in compromising the former deputy and the ex-deputy himself. Together they tell a cautionary tale of how inmates can compromise the integrity of deputies given the opportunity to do so.

To demonstrate, the video juxtaposes two very different perspectives of the drug smuggling operation. The first perspective is that of the two inmates. The inmates explain how they developed a falsely caring friendship with the deputy, tested and exposed his limits and eventually convinced him to smuggle drugs. The second perspective is that of the deputy who explained how he began seeking approval with the inmates. The deputy obtained such approval by granting small favors for the inmates (such as bringing in special food or delivering a

message). Eventually, he admitted to one of the inmates that he had used marijuana in the past. This admission caused the inmates to believe that since the deputy had used drugs in the past, he might be suggestible to using drugs again. At the inmate’s suggestion, the deputy used marijuana and then told the inmate that he had done so. This admission and the favors that he had provided

the inmate placed him in a position to be blackmailed, or as the inmate put it, “I [the inmate] knew I had him.” Once the deputy began providing the inmate drugs, he could not stop since the inmate threatened to expose the deputy if he did so.

The video presents powerful insight into the circumstances that led to the ultimate fall of this deputy. The video has been presented to several new academy classes as part of training on ethics. In addition to the video, discussion is held between the recruits and the ICIB Captain. The curriculum is supplemented with a presentation by an FBI Agent who talks about the federal criminal civil rights statutes that are used to prosecute peace officers who violate the law. Recently, the video was made available to all LASD employees and was presented to all LASD Captains at a management conference. OIR has been advised that most custody facilities require all deputy personnel to review the video. OIR commends the Department for taking the time to develop and circulate this powerful training video.

The Burrito Deputy

Based on information obtained from the task force investigation of allegations of drug smuggling by deputies, the Department investigated allegations that a deputy was involved in smuggling drugs to an inmate during the inmate’s court appearances. The investigation revealed that a deputy was accepting food items from an inmate’s visitors at the courthouse. According to confidential information, these visitors had hidden narcotics in burritos and had delivered them to the deputy in the past. The deputy in turn delivered the burritos to an inmate inside the court-lock-up facility. A Special Operations Group from ICIB conducted an undercover operation. In this case, a woman who had been asked by an inmate to deliver burritos stuffed with heroin to the courthouse deputy agreed to cooperate in the undercover operation. She gave the burritos which contained heroin to the deputy. The deputy accepted the burritos from the woman who was wearing an audio wire. The task force stopped the burrito from entering the lock-up area of the courthouse and confronted the deputy. The deputy admitted to delivering food to the same inmate on numerous occasions, but claimed he did not know there were narcotics inside the food. The deputy was relieved of duty and the Department moved to discharge him. However, he resigned prior to being served with discharge papers. The deputy recently pled no contest to Penal Code section 4573, Bringing Drugs into a Jail, a felony, and was sentenced to two years in jail.

Off-duty Violence Mixed with Alcohol

The Restaurant Melee

One night in 2010, several deputies got together to celebrate a birthday at a local bar. At the end of the party, a Sergeant among a group of about six to ten deputies had determined that some of the deputies were unable to drive home due to their level of intoxication. She recommended they get something to eat. They all decided to go to a restaurant that stays open 24 hours.

Once at the restaurant and according to the majority of the witnesses and video surveillance from the restaurant, one of the deputies appeared to be overly intoxicated. He was reported by one witness as being obnoxious and angry. As the night unfolded, a very disturbing event began to take place.

When the deputies were sitting at the dining table, one of the male deputies failed to move his chair out of the way to allow another female restaurant attendee to pass. He then aggressively backed his chair up into another chair of a male at another table and stood up. At the time, the intoxicated deputy believed that the male behind him had actually caused the “bump” with the chair, when in fact the video clearly shows that the deputy was the one that caused the “bump.” The two began exchanging hostile words and squared up with each other. While the deputy and the unknown male were arguing, a female deputy attempted to hold back the male deputy. She explained later in her interview that she was trying to tell the male deputy to calm down and defuse the situation.

Although the stories are conflicting at this point, it appears on the video that an object (most likely a balled up napkin) is thrown from one table of unknown people towards the table with the deputies. Then, another deputy picks up a plate and flings it towards the table of unknown people. It is at this point that massive chaos begins to unfold. People begin fighting, chairs and tables are knocked over, food is thrown, and there is even one point where a deputy attempts to remove a male from the floor and tosses him towards a window, causing the window to break.

Witnesses to the incident begin fleeing the scene and all of the people from the non-deputy table who were involved in the melee left via the back door. Once the incident is completely over, the only people left at the restaurant were the deputies involved in the incident and the restaurant personnel. The restaurant called 911 and a local LASD Sheriff Station took the call and responded.

Upon arrival at the restaurant the handling deputy pulled the video and allowed some of the involved deputies to review it at the scene.¹⁰ It was obvious to anyone looking at the video and the aftermath of the incident that there was significant damage to the restaurant and a significant fracas had occurred. A Sergeant and an assisting deputy also responded to the scene to help the handling deputy with the situation.

Unfortunately, however, the handling deputy and Sergeant decided not to take a report, nor did they make any special notification to their Watch Commander – even though off-duty LASD deputy had been involved in a very serious situation that likely involved alcohol. The handling deputy stated the other party had fled the scene, the deputies involved in the fight had agreed to pay for the damages, and the manager did not wish to press charges. It was for these reasons that the handling deputy had deemed the incident to be a “civil matter” not requiring a report.

Fortunately and to the credit of the Watch Commander on duty at the LASD station, once he found out that the incident had involved off-duty deputies and that there was a physical fight resulting in thousands of dollars in property damage, he insisted the handling deputy return and take a report. He also made the proper notifications to his Unit Commander and the Department regarding the off-duty conduct of the involved deputies.¹¹ This, however, was all done several hours after the event took place. As such, there were no witnesses when the deputy returned to take the report.

The entire matter involved ten LASD personnel from four LASD station/custody units. The Unit Commanders of all four units decided the very complex incident needed to be handled by the Internal Affairs Bureau. In the end, most of the involved deputies, including the handling deputy and Sergeant from the responding LASD Station, were named as subjects.

The investigation by Internal Affairs, conducted by a retired Lieutenant on call-back duty with the Department, was extremely voluminous, thorough, and included over twenty-five interviews. Uniquely, this case crossed over OIR “jurisdictions” as well. Due to the number of different LASD units involved, there were three OIR attorneys who were ultimately consulted on the matter regarding outcome and discipline.

¹⁰ During the fight, it was determined that some cellular phones were taken off the tables or picked up off the floor. During the interviews of some of the involved deputies, it was stated that the reason the handling deputy let them look at the video was to allow them to determine who had stolen their cellular phones. At the time of the IAB interviews, all involved off-duty deputies had seen the video (some even having their own personal copies).

¹¹ The Watch Commander learned of the incident when another Lieutenant from another unit called in to inquire about the event.

Sorting Out the Violations

At the beginning of the investigation it was necessary to vet the violations that occurred at the restaurant – namely, those potential violations that occurred when off-duty LASD personnel became involved in a physical altercation likely involving alcohol, and those that occurred when the LASD responding unit arrived. For instance, was there any attempt to dissuade the responding deputy from taking a report? Were the deputies treated favorably because of their deputy status? Additionally, were proper notifications about the incident made to all administrators responsible for the off-duty deputies?

Also, at the scene it was alleged that some of the deputies had yelled obscene and harassing comments to patrons. Specifically, it was alleged the deputies had insulted several gay patrons by yelling out hate words to them while they ate. This was allegedly one of the reasons why the fight had begun, thereby raising the question as to whether the incident involved a hate crime.¹² Yet another allegation involved a patrol Sergeant who had allegedly run into some of the involved deputies earlier at a club while he was on-duty in the area. It was reported that the Sergeant informed the involved deputies that he would meet up with them after his shift ended at the restaurant where this incident took place. When the Sergeant arrived, the fight had already taken place. Some witnesses stated that the Sergeant was lingering around the scene and interjecting himself inappropriately in the investigation.

In the end, it was determined that the majority of deputies were looking at violations of general behavior and off-duty conduct. The responding deputies were alleged to have violated performance-type policies for failing to take a report. And, as will be explained below, one deputy failed to provide full and truthful statements to the investigator and was later found to have made false statements to an investigator.

The Fighting Deputies

Once all of the interviews were conducted, in conjunction with the obvious information gleaned from the video footage, it became clear there were only two deputies who were the aggressors and instigators of the fight. There were many admissions of drinking alcohol, although the evidence only proved that the deputy who instigated the incident was completely intoxicated. As such, and with OIR's concurrence, these deputies received the most significant discipline. The remaining deputies present during the fight had either been attempting to break up the fight or had simply stayed out of the way of the incident entirely. As such, the charges against them were unfounded.

¹² The investigation did not reveal any evidence to support the allegation that a hate crime had occurred or that any of the restaurant patrons were verbally or physically assaulted because of their sexual preference.

“See No Evil” Does Not Work

One deputy at the restaurant claimed to have “not seen anything.” In fact, her story was that as the fight began some liquid food had gotten into her eyes and she was rubbing her eyes the entire time. As such, she answered “I don’t know” or “I didn’t see” to many questions to which the other subject deputies had provided complete answers. And worse, the video completely contradicted what the deputy stated in her interview. She was seen on the video looking directly at the fight as it began, and as it ended, she was seen laughing. Regarding her eye, there is one portion of the video where she touches her eye, but it is not for any extended amount of time. She gave no valid explanation for the contradictions and as such, she was charged with failing to give full and complete statements and given a significant suspension. OIR concurred with the outcome.

Failing to Take the Report

In addition to sorting out the fight at the restaurant, Internal Affairs investigators also touched on the matter involving the responding deputies and Sergeant for failing to take a report at the scene or give proper notifications to the Watch Commander regarding the involvement of off-duty deputies in an incident involving alcohol.

It was confirmed that the responding unit and the Sergeant did not properly handle or investigate the situation. Further, due to the notification lapse, the Department missed its opportunity to determine the off-duty deputies’ level of intoxication. As such, it was never fully explained what role alcohol played in the fight, although the evidence clearly suggested it was a significant contributing factor.

Although there was no evidence of purposeful intent to “cover up” the situation, the perception of such a “cover-up” cannot be denied. This was one of the reasons the handling deputies and Sergeant were ultimately disciplined for their lax handling of the situation. The Sergeant, responsible for directing and commanding the handle, received the most significant discipline. The handling deputy received lesser discipline as he maintained that he was instructed by the Sergeant “not to write a report” and had just followed direction. The deputy received discipline, because even if his version of events was accepted (and although ordered by his supervisor), he still should have known he needed to take a report by the extreme damage to the restaurant and video footage showing the fight.

The Off-Duty Sergeant

Regarding the off-duty Sergeant that met up with some of the involved deputies after his shift ended, the investigation revealed information which suggested he inappropriately interfered with the investigation and/or attempted to stall the progress of the investigation. For example, the Sergeant had knowledge that some of the fighting deputies had been out drinking prior to arriving at the restaurant, yet he did not inform the handling Sergeant or deputy of this

knowledge. Further, the off-duty Sergeant was informed by the restaurant manager that the incident was caught on tape and that there was a large amount of property damage, yet he did not object when hearing the handling Sergeant instruct the handling deputy not to take a report of the incident. Finally, the off-duty Sergeant did not make any notifications of the incident, even though he knew several LASD employees had been involved.

While the evidence did not clearly or convincingly prove the off-duty Sergeant was *intentionally* trying to interfere or stall investigation of the incident, the evidence did support a finding that he had failed to perform his duties (albeit off-duty) as a Sergeant and member of LASD. As such, he was given a suspension for his performance failures.

All three involved OIR attorneys concurred with the outcome in this matter.

Quiet Cannon Christmas Party

Holiday Party Off-Duty Assault

The 2010 Men's Central Jail (MCJ) holiday party was held at the Quiet Cannon in Montebello. By the end of the evening a physical altercation erupted between several deputies assigned to the 3000 module and two deputies who worked in the visiting area of the jail (Visiting). While it was not the first time in the recent past that deputies from MCJ were involved in an off-duty incident which resulted in discipline, this event was viewed by LASD as very troubling because it appeared that one group of deputies had attacked fellow members of the Department. The Internal Criminal Investigations Bureau (ICIB) conducted a quick and extensive investigation into the matter. While the District Attorney ultimately declined to file criminal charges against any of the involved deputies, a nearly parallel Internal Affairs Bureau investigation did result in the firing of six deputies involved in the assault.

The Altercation

One of the deputies from Visiting was the designated driver and was carrying his duty weapon in his pocket. The other deputy, Deputy A, told investigators he consumed about ten beers and a shot of alcohol during the party. Fellow party-goers who were near Deputy A described the deputy as appearing intoxicated. One witness recalled Deputy A making rude comments towards the server at their table. Deputy A also recalled having a conversation with an unidentified deputy from the 3000 floor. He recounted explaining to the 3000 Deputy the importance of getting inmates to the visiting area in a timely fashion because the 3000 deputies were habitually slow in doing so.

As he was getting ready to leave the party, Deputy A recalled he was saying his good-byes on the upper landing of a set of stairs which led down from the private room where the MCJ party was being held. He noticed that several deputies he recognized from the 3000 floor were standing below him on the middle landing and motioning him to come down to them. When he walked down to the middle landing, he recalled that one of the 3000 floor deputies said, "You disrespected us." He recalled that his designated driver pulled on his arm and told him it was time to go and the next thing he recalled was waking up lying face down on the ground while being punched and kicked by several different people.

Deputy B, the designated driver, said that he walked down the stairs with his partner who told him that he wanted to talk to deputies who were standing on the middle landing. Deputy B knew all the deputies in the group by name and knew that they worked on the 3000 floor. He stood off to the side as Deputy A spoke to the 3000 floor deputies for about four or five minutes. He eventually noticed that the initially calm conversation had escalated into a heated argument. At that point he walked over to his fellow deputies in hopes of defusing the situation. He noticed that one of the deputies from 3000 was now behind him sitting on the steps above the middle landing. Deputy B put his hand on the shoulder of Deputy A who was in the argument and told him it was "time to go."

As Deputy B pulled on Deputy A's shoulder he noticed the deputy from 3000 who had been sitting on the steps came up from behind him, grabbed him and said, "Don't [expletive] touch my partner!" Deputy B said that the deputy from 3000 spun him around and was starting to throw him to the ground. When asked, Deputy B said it was clear in his mind that he was being assaulted and he thus braced himself from falling with one foot and punched the deputy who was trying to take him to the ground in the face. He also said that he had not touched any deputy from the 3000 floor, he was only trying to get the attention of Deputy A. Deputy B and the 3000 floor deputy punched each other several times when four other deputies from the 3000 floor then joined in by circling around and punching Deputy B. He recalled being backed into the corner of the landing while he was being struck about the face and back of his head by the deputies from 3000. A civilian witness described the victim deputy as being held in a headlock as other males came up to the victim and hit him, left and then came back and hit him again.

Deputy B recalled gripping the handrail of the landing and somebody trying to pry his hands off the railing. He was afraid that one of his assailants was going to throw him over the side of the railing. He said the assault finally stopped when other Department personnel intervened. He eventually made it to the bottom of the stairs when the deputy from 3000 who initially grabbed him by the shoulders broke free from other deputies who were holding him back. They briefly exchanged punches before being separated again. The deputy recalled that the same deputy broke free a second time and they again exchanged blows.

Supervisors and assisting deputies succeeded in guiding the involved personnel down the stairs. Another deputy assigned to Visiting was also in the area at the bottom of the stairway. She told investigators that she challenged one of the involved deputies from 3000 by asking him why he would assault fellow deputies. She recounted that she was within three feet of him as he was being pulled away by other deputies, when he reached over them and punched the female deputy in the chin. She was able to identify the deputy who punched her as well as one of the deputies who was pulling him away.

The Criminal Investigation

The ICIB and Internal Affairs Bureau (IAB) were notified of the incident the next day. The following business day, the Captain initiated an inquiry into the incident. Seven deputies, all assigned to the 3000 floor, were relieved of duty pending a criminal investigation. Two days later, the two injured deputies from Visiting went to the Montebello Police Department to report that they had been assaulted by other deputies and they were desirous of prosecution.

Soon thereafter, the Montebello Police Department's acting Chief formally requested that the LASD investigate the possible crimes that took place at the Quiet Cannon because of the limited resources they had to conduct what would likely be an extensive investigation involving numerous potential witnesses. The Undersheriff assigned the investigation to ICIB.

The investigation was a massive undertaking which strained the resources of ICIB. ICIB eventually contacted over two hundred potential witnesses and conducted over 180 interviews. Many of those interviewed were either not present during the incident or did not see the altercation. A large number of other witnesses saw portions of the incident but were not able to identify the involved parties or provide detailed accounts of what occurred. The rest of the witnesses did provide details and some were able to identify particular Department employees who took part in the altercation and the events which took place immediately afterwards.

The review resulted in six deputies assigned to 3000 floor being terminated from the Department.

Considering the extensiveness of the investigation, the criminal investigation was completed at breakneck speed in early February and submitted to the District Attorney for filing consideration. The District Attorney eventually declined to file criminal charges against any of the involved deputies.

The Administrative Investigation

IAB conducted nearly two dozen additional interviews of witnesses – most of whom were previously interviewed by ICIB. Because the deputies’ union had obtained a temporary restraining order that prevented IAB from interviewing the deputies, none of the subject deputies were interviewed during the administrative investigation. While the investigation centered on whether a number of specific policy violations had occurred, it also examined broader questions potentially leading to additional subjects and policy violations. IAB looked at the actual incident, the actions of superiors before, during and after the event, whether a handful of deputies were disrespectful to staff at the Quiet Cannon, whether a deputy was disrespectful and uncooperative with the Montebello Police Department, and whether the consumption of alcohol by various individuals was outside of policy.

IAB concluded its investigation by the end of February and submitted the matter for charging and discipline consideration. Eventually the incident was considered by the Case Review Committee. The review resulted in six deputies assigned to 3000 floor being terminated from the Department. One deputy who was initially believed to have been part of the altercation was not charged or disciplined and returned to work. OIR concurred with the outcome.

After consulting with OIR, one of the deputies from Visiting also received discipline for being intoxicated and for disorderly conduct and rudeness towards his co-workers and restaurant staff. OIR concurred with the result.

Correcting the Record and Protocol Changes Emanating from the Incident

This incident received extensive publicity in the media. As a result of that publicity, the deputies involved in the assault have been often referred to as the “3000 boys” and some have suggested that the deputies shared a common tattoo. However, during the extensive criminal and administrative investigations, there was no evidence that the involved deputies had ever referred to themselves as the “3000 boys.” Additionally, while several of the involved deputies had numerous tattoos, an examination of those tattoos found no common tattoo.

The investigation, however, did reveal troubling photographs of some of the involved deputies prior to the incident holding up three fingers in a way that could be interpreted as throwing “gang” signs. The investigation also indicated that the assault, while likely fueled by alcohol use, was instigated at least in part as a result of work-related conflict between two groups of deputies assigned to different parts of Men’s Central Jail. The fact that the groups of deputies allowed a work place conflict to evolve into an assault was troubling and indicative of a deep divide amongst them. More concerning was the apparent formation of a group by some deputies who apparently identified more with their floor assignment than their unit assignment or with the

Sheriff's Department. The fact that some of those deputies allowed themselves to be publicly photographed holding out three fingers similar to the way gang members do showed complete ignorance of the negative message that such a photograph presented; by adopting the gestures

of gang members, jail deputies undermined their colleagues in patrol, who were working hard to keep from inflicting violence in the streets.

In discussions with Department executives, all readily agreed with our position that a rotation plan should be resurrected, and within weeks, one was in fact devised and implemented by LASD.

By the time of the Quiet Cannon incident, we had learned of a failed attempt by a Unit Commander several years prior to create an assignment rotation system among deputies working in the jails, whereby deputies would work different parts of the jail on a rotational basis. In part, that plan was intended to reduce the likelihood deputies would form work-related cliques. In discussions with Department executives, all readily agreed with our position that a rotation plan should be resurrected, and within weeks, one was in fact devised and implemented by LASD.

Fraternization with Informants

The year 2011 yielded two serious cases involving fraternization with informants. Although having two general fraternization cases is not necessarily out of the ordinary for any given year, what is most concerning about these two cases is that they involved deputies and detectives working with confidential and reliable informants. In order to become a confidential informant, the informant must go through a lengthy registration process. The informant is paid for the information he/she provides. Most informants are persons facing criminal charges or who have recently been convicted of crimes. While the relationship between LASD and a confidential informant is expected to be professional, it is also understood that it involves developing a working relationship between a law enforcement officer and an individual who is frequenting the criminal underworld. As a result, the relationship requires checks and balances by LASD to ensure the process is in accord with best police practices.

In order to ensure confidential informant work is conducted properly, LASD has extensive policy on how to work with informants. In addition to administrative requirements, the policy includes safeguards intended to prevent the development of inappropriate relationships. For example, the policy prohibits deputies from personally meeting with informants unless there are two LASD

personnel present. Further, the policy requires all paid transactions to be reviewed by multiple levels of administration. And finally, the informant is expected to be made aware of the policy so that the expectations are understood by all involved. In 2012, the Department updated and revised its already comprehensive informant policy to address some of the concerns that arose out of the 2011 cases. OIR actively participated in those discussions and concurred with the Department's revisions.

In addition to the informant policy, there is also an LASD policy prohibiting personal relationships with certain persons accused or convicted of certain crimes. That policy is called the Fraternalization and Prohibited Association Policy.¹³

Below are brief summaries of two of the cases involving inappropriate relationships with informants.

Case One

While on duty, a deputy was on patrol in a high narcotics area when he encountered a female whom he checked for outstanding warrants. During their conversation, he gave the female his personal mobile phone number and asked her to call him with information. Shortly thereafter, the female called and they became involved in a sexual relationship. While they were dating, the female sometimes provided the deputy with information about individuals she knew were involved in narcotics. During that time, she was also arrested for being under the influence of a controlled substance and felony possession of stolen property. The deputy spoke with the female while she was in custody and provided child care for her. He thereafter registered her as an informant with the Narcotics Bureau. Part of the registration process involved going through the female's extensive criminal history with the deputy. When their relationship deteriorated, the female went to the deputy's station and reported that he was a "dirty cop" who took narcotics from people he arrested and gave them to his informants, including her. She also provided the Department with a small magnetic pouch which she said he had taken

¹³ Manual of Policy and Procedure 3-01/050.85: Members shall not knowingly fraternize with, engage the services of, accept services from, do favors for, or maintain a business or personal relationship or association with persons who are in the custody of any federal, state, or county law enforcement agency or who have been released from the custody of any law enforcement agency within the preceding 30 days. Additionally, members shall not knowingly fraternize with, engage the services of, accept services from, do favors for, or maintain a business or personal relationship or association with the spouse, immediate family member, or romantic companion of any person in the custody of any law enforcement agency.

Any member contacted by, or on behalf of, a former inmate who has been released from the custody of any law enforcement agency within the preceding 30 days shall immediately report such contact in a memorandum to the member's Unit Commander.

from one of his arrestees after removing narcotics from inside and booking them into evidence. A photograph of the pouch was discovered to be part of the evidence booked on behalf of one of his arrestees, but the actual pouch was not booked as evidence. The matter was referred to the ICIB for a criminal investigation and presented to the District Attorney's office for filing. The District Attorney declined to file charges.

During the subsequent administrative investigation, the deputy denied giving drugs to his informants and explained that he had kept the pouch for training purposes because it was a unique container for narcotics. He readily admitted his sexual relationship with the female. The Department thereafter discharged the deputy for multiple violations of policy including Fraternization, Tampering with Evidence, Performance to Standards, and Obedience to Laws. OIR concurred with the discharge. The case is currently pending before the Civil Service Commission.

Case Two

A detective began working with an informant on a particular matter because the informant was trying to "work off" a criminal charge. During a meeting with the informant and two detectives (one being the subject detective), the informant left a cellular phone in the patrol car. The subject detective took responsibility for returning it to the informant. The informant admitted having nude photographs of her body on the phone. Shortly after the phone was returned, the subject detective contacted the informant via text message and requested the informant send him the nude photos. The informant formed the opinion that the detective had gone through the phone. The informant complied with the request because the informant believed he/she was

Members shall not knowingly maintain a business or personal relationship or association with persons who have an open and notorious reputation for criminal activity, or where the association would otherwise be detrimental to the image of the Department. Examples include, but are not limited to, persons members know or reasonably should know are:

- under criminal investigation or indictment;
- on parole;
- gang members; and/or,
- adjudged guilty of a felony crime.

Exceptions to this policy require the express written authorization of the member's Unit Commander. Absent extraordinary circumstances, there is a presumption that requests to associate with immediate family members will be granted; however, express written authorization shall still be sought and received. The member's request, accompanied by the Unit Commander's response, shall be placed in the member's unit personnel file and become a permanent part of the member's personnel file.

A subsequent request shall be submitted any time the circumstances upon which the original authorization was based change. Subsequent authorization(s) will be considered on a case by case basis.

obligated to comply with the detective's request. As time passed, the detective and the informant carried on a personal relationship. They would speak on the telephone about very private and personal matters; they exchanged text messages and ultimately went on a dinner date where they held hands as they entered the restaurant. The detective admitted going to the informant's place of business unannounced and kissing and hugging the informant. On one occasion, the informant was cited for a traffic violation and the informant's car was impounded. The informant telephoned the detective and requested help. The detective showed up at the location, spoke to the outside agency about the car impound and gave the informant a ride home.

This matter came to light when the informant was speaking to another law enforcement officer about the case he/she was "working off" and mentioned the personal relationship with the LASD detective. The law enforcement officer became concerned and reported his conversation with the informant to LASD. An investigation was initiated and the detective was found to be in violation of multiple policies, including: Fraternization/ Prohibited Association, General Behavior, Immoral Conduct, and Use of Informants. The Department terminated the employee. OIR concurred with the disposition.

When a law enforcement agency chooses to work with informants, the delicate informant/deputy relationship must be kept professional at all times. In the two cases above, it was clear the deputies failed to maintain an appropriate and professional relationship with their informants. To the Department's credit, it recognized the seriousness of these offenses, thoroughly investigated the allegations, and held the deputies accountable for these serious transgressions.

OIR Impact

Miscellaneous Misconduct Cases

Over any one year, OIR is responsible for ensuring thorough and fair investigations and principled outcomes for approximately 250 administrative investigations and close to another 100 deputy-involved shootings and major force investigations.

Below are some examples of how OIR impacts both the investigative and review processes of the Sheriff's Department. While these cases serve as illustrations, in every investigation OIR reviews, we evaluate its thoroughness and objectivity and weigh in on the resultant discipline decisions. We work closely with Department investigators, regularly providing input on the scope or direction of an investigation as it is ongoing rather than waiting for its completion before weighing in. We likewise work closely with Department decision makers in framing appropriate charges and outcomes, meeting with Captains, Commanders, and Chiefs as they consider the facts of a case so that our views are heard prior to any decision being made. It is not our practice to wait until a case is concluded and try to "catch" the

We likewise work closely with Department decision makers in framing appropriate charges and outcomes, meeting with Captains, Commanders, and Chiefs as they consider the facts of a case so that our views are heard prior to any decision being made.

Department completing a subpar investigation or reaching an unprincipled decision, but rather to shape investigations and outcomes at every step along the way so that wayward employees can be effectively held accountable when they violate policy. This interaction and impact on providing independent quality control on investigations and outcomes is the cornerstone of OIR's daily work and virtually every case is impacted as a result of OIR's input. The following examples illustrate the scope of that impact.

Ensuring Holistic Fact Gathering and Review: The Elevator Stabbing Case

OIR was notified that a K-10 inmate had stabbed another K-10 inmate in an elevator in a custody facility. The incident occurred as the inmates were being transported to the bus bay. The K-10 inmate, who was waist and leg-chained, freed his hands and stabbed the other K-10 inmate using a shank (a jail-made knife). During the struggle to separate the two inmates, a deputy received a minor stab wound to the arm. The stabbed inmate received puncture wounds to his neck. During the subsequent search, deputies found a Smith and Wesson handcuff key and two makeshift handcuff keys on the inmate that also had the shank. OIR immediately advised that this case should be handled by LASD's Internal Affairs Bureau (IAB) to investigate how the inmate was able to smuggle in the shank and the handcuff keys. When inmates are brought to court they are searched after leaving their cells in jail. They then board the bus and upon arrival at the courthouse they are searched again. The initial inquiry found that this K-10 inmate was not searched upon his arrival at the courthouse. Therefore, the question remained as to how and at what point he had armed himself with the shank and the handcuff keys. OIR advised the unit of its recommendation. However, the Department initially made the decision to keep the investigation at the unit level (which would only look at the policy violations of deputies at the courthouse). OIR believed there was a need to look at the bigger picture to find out what failures or violations of policy had occurred from the moment the inmates left their cells. In addition, an IAB investigation would provide a broader overview of the current practices of the Department in regards to transport and searches of K-10 inmates between the jails and courthouses. Once OIR learned that this case was to remain at the unit level, it took the matter through the chain of command, explaining the facts and the reasons why it should be an IAB investigation. The Department agreed with OIR and the case was investigated by IAB.¹⁴ This case resulted in seven deputies and one sergeant receiving discipline for failure to conduct searches of the K-10 inmates upon entering the courthouse and for failure to follow Department policy of keeping K-10 inmates separated from all other inmates at all times.

¹⁴ It should be noted that prior to IAB receiving this case for investigation, the unit had conducted its own very thorough investigation of their personnel involved in this incident.

Ensuring that Statutes of Limitations Are Met

Under the Public Safety Officer's Procedural Bill of Rights Act, notice of any discipline resulting from investigation of officer misconduct must be provided to the officer "within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation." California Government Code Section 3304(d). Thus, a deputy must be served with a letter of the Department's intent ("intent letter") regarding the discipline to be imposed upon him/her within the period of the statute of limitations. In a recent case where a deputy was convicted for a DUI, the Department and OIR had agreed upon a 20 day disciplinary suspension. During its due diligence, OIR contacted the unit to determine whether the deputy had been served with the intent letter. OIR had reason to believe the letter had been served approximately one month earlier. However, upon contacting the unit, OIR learned that the deputy had not been served due to an oversight. OIR quickly facilitated the means for the unit to write and serve the deputy that day, which was the expiration day of the statute. Had it not been for OIR's follow-up on the case, the deputy would not have been served with the intent letter imposing a 20 day suspension and the case would have been inactivated for failure to timely serve the deputy. In other words, but for OIR's intervention, the deputy would have escaped accountability in this case.

Video of Force Case: Ensuring Criminal Review

The OIR was contacted regarding a force incident that had been captured on video in a jail facility. The unit was inquiring whether OIR thought the case was appropriate for a Pre-Disposition Settlement Agreement (PDSA) or whether it should be a unit level investigation. A PDSA is an alternative method to a full investigation when an employee readily acknowledges his/her error and wants to conclude the matter promptly. The use of PDSA's is intended to be limited to non-serious policy violations. In addition, PDSA's should not be used unless there are no factual discrepancies in the involved parties' version of events. Unit level investigations are intended to be reserved for lower level disciplinary cases. In this case, OIR requested the use of force report along with the video of the incident before making its recommendation.

Upon receipt and viewing of the report and video, OIR immediately notified the unit that neither a PDSA nor a unit level investigation were appropriate. OIR recommended that the unit consult with the Department's Internal Criminal Investigation Bureau (ICIB) and allow them to view the video and determine whether a criminal investigation should be initiated. The unit was initially reluctant to do so as it did not view the incident as rising to a criminal level. OIR, through the Department's chain of command, expressed its recommendation and the reasons for it. Furthermore, OIR believed once ICIB had completed its investigation, the Internal Affairs Bureau (IAB) (not the unit) should investigate the case for policy violations. The Department agreed and shortly thereafter, the deputy was relieved of duty pending the outcome of the ICIB and IAB investigations.

Ensuring Case is Not Inactivated

If an allegation of misconduct is also the subject of a criminal investigation, the time during which the investigation is pending tolls the one year time period. The statute was believed to be expired in a case where three deputies and a sergeant responded to a three vehicle injury collision involving an off-duty deputy. The off-duty deputy was transported by paramedics to the hospital and the lead deputy prepared a traffic collision report indicating the deputy had not been drinking. It was brought to the Captain's attention several days later that the off-duty deputy may have been intoxicated. The Captain immediately consulted OIR and prepared a search warrant for the off-duty deputy's blood, which had been drawn at the hospital a few hours after the collision. When the case was presented to the District Attorney's Office, the prosecutor indicated he would also look into the issue of whether there was sufficient evidence to file conspiracy or obstruction of justice charges on the responding deputies.

More than a year later, after the off-duty deputy pled to a misdemeanor charge of DUI with injuries, the unit called OIR to inactivate the case, believing "the statute had been blown." IAB was consulted and opined that an administrative investigation could not be pursued against the responding deputies because more than a year had elapsed since the Department became aware the responding deputies may have covered up the fact that the off-duty deputy was intoxicated. OIR researched the issue, consulted with Advocacy, discussed the case with the prosecutor who reviewed the case, and ultimately convinced IAB and the unit that the statute had been tolled for four and a half months while the case was at the District Attorney's Office because the original prosecutor told the investigator who presented the case that conspiracy or obstruction charges were being considered against the responding deputies, even though the District Attorney's Office never formally rejected the case against them and filed only on the off-duty deputy. The evidence adduced during the administrative investigation was insufficient to prove any of the responding personnel engaged in an intentional cover-up of the off-duty deputy's criminal conduct, in part due to the fact that two of the deputies and the sergeant left the scene to respond to a deputy-involved shooting shortly after arriving. The lead deputy and the sergeant, however, were both disciplined for failing to perform to the standards expected by the Department. OIR concurred with the findings and discipline.

OIR Works with Unit to Persuade Department to Discharge a Repeat Policy Violator

Over the course of six months, a unit opened up four internal affairs investigations against a deputy for allegations including unauthorized absences, derogatory language toward a citizen, performance of duty, and general behavior. In addition to failing to report to work on numerous occasions, the deputy used foul language when confronted with absences by a supervisor, the deputy detained and aggressively searched and cursed at a citizen who did not

immediately follow orders, the deputy used derogatory language and failed to perform duties expected of the deputy while working with multiple partners, and the deputy falsely accused a supervisor of using foul language. Based on the number of administrative investigations and the deputy's prior disciplinary history, OIR was consulted early on by the unit and we worked together to decide upon the appropriate follow-up investigation, charges, and discipline. While no single investigation was significant enough to warrant a discharge, OIR believed discharge was appropriate given the deputy's prior discipline history (a total of eight cases with founded charges which included the use of excessive force and false statements) and the fact that the allegations involved being discourteous to both the public and supervisors. Once the investigation was concluded, OIR recommended including additional false statement charges. The unit agreed, as did Advocacy, and the deputy was ultimately discharged by the Department. An appeal of the discharge is pending before civil service.

Review of Lawsuit Causes Initiation of Internal Affairs investigation

When reviewing a federal lawsuit filed by the ACLU regarding First Amendment violations, OIR determined that a Deputy and a Sergeant may have acted inappropriately when confronting a photographer who was attempting to take photographs of an incident involving deputies while standing on a public sidewalk. According to a video of the incident surreptitiously taken by the photographer and posted on YouTube, the photographer was told he could not take pictures of the incident and asked to move. When the photographer attempted to discuss the incident with a supervisor, his complaint was ignored. OIR determined the incident fell within the statute of limitations and immediately met with the Deputy and Sergeant's Captain and Region Commander to show them the video and provide them with case law and information regarding the Department's policies and the photographer's First Amendment rights. At OIR's recommendation, the Department agreed to open administrative investigations against both individuals.

Once the investigation was concluded, OIR and the unit consulted on the charges and discipline. Both the deputy and the sergeant were found in violation of the Performance to Standards Policy and both were to be served with suspensions. OIR concurred with the findings and discipline. On the date the suspensions were to be served, however, the Unit Commander changed his mind and reduced the Sergeant's discipline to a written reprimand without OIR consultation or concurrence. OIR has addressed the failure to consult with the Unit Commander and has been assured that it will not happen again. While the Unit Commander may have had appropriate reasons to reduce the discipline, the agreement with OIR is that we are to be consulted before a final disciplinary decision is made so we are afforded an opportunity to appeal up the chain of command if we believe it is appropriate to do so. A formal policy setting forth the agreement with OIR is in its final stages and we are hopeful that the failures to consult under these circumstances will be reduced or eliminated after the policy is in place.

OIR Causes Force Incident to Be Elevated to More Serious Review

Force incidents which result in a fractured bone require a notification to IAB and OIR. IAB then responds to the incident, conducts the entire force investigation, and provides OIR with a copy of the completed investigation for review. The case is then heard by the Executive Force Review Committee (EFRC) panel to consider potential policy violations and tactical considerations. In this case, neither IAB nor OIR were notified of a significant force incident involving an inmate. OIR became aware of the incident about six weeks after it occurred because we were contacted by an attorney at a public agency who received a call from the inmate alleging excessive force was used by deputies. OIR looked into the incident and discovered a force incident had been reported and was in the process of being investigated as a case with an injury which did not rise to the level required for additional mandatory scrutiny by OIR and the EFRC. Additional inquiry into the incident by the Unit Commander disclosed the inmate was being housed at a medical facility and had in fact suffered a fractured knee-cap, which mandated an IAB and OIR notification. OIR discussed the matter with the Unit Commander, requested that the video for the date of the incident be reviewed and preserved, and further requested that the case be transferred to IAB for investigation. The Unit Commander agreed and the case is currently pending presentation to the EFRC. In addition to whether the force was within policy, the failure to document or discover the extent of the inmate's injuries will also be investigated and considered.

Ensuring Thorough Investigations: Deputy's Investigation of Neighbor Leads to Deputy-Involved Shooting

A deputy who lives in the city which he is assigned to patrol learned from a neighbor that another neighbor may be driving a stolen car. The suspect lived next door to the deputy and was known to the deputy to be a drug user. The deputy located the stolen car parked on the street. He confirmed the car had been reported stolen during a carjacking out of a different Sheriff's patrol station and decided to wait near the car to see if he could catch the suspect driving it. He did not notify anyone that he was watching the vehicle, nor did he tell the detectives investigating the carjacking that he had located their stolen car. When the deputy's shift ended, he reported back to the station and passed the information about the stolen car on to some deputies on the next shift, but did not notify a supervisor.

When he began his shift the next day, the deputy noticed the stolen car was still located where he had last seen it. He then notified his sergeant, who informed detectives and put together a surveillance team. After a brief surveillance, the suspect got into the stolen vehicle and began to drive away. The subject deputy and others followed. After a brief period of time, the suspect

stopped the car, got out, and began to walk toward the deputy's vehicle. The other deputies involved in the surveillance had not yet caught up to the suspect's vehicle, in part because of poor radio communications. As the deputy tried to apprehend the suspect, the suspect continually disobeyed commands. When he reached around his back, the deputy believed he was reaching for a weapon and fired one round, missing the suspect. The suspect then complied and was taken into custody.

When this case was reviewed by the EFRC, OIR agreed with the Department's conclusion that the shooting was within Department policy. Though the suspect had no weapon, he told investigators that he had reached behind his back and into his pants in an effort to conceal in his buttocks a cigarette that he could later retrieve in jail. He elaborated to say that he understood how the deputy could easily have interpreted this movement as him reaching for a gun.

OIR's Role in Ensuring that Citizen Complaints Are Taken Seriously

As is normal course of business for OIR, an OIR attorney received a phone call from a citizen regarding a complaint he had filed against the Department. The citizen was particularly concerned that no one was taking his complaint seriously. The citizen, an ex-deputy, alleged his "friend," a current deputy, was harassing him, causing major hardship in his and his father's life. He alleged the hardship eventually contributed to his father committing suicide.

Specifically, the citizen stated that the issue originated when he began receiving various harassing phone calls from what he believed to be public agencies, such as his local police station, City Hall and the FBI. The phone calls, some of which were recorded messages, consisted of people saying threatening things, making sexual sounds, including crude sounds of masturbation, and a singing of the song "Follow the Yellow Brick Road," to name a few. Based on caller identification, the citizen was able to view the telephone numbers of the harassing callers, all of which were phone numbers ascribed to public entities. The citizen filed complaints with those public agencies, but all agencies denied the harassment. The citizen alleged his family business began losing money. He initially believed it was directly related to a conspiracy between the agencies to ruin his and his father's life.

As all of this was ongoing, he repeatedly communicated the "harassment" to his "friend," the subject deputy in this case. He stated he was very upset and frightened for his life and informed his "friend" he thought his father was going to be ill because of the harassment and loss of business. The citizen and his father filed a lawsuit against the public agencies for harassment and interference with business. During the discovery phase of litigation, it was discovered that the phone calls were "spoofed." Spoofing is a process whereby a caller may create the appearance that a call is coming from another number. Spoofing also allows the caller to disguise their voice.

The “spoofers” were identified as the subject deputy. The lawyers for the public agencies threatened to countersue the family for filing a false lawsuit, because the public agencies were convinced the “friend” and the family had conspired to orchestrate the spoof and then sue the entities. The family was forced to drop their lawsuit and paid close to \$10,000 in fees. According to the complainant, very shortly after dropping the lawsuit, the father committed suicide, stating he was embarrassed about the event and that he could not take the shame. The citizen communicated these events to the Department, who originally took the complaint, but ultimately dismissed the incident because it sounded far-fetched and was coming from an alleged “disgruntled ex-employee.”

OIR spent several hours communicating with the citizen about the incident. OIR asked the citizen to forward the litigation documentation with the spoof information. The documents clearly proved the subject deputy had placed the harassing calls using a spoof card. OIR shared the information with the Department and recommended that it open an administrative investigation, to which it agreed. The evidence gathered confirmed that the “spoofers” were the deputy and all of the harassing calls had been placed by him. The deputy stated he was joking and although he had knowledge of the lawsuit and the turmoil it was causing the family, it was simply a joke.

The deputy had a significant discipline history, including a previous discharge that was grieved down to a 30-day suspension, with a last chance settlement agreement. Notwithstanding the discipline history or the facts of the spoof case, the Department was unwilling to discharge the deputy. OIR maintained a position that discharge was necessary and appropriate. It required numerous meetings with top Department executives to convince the Department to discharge the deputy. They finally agreed.

However, at civil service, the Department once again considered reducing the discharge and settling the case, which would have permitted the deputy to regain his job. The argument was that the Department could not locate the citizen and needed him to testify at the hearing. The Department notified OIR of this fact on the eve of the day the citizen was set to testify. OIR spent several hours trying to locate the witness and ultimately did find the witness. He confirmed his appearance and testified at civil service. The hearing officer upheld the Department’s discharge, specifically referencing the malice of the deputy’s actions in the spoof case and affirming that such conduct and discipline history warranted a discharge.

OIR Pushes for Drug Testing an Employee with a Questionable Past

A deputy was involved in a road rage incident. It was originally alleged that the deputy had stopped on an off-ramp, when he was rear ended by a driver that had previously “flipped him off” on the freeway. The deputy stepped out of his vehicle and the man ran up and punched him in the face. The deputy and the man then became involved in a physical altercation, ending

with the deputy being able to pin the man down until other deputies in the area responded. The case was written up as an assault against a peace officer (because the deputy stated he identified himself as a deputy as soon as he stepped out of his car).

Upon review of the police report, OIR became concerned with a few facts. First, it appeared that there were witnesses who reported that both the deputy and the other driver were equally engaged in “road rage” behavior. Additionally, the deputy stated he had come to a stop in the middle of the off-ramp when he was rear ended. There was no indication that there were any cars in front of the deputy, thereby begging the question of why the deputy would abruptly stop in the middle of an off-ramp. Furthermore, during the criminal investigation on the assault matter, a witness was located who stated the deputy had been a mutual aggressor in a “road rage” incident on the freeway. The District Attorney ultimately dropped the assault case.

OIR recommended the Department conduct an administrative investigation into the case. The Department did not believe there was any reason to investigate the matter and affirmed their belief that the deputy was just a victim. OIR argued that any involvement in a serious road rage incident, at the very least, raised a suspicion that the deputy might have anger issues. The Department ultimately disagreed with OIR and inactivated the case.

A few months later, the Department received information regarding serious allegations of misconduct (some criminal and still being investigated as of the writing of this document), including steroid use. Once the Department forwarded the criminal allegations for investigation, it was unsure what to do with the steroid use allegations. OIR encouraged the unit to perform a “for cause” test. However, there was much resistance from the Department, who expressed concern about a lack of “cause” based only on one allegation of steroid use. However, OIR reminded the Department of the previous road rage case, and even though it was ultimately inactivated, there remained questionable facts that could be articulated with the current allegations as further support of a “for cause” test. The unit followed that recommendation and tested the deputy. The test came back positive for steroids and the Department is in the process of completing the administrative investigation.

In addition, the Department reopened the road rage incident and the investigation is ongoing. OIR remains in contact with the investigative Lieutenant regarding the status of the case, and per its protocols, will participate in discussions with the Captain regarding the ultimate disposition.

OIR Identifies Policy Issue Stemming from Use of Force

In the processing area of a jail facility, an inmate was suspected of secreting contraband (narcotics) in his rectum. Deputies separated him from the remaining line of inmates and placed

him in a holding cell, pending a bowel movement. Despite the presence of a toilet in the cell, the deputies instructed the inmate to defecate in a bucket that contained plastic over the top. According to the investigation, this allowed the deputies to sift through and move the feces (and any contraband) without fishing it out of the toilet.

During the waiting time, the inmate asked for a blanket (he was placed in the cell naked). He then was seen by a deputy sitting on the toilet with the blanket covering his entire body, including his face. The deputy suspected the inmate was retrieving the contraband and possibly ingesting the items. The deputy opened the door and the inmate lunged from the toilet and struck the deputy in the face. The two began fighting and it took a significant amount of force to subdue the inmate, including use of a Taser. The facts of the case strongly suggested that the inmate was possibly on drugs and had continued to fight throughout the struggle with deputies. Several deputies were injured as a result of the incident.

During review of the force, the Department concluded all of the force used was justified and necessary. OIR concurred with the conclusion, but expressed great concern about the callous use of the bucket and plastic during jail facility contraband investigations. OIR recommended the Department cease use of the bucket and develop better policy regarding such sensitive, but necessary, contraband investigations. The Department agreed with OIR's recommendations and has been in the process of developing new policy regarding retrieval of contraband from within an inmate's body. OIR remains an integral part of this process.

Ensuring Thorough Investigation and Significant Discipline in Custody Force Case

A deputy received information that an inmate had a shank hidden in his rectum. The deputy advised his Sergeant of the information, who in turn directed him to escort the inmate to the clinic for further investigation. The deputy asked another deputy for his assistance and they went to the clinic with the handcuffed inmate. There he refused to be x-rayed and the sergeant considered what next steps to take. The Sergeant went to find the Watch Commander and about 45 minutes later ordered the deputy who first told him about his suspicions to take the inmate back to the 2000 floor and "secure him to a bench." The deputies took the inmate back upstairs but instead of handcuffing him to the bench as instructed, created their own plan to have the inmate stand over a bucket while handcuffed to a wire mesh partition until the suspected shank was excreted. The area, a hallway leading to an empty mini-clinic, was visible to a recording security camera. The deputies advised the inmate of their plan. Up until this point he had not acted aggressively towards deputies. As the initial deputy took the inmate's handcuffs off the inmate, he turned and punched the deputy - apparently striking him in the face.

The deputy immediately engaged the inmate as three other deputies joined and brought him to

the ground after about a five-second struggle. The video recording shows that once on the floor of the clinic hallway, a deputy kicked the inmate several times in the legs. The incident report states that another deputy threw numerous punches and knee strikes to the face and head of the inmate and kicked the inmate's torso one or two times. Another deputy kned the inmate three times in the stomach and then punched him two to three times in the face. That deputy, who is very large, then gained leverage by holding on to the mesh fence in the hallway that leads to the mini-clinic and delivered several knee strikes to the head of the inmate. One of the deputies sprayed the inmate in the face with OC spray and another deputy admits that he also punched the inmate in the face three or four times. The deputies asserted in their reports that the inmate was assaultive the entire time they were using force on him.

As the altercation develops, the deputy and inmate end up in the clinic. Parts of the surveillance video are not clear because the inmate is surrounded by deputies. The video does show a deputy holding a Taser and pointing it at the inmate with wires apparently leading from the Taser to the inmate. The Taser was equipped with its own camera and microphone. The deputies had written in their reports that the inmate was trying to crawl away and get to his feet when the Taser was used. The video footage of the Taser deployment, however, showed that the un-handcuffed inmate was lying prone on the floor with his legs straight out when the first five-second activation of the Taser occurred. The inmate is heard screaming in pain. A voice is heard saying, "Cuff him." A few seconds later there is a second activation and the camera shows the Taser is obviously very close to the inmate. The deputy who used the Taser wrote in his report that he used a "3 point stun," where the activated Taser not only discharges electricity through the probe wires but also through the Taser itself, which is making direct contact with the leg of the inmate to, in the deputy's words, "maximize the effect." Once the Taser is pulled away from the thigh, the Taser camera shows that the inmate is in handcuffs.

The inmate had a one and a half inch laceration on the top of his head that required staples, a contusion to his forehead, swollen ears, a laceration to his right inner ear, a contusion to the back of his head and a fractured rib. The inmate was x-rayed and a four-inch shank was visible in his anal cavity, which the inmate later removed along with a lighter.

The incident was investigated by the IAB and prepared for evaluation by the EFRC. The investigation reports prepared by IAB and the force memos written by the deputies were shared with OIR. The initial focus of potential policy violations by the Division Chief and EFRC members was on the failure to follow the instructions of the Sergeant, the decision to remove the handcuffs from an uncooperative inmate and, to some extent, the manner in which force was used, namely the kicks and knee strikes.

The OIR attorney responsible for handling the case received the investigative report from IAB describing the initial force report, the interviews of involved personnel and the indication that

the inmate did not submit to an interview with IAB. The OIR attorney noticed, however, that while the IAB report referenced the investigator's review of the surveillance video and also the possession of the Taser video, both those items were not provided to OIR. Because of a change in personnel at IAB, OIR had some difficulty quickly obtaining the videos before the EFRC hearing. When the videos were ultimately viewed, an immediate concern arose that the video did not appear consistent with the deputies' prior accounts of the incident. The two main concerns were that the deputies claimed that when the inmate went to the ground he pulled deputies down with him, thus explaining their continued force; and that the Taser was used because the inmate was still assaultive by trying to get back up on his feet when the Taser video showed he was lying flat on the ground.

The OIR attorney immediately met with the chair of EFRC to relay OIR's belief that the account of the deputies was not consistent with the surveillance video, and that the Taser video contradicted the claim that the inmate was still assaultive and advocated for an administrative investigation for use of unnecessary force. At the EFRC hearing, the matter was referred for an administrative investigation. Following protocol, the OIR attorney later met with the Custody Division Chief to discuss the case and review the videos. OIR recommended discharge for the deputy who used the Taser and significant suspensions for the remaining three involved deputies. Ultimately, Department executives subsequently reviewed the case and the videos and agreed with the Division Chief's recommendation for the discharge of one deputy, and suspensions for the other involved deputies.

The OIR attorney then conferred again with the Division Chief both before and after the *Skelly* hearing. Meetings were also held with Department experts in the use of force and Taser use to discuss claims made by the deputy that the use of the Taser was justified and within the training guidelines of the Department. *Skelly* hearings for the three remaining deputies resulted in modifications to the discipline.

Gang Injunctions: Working Towards Fairness

Gang Injunctions are a controversial law enforcement tool that has been frequently used in Southern California. Advocates of gang injunctions aver that they are effective ways to eliminate the presence of violent gangs in communities plagued by them. Detractors argue that gang injunctions allow the criminal justice system to imprison individuals whose only crime is that they belong to a designated gang and that they had failed to follow the limitations set out by the injunction. Without taking a position on gang injunctions per se, OIR has been involved over

the past several years with the Sheriff's Department on making sure mechanisms are in place to ensure certain levels of fairness in how the gang injunction is enforced.

The issue came to prominence in recent years in the City of Hawaiian Gardens. In that case, a gang injunction was issued and family members of those arrested complained about the way in which the gang injunction was being enforced. The two most prominent complaints were that individuals were being improperly served as members or associates of the gang and that there was no mechanism available for alleged gang members or associates to be "delisted" from that determination.

The Sheriff himself took a personal interest in the concerns raised by the citizens of Hawaiian Gardens and met on Saturday mornings with individuals to hear those concerns. OIR attended these meetings in order to provide an independent outlet to the complainants. As a result of the Sheriff and OIR's work, structural changes were made in the way in which LASD maintained the injunction.

First, protocols were created at the Sheriff's behest to ensure that there was more reliability in who was served with a gang injunction. From the Saturday meetings, it was ascertained that individuals had been served who may not have been gang members or associates. As a result, the protocols no longer allowed patrol deputies the complete discretion to serve believed associates with the injunction, but required that determination to be made by a detective with gang expertise.

More importantly, the new protocols provided a path with which citizens could appeal a determination that they were subject to the injunction. In the past, because there was no guidance on how a gang member could remove himself from the dictates of an injunction, not one person had been successful in doing so in Los Angeles County. As a result of the protocols and the Sheriff's influence, for the first time, individuals who had been subject to the dictates of the injunction were able to successfully challenge that designation. For those who were admitted gang members, the new protocols also provided a clearer path for removal of that designation.

As a result of the protocols and the Sheriff's involvement, the consternation that had developed in Hawaiian Gardens about the way in which the gang injunction operated dissipated significantly. OIR was pleased to be part of the solution in resolving community concerns about its use and will continue to monitor the protocols and its use.

As a result of the Sheriff and OIR's work, structural changes were made in the way in which LASD maintained the injunction.

Performance Log Entries

The Department uses a Performance Log Entry (PLE) to document performance by an employee. While the PLE does not constitute formal discipline, it is memorialized and can be considered when preparing the employee's annual performance evaluation. In July 2011, OIR learned about two issues regarding the PLE forms as a result of an article that appeared in ALADS Dispatcher, the monthly publication of the Association for Los Angeles Deputies Sheriffs, the union for deputies. The Sheriff's Department's Manual of Policy and Procedures section 3-02/085.10 defines the PLE as follows: "The Unit performance log is comprised of interim supervisory notations about employee performance during a given rating period. The purpose of the Unit performance log is to document supervisors' observations about performance and supervisor/employee discussions about performance (goals, strengths/weaknesses, career guidance, etc.)."

The first issue raised in the article was that some of the units/assignments in the Department were using PLE forms that incorrectly stated that a deputy has only 10 business days to file a written response (referred to in the article as a "rebuttal") to a PLE. In support of this argument, the article cited Peace Officer's Bill of Rights (POBR), Government Code section 3306 which states "[a] public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany the adverse comment."

The second issue raised in the article was that deputies were signing PLE forms when they were not required to under POBR. The article cited Government Code section 3305, which states "no public safety officer shall have any comment adverse to his interest entered into his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer." ALADS, in its article, recommended that the Department correct the misstated 10 day period on the PLE form and work on achieving consistency throughout the Department regarding use of the forms.

Upon learning about the alleged inaccurate information contained in the PLE forms, OIR contacted different units within the Department to ascertain which PLE forms each unit/assignment was using. OIR was able to quickly confirm that different and inconsistent forms were, in fact, being used throughout the Department. Some units had personalized the form to be specific to their unit. Some units had forms incorrectly stating deputies had 10 days to file a written response while other units had forms correctly stating deputies had 30 days to file a written response. One unit omitted any reference altogether to filing a written response. It was clear from our review that there was no specific PLE form that all units within the

Department were uniformly using. More significantly, OIR believed it was important that the PLE form not only correctly advise deputies that they have 30 days to file a written response to any adverse comment entered in their personnel file through a PLE, but that deputies should also be advised of the additional right granted to them under POBR, i.e., that they have 10 days to file a grievance after the PLE is entered into their file.

OIR expressed its concerns to the Department regarding the PLE forms. Robust discussions ensued between OIR and personnel from the Department's Advocacy Unit, Risk Management Bureau and Employee Relations Bureau. Initially there was resistance by some to create a new PLE form advising deputies of their rights. However, OIR believed and was able to persuade the interested parties that a new form would be in the best interest of both deputies and the Department. As a result there is now one PLE form that all supervisors must use regardless of their unit assignment. In fact, Manual of Policy and Procedure section 3-02/085.10 was revised in June 2012 to state: "Use of the Department's designated unit performance entry log form is required. Forms created or modified in any way by the Department bureaus, facilities, stations or units shall not be used."

OIR also worked with the Department regarding ALAD's second concern, the right of a deputy to refuse to sign the PLE form. The form now states that if, after reading the document, the employee refuses to sign the form, that fact is noted and witnessed by a second supervisor. Finally, due to the fact that PLE forms are used for both sworn and civilian employees, the new form is used by supervisors regardless of the employee's classification.

The new form and policy manual dictates will ensure consistency and more thorough advisement to LASD employees about their rights so that the confusion that has existed in the past about these matters will cease.

3-02/085.10 EMPLOYEE PERFORMANCE RECORDS

Documentation about a given employee's performance may be found in the following sources:

- Department personnel folder,
- Unit personnel folder,
- Unit performance log,
- Automated Personnel Performance Databases.

Department Personnel Folder

The Department personnel folder comprises the file of personnel records maintained in a centralized location by Personnel Administration. (See section 3-02/020.10 Personnel Folders.)

Unit Personnel Folder

The Unit personnel folder is a decentralized extension of the Department folder. The Unit personnel folder is maintained at, and by, the employee's Unit of assignment, and is transferred from Unit to Unit as the employee transfers. If an employee leaves the Department, the Unit personnel folder shall be sent to Personnel Administration.

Unit Performance Log

The Unit performance log is comprised of interim supervisory notations about employee performance during a given rating period. The purpose of the Unit performance log is to document supervisors' observations about performance and supervisor/employee discussions about performance (goals, strengths/weaknesses, career guidance, etc.). Use of the Department's designated unit performance log entry form is required. Forms created or modified in any way by Department bureaus, facilities, stations, or units shall not be used.

The documentation on a given employee in the Unit performance log shall be shown to, and discussed with, the employee by the supervisor who recorded it, who shall obtain the employee's signature as evidence that the employee saw the documentation.

NOTE 1: If the employee refuses to provide a signature acknowledging awareness of the documentation, the supervisor shall have another supervisor witness the refusal. Both supervisors shall sign the documentation.

Performance log documentation may be referred to in the employee's current performance evaluation, after which all the past rating period's notations shall be removed from the log and new notations only, shall be entered for the next rating period.

NOTE 2: Expired documentation shall be maintained at the Unit until the evaluation process is complete, and shall then be destroyed.

Automated Personnel Performance Database

The Department maintains records on specific incidents relating to personnel performance in several automated databases.

Updates and Initiatives Incidents

Deputy-Involved Shootings

The Process

An attorney from OIR is on call 24 hours a day, seven days per week to respond to any deputy-involved shooting anywhere in the County of Los Angeles.¹⁵ If an individual is hit by one of the deputy's bullets, the shooting is classified as a "hit" and is investigated by the Homicide Bureau. If the individual shot at is not hit by the deputy's bullet, the shooting is considered a "non-hit shooting" and is investigated by the Internal Affairs Bureau (IAB). In addition to walking the scene of the shooting behind the police tape, OIR is briefed regarding the initial investigation and provided with information regarding the shooting upon request throughout the pendency of the investigation, whether the lead investigator is out of the Homicide Bureau or IAB. In every hit-shooting, in addition to the Homicide Bureau investigation, there is a subsequent IAB investigation that considers tactical issues, potential policy violations, and performance issues. During the investigative process, OIR consults with the Department and sometimes recommends

¹⁵ "Deputy-involved shootings" are defined by the Department as instances in which a deputy intentionally fires at one or more people. OIR is also notified of all inmate deaths and significant force incidents wherein protocol requires internal affairs investigators to roll out and conduct the force investigation. OIR responds to the scene of all inmate deaths unless it is immediately apparent that the inmate died of natural causes, such as when the inmate is in critical condition at a hospital preceding his death. With respect to significant force incidents, OIR has the option of responding when the incident is handled by internal affairs. Whether OIR responds depends on the circumstances of the incident which include the type of force used, when the degree of injury became known and thus, whether a crime scene still exists, and the extent of the injuries.

additional investigation. All of the reports, transcripts of interviews, photographs, diagrams, audiotapes of interviews or radio traffic, and videotapes are provided to OIR for review. Once the investigation is completed, OIR reviews the full investigation into the shooting and presents its opinions and concerns at the Executive Force Review Committee (EFRC) presentation, which consists of a panel of three LASD commanders. The commanders review the investigative report, receive a briefing from the IAB investigator who conducted the investigation, and then determine whether the shooting was in or out of policy, whether the tactics leading up to and including the shooting were appropriate, and whether any of the involved deputies failed to follow the Department’s policies and procedures. If the shooting was out of policy, if the commanders determine the tactics could have been better, or if they all agree a deputy violated the Department’s policies and procedures, the commanders decide whether to impose discipline, order counseling of the involved deputies, or require additional training. The commanders also look for systemic issues which may be presented by a particular shooting and whether current policies may be in need of revision.

The Numbers

In 2011, we saw more than a 10% decrease in the number of total shootings from previous years. However, the number of hit-shootings increased significantly:

Year	2009	2010	2011	2012
Hit Shootings	27	23	32	18
Non-Hit Shootings	15	20	6	10
Total Shootings	42	43	38¹⁶	28¹⁷

In 13 of the 32 hit-shootings in 2011, the injuries to the suspects were fatal. However, in all except one of those shootings, the individual shot was armed with a weapon which was recovered at the scene. Eight of the suspects were armed with a firearm, three with firearm

¹⁶ Of the 38 shootings, 32 occurred while the involved deputies were on duty and six of them occurred while the involved deputies were off duty.

¹⁷ This number reflects the total number of shootings reported in the first six months of 2012.

replicas, and one with a knife.¹⁸ With respect to the fatal shooting wherein a weapon was not recovered, the deputies reported to have seen the suspect point a firearm at them, but the two suspects fled on foot in opposite directions through a residential neighborhood and the deputies lost sight of them for several minutes before the shooting took place. The facts surrounding this shooting are described below as Case Two. In one of the fatal shootings, the suspect fired two rounds at a trainee, striking him once in the face resulting in the loss of an eye, before the deputy's training officer was able to return fire. Moreover, one of the fatally wounded suspects was shot after stabbing a baby to death and entering an occupied residence armed with a knife.

By comparison, in 2010 there were more shootings overall, but the number of hit-shootings was 23 and suspects suffered fatal injuries in seven of those shootings. Of the seven fatal shootings, the suspects were armed with a firearm which was recovered in two of the shootings, the suspects were armed with a knife in two of the shootings, one suspect used his vehicle as a weapon to strike a deputy, and two of the suspects were unarmed and were reportedly shot after reaching for their waistband. This year the number of deputy-involved shootings has risen to 28 in the first six months, up from 23 at this same time last year. Of the 28 shootings, 18 were hit shootings and seven have resulted in fatal injuries to the suspects. Last year during this same period, there were eight fatal shootings out of a total number of 20 hit-shootings. Unlike last year, however, preliminary information indicates two of the hit-shootings involve unarmed suspects. The investigations in these cases are still pending.

It is relatively straightforward to track and report on the total number of shootings, the number of fatal shootings, and the number of "hit" or "non-hit" shootings. The more difficult and often controversial number to report on is the number of hit-shootings when the individual shot proves to be unarmed, also known as "state of mind" shootings. While a peace officer need not wait until shot at before defending himself, unarmed hit-shootings are amongst the most controversial because there is often no evidence to corroborate the deputy's statement that he feared for his life after seeing the suspect reach for his waistband. Law enforcement officers are trained to make a split second decision to shoot based on the totality of circumstances, including their cover and their assessment of the threat, but they need not wait until they actually see a gun. Unarmed deputy-involved hit-shootings are nonetheless the most critical of incidents the Department handles and are the most closely scrutinized by the Department, the public, and OIR.

¹⁸ The *Los Angeles Times* recently reported that there were 54 officer-involved fatal shootings throughout Los Angeles County in 2011 and the person shot was armed in only two-thirds of the cases. The percentage of armed persons fatally wounded by LASD deputies, however, was much higher than the county average, i.e. they were armed in 12 of the 13 incidents. (See Rubin, J. and Ardalani, S., *Killings by police in L.A. County jump sharply*, L.A. TIMES, June 10, 2012, <http://www.latimes.com/news/local/la-me-cop-shootings-20120610,0,6928432,story>.)

Whether to classify a shooting as an armed or unarmed shooting in itself is often not as simple as it sounds and differs depending on the agency or organization. The classification of an incident as an armed or unarmed shooting for LASD is important because, as reported last year in OIR's Ninth Annual Report, current policy and protocols mandate that the investigation of unarmed hit-shootings be completed within 90 days of the incident. The protocol was instituted by the Sheriff in response to public concern about a series of unarmed hit-shootings in the summer of 2009 and in order to provide swift potential accountability and training when appropriate.

The Classification of Deputy-Involved Shootings

For purposes of LASD's policy expediting a shooting investigation, the individual shot at cannot be armed with or have access to a firearm,¹⁹ replica firearm, or other weapon such as a knife *at the time of the shooting*. While this may seem simple and easy to follow, there are some cases that present facts which are difficult to categorize. Last year, for instance, deputies reported to have seen a suspect brandish a gun at them while driving his vehicle. A vehicle pursuit ensued. At the end of the pursuit, the suspect was shot at after raising his right arm toward a deputy. However, no gun was recovered at the scene. The Department classified the case as an unarmed shooting because the suspect did not have a gun on him at the end of the pursuit where the shooting occurred. In another case, deputies conducted a felony traffic stop of a stolen vehicle. The suspect exited his vehicle and ran. A foot pursuit ensued wherein a deputy stated the suspect turned and shot at him and his partner three times. The deputy then fired at the suspect, but the suspect got away. The investigation failed to discover any bullet strikes or casings to corroborate the deputies' statements regarding the suspect shooting at them, but the case was nonetheless handled as an armed shooting because the Department could not learn whether the suspect was armed since he escaped apprehension. Moreover, in this case, because there was no evidence to indicate the suspect had been hit such as a trail of blood, the shooting was classified as a "non-hit."

In a third case, a deputy conducted a traffic stop for registration. The suspect exited the vehicle and engaged the deputy in a fight. During the fight, the deputy felt a firearm in the suspect's pocket while the suspect was grabbing at the deputy's firearm. The suspect broke free and a foot pursuit ensued wherein the deputy reported firing at the suspect when the suspect reached for his weapon. Again, because the suspect got away, there was no physical evidence to either corroborate or refute the deputy's statement. The Department classified the case as an armed "hit-shooting." While the suspect got away, he left a blood trail indicating he had been shot. In a fourth case, deputies reported that the driver of a stolen vehicle they had been searching for

¹⁹ When there is evidence of a struggle for a deputy's weapon or control of a deputy's weapon by a suspect during a physical fight with a deputy, the Department classifies the shooting as armed because it considers the weapon to be jointly possessed by both the suspect and deputy.

pointed a firearm in their direction and then took off with a passenger in his vehicle. One of the deputies later located the driver and after observing him reach for his waistband, shot at him. A gun was not located, but there was some possibility it could have been handed to the passenger who fled in a different direction. The Department nonetheless classified this shooting as an unarmed hit shooting because the driver was unarmed at the time of the shooting and did not have a weapon within his reach. These cases demonstrate the difficulty sometimes inherent in making hit/non-hit or armed/unarmed classifications and then drawing any conclusions from the numbers without analyzing the specific facts in every case.

Of the 38 shootings in 2011, the Department classified only five of them as unarmed hit shootings for purposes of their 90-day investigative protocol – down from eight the previous year. Two additional non-hit shootings involved suspects who were unarmed. The reduction in the number of unarmed hit-shootings in 2011 may be attributed to the additional training and policy adopted in October of 2010 which changed the manner in which high risk and suspected armed suspects were treated. As we reported in our Ninth Annual Report, the training concepts were featured in a document entitled “Split Second Decision: The Dynamics of the Chase in Today’s Society.” Rather than automatically chasing such suspects, the policy and the training directs deputies to “be cautiously persistent in performing their duties” and advises that it may be safer and more tactically prudent to slow down, contain the situation until backup arrives, and coordinate a plan to apprehend the suspect.”²⁰ Since the policy was enacted, EFRC has closely scrutinized the tactics leading up to each shooting and has held deputies accountable who have placed themselves in harms way by chasing after a suspect when they could have stepped back, coordinated a containment of the suspect, and sought additional resources to apprehend him in a manner which would reduce the danger to both the deputy and the suspect.

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²⁰ See Section 5-06/105.00 of the Manual of Policies and Procedures.

The following is a more detailed breakdown of the nature of the shootings.²¹

2011 HIT SHOOTINGS	No.
Armed with firearm and firearm recovered	14
Armed with firearm replica and firearm replica recovered	3
Armed with knife and knife recovered	4
Suspect struggled with deputy for possession of gun	3
Firearm seen by deputy but suspect had opportunity to discard weapon before he was apprehended	2
Suspect's vehicle was considered a weapon ²²	1
Unarmed and subject to 90-day investigative protocol	5
Total Hit Shootings	32

2011 NON-HIT SHOOTINGS	No.
Armed with firearm replica and firearm replica recovered	1
Firearm seen but suspect fled and was not apprehended	1
Dark object and knife seen but suspect fled and was not apprehended ²³	1
Suspect struggled with deputy for possession of gun	1
Unarmed	2
Total Non-Hit Shootings	6

²¹ Because not all 2011 shooting investigations have been completed, some of the information is based on preliminary facts provided to OIR at the scene of the incident or during subsequent communications with investigators.

²² This shooting involved an off-duty deputy who followed a vehicle being driven erratically. At some point during the pursuit, the deputy shot at the driver of the vehicle. Based on the initial information gathered, the shooting was classified as an armed shooting due to the manner the vehicle was driven by the suspect. However, a final decision on whether the vehicle was used as a weapon has yet to be determined. The case was presented to the District Attorney's Office and a determination has not yet been made on the issue of whether the force used by the deputy was reasonable.

²³ This shooting involved an off-duty reserve deputy who was the victim of a hit and run collision. He followed behind the vehicle in an attempt to get the license plate. The driver of the vehicle stopped his car and started to approach the deputy along with two of his passengers. As they approached, the reserve deputy saw one of them was armed with a dark object and a knife so he fired a warning shot out of his vehicle. The men then turned around and fled.

Despite sincere efforts to comply with the Sheriff's expedited investigative protocol for unarmed hit-shootings, it has been difficult to do so due to the complexity of some cases and the shortage of personnel at IAB. Of the five cases classified as 90-day cases in 2011, all of the investigations have been completed and the cases have been heard by the EFRC panel. While OIR agrees that a prompt resolution of unarmed hit-shooting investigations is very important and has encouraged the Department to provide additional investigators to IAB so that these cases can be investigated as expeditiously as possible, the need to expedite these cases must be balanced with the countervailing need to produce fair and thorough investigations.

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Cases of Concern to OIR

As discussed earlier, OIR expresses its concerns about any particular shooting to the EFRC panel for consideration. The following are two examples of 2011 deputy-involved shootings which have been heard by the panel and resulted in discipline.

Case One

Two deputies in a patrol car observed a recently stolen vehicle driving in the opposite direction. As they approached it, the suspect's vehicle collided with the patrol and car and the driver ignored orders to stop and sideswiped a parked car. Both deputies reported seeing the driver point a gun at them. The driver deputy broadcast that he was in pursuit of an assault with a deadly weapon on a peace officer suspect, but never broadcast that the suspect was armed with a firearm. The driver deputy later recalled running into the rear of the suspect vehicle during the pursuit but neither deputy broadcast the collision.

The suspect eventually came to a stop in a residential neighborhood and patrol cars involved in the pursuit stopped on each side of the suspect's vehicle. The suspect drove a little further forward, striking the left front fender of the second patrol car, and was effectively pinned in between the two patrol cars. The deputies in the initial radio car both reported seeing the suspect turn towards them and lift his right arm in a manner similar to what they reported seeing him do when he sideswiped their car earlier.

Fearing they were going to be shot, both deputies fired multiple rounds at the suspect through the open passenger window. Meanwhile, the driver of the second patrol car heard gunfire and saw the suspect turn towards him, so he also fired at the suspect. The suspect was struck in the hands, torso and head. No firearm was ever recovered despite efforts to search for a gun along the path of the five minute pursuit.

Deputies reported that the only gunfire they were involved in occurred at the termination of the pursuit, but investigators found a shell casing in the street 142 feet south of the intersection where the deputy-involved shooting took place. The shell casing was identified as having been fired by the deputy who drove the initial patrol car. The criminalist who examined the shell casing stated there was no way to conclusively determine if the shell casing was discharged nearby or was moved there by being embedded in the tread of a vehicle tire or the sole of a boot.

Contrary to the involved deputies' account, an eyewitness reported seeing the suspect pushing the left side of his upper body against the driver's door and moving his arms up and down when he heard the shots being fired. In addition, five other witnesses stated they heard multiple gunshots coming from an intersection a block south of where the pursuit ended. However, the sounds heard could have come from the suspect's tires being blown out after hitting a curb. Two of those witnesses saw the pursuit after the gunfire and then heard additional gunfire from the direction of the reported shooting at the pursuit's termination.

This was the driver deputy's sixth shooting in eight years. The shootings were all found to be within the Department's use of force policy, but a firearm was recovered in only one of the shootings. For this incident, the driver deputy was moved out of a patrol assignment and received significant discipline for failing to properly perform his duties by failing to communicate the presence of an armed suspect inside the vehicle, for failing to safeguard himself and his partner by stopping his vehicle in an unsound tactical position at the termination of the pursuit, and for discharging his firearm from a position that was potentially hazardous to his partner, i.e. by reaching over him to fire out the passenger window. The passenger deputy received discipline for failing to communicate or broadcast the presence of an armed suspect in the pursued vehicle, which jeopardized the safety of assisting deputies. OIR concurred with the discipline but remains concerned that some of the evidence suggests that a shooting took place during the pursuit.

Case Two

While on patrol, subject deputies ran a vehicle's license plate and discovered it was

stolen. They lost sight of the vehicle, but located it later at an intersection in a residential neighborhood. Both deputies indicated that as they approached the vehicle, the driver pointed a gun at them. The driver deputy ducked and the passenger deputy jumped out of the vehicle for cover. The suspects then drove down a dead end street, stopped their vehicle and ran in opposite directions. The deputies lost sight of the suspects but after calling in the fact that they had located the stolen vehicle suspects, they walked down a long driveway where they believed the suspect with the gun had gone. A deputy in a police helicopter spotted the suspect and relayed the information to the deputies via his radio. The passenger deputy stayed at the end of the driveway while the driver deputy walked toward the area where he had been told the suspect was hiding. When the driver deputy saw the suspect hiding behind a tree, he instructed the suspect to put his hands up. The suspect reportedly did not follow his order and instead reached for his waistband. Believing the suspect was armed, the deputy fired sixteen rounds in the suspect's direction, fatally wounding him. The passenger suspect was located nearby after running behind an apartment building, but no weapon was recovered from either suspect.

Per LASD protocol, the case was presented to the District Attorney's Office after the Homicide Bureau completed its investigation. The District Attorney's Office rejected the case, finding the force used was reasonable. While there were no witnesses to the shooting other than the deputy who shot the suspect, there were three witnesses who observed the suspect vehicle come to a stop, the suspects flee from the vehicle, and the deputies follow after them. Because the witnesses were not interviewed in depth and were not asked what, if anything, they had observed at the intersection when the stolen vehicle and the deputies' patrol vehicle came together, OIR recommended that the witnesses be re-interviewed. The EFRC commanders agreed and the case was sent back to IAB for further investigation. After the investigation was completed, the case was heard a second time by EFRC.

OIR expressed a number of concerns with the shooting, including the following: (1) that the brandishing of the weapon at the intersection had not been called in; (2) that the deputies were in foot pursuit, but did not call it in and jeopardized their safety by pursuing a suspect they believed to be armed down a long dark driveway with no cover; (3) that the deputies were too far from each other at the time of the shooting; (4) that the deputies should have coordinated a containment and waited for back-up rather than go in after the suspect; and (5) that the driver deputy fired 16 rounds at the suspect in rapid fire without reassessing. The panel concluded the force was within policy, but the tactics and conduct leading up to the shooting were out of policy. The deputies were both found to have violated the Department's Performance to Standards policy and discipline was ordered.

Moreover, the following are examples of three deputy-involved shooting cases which occurred in 2010, but were heard by the EFRC panel in 2011. In all three cases, the panel determined the shootings were within policy. However, the deputies' actions leading up to the use of deadly force involved tactical issues which were found to violate other policies, falling short of the Department's performance expectations.

Case Three

Two deputies were on patrol when they observed a suspect riding slowly on his bicycle and peering into parked cars. Because the deputies believed that the suspect was "casing" cars and planning to burglarize vehicles, deputies decided to contact the suspect. When the suspect noticed the patrol vehicle behind him, he increased his speed and appeared to grab something from his waistband. After traveling a short distance, the suspect then suddenly stopped, dropped his bicycle and fled towards an apartment complex. The deputies exited their patrol vehicle and ran after the fleeing suspect, chasing him a distance of approximately 250 feet. It was dark and the deputies lost sight of the suspect several times as they weaved in and out of the apartment complex buildings and through narrow pathways (which provided limited opportunities for cover). During the foot pursuit, the deputies stopped and paused at different times and communicated with each other but failed to make the required foot pursuit broadcast. One of the deputies stated that he was unable to broadcast the foot pursuit because he was holding his weapon in one hand and his flashlight in the other. The other deputy, a training officer, stated he simply did not have time to make the broadcast. The Department policy states, however, that if a deputy is unable to promptly broadcast the foot pursuit, the pursuit must be terminated. The EFRC panel determined that, based on the facts, the deputies failed to comply with the Department's foot pursuit policy.²⁴ Both received formal discipline and were required to complete a six-hour field training course as part of the corrective action plan. OIR concurred with the panel's findings and action.

Case Four

A deputy and a sergeant approached a vehicle they believed had been reported stolen and noticed a male standing in front of the vehicle, looking into the engine compartment

²⁴ Manual of Policy and Procedures 5-09/220.50 Foot Pursuits: It is the policy of the Sheriff's Department to assertively apprehend fleeing suspects in a manner that maximizes both public and Deputy safety, while giving due consideration to Department Policy and the Force Options Chart. Depending on the circumstances of an incident in which a suspect flees, Deputies are authorized either to pursue or coordinate a containment.

(under the hood). As the deputies exited their patrol vehicle, the suspect saw them, turned and fled. The deputies ordered the suspect to stop running but the suspect did not comply and continued to run away gripping at his waistband. The suspect ran through a dark alley and then entered a junk yard filled with vehicles. The deputy climbed onto one of the cars so he could regain a visual of the suspect. When the deputy saw the suspect, the suspect turned toward him holding something in his hand. Believing that the suspect was pointing a weapon at him, the deputy fired three rounds from his duty weapon, missing the suspect. Though the shooting was found to be within Department policy, the deputy and the sergeant were disciplined for failing to put out radio traffic regarding the foot pursuit. OIR concurred with the EFRC panel's finding.

The Department's foot pursuit policy states that "...Deputies must initiate a radio broadcast with appropriate information [location, suspect description, etc.] within the first few seconds upon initiating a foot pursuit." The deputies pursued the suspect a total of approximately 155 feet. Although the deputies had time and opportunities to safely make the broadcast, they failed to do so. For instance, early in the pursuit, the deputies had safely taken cover behind a large trash bin but failed, at this point, to broadcast the pursuit. At the mouth of the alley, the deputies stopped to "assess" the situation, but again no transmission of the foot pursuit was made. As a result of the EFRC panels' finding, both the Deputy and Sergeant received formal discipline and were also required to complete a six-hour field training course.

Case Five

A trainee and his training officer responded to an armed robbery in progress call. The police car was stopped near the business where the robbery was occurring and the two deputies got out. As the trainee stepped out of his car, he observed a person standing in the street. The trainee believed the person was one of the suspects involved in the

Foot pursuits are inherently dangerous and require heightened officer safety awareness, keen perception, common sense, and sound tactics. It is the Department's position that, barring extenuating circumstances, surveillance and containment are the safest tactics for apprehending fleeing persons. Therefore, Deputies must initiate a radio broadcast with appropriate information within the first few seconds upon initiating a foot pursuit to ensure that adequate resources are coordinated and deployed to assist and manage the operation to a safe conclusion. The safety of Department personnel and the public is paramount and shall be the overriding consideration in determining whether or not a foot pursuit will be initiated or continued. Any doubt by participating Deputies or their supervisors regarding the overall safety of any foot pursuit shall be decided in favor of communication, coordination, surveillance, and containment.

Each provision of this policy is subject to emergency exceptions. However, the Deputy or supervisor who deviates from this policy will be solely responsible for explaining their actions. Common sense shall be the guiding factor in any decision to engage or not engage in a foot pursuit, as well as in any subsequent assessment of the decision made.

robbery and after observing the man raise his left hand and extend his arm, the trainee believed a gun was being pointed at him and fired eight rounds. The man lay on the ground and followed orders not to move. While all the rounds fired missed the man, rounds did strike a vehicle and buildings across the street. After the shooting, it was learned that the man being shot at was the armed robbery victim and by his gestures, he was attempting to alert deputies to the direction in which the suspects had traveled.

This matter was presented to the EFRC panel, which determined the trainee had violated Departmental policy as a result of tactical deficiencies. Specifically, the Committee determined the trainee had placed himself in an unsafe position when he alighted from the patrol car, had failed to ascertain sufficient target acquisition, and had failed to fire his weapon in controlled bursts followed by a reassessment of the threat. The training officer was similarly found to have violated Departmental performance expectations and policy by failing to prepare and lead his trainee to succeed in handling a robbery call which resulted in a deputy-involved shooting. Specifically, it was found that the training officer did not discuss a tactical plan with the trainee en route to the call and did not provide sufficient guidance to the trainee about how to approach the scene when they arrived near the location.

Both the training officer and the trainee were suspended as a result of this incident. To the unit's credit, even before the investigation concluded, it had ordered the trainee to undergo extensive retraining with regard to tactical decision making.

There was an additional shooting which occurred in 2010, but was reviewed in 2011, that raised serious concerns for OIR and led to a procedural change in the review process. The incident occurred when the suspect vehicle struck a patrol car and then began slowly rolling backwards. Three deputies responded and began tracking the car, eventually using flashlights to try to smash out the windows of the vehicle. This caused a deputy to lose control of his flashlight and arguably caused him to place himself in the path of the vehicle when it reversed direction and began to move forward.

As the car moved forward, one deputy began shooting when the car was beside him and continued shooting as the car moved away, firing 11 rounds in total. As a result of tactical deficiencies, such as the approach to the vehicle, the number of rounds fired, potential cross fire, backdrop issues, and the failure to be on target with any of his rounds, OIR recommended that the shooting deputy be found in violation of the Department's tactical performance policy and be disciplined. When the EFRC panel convened, by a two to one vote, it disagreed, recommending no violations of policy.

Because OIR has the ability to “appeal” disciplinary decisions, it immediately raised its concerns about this recommendation to the Sheriff. When we briefed him about the shooting, he ordered that the recommendation be revisited. As a result, the Department decided to override the EFRC panel’s recommendation and found that the shooter deputy had violated the Department’s performance policy by his poor tactical decision making. In addition, the Sheriff requested that EFRC protocols be adjusted so that in cases in which there was a non-unanimous decision by the panel, the Sheriff be briefed on the incident so that he could weigh in on the final outcome.

Training Bureau Participation in Shooting Reviews

In our Ninth Annual Report, we wrote about the diminished role that the Training Bureau had assumed in responding to and analyzing deputy-involved shootings. We reported that, when we brought this issue to the Sheriff’s attention, he instructed the Training Bureau to resume rolling out to shootings, and to prepare written analyses of these incidents. Since that time, a member of the Training Bureau staff has been responding to the scene of all deputy-involved shootings. The written analysis requirement, however, has taken longer to implement.

Last fall, OIR provided Training Bureau representatives some examples of what training staff in other jurisdictions prepare following officer-involved shootings, and met with them to discuss the key features of any written analysis. The Department then met internally to work out its protocols for rolling out to the scene of shootings and following up with written analyses of their concerns. In the end, the Department decided to have deputies and sergeants assigned to Tactics and Survival (TAS) respond to the scene of all hit-shootings. The TAS personnel who respond will then be responsible for preparing a written analysis based on the notes they have taken on a detailed form prepared by the Training Bureau. That written document will be forwarded to the EFRC panel of commanders, and the responsible deputy will attend the EFRC meeting to discuss the shooting. This protocol was finally implemented this spring, so the first shootings for which there will be a written Training analysis will not be considered by the EFRC until six months or more from now. We will further report on the progress of this effort to more substantively engage the Training Bureau in the review of deputy-involved shootings, to assist the commanders in their analysis, and to help trainers better use these incidents in training deputies to respond to situations where deadly force may be an option.

Conclusion

The investigations and totality of circumstances in each shooting must be analyzed and evaluated on a case by case basis together with the Department’s response to the tactics and force used. OIR expresses its concerns about each case to the Department and when OIR disagrees with an EFRC finding, it reports on that disagreement and further has the option of presenting its concerns to the Sheriff, who is the ultimate arbiter. While no conclusions can be drawn from the raw number of shootings, OIR is nonetheless concerned about the increase in shootings this year. The increase

started after Thanksgiving last year. The average number of shootings per month in 2011 ranged from one to six. The only two months in 2011 with six shootings were March and December. In 2012, there were seven shootings in January, February and May. Interestingly, the *Sacramento*

OIR expresses its concerns about each case to the Department and when OIR disagrees with an EFRC finding, it reports on that disagreement and further has the option of presenting its concerns to the Sheriff, who is the ultimate arbiter.

Bee reported that 37 days into the year, the Sacramento Sheriff's Department "surpassed its total of officer-involved shootings for 2011" and quoted a criminology expert who "said there was anecdotal evidence nationwide that suggests an uptick in violence toward officers."²⁵ More recently, Chief Beck of the Los Angeles Police Department also reportedly explained a 50% increase in the number of times Los Angeles police officers fired their weapons in 2011 by pointing to an increase in assaults on officers.²⁶ OIR is both monitoring the situation closely and determining whether additional strategies should be devised by the Department to address any systemic issues. However, given the small number of shootings compared to the overall contacts law

enforcement has with the public, OIR finds it more useful to review the circumstances of each shooting rather than speculate as to why the numbers fluctuate from year to year.

Alcohol-Related Misconduct Update

From 2008 through 2010, the Department experienced an increase in the total number of its employees arrested for Driving Under the Influence (DUI). The total DUI arrests during that period ranged from 37 to 40, of which 24 to 26 were arrests of sworn members. During that period of time, the Department enhanced its disciplinary guidelines for alcohol-related conduct, increased its efforts to educate its employees regarding the cost of driving under the influence and increased unit commander responsibilities to include responding to an arrested employee's

²⁵ Minugh, Kim, Shootings by county deputies already at previous year's high, *Sacramento Bee*, Feb. 07, 2012.

²⁶ Rubin, Joel, "Watchdog disputes LAPD rationale for rise in police shootings," *L.A. Times*, July 2, 2012, latimes.com/news/local/la-me-lapd-shootings-assaults-20120702,0,3558616.story

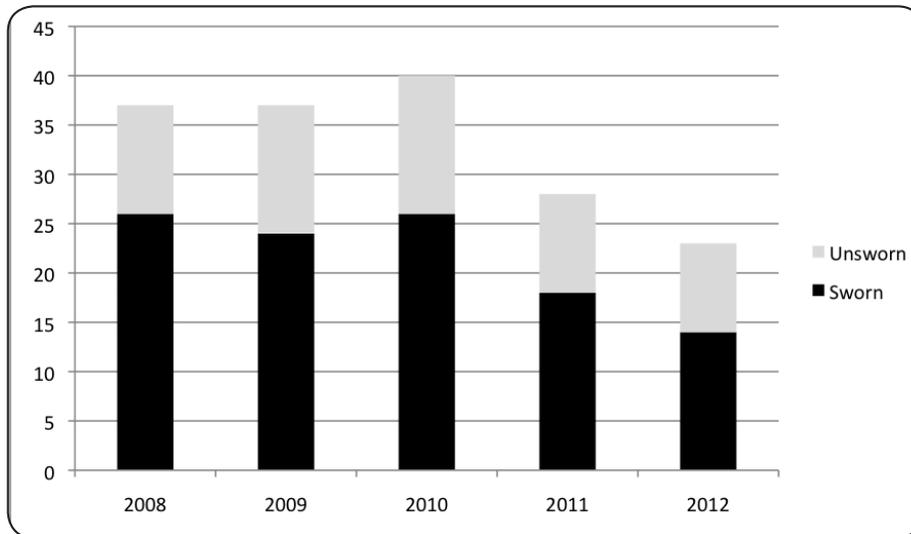
location and ordering the employee to submit to a blood alcohol test when there is any evidence the arrest was alcohol-related. As we reported in our Ninth Annual Report, the Department's multipronged approach to reducing the number of alcohol-related incidents appeared to be showing results. OIR saw a downward trend in employees arrested for DUI in the first part of 2011. That trend held through the end of the year. The total number of employees arrested for DUI in 2011 was 28,²⁷ down from 40 the year before. This year, however, there has been a major increase in the number of personnel arrested for DUI – 24 through the end of June versus 13 during the first six months of last year. It is difficult to tell why the number of DUI arrests has risen so much this year. The only two changes the Department has made which OIR has been able to identify is that the Undersheriff's weekly bulletins describing the latest alcohol-related arrests of Department employees have not been distributed in email form to employees in 2012, and the Undersheriff is no longer personally counseling each individual arrested for a DUI. Instead, information regarding alcohol-related arrests is displayed about once a week on all employees' computers when they log on. The employee must click on the "acknowledge" tab on the screen before the computer can initiate the log-on process on his or her desktop. If the employee did not log off the previous day, however, the screen with DUI information on related arrests does not appear. With respect to the personal counseling sessions, they have continued, but are being conducted by the Department's two Assistant Sheriffs instead of the Undersheriff.

In our Seventh Annual Report, we applauded the Undersheriff's bold initiative of publicizing the details of alcohol-related arrests to attune Department supervisors and members to the nature and degree of the problem. OIR is working with the Department to reinstate the Undersheriff's weekly bulletins in email form and has requested the inclusion of information regarding the consequences suffered by employees engaged in alcohol-related misconduct with the hope that it will serve as a deterrent. In addition, each custody unit is putting together additional

OIR is working with the Department to reinstate the Undersheriff's weekly bulletins in email form and has requested the inclusion of information regarding the consequences suffered by employees engaged in alcohol-related misconduct with the hope that it will serve as a deterrent.

²⁷ This number was particularly impressive by comparison to the number of DUI arrests of Los Angeles County Probation Department employees. As OIR Probation reported earlier this year, 29 employees were arrested for DUI in 2011, but their department has about one-third the number of employees as LASD.

information sessions and trainings on the topic and the Assistant Sheriff who oversees custody is planning to go out to each unit to personally speak to all custody deputies. OIR is hopeful that these measures will have an effect on the number of DUI arrests for the last six months of 2012.



On the issue of discipline, the Department has continued to impose lengthy suspensions for employees engaged in alcohol-related conduct. With DUIs, for example, the discipline has continued to range from 15 days to discharge as it has since 2009. The 15-day suspensions are usually reserved for employees who are first-time offenders and were cooperative with arresting officers. A suspension of 15-days also means the case can be handled as a unit level investigation and need not go to Case Review where the disciplinary decision is made by a panel of three Department executives.²⁸ Even first-time offenders, however, have their discipline increased based on aggravating factors such as when they are belligerent or uncooperative with law enforcement,

Currently, the Department is working on adding a specific discipline range of 16-30 days for drunk driving in which the BAC is .16 percent or higher.

are involved in a traffic collision, or are in possession of a firearm. In addition, this year OIR successfully advocated for adding an employee's elevated blood alcohol content to the list of aggravating factors to be considered when determining the level of discipline to impose on an employee arrested for a DUI. While a formal policy has not yet been implemented, OIR met with the Undersheriff

²⁸ All cases wherein the recommended discipline is 16 days to discharge are handled at Case Review. In 2011, the panel of decision-makers included the Undersheriff and the two Assistant Sheriffs. Currently, however, the panel of Case Review decision-makers is staffed by three commanders selected by the Sheriff. A representative from OIR, the unit commander, and the Region Chief is also present and all are consulted regarding the level of discipline and any other relevant concerns.

and Assistant Sheriffs on this topic and they agreed with OIR that when an employee's blood alcohol is double the legal limit, their blood alcohol content (BAC) should be considered an aggravating factor and elevate the case for Case Review analysis. Currently, the Department is working on adding a specific discipline range of 16-30 days for drunk driving in which the BAC is .16 percent or higher. We know, for example, that in 2010, of the 29 DUI arrestees for whom the BAC is known, 10 had a BAC of .16 percent or higher. In 2011, of the 28 DUI arrestees for whom the BAC is known, 11 had a BAC of .16 percent or higher. As of the end of May 2012, of the 12 employees for whom the BAC is known, six had a BAC of .16 or higher.

The following is a summary of the case wherein the elevated BAC contributed to the decision to increase the discipline beyond the minimum number of days recommended in LASD's Guidelines for Discipline.

Case One

Subject custody assistant was driving to work when a citizen driving behind her observed her vehicle straddling two lanes and almost colliding into a center divider. He called his observations in to the police who conducted a traffic stop. The responding officer from an outside law enforcement agency could smell alcohol on the subject's breath and conducted field sobriety tests. The subject was cooperative and agreed to a breath test which registered a blood alcohol content of .26 percent. A subsequent blood test taken approximately two hours after the arrest revealed the blood alcohol content to be .30 percent. The subject was arrested for DUI and subsequently pled guilty to a misdemeanor charge of driving under the influence. The Department agreed with OIR that the subject's .30 percent blood alcohol content, and the fact that the subject was driving to work, were both aggravating factors that should increase the discipline from the standard 15 days to 30 days.

In addition, while most of the cases from 2011 are still pending, the Department has already discharged three deputies arrested for DUI in 2011 and one Custody Assistant has resigned as a result of a DUI with injuries arrest and subsequent conviction.

Case Two

Subject deputy was driving down a winding road while off-duty when he was seen by an officer from an outside law enforcement agency driving erratically, tailgating other cars and nearly crashing into a guard rail. The officer was able to run the license plate and learned immediately that the car was registered to an LASD deputy, yet the registration had expired two years prior. The officer conducted a traffic stop. During the stop, the deputy refused to produce identification and was heard, on recorded audio, using profanity and insulting the officer. The officer requested a Sergeant response and subsequently arrested the deputy for resisting arrest and driving under the influence. Because the deputy was uncooperative with the arresting agency, they were initially unable to obtain a breath sample. Two hours later, however, his BAC was determined to be .20 percent.

While the matter above was working its way through the criminal courts, the deputy was involved in another incident. While attempting to obtain a police report for the aforementioned incident at the outside law enforcement agency, the agency noted his license was suspended and checked to see if he had driven himself to the station. Attempting to “give the deputy a break,” the agency called his unit of assignment and advised the Watch Commander on duty that someone needed to pick up the deputy and drive him and his car home. Someone from LASD picked up the deputy and drove him and his vehicle back to his unit of assignment. Upon arrival, the deputy was ordered by another supervisor to report to a Lieutenant and not to drive his car. The deputy said he would abide by the order, but instead returned to his vehicle and drove away. The deputy lied during the administrative investigation by stating he was not the driver. However, a reliable, independent witness confirmed he was in fact driving the vehicle. Moreover, the deputy pled guilty to one count of driving under the influence and was placed on probation. Based on the conviction, his false statements, and the egregiousness of his conduct during both incidents, the deputy was discharged.

Case Three

Deputies were dispatched to the scene of a traffic collision wherein one vehicle was rear-ended by another while stopped at an intersection. Both vehicles sustained major damage. The driver of the vehicle who caused the collision was reported to have left the scene in another vehicle. When the deputies arrived, they ran a license check of the unoccupied vehicle and responded to the registered owner’s residence where they contacted the subject deputy standing in his driveway. The deputy was observed to have a minor laceration to his forehead and admitted to being involved in the traffic collision when questioned. The driver of the other vehicle complained of pain to her neck, back and shoulders. Approximately two hours after the collision, the deputy

was determined to have a BAC of .26 percent. The deputy was thereafter arrested and charged with two felony counts of DUI causing injuries and one felony count of hit and run. After pleading no contest to both felony charges, he was discharged by the Department but thereafter grieved the discharge and was permitted to resign. The deputy had a DUI conviction a few years prior to this conviction. As of the writing of this report, the deputy is awaiting sentencing.

Case Four

Subject deputy was off-duty and vacationing in another county. Two officers from an outside law enforcement agency saw the deputy driving while weaving and crossing over the white lines separating traffic lanes. They also saw a lit cigarette thrown out of the driver's side window. The officers conducted a traffic stop. One of the officers contacted the deputy and asked to see his driver's license, registration and proof of insurance. Instead, the deputy produced his Sheriff's Department identification card and flat badge. The officer noticed the odor of an alcoholic beverage emanating from inside the vehicle and saw an open bottle of beer between the driver and passenger seats. When the officer asked the deputy about the open container, the deputy told him not to "worry about it." The officer asked the deputy to exit his vehicle; instead, the deputy refused to get out, used expletives and demanded that the officer call his Sergeant.

The officer requested back up from a sister agency whose officers were nearby. A Sergeant from the other agency attempted to get the cooperation of the deputy, but he again refused to exit his vehicle. He continuously disparaged the officers from the department that initially stopped him with profanities and demanded that the Sergeant call the deputy's Watch Commander in Los Angeles County. The Sergeant accommodated the deputy's request and was able to reach the on-duty Watch Commander at the deputy's assigned unit. The Sergeant handed his phone to the deputy who was still seated in his vehicle. The Watch Commander spoke to the deputy and asked him to cooperate. When the deputy refused, the Watch Commander ordered the deputy to cooperate. The deputy still refused and dissuaded two other passengers who were with him from getting out of the vehicle. The entire incident was recorded by personnel from the second agency.

Based upon the driving the officers saw and the signs that the deputy was intoxicated, including what they described as "his up and down behavior," they formed a plan to arrest the deputy by force. By this time, he had rolled up the driver's window and all the doors were locked. Officers broke a side rear window with a baton and reached inside to unlock the door. Officers tried to pull the deputy out of the vehicle, but he made his body rigid to resist their efforts. An officer then used his Taser on the deputy's leg. The

deputy screamed and flinched, which allowed officers to remove him. Once he was out of the vehicle, the deputy was on his feet and refused orders to get on the ground. Officers used a takedown technique to bring him down, yet he continued to resist and tried to break free from their efforts to handcuff him. The Taser was used on the deputy again and he finally complied. Throughout the incident the deputy continued to yell and curse at officers trying to arrest him.

An officer explained the DUI test procedures to the deputy and he elected to have a blood test. Therefore he was driven to a local hospital for a blood draw and a medical check. Once there, he changed his mind and asked for a breath test at the jail. On the way to the jail, he said he now refused any form of alcohol testing. Officers explained the legal consequences of a test refusal and also explained that their agency would draw his blood forcibly if he continued to refuse. The deputy eventually submitted to the blood draw, which occurred about two and one half hours after the traffic stop. The chemical testing revealed a BAC of .17 percent, more than twice the legal limit. He was arrested for driving under the influence of alcohol and for resisting, delaying or obstructing a peace officer. Though the criminal case was still pending, the Department discharged the deputy for his belligerent and uncooperative conduct throughout his detention, and for the embarrassment his conduct brought upon himself and the Department.

Case Five

Subject custody assistant ran a red light and was broadsided by a vehicle in the middle of an intersection. The driver of the other vehicle suffered injuries, including shoulder, chest and knee pain. Deputies responded to the scene of the collision and noted that the custody assistant smelled of alcohol and was staggering when attempting to walk. The custody assistant was transported to a local hospital for treatment of facial abrasions before any breath tests could be administered. While at the hospital, the custody assistant consented to a blood test which indicated a BAC of .24 percent, three times the legal limit. He was thereafter arrested and charged with two felony counts of DUI causing injuries. After pleading no contest to one of the DUI counts, the remaining count was dismissed and he was placed on three years felony probation. The custody assistant thereafter tendered his resignation.

Moreover, the following is an example of a case wherein a deputy was discharged for alcohol-related conduct notwithstanding the fact that the deputy was never charged with any crimes.

Case Six

A deputy was permitted to go to the front of the line of a nightclub while off-duty and enter with a friend without paying the cover charge in part due to his status as a peace officer. Both individuals had been drinking alcohol prior to entering the nightclub and continued to consume additional alcoholic beverages inside the nightclub. At some point, they started behaving in a disruptive manner and continued their behavior after being warned by a security guard. While escorting the individuals out of the nightclub, the deputy's friend asked the security guard if he knew who his friend was and jumped on his back. The deputy then swung at the security guard, but missed and hit his friend. They were both handcuffed until an outside law enforcement agency arrived to assist. While waiting for law enforcement officers to arrive, the deputy was videotaped using profanity and making racist remarks. Once transported to a police station, the deputy was interviewed about his detention, made additional racist remarks, and when asked about scars on his knuckles, boasted that the scars were from using force against "Black" individuals while on patrol.

The security guard was non-desirous of prosecution and the law enforcement agency opted not to charge the deputy with public intoxication. He was instead released to a Department supervisor who responded to the station and ordered him to submit to a breath test. The results indicated his BAC was .17 percent. A review of the deputy's reported force incidents did not disclose any reported incidents of force against African-American individuals. Thus, it was difficult to determine if the deputy was telling the truth or falsely boasting about using force against African-Americans. However, the deputy did have one prior founded administrative investigation for failing to report a force incident. The deputy was discharged for his conduct.

An additional alcohol-related case of note was a case involving a deputy who, in addition to driving under the influence, violated Department policy by having a firearm in his vehicle.

Case Seven

An off-duty deputy was driving in the early morning when he ran a red light and was hit by another vehicle. His car flipped several times before colliding into a third vehicle. The deputy and his passenger, as well as the drivers of the two other vehicles, all suffered injuries as a result of the collision. The subject deputy was transported to the hospital by ambulance. Because the accident occurred in a city patrolled by the Sheriff's Department, other deputies responded to investigate. The initial accident report indicated the subject deputy had not been drinking and was not under the influence. Later, the drivers of the other two vehicles independently contacted the Sheriff's station

to inquire about the status of the subject. They said they heard from fire department personnel that he had been drunk and was a “cop.” A station supervisor investigated the incident, and based on blood tests run on the subject at the hospital, determined the deputy had been under the influence at the time of the accident. The deputy had a BAC of .17. The unit began an investigation into the driver deputy’s conduct, as well as the performance of a deputy and a Sergeant who initially responded to the scene and failed to investigate the DUI. All three were ultimately disciplined for their conduct that morning. In addition to the DUI charge, the driver deputy was disciplined for failing to comply with the Department’s “Safety of Firearms” policy which prohibits deputies from carrying or handling their weapons while intoxicated. The investigating deputies had found the driver deputy’s gun unsecured inside his vehicle following the collision.

The above cases demonstrate the serious consequences which can ensue when Department members engage in off-duty alcohol-related misconduct. Arrests of LASD employees for alcohol-related offenses are a personal embarrassment to the employee, an embarrassment to the department, and represent a lapse in judgment by those who work for an organization empowered to enforce the law. OIR and the Department continue to take every alcohol-related misconduct incident very seriously and work together to develop new strategies, guidelines, training and policies in an attempt to reduce both the numbers and the gravity of alcohol-related incidents among Department members.

Embezzlement of Towing Fees: The Point of Sale System

In our 2008 Annual Report, we reported on an issue LASD faced involving personnel stealing towing fees. We outlined a specific misconduct case wherein a deputy was criminally charged with misappropriating thousands of dollars in city and county towing fees. Tow fees are routinely collected at the stations. As we discussed in 2008, part of the problem with the towing fee collections was the Department’s inability to record and track the fees. Until 2011, LASD utilized a very antiquated system to collect the fees. That system consisted of using handwritten ledgers and receipts, issuing Vehicle Release forms that were not recorded at the station level (the owner was given the only copy) and “depositing” cash into a grey steel money box. While the vulnerability of this antiquated system was highlighted in the theft case, LASD had been regularly facing an ongoing and difficult situation for years because the stations were not properly tracking collections and receipts of towing fees due to reliance on paper documentation and inked entries. In our report, we discussed possible solutions the Department was

considering, including streamlining and centralizing the collection of tow fees via a computer system. At that time, LASD recognized the problem, but also recognized that such department-wide systematic changes would be costly and time consuming.

However, due to the work of LASD's Data Systems Bureau, in 2011, the Department began using a centralized "Point of Sale" (POS) computer system for all fees collected by LASD. Simply put, the computer system resembles a computer sale register that one might find in any department store. The computer is touch screen and requires the user to log in under their name, thereby eliminating any confusion as to who was responsible for any given transaction. Once logged on, the user simply selects the type of fee being paid by tapping on the screen and follows the screen prompts to close out the transaction. The POS records the type of tender, produces a receipt and records the entire transaction. Moreover, the specific transactional information is recorded at a centralized location for future accounting and reconciling.

Additionally, since each contract city collects different fees and some stations are responsible for multiple contract cities, the system allows the user to simply select the appropriate contract city, and those fees are automatically generated and the transaction recorded for that particular city. At any given time, the main center can query the system to determine the exact amount tendered for each contract city.

The Department created a training program for the POS system. It currently requires all users to be trained prior to use. Additionally, per policy, supervisors still remain responsible for reviewing the till at the end of any given shift. However, with the POS, the ability to reconcile is generated by the computer, thereby allowing the supervisor to simply review the user's transactions on the system's screen and sign off, if accurate. In the event it is not accurate, the user is not permitted to sign out of the POS until obtaining proper clearance.

In the summer of 2011, OIR was given the opportunity to view the first system being introduced into the Department. Overall, the new POS system appears to be a well-planned and viable solution to the previous antiquated system. We were impressed with the user-friendliness of the system and most importantly, the centralized tracking of all transactions. We are hopeful this new system will reduce general tracking errors, reduce the ability for internal theft, and provide proper accounting of all transactions.

Service Comment Reports and Force Packages: Status on Timeliness

LASD's Discovery Unit is responsible for, among other duties, updating the Department's Personnel Profile Index (PPI) system. That responsibility includes uploading completed force packages and service comment reports (including complaints) received from the units within LASD. In 2010 and early 2011, OIR began noticing a large delay in uploading completed packages and reports into PPI. At one point the Discovery Unit was approximately 11 months behind. This meant that, for example, if a unit completed a force package in January and sent it to the Discovery Unit for proper uploading into PPI, it was not being uploaded until November. As such, PPI would "report" those packages as "pending" when in fact they were complete. Additionally, any person wishing to view the package on PPI was unable to unless they located the original package (or were somehow able to obtain a copy). We inquired with the Discovery Unit, which acknowledged there was a backlog, but cited understaffing and noted that every package and report needed to be individually scanned prior to upload. Depending on the size of a package or report, scanning alone could take hours.

In 2011, the Discovery Unit worked diligently to scan all the packages/reports and clear the backlog. To date, the unit has eliminated its backlog of uploaded packages and reports. However, in order to avoid a recurrence of the backlog, the Discovery Unit has begun utilizing a new system. It is an electronic system intended to allow each unit to electronically send the completed packages and reports to the Discovery Unit. Prior to this system, each unit would send the original hard copy of a completed force package or service comment report. The Discovery Unit would then scan that document and upload it to PPI. Sending the files electronically was not possible due to the forms and data often used in force packages or service comment reports. However, the new system allows all data to be sent electronically. It is hoped that this technological "fix" will ensure that force packages and service comment reports are timely entered into the Department's database.

Creating Transparency for LASD's Policies and Procedures

The Sheriff's Department's policies are contained in a Manual of Policies and Procedures. The manual is accessed through the Department's intranet, accessible to all LASD employees. While the Sheriff's Department has not been reticent about providing copies of its policies upon request, until recently, the policy manual was not readily available to the public.

We have seen other law enforcement agencies that have placed their policy manual on the agency's website, providing ready access to the public they serve. As a result, we approached the Sheriff with the idea of placing LASD's manual on the internet. The Sheriff immediately agreed, and within days, the manual was available online to members of the public. We believe this decision is an important initiative in providing transparency regarding the Department's policies and procedures. The public has an interest in being able to know the internal rules that govern the actions of the Sheriff's Department. By making such information readily accessible, LASD has shown responsiveness to that interest and an understanding of the importance of transparency in this area. Because the Custody Division Manual is still being modified in significant ways as a result of the work of the Commander's Management Task Force, we have not pressed the Department to make it available online, but plan to encourage this in the near future.

We believe this decision is an important initiative in providing transparency regarding the Department's policies and procedures.

Information Flow within the Department

When we first began monitoring the Sheriff's Department, we were struck by a dynamic regarding information flow to the Sheriff. Prior to the Sheriff's weekly meeting with his command staff, there was a "pre-meet" in which the Chiefs and other executives would raise issues and the Undersheriff would decide which information was deserving of presentation to the Sheriff. In some cases, it appeared as if certain information was shielded from the Sheriff's purview.

This phenomenon is consistent with traditional police culture. Law enforcement supervisors have often been promoted because they are problem solvers. As a result, there is a tendency for individuals in the organization to want to resolve issues themselves rather than seek help from above. While this self-sufficiency is admirable, this tendency coupled with the natural desire to avoid being the bearer of bad news to the boss created a dynamic which may have prevented the Sheriff from receiving some critical information about his Department. Cognizant of this dynamic, OIR often has been a conduit of information about cases and systemic issues that, in our view, the Sheriff should know about.

Recently, there has been a change in the interaction between the Chiefs' weekly meeting and the subsequent meeting chaired by the Sheriff. The Chiefs have been advised to speak freely to the Sheriff about matters they wish to relate to him, and there is no attempt to channel the information flow during that prior meeting. In our view, this change in direction is helpful in facilitating the stream of information to the Sheriff.

Executive Leadership: The Pitfalls of Conflicting Messaging

Over the past years, there have been times in which messages from Sheriff's executives to LASD personnel did not seem to mirror the vision of the Sheriff himself. For example, in 2007 we heard that a high level executive had been communicating his dislike of the Internal Affairs Bureau (IAB) to various audiences. Because we monitor all investigations coming out of IAB, we were concerned that such comments could have a deleterious effect on the functioning and morale of the unit. We also were concerned that the comments could undermine the effectiveness of internal investigations.

As a result, we met at that time with the executive and related our concerns about comments attributed to him. He described how his intended message was a more innocuous version of what we had heard, and we indicated that his comments were not being received in the way he said he intended. We suggested that he explore other ways to communicate his sentiments, and he agreed to do so. We also relayed our concerns about the executive's comments to the Sheriff at that time, and we were informed that he subsequently also had a conversation with the executive about the IAB comments.

It is critical that executives' comments to deputies and other personnel be consistent with the vision of the head of the agency. Comments perceived as divergent from that vision may be used by personnel to behave counter to the agency's values. As another example, there has been

much recent public discussion about the same executive making a comment about “working the gray.” There were clearly deputies who believed the executive intended by his comments that deputies could cross or come close to the line of professional, legal, or ethical conduct in order to get criminals off the street. While the executive has recently disavowed that intent, in the years previous that messaging may have caused deputies to be confused about the expectations of their Department. We are hopeful that this unfortunate episode has served as a learning opportunity for the Department, and that communications contrary to the ideals of the organization will not be articulated in the future.

Finalized Discharge Cases for 2011

Discharges, Civil Service and Settlements

After a decision is made to discharge a Department employee, the employee is served with a letter of intent to discharge setting forth the founded allegations. After receipt of the letter, the employee has several options: (1) accept the discharge; (2) resign or retire; (3) grieve the discharge to the Chief of the employee's region and settle the case for less than a discharge such as a demotion or a lengthy suspension; or (4) if the case cannot be settled at the grievance stage, appeal the case to the Civil Service Commission. The Civil Service Commission is comprised of five persons. Each member of the Los Angeles County Board of Supervisors appoints one member of the Civil Service Commission. The Commission refers the case to a Hearing Officer who is charged with presiding over proceedings in which evidence is presented by both the Department and the employee. The Department is represented at the hearing by either an attorney from the Department's Advocacy Unit²⁹ or an attorney from a law firm that contracts with Los Angeles County to represent the Department.

The Hearing Officer is charged with evaluating whether or not there is sufficient evidence to support the allegations by a preponderance of evidence; and, if the evidence is sufficient to sustain any of the allegations, whether the discipline imposed is appropriate. After evidence and arguments are heard, the Hearing Officer writes a formal report indicating his or her findings of fact, conclusions of law, and recommendations. The report is then provided to the Civil Service

²⁹ The Advocacy unit is staffed by members of County Counsel and the Sheriff's Department.

Commission which votes to accept or reject the report. Acceptance of the report does not mean endorsement of the opinions expressed therein, but acceptance of the report does trigger the appellate process under which the losing party may file an objection to the Hearing Officer's recommendation. For peace officers, a closed hearing is thereafter held in which argument is heard from both parties and the commissioners vote to either affirm or reverse the Hearing Officer's findings of fact, conclusions of law, and recommended decision. Either party can then appeal the Civil Service Commission's decision to the Los Angeles County Superior Court. A discharge from the Department is not considered final until the discharge is either accepted by the employee, the employee resigns or retires, the case is settled, or all of the employee's

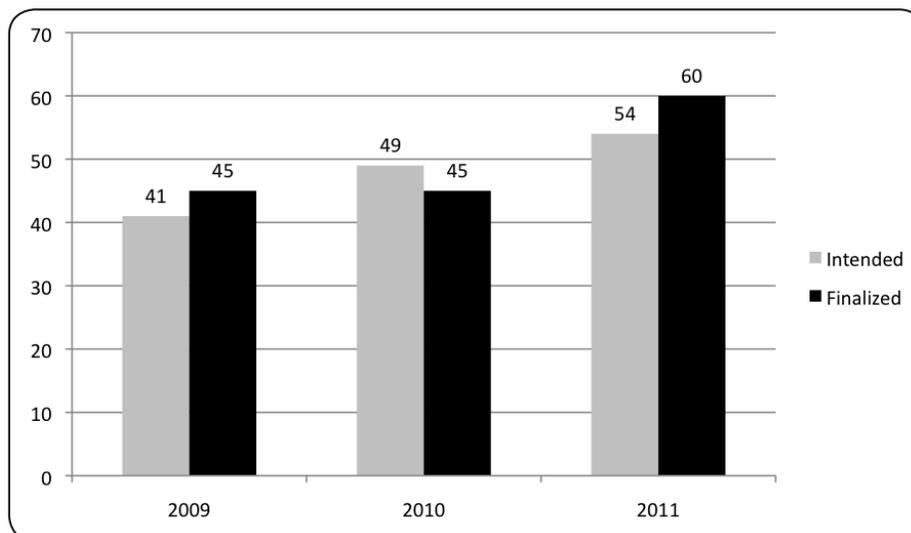
appellate remedies have been exhausted. This process sometimes takes years.

In 2011, the Department experienced the highest number of finalized discharges in the past 10 years.

In 2011, the Department experienced the highest number of finalized discharges in the past 10 years. Prior to 2011, the number of finalized discharges per year roughly ranged from 25-45. In both 2009 and 2010, the number of finalized discharges were 45. Last year, however, the number was 60 – 40 sworn employees and 20 civilians. Finalized discharges

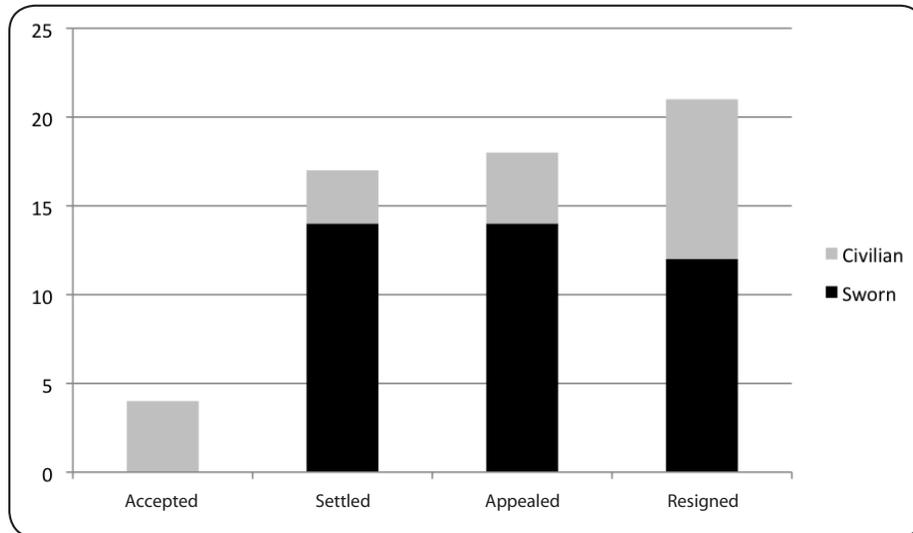
are to be distinguished from the number of decisions to terminate which are made each year. After a decision to terminate is made, the employee is served with a letter of intent to discharge. However, as mentioned above, the discharge is not finalized until later. In 2011, 54 employees were served with a letter of intent to discharge. The number of letters of intent to discharge served in 2010 was 49 and the number in 2009 was 41.

Finalized vs. Intended Discharges (2009-2011)



Of the 60 finalized discharges, four employees accepted their discharge, 21 resigned, 17 settled,³⁰ and 18 appealed their case to the Civil Service Commission. Of the 18 who appealed, the Department experienced a record percentage of sustained discharges. All but two of the appeals to the Civil Service Commission were sustained. The following is a graph of the breakdown between sworn and civilian employees:

Finalized Discharges in 2011 (Civilian vs. Sworn)



Of the 40 sworn employee discharges, 14 of them were second time patrol failures,³¹ up from six in 2010 and four in 2009. Three of the patrol failures in 2011 resigned, 10 were demoted to custody assistants, and one was assigned as a custody deputy for the remainder of his career. The remainder of the 26 sworn employees discharged were discharged for criminal allegations and general misconduct.

³⁰ Of the cases that settled, 11 were second time patrol failures and five were discipline cases which settled for lengthy suspensions ranging from 20 days to 30 days. The remaining case was a discharge based on pending felony charges which had been filed against a deputy outside of Los Angeles County. Once the charges were dismissed against the deputy, the discharge was rescinded.

³¹ After going through the academy and spending time in custody, deputies must then go out on patrol with a training officer and prove they are capable of performing to the standards expected of them by the Department. Their patrol training generally lasts approximately six months. If they fail their patrol training, they are then sent back to custody for a period of time before they can go back out on patrol. However, if they fail a second time, the Department has traditionally removed them from a deputy position. If the employee was believed to be an asset to the Department, the deputy would be offered a demotion to a Custody Assistant, a non-sworn position. This past year, however, the Department started offering permanent custody deputy positions to patrol failures without demoting them to Custody Assistants.

Sworn Employees Discharged for Criminal Allegations

The most common reason for being discharged among these deputies was for off-duty criminal conduct – a total of 12 deputies were discharged after being arrested (even if they were not subsequently convicted). OIR concurred with all but one of the discharges involving criminal conduct. In the case wherein OIR did not concur in the discharge, the deputy had been charged with a felony hit and run. OIR reviewed the investigation conducted by an outside law enforcement agency and felt some aspects of the investigation were not sufficiently fair and thorough. Moreover, OIR believed there were significant proof problems and was concerned that the prosecutor would not be able to prove the case. The case was eventually dismissed by the prosecution before trial and, with OIR’s concurrence, the deputy’s discharge was rescinded and the deputy was reinstated with back pay. The most serious of the off-duty criminal conduct cases involved felony convictions for crimes such as insurance fraud or unlawful sexual conduct with an inmate. Less serious criminal cases included aggravated driving under the influence charges and misdemeanor assaultive conduct.

Assignment	Brief Summary of Criminal Allegations	Result
Court Deputy	Deputy pled no contest to unlawful sexual conduct with an inmate	Resigned
Patrol Deputy	Deputy pled no contest to felony driving under the influence	Resigned
Patrol Deputy	Deputy pled no contest to driving under the influence and child endangerment	Resigned
Custody Deputy	Deputy charged with felony hit and run but charges were dismissed by prosecutor before trial	Reinstated
Patrol Deputy	Deputy found guilty of violating a domestic violence protective order	Discharge sustained
Patrol Deputy	Deputy pled no contest to felony insurance fraud	Resigned
Patrol Deputy	Deputy accused of sexually assaulting female he pulled over for traffic violation but prosecutor declined to file charges	Discharge sustained
Patrol Deputy	Deputy pled no contest to driving under the influence and being disrespectful to arresting officers	Discharge sustained
Custody Deputy	Deputy pled no contest to driving under the influence and hit and run.	Discharge sustained
Patrol Deputy	Deputy accused of having naked photos of minor but prosecutor declined to file charges	Discharge sustained
Custody Deputy	Deputy accused of assaulting girlfriend, disorderly conduct and negligently discharging firearm but prosecution declined to file charges	Resigned
Patrol Deputy	Deputy accused of assaulting girlfriend but prosecution declined to file charges	Resigned

Sworn Employees Discharged for Miscellaneous Misconduct

The second most common reason for being discharged was for violating the Department's policy against fraternization and prohibited association. A total of seven deputies were discharged for these policy violations. Their conduct ranged from having a relationship with an inmate to associating with a criminal street gang. Two deputies were fired for testing positive for drugs while on duty (steroids and Vicodin), one for an off-duty shooting,³² and one for being the mastermind behind the bar code scam which was created to circumvent the requirement of physically conducting row checks at one of the jails.³³ Moreover, the last three of the 26 sworn employee discharge cases involved miscellaneous misconduct summarized below.

Case One

For a period of about four years, a Sergeant regularly used the express lanes on a freeway without paying the toll. However, because a deputy's home address is confidential, citations for his infractions could not be mailed to him. While an investigation into this matter was pending, the subject was observed selecting a video game and cutting open the wrapping with a utility knife in a department store. He then concealed the video game in his waistband. The subject thereafter selected five DVDs which he also concealed in his waistband. He then walked toward the checkout area with a sixth DVD and a video game in his hand. Loss prevention officers then decided to conduct a "burn operation" which consisted of broadcasting information on their radios within earshot of the Sergeant to get him to discard the items he was secreting and avoid having to arrest him. The Sergeant then turned around, walked back to the video section of the store, and discarded the DVDs, video games, and his knife on a bottom shelf. At Civil Service, the Sergeant argued the Department failed to prove he ever intended to take the items without paying because he never walked out of the store with them. His argument was rejected by the Hearing Officer, whose recommendation to sustain the discharge was affirmed by the Civil Service Commission.

Case Two

While off-duty and walking with his girlfriend, a male deputy became involved in a street fight with several unknown gang members. Local law enforcement officers responded

³² Of the 10 patrol failures who were initially demoted to custody assistants, seven of them were reinstated as deputies as part of an agreement which was reached to settle a lawsuit filed by the deputies.

³³ The facts of this off-duty shooting were previously published in OIR's Ninth Annual Report at pp. 46-47. (See <http://laoir.com/reports/9AR-OIR-Annual-Report-FINAL.pdf>.)

and when they arrived, the deputy was uncooperative and angry at the officers for failing to pursue the individuals he had just been fighting. The officers described the deputy as “smelling strongly of alcohol” and using profanities towards them. He was heard saying, “Fuck you!” and “You don’t know who you are messing with.” At one point, the deputy stated a Florencia gang member in the area also had problems with the younger gang members he had just fought and went on to say, “See, even Florencia has my back and [local law enforcement agency] don’t [sic].” The officers decided not to arrest anyone and left the scene.

Shortly after, the deputy went to the local law enforcement officer’s station and started complaining to the front desk about the officers’ lack of response. Some of the people he talked to at the station noted he was displaying signs of being intoxicated. He was very agitated and upset about the incident and felt the officers did not do their jobs. The investigation supported a finding that the deputy was intoxicated and acting inappropriately. The Department discharged the deputy, but later settled the case for a 30-day suspension³⁴ at the grievance stage. OIR was consulted, and although we expressed great concern over the fact that the deputy was intoxicated and had inappropriately associated himself with a Florencia gang member, ultimately concurred with the strict terms of the settlement agreement.

Case Three

A deputy, while off-duty and in his personal car but wearing his uniform, drove to a citizen’s house and falsely represented that he was responding to a 911 hang-up call. When the citizen informed the deputy that no one had called 911, the deputy said he needed to enter the residence to ensure that everything was okay. When the citizen refused to allow the deputy to enter, he spoke to her about her son, whom the deputy knew from childhood. He then provided the citizen with his cell phone number and requested that her son give him a call and left the location. After the deputy left, the citizen contacted the nearest Sheriff’s Department station and reported the incident. During both the criminal and administrative investigations initiated by the Department, the deputy made false statements denying that he was the person involved in this incident.

The Department initially discharged the deputy. However, during the grievance process, the discipline was reduced to a 30 day suspension. OIR was consulted and ultimately concurred with the reduction in discipline, but OIR expressed its grave concern over the

³⁴ A 30-day suspension is the longest and most severe suspension the Department imposes short of demotion and discharge.

repeated lying and bizarre behavior by the deputy. Shortly thereafter, in a subsequent case, this deputy was discharged for fraternization.

To the credit of the Department, it does not hesitate to identify, thoroughly investigate, and move to discharge employees for serious misconduct. OIR monitors the investigations from their inception and is consulted and involved in every step of the process. After a decision to discharge is made at Case Review, OIR is thereafter consulted by the subject's Chief if a

Assignment	Brief Summary of Miscellaneous Misconduct	Result
Probationary Custody Deputy	Deputy was involved in off-duty shooting involving individual who tried to leave scene of accident	Probationary discharge
Custody Deputy	Mastermind behind bar code scam at jail	Discharge sustained
Patrol Deputy	Deputy violated fraternization policy by having sexual relations with inmates at station jail	Discharge sustained
Patrol Deputy	Deputy violated fraternization policy by associating with criminal street gang members	Discharge sustained
Patrol Deputy	Deputy violated fraternization policy by moving in and having child with parolee whom he met while parolee was in custody	Resigned
Custody Deputy	Deputy tested positive for steroids	Discharge sustained
Custody Deputy	Deputy violated fraternization policy by dating person with criminal background	Discharge sustained
Custody Deputy	Deputy violated fraternization policy by having inappropriate relationship with inmate	Resigned
Patrol Deputy	Deputy violated fraternization policy by living with parolee	Resigned
Patrol Sergeant	Sergeant tested positive for Vicodin while on duty	Discharge sustained
Custody Deputy	Deputy violated fraternization policy by associating with criminal street gang members	Discharge sustained
Custody Deputy	Deputy was uncooperative and belligerent toward officers attempting to investigate a crime	Discharge reduced to 30 days per settlement
Patrol Sergeant	Deputy accused of attempting to steal from department store and repeatedly using toll road without paying	Discharge sustained
Court Deputy	Deputy attempted to gain entry into residence under color of authority for personal reasons	Discharge reduced to 30 days per settlement

settlement agreement is being contemplated. In the five cases settled for lengthy suspensions, OIR was consulted and concurred with the reduction in discipline either due to additional mitigating circumstances presented after Case Review or perceived problems with proving the allegations before the Civil Service Commission.

The Department should be commended on the number of discharges which have been upheld by the Civil Service Commission this year. With respect to the two cases wherein the discharges

To the credit of the Department, it does not hesitate to identify, thoroughly investigate, and move to discharge employees for serious misconduct.

were not upheld, one involved a Technology Specialist's discharge based on Policy of Equality violations involving an alleged relationship with a subordinate. The Civil Service Commission reduced the discharge to a demotion and a 10-day suspension. Decisions on Policy of Equality violations are not typically monitored by OIR unless there are other general misconduct allegations involved. The second case involved a deputy who was discharged for allegedly having inappropriate sexual contact with a motorist he had stopped. The Hearing Officer who heard the evidence in the case was of the opinion that the evidence was insufficient to sustain the allegations and discharge. The Civil Service Commission

voted to adopt the Hearing Officer's findings. OIR monitored the case and had expressed its concern regarding the sufficiency of the evidence to the Department during Case Review, but the Department nonetheless chose to discharge the deputy due to the seriousness of the allegations.

OIR Special Reports

Maywood Police Department Hires

Introduction

On June 29, 2010, after the City of Maywood disbanded their police department, they entered into a Municipal Law Enforcement Services Agreement with the County of Los Angeles. Pursuant to the Agreement, LASD was to provide general law enforcement services within the City of Maywood's corporate limits. The Agreement contracted for approximately 13 deputies and one sergeant. Although the deputy and sergeant positions were itemized in the agreement, the contract was silent as to whether any of the existing Maywood police officers would be merged into LASD to fill those contracted items, or whether existing applicants on the LASD wait-list would fill the itemized positions. OIR understands that the County/LASD decided not to merge any of the existing personnel based upon concerns raised from prior experiences where outside city peace officers were absorbed by LASD upon disbandment.³⁵

However, the Sheriff's Department expressed a desire to work with the Maywood officers who had lost their jobs in the disbandment. As such, the Department indicated Maywood officers could apply with LASD for entry-level deputy positions for immediate processing and potential

³⁵ We have been informed that LASD underwent a previous merger wherein several assumed personnel lacked critical training and/or had questionable backgrounds. This caused numerous challenges for LASD in the years following the merger.

hire.³⁶ To that end, 21 Maywood officers applied immediately following the disbandment. In early 2011, and after the hiring process was completed, 11 Maywood officers were officially hired by LASD. As of the writing of this report, nine of the original 11 remain employed by LASD.³⁷

In late fall of 2011, OIR received complaints alleging bias and inadequacies in the LASD hiring process of the displaced Maywood officers. First it was alleged that one of the hired officers had an extensive criminal record, including felony charges. Second it was alleged there was inappropriate collusion between LASD's decision maker (the Undersheriff³⁸) and the former Chief of Police of Maywood³⁹ during the hiring process. The specific allegation was that the former Chief of Police submitted a list of names to LASD's Undersheriff, who then approved the list for hire without considering the information in the background investigations. Finally, it was alleged that the background investigation process was inadequate and conducted in such a manner as to make it impossible to successfully complete. Specifically, some complainants alleged they were required to submit their LASD application, take the medical examination and take the written and oral psychological examinations all on the same date. According to the complainants, this alleged one-day requirement made it near impossible to complete all of the required tasks.

The following report is a summary of the Office of Independent Review's examination into the Los Angeles County Sheriff's Department's background investigations and hiring processes involving former Maywood police officers that sought employment with LASD. Upon completion of our review and in anticipation of authoring this report, OIR has developed several recommendations regarding LASD's background investigations and hiring processes. OIR is working with LASD to hopefully implement these recommendations.

Scope of Review

Upon learning of the allegations made by the complainants, OIR promptly contacted the Captain of Personnel Administration and requested access to the hiring files of the Maywood police officers that applied and were hired by LASD. Each file included the application and background investigation conducted by LASD Background Investigation Unit (BIU). OIR initially reviewed

³⁶ Other than the former Maywood officers, in June of 2010, LASD was experiencing a hiring freeze. In fact, there were several applicants with completed background investigations waiting for further consideration (i.e. wait-listed). The former Maywood officers were given priority and placed in front of the wait-listed individuals.

³⁷ Two deputies who were former Maywood officers soon left LASD to lateral into other, smaller law enforcement agencies.

³⁸ In this report, "Undersheriff" refers to LASD's Undersheriff at the time of the Maywood hiring process.

³⁹ In this report, "Chief of Police" refers to Maywood's Chief of Police at the time of disbandment.

the personnel files of the Maywood officers that were hired by LASD. However, it soon became apparent a comparison of files of applicants who were hired to those that were disqualified during the investigation/hiring process was necessary to determine what factors LASD deemed disqualifying. In sum, we reviewed 21 Maywood sworn officer files, including all hired applicant files and all disqualified applicant files.⁴⁰

In addition to speaking to the complainants, we also interviewed the LASD personnel involved in the hiring process, including the following: team Lieutenant and Captain at Personnel Administration, the Undersheriff's aide at the time of the process (holding the rank of Lieutenant), the Undersheriff and the former Maywood Chief of Police.

Finally, in addition to reviewing the personnel files, OIR also reviewed numerous documents related to the lateral hiring process from Maywood PD to LASD, including internal memoranda, the Agreement, e-mails, LASD hiring guidelines, POST hiring guidelines, contracts, reports and articles.⁴¹

The Hiring Process

Law Enforcement Standards

California's Commission on Peace Officer Standards and Training (POST) is an independent commission that devises minimal requirements for background investigations for law enforcement agencies. In addition to setting minimal standards, POST annually inspects police departments to determine whether the investigations conducted are in compliance with POST standards. POST has routinely found that LASD has complied with its minimal standards for background investigations. In fact, LASD exceeds the minimal requirements set by POST by, for example, requiring a polygraph examination for LASD applicants. In order to protect the integrity of the process, law enforcement agencies do not publicize details of their internal hiring standards. To maintain the confidentiality of the Department's internal standards and requirements, we have not included or described in detail those standards or requirements in this report. However, a brief discussion of POST's publicized minimal requirements sheds light on areas of importance and concern in the cases we reviewed for this report.

POST's Background Investigation Manual⁴² is designed to help law enforcement background

⁴⁰ Applicants who were disqualified for medical or psychological reasons were not reviewed by OIR.

⁴¹ We used as references and background numerous articles written in regards to police abuse by the Maywood Police Department. Specifically, we studied the California Attorney General's investigation report of the Maywood Police Department, published in March 2009.

⁴² Shelley Spilberg, Background Investigation Manual, Commission on Peace Officer Standards and Training, (May 1, 2012), <http://post.ca.gov/background-investigation-manual-guidelines-for-the-investigator.aspx>.

investigators identify areas of concern regarding applicants by providing different dimensions to evaluate. Each dimension includes a behaviorally based definition and description, along with a set of indicators for use by investigators in evaluating candidates against these attributes. However, the specific thresholds of acceptability (e.g., number of allowable moving violations) are not included in POST's guidelines. Rather, the establishment of those thresholds is within each agency's discretion.

The central requirement of any law enforcement agency's hiring standards is the assessment of the applicant's integrity and moral character. This requires that the applicant has maintained high standards of personal conduct, which include attributes such as honesty, impartiality, trustworthiness, and abiding by laws, regulations and procedures. According to POST, some indicators of dishonesty in the hiring process include: (1) misleading any person involved in the pre-employment screening process by misstating, misrepresenting, or failing to completely answer questions; (2) inaccuracies or deliberate omissions in applications, Personal History Statements, or any other documentation required as part of the pre-employment process used to help determine the candidate's suitability for employment; (3) any other act of deceit or deception; (4) involvement in the sale or distribution of illegal drugs; (5) engagement in inappropriate sexual activity (e.g., prostitutes, sex with minors); (6) evidence of perjury or falsification of official reports; and (7) association with those who commit crimes or conduct otherwise demonstrating unethical or immoral behavior.

Per POST guidelines, misdemeanor convictions are not, in and of themselves, disqualifying. However, any conviction should be carefully examined with regard to its relevance to the candidate's suitability for appointment. Any person convicted of a felony is prohibited from employment as a California peace officer pursuant to Government Code Sections 1029(A) and (B). This prohibition holds even if the conviction was sealed, expunged, or set aside. It may also apply to any felony conviction that was subsequently reduced to a misdemeanor on or after January 1, 2004.

POST also indicates that juvenile adjudications are generally not considered to be criminal convictions unless the individual was certified, tried and convicted as an adult. Therefore, juvenile convictions are not included as a legal bar to appointment as a peace officer. However, POST advises that the conduct surrounding the offense should certainly be considered as part of the overall background. POST strongly encourages agencies to establish standards associated with such issues as criminal convictions, thefts, illegal drug use, driving history and other criminal conduct.⁴³

OIR agrees with POST that no amount of standard-setting will eliminate the need to make case-by-case judgments based on specific facts presented within each candidate's background. Everyone we interviewed for this report stated that it is neither possible nor prudent to look at

⁴³ *Id.* at Chap. 2-2.

applicants using solely objective criteria. Rather, each applicant needs to be viewed individually based on their specific life experiences. This is not to say that LASD's internal hiring guidelines are completely subjective. They are not, and are in fact quite specific in many areas. While some facts are automatic disqualifiers, LASD tends to view the applicant as a whole.

POST recommends, and LASD adheres to, investigating circumstances surrounding each fact in order to make an educated assessment of the candidate's suitability, taking into consideration factors such as patterns of past behavior, the likelihood the undesirable behavior will recur, the relevance of the past behavior to the job demands and requirements, and the length of time between the particular undesirable act and the application for employment.

In speaking to those involved with LASD's hiring process, it became clear that the difficult question they faced in assessing the Maywood files (and any background file, for that matter) is how best to manage the inevitable subjectivity that is necessarily part of the hiring process. In our review, we agree such hiring processes cannot be undertaken in a black and white decision-making manner and that all individual files must be considered carefully and thoroughly, using guidelines and standards as a guide in the process. As is stated at the conclusion of this report, OIR has made recommendations on how we believe the hiring process can remain fair, unbiased and thorough while also understanding the necessity of a subjective component in the process.

The Process

POST certified Maywood police officers who applied to LASD were considered "POST Trained Laterals." This meant the Maywood sworn applicants who were hired by LASD did not have to attend the Department academy. Nevertheless, all Maywood applicants had to go through the same background process as any new hire. For example, they had to submit to pre-background written and oral examinations. Further, once the oral and written examinations were passed, LASD then conducted a full background investigation on each applicant.⁴⁴

Generally, the average time of hiring an LASD deputy sheriff trainee (from when the application is submitted to the time the conditional offer of employment is made) is approximately six months to a year. However, when LASD assumed the policing services of the City of Maywood, the background investigatory process took approximately three to four months. As noted earlier, when the City of Maywood contracted with LASD, it was at a time when LASD was experiencing a hiring freeze. Therefore, other than occasionally refreshing the completed "wait-listed" background files,⁴⁵ the background investigators were not conducting investigations

⁴⁴ As part of the background investigation, BIU obtained all Maywood police officers' personnel files, which included any internal investigations conducted by the Maywood Police Department.

⁴⁵ LASD background files are active for one year. If the information within the file has not been updated within the year, the applicant must go through a new background investigation.

on new applicant files. As such, the availability of the investigators that could focus solely on Maywood permitted the process to move more quickly than the norm.

In fact, LASD was able to assign a specific team of investigators and one Sergeant from the BIU to work primarily on the Maywood applicants' background investigations. In order to facilitate the application process, this team of investigators from BIU attended a meeting in Maywood where they met with sworn and non-sworn personnel. During this meeting the LASD team advised and explained to all that were present the process of applying to the Department, distributed applications and background forms, and answered questions posed to them. It should be noted that not all sworn Maywood personnel were present during this meeting. For example, some sworn personnel were off duty due to being injured on duty (IOD). However, it was our understanding that every effort was made by Maywood to have as many employees as practicable present at the meeting with LASD.⁴⁶

After the BIU investigator completed the background investigation on an applicant, the team Sergeant reviewed the file for any outstanding substantive issues. If the team Sergeant deemed the investigation complete, he would send the file to the Operations Sergeant at Personnel Bureau for a second reading. The Operations Sergeant's review of the file was not substantive; rather, it was to ascertain whether all statutory and regulatory requirements had been met and to ensure that the file was complete. Once the Operations Sergeant completed reviewing a file, the file was then sent to the team Lieutenant who - like the team Sergeant - reviewed the file for substantive issues. Once the team Lieutenant was satisfied with the thoroughness of the file and that POST requirements and the Department's hiring standards were met, he highlighted any areas of concern, such as moral or integrity concerns. He then sent the file to the Undersheriff's office for review and a final hiring decision.

OIR found that in the cases of Maywood applicants there was a very informal method of highlighting issues and concerns in each file. The concerns were either typed on a blank piece of paper, or they were tabbed with Post-its. Occasionally there were pen markings or yellow highlights written directly onto pages within the background file.⁴⁷ OIR was told these

⁴⁶ From the discussions OIR has had with both Department members and the Chief of Police, there appeared to be some confusion as to hiring opportunities for the non-sworn professional employees from Maywood. From Maywood's point of view, it was believed that professional staff members would be eligible for hire by LASD, just as the Maywood sworn staff was. However, it was LASD's position that the non-sworn employees from Maywood would not be hired unless there were specific positions open in the Department that matched their skills.

⁴⁷ The notes and Post-its by BIU were destroyed once the decision to hire was made. Although OIR is convinced such notes existed and were used to assist the Undersheriff in making his final decision, we found that without being able to review these notes it was very difficult to ascertain what concerns and issues were actually addressed and how or why certain decisions were made.

markings and highlights were likely done by the BIU team Sergeant. OIR also confirmed that the team Lieutenant had typed out his concerns onto a blank piece of paper and attached the paper to the front of each Maywood file. The majority of these typed notes were in the form of “highlights” (positives) and “lowlights” (negatives) regarding information in the applicant’s file. In most cases, once the team Lieutenant prepared his typed notes for the file, he sent the file to the Captain of Personnel Bureau for final approval.⁴⁸ The Captain reviewed the file, including the team Lieutenant’s notes, and subsequently sent the file (along with the notes) to the Undersheriff’s office.⁴⁹

Upon delivery to the Undersheriff’s office, the Undersheriff’s aide (“Lieutenant Aide”) then reviewed the file in its entirety for the sole purpose of briefing the Undersheriff of a file’s contents. During the course of our investigation, OIR formed the opinion that the Lieutenant Aide was, for the most part, extremely thorough in his review of the files. In fact, he initiated back and forth communications with the Personnel team Lieutenant and/or Captain, often times requesting follow-up or further investigation.

Once the Lieutenant Aide was satisfied with the thoroughness of a file, he then briefed the Undersheriff regarding each applicant. In our interview of the Lieutenant Aide, he stated he would highlight any areas of concern, such as integrity or moral issues, discovered in the background investigation. Per the then Undersheriff, he received all of the information regarding the Maywood applicants from his Lieutenant Aide and was the ultimate decision-maker on the hiring or disqualifying of any Maywood applicant.⁵⁰ The Undersheriff also advised OIR that if an applicant was determined to be a “50/50” (i.e. 50% chance of hire, 50% chance of disqualification), the benefit of the doubt was given to the officer and he was hired.

⁴⁸ OIR found that in some cases the Personnel Captain noted his review of a file via the presence of a “contents noted” stamp on the file. However, there were some files that did not have the “contents noted” stamp and the Captain had no specific recollection as to whether he had reviewed those files.

⁴⁹ Under normal hiring practices, LASD’s Captain of Personnel Administration makes the final hiring and disqualifying decision. However, there have been unique scenarios, such as Maywood, where the Undersheriff (or someone else) was designated the sole authority to make the hiring decisions. For example, just a few weeks prior to Maywood entering into contract with LASD for policing services, LASD received a number of applications from employees who had been employed by the County’s Office of Public Safety (“OPS”). In regard to those applicants, the Undersheriff was similarly tasked with making the final decision on hires.

⁵⁰ We should note that in the course of interviewing Department members, we often ran into confusion over whether the hiring process they were recalling was in regards to the OPS hiring or whether it was the Maywood Police Department. Nonetheless, as we understood it, the two processes were nearly identical in nature.

Letters of Conditional Offer, Medical and Psychological Examinations

As discussed thus far, once the background investigation was completed, LASD then reviewed the background file and made a determination of whether or not to hire or disqualify an applicant. Generally speaking, if LASD decided to hire an applicant, the applicant would then be sent a “conditional offer of employment” letter. The offer in the letter was conditioned upon completing and passing the medical and psychological examinations. The medical and psychological examinations’ criteria are set by Los Angeles County’s Occupational and Health Programs (OHP). The psychological examination consists of an oral and a written examination. The written part of the psychological examination, the Minnesota Multiphasic Personality Inventory (MMPI), is normally conducted at LASD’s Personnel Bureau. The results of the examination are then sent with the background investigation file to the contracted psychologists’ office for review and preparation for the oral psychological examination.

Specific language in the letter dictates that the applicant must sign the offer and upon LASD’s receipt of the signed letter, a member of the Pre-Employment Unit staff would contact the applicant to schedule these appointments.

However, during OIR’s inquiry into the Maywood hiring process, we found two deviations from this procedure. The first was that in several files the medical examination predated the date of the offer letter. Second, OIR found the applicants signed their letter on the same date that OHP approved their psychological evaluations. This directly conflicts with the language in the letters which postulates that the examinations would be taken after the offer has been accepted by the applicant. This was concerning to OIR because it was an evident departure from the language of the offer letter and the routine hiring process. OIR expressed its concerns to the Department and requested it conduct an inquiry into the apparent discrepancies.

After the Department’s inquiry, it was determined that Department protocol was not followed. The administrative person in charge of obtaining acceptance signatures on the letters was the same person responsible for scheduling the medical and psychological examinations. In the case of Maywood, this person scheduled medical examinations prior to receiving the signed letters from the applicants. As stated previously, it is Department procedure for the applicant to accept and sign the letters before any medical or psychological examinations can be scheduled.

With regards to the psychological examinations (both written and oral), they were conducted on the same date as the letters were signed. This occurred because the administrative person sent the letters to the psychologists’ office and requested they obtain the applicants’ signatures on the date of the applicant exams. The reason given for the obvious departure from Department protocol was, in part, due to the fact that LASD’s MMPI scoring machine was broken. Thus, the administrative person determined it would be easiest to send the unsigned

offer letters to the psychologists' office where the applicants were taking the MMPI. Albeit OIR does not believe the failure to adhere to Department protocol led to significant or substantive issues regarding the hired applicants, it is nonetheless concerning that protocol was ignored. It was especially concerning that LASD delegated its responsibility regarding the letters to an outside contracted psychologist. The letters are official LASD documentation that should only be presented to the applicants by a Department member who is knowledgeable about the contents of the letters. In this particular situation, the applicants were not given an opportunity to discuss the letters with any Department members at the time of signing the letters.

Questionable Hires

As stated above, OIR reviewed numerous files involving the Maywood applicants. Although we did not summarize all of the applicants' files, we have categorized a few of those applicants as "questionable hires." That means we believe the applicants' files should have been examined more closely and/or we have concerns about whether the applicant should have been hired.

Before we delve into case examples, it is important to recognize the different decision-making calculus when determining whether to hire an officer who is currently employed as a peace officer versus a civilian applicant. In assessing a lateral applicant, the potential employing agency can generally take some confidence if the background investigation has revealed that the applicant has succeeded in his/her current peace officer position. In other words, the assessment of an employed peace officer should be weighted more heavily on his/her current work experience than the history that preceded that employment. That being said, because of the huge impact that every hiring decision might have on a Department, it is incumbent upon the hiring agency that such decisions be carefully vetted and that the investigation into a candidate's history be thorough.

The Maywood case presented unique challenges and considerations because the Sheriff's Department was taking over the law enforcement responsibilities for the citizenry who lived there and causing several scores of officers to be suddenly out of a job. While it is human nature to be sympathetic to the plight of these now unemployed officers, that sympathy cannot override the Sheriff Department's self-interest in ensuring that only the highest caliber applicants enter its ranks. Because of the failure to preserve documentation indicating the decision making in Maywood, we are left to question, as illustrated below, whether in every case the Department met this ideal.

Case No. 1

Educational and Family Background

The applicant received both undergraduate and master's degrees from two California universities. The applicant was married with children and identified valid hardships in his family life, consisting of his children's serious medical issues.

Employment (prior to Maywood) History

The applicant was employed by a law enforcement agency as a peace officer for a few years before he resigned in lieu of termination after a felony arrest which will be discussed in further detail below. He thereafter worked as a bail bondsman and a private investigator before being hired by the Maywood Police Department. During his time at Maywood, he received evaluations which were "above average" and he had achieved the rank of Sergeant. His Internal Affairs (IA) file included four investigations. Of the four IA cases, none were considered "founded." They included allegations of creating a hostile workplace, discourteous behavior in the field and use of excessive force.

Financial Concerns

None.

Information from Background Investigation

During the LASD background process, the applicant admitted to several concerning behaviors, including:

- Being arrested for discharging a firearm from a vehicle (a felony) and driving under the influence (a misdemeanor). He ultimately pled to a misdemeanor charge of discharging a firearm within city limits, and was sentenced to 52 days of electronic monitoring and probation;
- Giving false information to a police officer;
- Driving under the influence at least 5 times in the past (without being arrested or convicted);
- Being involved in four at fault accidents; and
- Having two IA cases as a police officer, when in fact it appears he had at least four.⁵¹

Regarding the incident which led to the applicant's arrest, the applicant admitted visiting friends at a house where he consumed alcohol and became intoxicated. At some point later in the night,

⁵¹ Additionally, there is some information in the file that suggests he had an additional IA case at another law enforcement agency.

the applicant left the house and fired his duty weapon out of the driver's side window toward the area of the home he was visiting. He then drove away from the scene. Local law enforcement officers nearby heard the shots fired and traveled in the direction of the shots to investigate. Minutes later, the applicant was stopped by a police officer. The officer asked him whether he heard shots fired and the applicant denied any knowledge of the shots. During the stop, the officer saw open containers of beer in the drink holders of the vehicle. When the officer asked the applicant to exit the vehicle, the applicant informed the officer he was a peace officer. The officer observed the applicant had an empty holster on his hip and inquired about the gun. The applicant stated that his Department issued weapon was in the vehicle. The officer asked the applicant if he had been shooting his weapon, to which the applicant denied doing so. The officer then let the applicant leave without arresting him.

Upon arrival at the area where the shots were fired, the officers began speaking to witnesses who gave them a description of the vehicle involved in the shooting. The officer, believing the applicant's vehicle matched the description by witnesses, put out radio traffic to other units in order to try and re-contact the applicant. Another officer located the applicant and conducted a second traffic stop. The applicant and all other vehicle occupants were detained at gunpoint. The applicant was removed from his vehicle and placed into the backseat of a patrol car. The same officer that originally contacted the applicant once again asked whether the applicant had fired his weapon. For a second time, the applicant denied that he had discharged his weapon. The officer then told the applicant about the witnesses who described the applicant's vehicle and the applicant as being involved in the shooting. For a third time, the applicant denied being involved in that particular shooting, but stated that he and his friends had been shooting his duty weapon earlier in the day.

Officers searched the applicant's vehicle and found one expended shell casing as well as his duty weapon. The weapon was located inside the center console in the same holster that the applicant had been wearing during the initial traffic stop. Two expended shell casings were found in the applicant's front pant pockets. Upon further investigation, one of the other vehicle occupants admitted it was the applicant that fired the weapon out of the window in the direction of the home where the party had taken place.

Additionally, the applicant was suspected of being under the influence. However, the applicant refused to participate in any field sobriety tests or submit to a Preliminary Alcohol-Screening test (PAS). The local agency took the applicant into custody and drove him to a hospital where he was ordered to give a blood sample. The applicant agreed to the blood draw only by a phlebotomist. Once the process was initiated to obtain a phlebotomist, the applicant then stated he no longer wanted to do a blood draw and that he would give a breath test instead. Ultimately, approximately two and one-half hours passed before the applicant submitted to a breath test. The test returned a .06% blood alcohol content.

During the background process, the applicant admitted to the entire incident, but could not

explain why the incident took place or the reason for firing his weapon out of his vehicle.

OIR Analysis

When OIR discussed this case with executives, only one executive recalled the arrest and the circumstances surrounding the arrest. The remaining Department executives either did not recall the arrest or believed it was “just a misdemeanor.” When OIR recounted the specific facts of the case to the then Undersheriff, he stated that he may not have hired the applicant given the specifics of the case, but that he could not recall what facts may have overruled his decision not to hire. In the end, he did not have any actual recollection of the hiring of this applicant, but stated that he was positive each file was considered completely and thoroughly, despite his (and others’) inability to recall the facts of this applicant’s arrest.

Case No. 2

Educational and Family Background

The applicant received his GED and accumulated some college credits, but never graduated from college. The applicant admitted having a relative in a gang and expressed concerns for his children, one of which needed extensive medical attention.⁵²

Employment History

The applicant worked for another police agency for three years. His last performance ratings at that agency were “Very Good” and “Excellent.” He worked for Maywood for six years. His last performance evaluation at Maywood was “Above Average.”

The applicant had two Maywood Internal Affairs cases which were concerning to OIR. The first involved allegations of “perjury.” This case was pending investigation at the time Maywood disbanded. As such, there was no formal resolution of the matter. It appears that as part of the background investigation, LASD obtained an appellate court opinion regarding a criminal matter wherein the officer was the investigator. The opinion may have been the basis for the “perjury” charges, but it is unclear from the personnel file because it does not contain the transcripts of the criminal case nor any evidence of a follow-up investigation into the matter. The appellate court found the officer had committed misconduct on the stand by deliberately and calculatedly testifying to information that had been suppressed. The opinion cited evidence that the officer was upset that the information was suppressed and was looking to find another way for the information to get in front of the jury. The appellate court reversed a serious felony conviction

⁵² This is important, because as we understood, the Undersheriff was very sympathetic to the officers’ current family situations and knowing the officers were unemployed greatly factored into LASD’s decision to hire.

finding the officer committed “willful misconduct.” The opinion was published in early 2010, several months before Maywood disbanded.

Upon completion of OIR’s inquiry into the Maywood files and well after this applicant had been hired, a citizen complainant contacted OIR and made certain allegations against this officer. The complainant is alleging the officer was dishonest during the background check and lied on his application for employment. OIR is currently in the process of monitoring the Department’s response to these allegations.

In addition to the alleged “perjury” case and reversed conviction, it appears there was another serious and possibly criminal allegation against the applicant while employed at Maywood. The matter involved allegedly making threatening comments and assaulting Police Commissioners. It was alleged by several people that the applicant attempted to “hit” a Commissioner with his vehicle and then made verbally threatening comments to several people involved with the Commission. While Maywood conducted an internal investigation, the investigation was not thorough. Several witnesses listed in a letter to the City were not interviewed about the incident and there were several unanswered questions regarding the applicant’s alleged volatile behavior.

The applicant had been involved in three shootings. Two were during the applicant’s time at Maywood and the third was prior to the applicant becoming a peace officer, when the applicant was an armed guard for a large casino. The most recent of the three shootings was being investigated by the District Attorney at the time of Maywood’s disbandment. Although it appears LASD attempted to follow up with the District Attorney regarding the outcome of the shooting, the matter was not resolved at the time the Undersheriff made the decision to hire the applicant.

Financial Concerns

The applicant had many problematic financial matters. He had a very poor credit history, and owed back taxes and had a history of repossessions.

Information from Background Investigation

Prior to becoming a police officer, the applicant was arrested for an outstanding warrant. The warrant stemmed from an outstanding traffic ticket (of unknown violation). The applicant stated he took care of the matter once informed of the warrant. His reason for allowing the ticket to become a warrant was that he was out of the country.

Additionally, the applicant was arrested as a juvenile and charged with auto theft and driving without a license. Since the records of that incident have since been purged, the only information involving the incident comes from the applicant. The applicant stated he had been given permission to drive his cousin’s vehicle, but when the officers phoned the cousin to substantiate the applicant’s story, the cousin denied granting permission. As such, he was charged with auto

theft. Additionally, the applicant did not have a valid driver's license. At some point after the arrest, the applicant stated the cousin admitted giving permission. None of these facts can be verified since there are no records available.

The applicant also admitted to being involved in a domestic violence matter, wherein he was the victim. There were no police records obtained by LASD to verify he was the victim in the domestic violence matter.

OIR Analysis

OIR was concerned that the Department had not fully considered the pending Maywood Internal Affairs case. From the background file, it was unclear what the "perjury" matter involved. And, based upon the early 2010 appellate court opinion, it is extremely concerning that LASD appears to have known they were hiring an officer that was found to have committed "willful misconduct" in court - such misconduct being the sole reason for a criminal conviction being overturned. Finally, the case involving criminal threats towards some of the members of the Police Commission did not appear to be thoroughly investigated and there was very little information on the case. OIR was concerned the Department did not have adequate information to determine whether any of the allegations held merit and how, if at all, those allegations should factor into their hiring decision.

Case No. 3

Education and Family Background

The applicant graduated high school and accumulated some college credits, but never graduated from college.

Employment History

While at Maywood, the applicant's overall rating on his evaluation was "above average." His Internal Affairs file while at Maywood revealed the applicant received a written reprimand for failing to properly book evidence. He also had two additional "not sustained" investigations involving performance and discourtesy towards a citizen.

Prior to his two years with Maywood, the applicant was employed at a law enforcement agency as a peace officer. The applicant was discharged from that department for dishonesty. The incident involved a Sergeant instructing the applicant to write a traffic collision report and to prepare a factual diagram. The applicant thought that an assault with a deadly weapon report would be a more appropriate report instead of a traffic collision report. The applicant approached a traffic Sergeant who was unaware about the previous Sergeant's orders. The traffic Sergeant told the applicant not to write a traffic collision report, unaware of the previous Sergeant's orders.

When the first Sergeant asked the applicant for the report, he said it was in his car and left to go to his car but never returned. During the Internal Affairs investigation, it was discovered the applicant had lied about the way he sought the second Sergeant's opinion ("Sergeant shopping"). The applicant misrepresented to the first Sergeant that he had run into the second Sergeant in the hallway. It was determined by Internal Affairs that the applicant had also lied to the first Sergeant by telling her he had written the traffic collision report and diagram. The LASD investigator spoke to the applicant's supervisor where the incident occurred, but did not contact the Sergeant to whom the applicant had lied.

Furthermore, a performance evaluation at that agency rated the applicant "below standards." The evaluation stated the applicant's behavior compromised his and the public's safety, after being warned several times that he drove too fast. In addition, according to the performance evaluation, the applicant was hesitant to accept new assignments, lacked initiative, and was reluctant to accept direction, instruction or correction. He also had "a proclivity to repeat negative behavior after being counseled."

Information from Background Investigation

During the LASD background investigation, the applicant admitted to underage drinking when 18 years old. The applicant also admitted to drinking and driving on two occasions, once after consuming approximately eight beers when he was 18 or 19 years old, and stated he bought his minor sister alcohol on two occasions when he was 21 years old. The applicant was not arrested for any of these incidents.

The applicant failed to disclose three incidents. The first incident occurred in July 2006, while employed as a peace officer at another police department. The applicant was scheduled to appear in court, but missed going to court after sleeping at the station after working a graveyard shift and forgetting to set the alarm.

The second incident involved the failure to disclose he had been observed by a Sergeant talking on his cell phone while driving his patrol vehicle. This was a violation of his then department's policy.

The final incident the applicant failed to disclose during the 2010 LASD hiring process involved a dining-and-dashing at a restaurant when he was 18 years old. The applicant had previously applied to LASD in 2004. He had disclosed this information during his 2004 intake interview with LASD but failed to do so in 2010. When asked about the incident, he admitted to it, but stated it "slipped his mind."

The applicant admitted to 10 speed contests from 18 to 19 years old. He admitted to driving his car faster than 90 mph on a public street approximately 40 times from the time he was 16 years old to the time of his 2010 LASD application. Since receiving his California Driver's License,

he admitted to driving in the carpool lane numerous times to avoid traffic. He had done this as late as two weeks prior to applying to LASD in 2010. Again, the applicant was never cited or arrested for any of the above-mentioned incidents.

During his 2010 LASD interview, the applicant indicated he may not arrest a friend if he came upon that friend using illegal drugs. Whether he arrested a friend depended upon the type of drug and the amount his friend possessed. The applicant explained if it were three grams of weed, he would let him go. However, if it was a felony drug such as cocaine, methamphetamine or ecstasy, he would make an arrest.

In 2004, when the applicant applied to this Department, he passed the written examination and oral interview. He did not appear for his background interview. A five day letter was mailed and he failed to respond. He was hired by another police department but was fired two years later by that agency. He again applied to LASD and was disqualified for countermeasures on his polygraph examination. When the LASD investigator spoke to the polygraph examiner, he explained that the applicant had displayed intentionally timed movements, apnea and deep breaths. The applicant initially denied these acts when confronted by them, but later admitted to the movements and to reading “how to beat a polygraph exam” on the Internet. During the investigation of his 2010 application, the investigator failed to question the applicant regarding the countermeasures on his 2007 polygraph examination.

While applying to LASD the second time, he also failed to disclose that he was on paid administrative leave from the law enforcement agency where he was employed. In fact, the applicant wrote in his application that the reason for leaving his current employment was to “gain more experience, more opportunity, and better benefits.” The LASD investigator noted this statement, writing that the applicant was on administrative leave from his employer during his LASD application process.

Personal references responded with favorable comments and recommended applicant for hire. However, one of his personal references was another Maywood officer who was also applying to LASD. The applicant’s last supervisor and another officer from the agency he was fired from gave positive recommendations for the applicant.

OIR Analysis

When we spoke to LASD regarding the decision to hire an applicant who had been fired by a previous law enforcement agency, we were advised that the Department generally does not hire such applicants. However, in this particular case, the applicant was unlikely to have been fired by LASD had he committed the same misconduct as a deputy. Rather, he would have been disciplined, but discharge would not have been the outcome. The Department believed other factors such as “politics” likely played a role in this applicant being fired from his previous agency.

In reviewing this applicant's file, we had serious concerns regarding the applicant due to his failure to disclose incidents during the investigation, his driving history (drinking and driving, speed contests and driving in the carpool lane to avoid traffic), trying to manipulate the polygraph examination in 2007, misrepresenting his reason for leaving the law enforcement agency during the 2007 application to LASD, and finally his discharge from that agency for dishonesty.

Case No. 4

Education and Family Background

The applicant received his GED and completed some college level units with no degree earned.

Employment History

Applicant was hired by the Maywood Police Department and remained in the Department for ten years. The applicant's last two evaluations from Maywood indicated a "met requirements" overall job performance rating. A review of his Maywood Internal Affairs file revealed the following incidents. He was given a written reprimand for performance involving an incident for a call for service where he spent only two minutes on the call. He failed to speak to the reporting person, and failed to identify the vandalized area or conduct a thorough investigation. The applicant received another written reprimand for failing to maintain and safeguard a fire extinguisher assigned to his vehicle. He had a "not sustained" investigation involving an offensive poster being placed in the station. The applicant also had an "unfounded" failure to take a police report and a "not sustained" on an excessive force investigation.

The applicant was a former LASD deputy. His last two performance evaluations were "very good." The applicant left LASD to advance his career at a different law enforcement agency. The applicant had no record of investigations or being disciplined while at LASD. However, he was verbally reprimanded for excessive sick calls. The applicant stated that in his last year at LASD, he called in sick 14 times and that on some of those occasions he was not sick, but simply did not want to come to work. The applicant failed to disclose the excessive sick calls during his first polygraph examination in 2010. When asked about it, the applicant stated he "forgot" to tell the examiner.

In October 1998, the applicant was hired by another police department in California, where he worked until March 1999, when he was asked to resign in lieu of termination. The applicant received an "unacceptable" overall job performance rating. His field training officer indicated a "deficiency in report writing, officer safety, writing routine forms, the use of correct forms and role playing during his fifth cycle of training." Although the applicant made some progress during the fifth cycle, he was rated as "unacceptable" and below average.

After his termination from that police department, the applicant applied for reinstatement at LASD in 1999. His reinstatement was denied by LASD. The BIU investigator does not explain why the applicant's reinstatement was denied. The file does reflect that the applicant took a polygraph examination with LASD in 1999. During this examination the applicant stated he resigned from his previous police department because he "missed his friends at LASD." The applicant failed to state that he had to resign in lieu of termination.

The applicant previously failed oral exams for three law enforcement agencies. He also previously failed the written exams for four law enforcement agencies.

Financial Concerns

The applicant filed for bankruptcy. He stated he began accumulating debt after losing his job with the previous police department.

Information from Background Investigation

The applicant was arrested at age 18 for possession of a steroid and syringe. The case was dismissed. The circumstances behind this incident involved a search warrant that was served at his family residence. The warrant was for the applicant's younger brother. During the search the police found steroids and syringes in the applicant's bedroom. The applicant stated he was given the items from an associate at the gym. He denied ever using the steroids. The applicant also had guns and rifles that were seized during the search. His brother served six to eight months in prison for selling cocaine. The applicant stated he does not keep in contact with his two brothers very much as they both have issues with drugs.

During the 2010 application process, the applicant took the polygraph examination twice. The results of the first polygraph were "inconclusive due to the charts being distorted." The test results showed there were countermeasures. The applicant had erratic breathing, took shallow breaths and was unable to follow simple instructions. The applicant passed the second polygraph examination.

On his first polygraph examination given in 2010, the applicant in his pre-test interview stated that he may have had between 10 to 20 unfounded Internal Affairs investigations while he was at Maywood. He stated that the investigations were for allegations of excessive use of force, physical altercations with suspects, and citizen complaints. However, the LASD investigator only noted four investigations while the applicant was at Maywood. There is no explanation or analysis by the LASD investigator to account for the fact that his investigation revealed a total of only four Internal Affairs investigations and not the "10 or 20" the applicant stated he had while at Maywood.

His personal references all returned positive comments and recommended the applicant for hire. The applicant listed three LASD references, including a retired Commander, a Lieutenant, and a deputy, all

of whom “highly recommended” him for hire. His former Captain at Maywood also recommended him for hire.

OIR Analysis

We believe a more thorough investigation should have been conducted to clarify the major discrepancy between the Maywood Internal Affairs file showing only four investigations and the applicant’s statement that he believed he had 10 to 20 investigations. We also believe the applicant should have been questioned regarding the countermeasures in his first polygraph examination in 2010. In more general terms, we wondered whether LASD should have hired an applicant that had not been hired by other law enforcement agencies due to failing oral and written examinations, had admitted to calling in sick to work numerous times when he was not always sick, had been terminated by another agency and subsequently lied about that termination when he applied for reinstatement with LASD.

Review of Disqualified Applicant Files

We found a wide range of reasons for disqualification of some Maywood police officer applicants. Unlike the hired files, the disqualified files usually had a few words written on the cover of the file indicating why they were disqualified. For example, such words as, “integrity issues” or “poor credit history” or “weapons charge,” etc. With these words as guides, OIR was able to comprehend why an applicant was disqualified. Below are brief examples of some of the reasons why applicants were disqualified.

One applicant had been arrested for stalking his ex-girlfriend, including following her in his car and trying to force her off the road. In addition, the applicant failed his polygraph examination due to “deception indicated.” The applicant had paid for services of a prostitute a dozen times and admitted to masturbating in the restroom at the Maywood Police Department between 2005 and 2010. This applicant was disqualified based on issues involving judgment, decision-making, impulse control, integrity and illegal sex. Similarly, another applicant had very disturbing sexual conduct in his background which involved a family member.

An applicant was disqualified due to issues involving financial responsibility. The applicant was sued for not paying rent and not paying for furniture purchased. In addition, the Department had concerns about his judgment, theft, gang association and solicitation of a prostitute multiple times.

One applicant was disqualified because he had well over 10 credit accounts in arrears and another applicant because of a weapons charge. OIR took interest in this particular file, because in contrast to the applicant (mentioned earlier) who was hired with a weapons charge, this applicant was disqualified. In the disqualifying case, the applicant was charged with carrying

a concealed weapon. Although the applicant had a valid permit for the weapon, the permit did not allow him to carry or conceal the weapon on his person. The gun was discovered after the applicant was contacted by law enforcement in a parking lot after a sporting game. He voluntarily advised the officer of the existence of his weapon in his car and permitted the officer to retrieve the weapon. The applicant expressed the gun was being carried for his safety since he lived in a gang-infested area. The applicant was charged and convicted with misdemeanor possession of a concealed weapon.

OIR Findings and Recommendations

A. Complainants' Allegations

As stated earlier in this report, the complainants informed OIR of several serious allegations regarding the Maywood/LASD hiring process. One of the allegations, which we discussed earlier, was that LASD hired a former Maywood officer with a felony criminal arrest. While the criminal conviction was not for a felony, the applicant did have a prior weapons-related misdemeanor conviction. As will be further discussed below, OIR has made recommendations to the Department regarding best practices when considering applicants with criminal convictions.

The complainants also alleged collusion between the Department's Undersheriff and the Chief of Police during the hiring process. They stated the Chief of Police gave the Undersheriff a list of hires and/or verbally expressed his recommendations regarding whom he favored, and more importantly, whom he disfavored for hire. OIR found no evidence to support inappropriate communications or collusion between the two executives. In fact, OIR was informed that the only communication between the two executives merely referenced the length of the background investigation process and did not include any discussion of individual applicants. Moreover, the Chief of Maywood expressed to us his disappointment in not being consulted by LASD about individual applicants during the hiring process. He believed he would have served as a useful resource in shedding light on the work performance histories of the applicants.

Finally, some of the complainants alleged they were required to take their medical and psychological examinations on the same date as they submitted their LASD applications. OIR found no evidence to support this allegation. Of the 21 files we reviewed, no applicant had taken the medical and/or psychological examination on the application submission date. Specifically, the submission date of the LASD applications pre-dated any psychological or medical examinations by at least three months.

B. Maywood Hiring Process

The most problematic aspect of our review involved our inability to decipher LASD's decision

making process. Although we began our review only about a year after the Department had hired the Maywood applicants, it was extremely difficult to piece back together the process as it had occurred during that time period. The difficulty was mainly due to a lack of documentation within each file explaining how and why the decision maker ultimately decided to hire the applicants. Under normal circumstances, the hiring decision lies with the captain of LASD's Personnel Administration. However, due to the uniqueness of the Maywood situation, it was decided that the Undersheriff would make all hiring decisions.

Recommendation No. 1: In "50/50" cases, the Department should use a 3-Commander panel for new hires and for lateral hires.

OIR does not have any issues with the delegation of the ultimate hiring decision to the Undersheriff. However, OIR was concerned with one significant change in procedure that involved the "50/50" cases. Under current LASD protocols, when the Captain encounters a "50/50" applicant, he/she defers the hiring decision to a 3-Commander review panel. After the panel considers the applicant's information, they vote whether or not to hire the applicant.

When a panel convenes to review applicant files, the BIU prepares a summary of the applicant's background investigation. The applicant is identified only by a number and no other relevant identifying information is provided (e.g. age, sex, race or name). This summary highlights the most pertinent information regarding the applicant's background, including the concerns that have been raised as a result of the completed background investigation. After reviewing and discussing the summary of each applicant, the panel votes to hire or disqualify the applicant. Alternatively, if the panel determines there is not enough information to decide or has additional questions, they send it back to BIU for further inquiry. OIR has found the Department's utilization of the 3-Commander panel to be objective, effective and unbiased.

In fact, OIR has and continues to participate in LASD's regular 3-Commander panel process. Our participation includes reviewing the specific background file and comparing it to the BIU's summary of the file. If OIR determines that certain facts from the file should be included or further explained, we make recommendations to revise the summary. Additionally, we can request further investigation of certain matters or issues we deem worthy of clarification or elaboration. OIR strives to ensure that every summary presented to the panel is complete, factually accurate and unbiased so that the decision makers can make an informed and objective decision. OIR does not attend the actual 3-Commander panel review, but we are immediately informed of the outcome upon conclusion. We appreciate the opportunity to be involved in this process and have seen a positive impact as a result of that involvement.

However, contrary to the effective 3-Commander panel process, the "50/50" Maywood files were never considered by the panel. OIR was informed that the 3-Commander panel was not utilized

because of the politically sensitive nature of the Maywood disbandment. Additionally, because the Maywood officers had abruptly become unemployed, some key executives believed that the use of a 3-Commander panel would be too time consuming. OIR disagrees. The total number of Maywood applicants considered was 21. While we appreciate the amount of preparation time BIU would spend summarizing the background files and convening a 3-commander panel, the quantity of files was not overwhelming and the benefits of using the 3-commander panel far outweighs any resource considerations.⁵³

Recommendation No. 2: If the Department delegates the hiring decision to an individual (e.g. the Undersheriff) and opts not to use a 3-Commander panel, we recommend BIU utilize the same preparation process for the individual decision maker as they do for the 3-Commander panel. In addition, any notes by reviewers regarding concerns about the applicant should be documented and retained in the file.

The lack of documentation in each of the files we reviewed made it extremely difficult to both comprehend and evaluate the reasoning and ultimate hiring decisions. As previously stated in the above section regarding the hiring process, the Department informed OIR that there were numerous levels of analysis and scrutiny involved in each of the Maywood applicant files. Specifically, the BIU team Lieutenant and the Undersheriff's Lieutenant Aide both stated they had written down their concerns regarding each applicant and had attached those notes to the entire background investigation file.⁵⁴ We were told by the Lieutenant Aide and the Undersheriff that the Undersheriff did in fact receive and review both Lieutenants' notes and concerns. Unfortunately, the notes were destroyed at some point after the hiring decisions were made and prior to OIR reviewing the files. As such, we cannot independently confirm nor determine what specific information was contained in these notes, and more importantly, what concerns the Undersheriff considered when making his decisions.

For example, in Case No. 1 mentioned above, OIR was deeply concerned with the obvious issues presented in the file regarding the off-duty shooting incident. Of additional concern was the fact that the officer had initially lied to the investigating agency and had appeared to interfere and stall the procedures to measure his blood alcohol content.⁵⁵ When OIR discussed the specific

⁵³ As we have stated in our previous report on background investigations, the decision to hire a peace officer is one of the most important decisions a law enforcement agency will make, as that employee will be an integral component of that agency for years, good or bad. In this case, since there were only 21 applicants, only a handful of them would have fallen into the "50/50" category.

⁵⁴ Most of the background investigation files from Maywood contained hundreds of pages of information.

⁵⁵ Ironically in 2009, the Department increased its discipline for alcohol-related incidents and increased its efforts to communicate with its personnel regarding the seriousness of alcohol-related issues.

facts of this case with those involved in the Maywood hiring process, the only facts that could be recalled were that the applicant had been arrested for an off-duty incident that was originally a felony, but had been reduced to a misdemeanor. When OIR asked how the specific behavior of the applicant during the incident and arrest factored into the hiring decision, no one could recall. Furthermore, because no one could remember the specific facts nor how those facts were considered, and since the notes had been destroyed, OIR was left with little insight into LASD's decision to hire that applicant.

OIR believes it is imperative to document the decision making process. This is especially significant in situations where there is only one decision maker. Otherwise, if, as in this case, the hiring decision is questioned, the Department is placed in a disadvantageous position by having to rely on the fading memories of Sergeants, Lieutenants, aides and executives who review hundreds of applicant files a year.

One way to simplify the documentation process is to have the individual decision maker review the summary of facts and concerns that is given to the 3-Commander panel instead of the entire background investigation file (which was the case with the Maywood applicants). Currently, the summary provided to the panel is generally short in length (three to five pages) and concise in the issues presented.

The benefits of utilizing the summary are two-fold. First, anyone viewing the hiring decision would know exactly what issues were considered and discussed before the ultimate decision was made. Second, in the event a hired applicant is involved in future misconduct or job performance issues and the Department executives wish to review his/her background investigation to determine whether such character flaws were evident in the file, the summary would clearly show what factors were reviewed and considered by the decision maker(s). Overall, this would lead to better transparency and accountability in the hiring process.

Finally, all notes regarding concerns by the reviewers of the applicant file should be documented and retained in that file. Had the notes written by those reviewing Maywood files been retained, OIR would have been better able to determine the reasoning behind some of the hiring decisions.

Recommendation No. 3: In all cases involving criminal conduct, the underlying facts should be thoroughly presented to the decision maker regardless of the ultimate criminal disposition.

Oftentimes in our criminal justice system, criminal cases are disposed of based on plea bargaining negotiations. These negotiations could be based on numerous factors that are not directly related to the underlying facts of the case. For example, if a defendant is charged with a felony, but that defendant has no prior criminal record, oftentimes a savvy defense attorney may utilize that fact to persuade the prosecutor to reduce the charges. Therefore, while the defendant

may only be convicted of a misdemeanor, the factual basis of the conviction nonetheless remains the same regardless of the disposition. Also, the reality of our criminal justice system is that the majority of criminal cases do not go to trial because if they did, the system would break down. Therefore, plea bargaining is the number one tool used to dispose of cases. Thus, law enforcement agencies in the market to hire new recruits should not rely solely on the criminal disposition of an applicant's criminal case.

For example, in Case No. 1 cited above, OIR found that most of the personnel involved in the Maywood hiring process could not recall any of the specific details of the incident other than that the applicant was charged with a felony reduced to a misdemeanor and thereafter expunged. This apparent reliance on only the criminal disposition of the case fails to appreciate the troubling facts regarding the applicant's specific behavior and acts which were serious in nature. That being said, and to the BIU investigator's credit, the applicant was asked about the incident during the background process.

Recommendation No. 4: In all cases involving lateral applicants where LASD reviews the previous law enforcement agency's personnel file and that file fails to fully explain a matter of concern, the Department should make a concerted effort to obtain all available information regarding the matter. In the event no further information is available, the Department should document their efforts in the background file.

This particular recommendation is based upon our discovery of three applicant files which did not contain complete information and thereby created ambiguity and confusion regarding a particular matter of concern. Two of those matters included lack of documented follow-up regarding Maywood Internal Affairs' investigations relating to perjury and assault with a deadly weapon allegation. The third matter involved an applicant who revealed to LASD background investigators that he/she had "10 to 20" Internal Affairs investigations, when the Maywood personnel jacket contained only four.

Again, our concern is with lack of documentation in certain applicant files. For example, one applicant's personnel jacket from Maywood contained a "pending" Internal Affairs case regarding perjury. The file also contained only an appellate court opinion but no other investigatory facts. OIR was able to cross-reference the applicant's criminal history check (which was contained in the background file) and confirm that the applicant was never charged with criminal perjury. Nonetheless, the underlying facts regarding the allegations of perjury or whether the officer's conduct was as malicious as the appellate court had concluded were not adequately explained or explored. Similarly, in another applicant's background file, there was an Internal Affairs investigation alleging the applicant used his/her vehicle to injure a person. Although the outcome of the Maywood investigation was stated in the background file as unfounded, there was no information regarding the underlying facts of the matter, as it appears

the investigator did not document whether he/she spoke to the applicant about the case, nor whether there was any independent inquiry conducted by LASD.

Finally, in the third matter, OIR discovered the BIU investigator failed to clarify a significant inconsistency regarding the number of Internal Affairs investigations that an applicant had accrued while at Maywood. Specifically, the applicant stated that he believed he had been internally investigated in “10 to 20” matters. However, LASD found only four Maywood Internal Affairs investigations in the applicant’s personnel jacket. This inconsistency should have been more thoroughly investigated and further questioning of the applicant conducted in order to, at the very least, clarify the true number of Internal Affairs investigations. While thoroughness of the background file was one of OIR’s main concerns, we were also concerned about the unexplained negative light left on the applicant. In other words, the applicant could have misunderstood what was meant by “Internal Affairs investigations.” We can imagine a scenario where the applicant’s supervisor verbally reprimanded him for a minor work performance matter and admonished him that such reprimand would be “in his file.” We can further imagine the possibility of him receiving numerous verbal reprimands and believing that each one would permanently be in his/her Internal Affairs file.

Here, the applicant was actually hired by LASD. As such, the existence of the inconsistency presents a potentially disadvantageous and harmful scenario for LASD because there could truly be “10 to 20” Internal Affairs investigations involving the applicant, of which LASD only knows about four.

Recommendation No. 5: If an external investigation by an outside governmental agency, as in this case by the Office of the Attorney General, has been conducted, we recommend LASD utilize this resource to its full extent.

In March 2007, in response to a request from then Assembly Speaker Fabian Nunez, the Department of Justice, Office of the Attorney General, directed the Civil Rights Enforcement Section to conduct an investigation to determine whether the City of Maywood Police Department had engaged in a pattern or practice of conduct that deprived persons of “rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California.” (Civ. Code, §52.3.)

The investigation commenced in April 2007, and was concluded in August 2008. In March 2009, the Office of the Attorney General issued a report⁵⁶ on its investigation and concluded that

⁵⁶ CA Office of the Att’y Gen., In the Matter of the Investigation of the City of Maywood Police Department, Attorney General’s Final Report (March 2009).

“during the period from January 2002 to March 2007, the Maywood Police Department engaged in a pattern or practice of conduct that deprived persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California.”⁵⁷ As of August 2008, there were 14 privately filed civil actions pending against the City that alleged Maywood Police Department sworn personnel engaged in misconduct such as false arrests, excessive force and sexual assault.⁵⁸ This report documented a pattern or practice of civil rights violations by the Maywood Police Department. Although we will not list all the causes found for the pattern or practice in the Attorney General’s report, it is important for us to highlight some of the causes as they relate to this report.

One cause listed in the report was that “[t]he Maywood Police Department has failed to consistently follow generally accepted hiring practices in evaluating applicants for the position of police officer and has failed to screen out and disqualify individuals who are not suited to perform the duties of a peace officer.”⁵⁹ The report goes on to state that Maywood PD has the reputation for being an “agency of last resort” for those who seek employment as a peace officer.”⁶⁰ One critical deficiency cited by the report is “incredibly poor background investigations of applicants.” Another is the cessation of polygraph examinations. “Without such an examination, there is no opportunity to require the applicant to complete a pre-polygraph questionnaire and to then test an applicant’s veracity on his representation of his background.”⁶¹

At the time LASD began the background investigations for the Maywood applicants, the Attorney General’s office had already issued its report. OIR discovered that although the Department was aware of the issues arising out of Maywood, it did not utilize the potentially discoverable information from the Attorney General’s office. In fact, during OIR’s interviews with LASD personnel, we specifically inquired whether the Attorney General’s report on Maywood was considered in the hiring process. We were definitively told it was not considered. Having reviewed the Attorney General’s report on Maywood, we found it contained valuable information regarding Maywood Police Department’s troubling history.

Although the Attorney General’s report did not publish the names of any of the Maywood officers involved in misconduct and abuse of power, it is certain that the names of these officers were known to them. OIR believes that the Department may have benefited from contacting the Attorney General’s office and requesting information regarding the applicants it had decided to hire. Although they may not have been privy to all information discovered by the Attorney

⁵⁷ *Id.* at p. 2

⁵⁸ *Id.*

⁵⁹ *Id.* at p. 20

⁶⁰ *Id.*

⁶¹ *Id.*

General's investigation, we believe a request from LASD may have yielded information to better help the Department with its hiring decisions.

Conclusion

OIR began its inquiry into LASD's hiring process for former Maywood officers after receipt of citizen complaints. We were concerned with addressing the veracity of the complainants' allegations. However, upon complete investigation, those allegations remain unsubstantiated. Notwithstanding this conclusion, OIR is grateful for the opportunity to address the citizens' concerns regarding matters involving LASD deputies. Our goals are usually two-fold. First, we want to serve the public in ensuring their complaints against LASD are thoroughly considered and addressed. Second, we hope to learn from our inquiries and investigations about matters of concern to LASD's day to day operations – whether directly or indirectly relating to an original citizen complaint. As was the case here, although the matter started out as an inquiry into certain allegations made by the complainants, OIR found many other areas of concern stemming from the hiring process and believed these additional issues required additional review and follow-up.

To that end, OIR would like to thank LASD, particularly the BIU, for repeated unfettered access to all files and personnel involved in the Maywood hiring matter. Were it not for their assistance, OIR could not have completed this inquiry. In addition to the BIU, there were many others that met with us, some no longer employed by LASD, some from Maywood and still others from the general public. All parties endured our questions and we are much appreciative.

To the extent this report is critical of the work LASD does in its hiring process, we feel it is important to point out that, overall, the work of LASD's BIU was thorough, professional and adequate. While we have recommended ways for LASD to improve its work, we hope those reviewing this report will receive it in the manner which we intend it to be received, that is, with an overall spirit of reform and improvement. OIR's past experience with LASD gives us hope that this report will be given the proper consideration and we look forward to continuing our productive working relationship with LASD.

A Look into the Mitrice Richardson Investigation

I. Introduction

On September 16, 2009, a 24 year-old City of Los Angeles resident, Mitrice Richardson, was taken into custody by deputies from the Los Angeles Sheriff's Department after her arrest for alleged misdemeanor offenses occurring at a restaurant in the City of Malibu. Deputies took her to the Lost Hills Station in Agoura for booking. She was released shortly after midnight on September 17, 2009 and made no contact with her family. At about 6:30 a.m., a little over six hours after her release, a resident in the Monte Nido neighborhood called the LASD to report a woman was sleeping on the rear steps of his home. When startled, the woman ran from the property and was never seen again. Later it was determined the woman was Ms. Richardson. Monte Nido is just over five and a half miles from the Lost Hills Station.

The disappearance of Ms. Richardson was handled as a missing person incident and, because she was a resident of Los Angeles, the Los Angeles Police Department was the lead agency. Over the next several months, searches for Ms. Richardson were mounted in the Calabasas and Malibu Creek State Park areas. Unmanned aircraft were also used to survey the area, but all efforts proved fruitless.

On August 9, 2010, local rangers were searching for marijuana grows when they discovered what were initially believed to be partial human remains in Dark Canyon, a remote location east of the Monte Nido neighborhood. Homicide and Search and Rescue personnel from the Sheriff's Department responded to LASD's Lost Hills Station and were airlifted by an LASD helicopter to the remains site where they met up with the rangers and examined the scene. They saw a skull, a pelvic bone and a leg bone lying among leafy debris. The Coroner's Department sent personnel along with a team trained to recover remains in remote areas to Lost Hills Station where a command post was established. The intent was for the Coroner's team to be the lead agency responsible for the recovery of the remains.

While the Coroner's team waited to be airlifted to the remains site, the assigned helicopter was forced to divert to two emergency calls in the Angeles National Forest. The result was that rapidly dwindling daylight and limited fuel onboard the helicopter made it problematic to pick up the Coroner's team at the Station, fly the Coroner's team into the Dark Canyon location and then be able to extract all the personnel at the site. Through a confluence of unforeseen emergency calls and the precarious conditions where the remains were found, the Sheriff's Department was left with the choice of either abandoning the remains until the following day when the

Coroner could arrive to process the scene, recovering the remains and hiking out of the canyon in darkness or airlifting them back to the command post.

The decision was made to remove the remains without the presence of Coroner personnel. LASD personnel believed they had permission to remove the discovered remains while a Coroner manager maintained no permission was given at all. The decision proved controversial and allegations were made that LASD personnel intentionally broke state law by removing the remains without permission from the Coroner's Department.

II. Scope of OIR'S Review

In early November, 2010, LASD executives began an investigation into the circumstances of the discovery and recovery of her remains on August 9, 2010. The decision was made to interview members of the Department as well as relevant personnel from other agencies who took part in the recovery efforts. The Chief of the LASD Detective Division assigned two highly experienced lieutenants who were not from the Homicide Bureau to conduct the investigation. Because this inquiry would involve interviews of both LASD and the Coroner's Office, LASD invited the Coroner's Office to assign a representative investigator to participate in all the interviews. To the credit of both agencies, these investigators functioned well together, working toward the common goal of gathering all relevant facts in a professional, unbiased manner. OIR received reports relating to the recovery of the remains and transcripts and recordings of all the interviews conducted but did not participate in them.

OIR also received supporting materials from Aero Bureau and the Homicide Bureau. In late November, 2010, OIR was escorted by members of Malibu Search and Rescue to the Dark Canyon and hiked to the remains site to make independent observations. In addition, Detective Division, the Homicide Bureau, the Aero Bureau, Malibu/Lost Hills Station and Malibu Search and Rescue were all cooperative in providing follow-up information when OIR had any questions throughout the review and preparation of this report.

The Department of the Coroner was also cooperative. OIR met with its Chief of Operations and received a briefing on the history and procedures of the Coroner's Special Operations and Response Team. The Coroner also provided all requested relevant policies and cooperated with answering follow-up questions.

As part of the fact checking process, OIR shared a draft of this report with both the Coroner and the Detective Division of the Sheriff's Department. After receiving potentially new information, OIR directly re-interviewed a limited number of witnesses in order to follow up on the new information regarding communications that took place on August 9, 2010.

III. Factual Summary of the Recovery of Mitrice Richardson's Remains

A. Discovery and Initial Response

On August 9, 2010, rangers from the California Department of Parks and Recreation, along with rangers from the Mountains Recreation and Conservation Authority (MRCA), were on an assignment to inspect remote areas of the Santa Monica Recreation Area for marijuana cultivation. Some of the same officers had been part of an LASD Narcotics Bureau's Marijuana Enforcement Team (M.E.T.) which destroyed marijuana grows in Dark Canyon in July, 2009. The M.E.T. operation included deputies and sergeants from the LASD who were assigned to the Narcotics Division. No deputies from Lost Hills Station participated. The rangers were now returning a little over a year later to learn whether traffickers had resumed cultivating marijuana in the area.

While hiking up the creek bed, the rangers saw several articles of clothing. They first saw a red leather strap, then a black bra partially covered with debris and, finally, a pair of blue jeans also partially covered with debris. They left these items undisturbed.

After inspecting the former grow area and the irrigation lines they had destroyed the previous year, the rangers began to hike down along the south side of the drainage when they spotted a human skull and a leg bone lying among leafy debris. The discovery was made at approximately 1:00 p.m. The supervising ranger notified his dispatcher by radio. He instructed the dispatcher to notify a fellow ranger supervisor as well as the Lost Hills station of LASD about his discovery. The ranger provided the dispatcher with the address of the ranch where the team entered the canyon and the Global Positioning Satellite (GPS) co-ordinates of the location of the remains. The dispatcher contacted the other ranger supervisor, who was on routine patrol, between 1:00 and 1:15 p.m. That ranger believed the remains might have been those of Mitrice Richardson, notified the Lost Hills station desk of the discovery and indicated it could be a "high profile" incident. He then drove to the Piuma Road location where the initial team had entered Dark Canyon to start setting up an incident command post.

The supervisor of the Search and Rescue Team for the Malibu area, a sergeant, was notified. Based on the information he received he also believed the discovered remains could be those of Mitrice Richardson. He notified his lieutenant and alerted the Malibu Search and Rescue (MSAR) team to assemble at Lost Hills Station.

The Search and Rescue Sergeant also called the crew chief of LASD's rescue helicopter, Air-5, by cell phone and informed him the rescue helicopter may be needed to insert personnel and then to assist with an extraction of the personnel. Within an hour, a second call was made by the Search and Rescue sergeant asking Air-5 for its assistance.

Lost Hills Station notified the Homicide Bureau which, at about 2:45 p.m., dispatched the two detectives who had been investigating Ms. Richardson's disappearance to respond to Lost Hills Station. The detectives arrived at the station at about 3:35 p.m. and met with personnel from the Malibu Search and Rescue team who had also by now arrived at the station.

The log maintained by Aero Bureau for Air-5 shows that the helicopter was en route to Lost Hills Station at 4:18 p.m. Air-5 landed at the station's helipad and picked up the two detectives and a four-person Search and Rescue team, including the unit's supervising sergeant, for the flight to the remains site. The crew chief of Air-5 later described the terrain as "a very treacherous canyon with a heavy canopy and a narrow area to work with." The tree canopy was so thick that the Air-5 pilots used the propeller wash to sweep the trees aside in order to insert the personnel and lowered the team by a hoist which then met up with the rangers who had discovered the remains. The plan was for Air-5 to go back to Lost Hills Station and transport the personnel from the Coroner's Office to the site.

B. Events at the Initial Command Post

An initial command post was set up on Piuma Road. As the incident progressed through the afternoon, the supervising ranger at the command post became concerned about limited daylight available to extract the rangers from the canyon. The ranger supervisor told investigators that, in the event the remains were not removed before nightfall, he did not want the responsibility for staying on the site to fall on his team that had been in the field for hours, had almost exhausted its water, did not have food, and was not equipped for an overnight stay.

At about 4:40 p.m., the Coroner's Special Operations & Response Team ("SORT") coordinator arrived at the Piuma Road command post. At this location, plans were made to have the Coroner's SORT assemble at Lost Hills Station in order to be flown to the remains site by Air-5.⁶² At this point, most of the personnel left the Piuma Road command post and drove to a new command post set up in the rear parking lot of the Lost Hills station in Agoura.

C. The Decision to Remove the Remains

When interviewed by investigators, both the ranger supervisor from the MRCA and the lead Homicide detective had a similar recollection of the actions taken at the remains site. At the scene, the detectives were first briefed by the rangers about their discovery. The rangers showed the remains site to the newly arrived LASD personnel. The ranger supervisor took photos of the skull and other visible bones.

The Homicide detective observed a skull, a skeletal leg and a pelvic bone lying about forty

⁶² The Coroner's Department does not have their own helicopters to conduct recovery missions.

feet to the south of the drainage. The remains were in a depression and partially obscured by twigs and leaves. The area was infested by mature poison oak plants. From his observations, the detective believed the bones were not attached to each other. He also took photographs of his observations with his cell phone. They then searched the area for any additional evidence that might be related to the finding of the remains. The detective's partner walked down the canyon with park rangers to locate the discovered clothing.

The detectives assumed the Coroner's team would be arriving soon to process the scene. However, Air-5 received a call to respond to an emergency in Eaton Canyon - which is just north of Altadena - of hikers trapped on a cliff face. A review of the flight log entry shows that at 5:43 p.m. Air-5 was en route to Eaton Canyon. After about a twenty minute flight, a paramedic was lowered by the hoist and he helped lift two young hikers to safety. Air-5 then returned them to the trailhead and prepared to fly back to Lost Hills.

As Air-5 neared Lost Hills, about 18 minutes after leaving Eaton Canyon, they received another emergency call. A female hiker had fallen off a cliff near Camp Colby in the Angeles National Forest, also north of Altadena. Air-5 updated the Search and Rescue sergeant at the remains site and the command post about the emergency and turned back to fly to Camp Colby. The flight log states Air-5 was en route to the call at 6:00 p.m. The hiker was located, rescued and flown directly to a Pasadena hospital. Air-5 arrived at the hospital at about 7:03 p.m. and then flew directly to Lost Hills Station.

At this point, Sheriff's personnel faced a number of concerns: fuel, daylight and safety. The Search and Rescue Sergeant learned from the Air-5 crew chief that the helicopter did not have enough fuel to fly to Lost Hills Station, pick up the Coroner's team, drop them off at the remains site and then later extract all the personnel. The sergeant was told, in the alternative, if Air-5 stopped to refuel, there would not be enough daylight to extract the team already on the ground.

The crew chief for Air-5 told investigators that performing the extraction in Dark Canyon after nightfall was not a viable option. While Air-5 pilots and crew are equipped with night vision goggles, the crew chief explained that some degree of ambient light is required for the devices to function. Dark Canyon has so little light due to its narrowness and heavy vegetation that night vision devices would have been ineffective and, thus, a night time extraction would have been "very hazardous."

The crew chief told the investigators he was informed by the pilots that going to refuel would cost too much time to get back to the site and make the extraction in good light. On the other hand, the crew chief also learned from the pilots that if they did not refuel, they only had enough fuel to hover for 5 to 10 minutes. The crew chief, who has primary responsibility for communicating with the personnel on the ground, passed the information on to the Search and Rescue sergeant at the remains site.

The Search and Rescue sergeant shared the information he learned from the crew chief with the others on the ground at the remains site. They had already become concerned the remaining daylight would not allow the Coroner's SORT to come to the scene and still have enough time to collect the remains and have Air-5 extract everyone out of Dark Canyon. A series of cell phone calls took place between one of the detectives at the remains site and his lieutenant and with the Coroner' Office captain - who were both at the Lost Hills command post. There were no joint phone calls, where the detective was speaking to both the Homicide lieutenant and the Coroner captain at the same time, but the detective expressed his concerns and a range of options were discussed in a series of calls with both officials. Many of the calls were dropped because of poor reception and several attempts often had to be made to re-establish contact.

The supervising rangers recalled that when they learned Air-5 was diverted to one of the rescues in the Angeles Forest, they made the decision that the rangers would hike out of the canyon. The supervising ranger at the site recalled that the rangers left the Search and Rescue personnel and detectives from Homicide with the remains, at about 6 p.m.

Meanwhile, the Homicide detective emphasized both to the Coroner captain and to his lieutenant that his concerns about the limited daylight, the hazardous conditions and his desire not to abandon the remains at the site. When he was interviewed by investigators, he stated, "I was much more concerned about . . . just abandoning it without actually being able to secure it." The detective emphasized a decision had to be made whether the personnel should hike out or wait for Air-5 to return and whether the remains should be left at the scene or removed. The detective asked that their safety be taken into account. The detective, the captain from the Coroner and the Homicide lieutenant had separate conversations about the option of leaving the remains overnight and posting deputy Sheriffs at the top and bottom of the canyon. The detective, though, expressed his concern that posting deputies around the canyon would not secure the actual evidence scene. He did not know whether someone had noticed the activity and could possibly come into the canyon overnight and disturb the scene. The detective was also aware that there were teeth in the upper jaw of the skull which made identification possible; and was concerned about losing critical evidence. Finally, he was also concerned that the recent human scent of the personnel at the scene could attract wildlife overnight which could disturb or damage the scene.⁶³

⁶³ OIR's consultation with persons skilled in forensic pathology have suggested the Detective's concern about recently added human scent increasing the likelihood animals would disturb remains of the age and condition of those discovered in Dark Canyon may have been misplaced. This does not mean the Detective should have known about this arcana possessed by a few specialized scientific experts nor that his concern about scent was entirely unreasonable based on his level of training and expertise. Moreover, the companion concern about the potential human intervention of an abandoned scene, while seemingly highly unlikely in that locale, is reasonable

The detective told investigators, “We just couldn’t abandon them (the remains).” The detective noted the sun was going down behind one of the larger mountains, “and as soon as it did, I know we, we probably still had about forty-five minutes of daylight, but it started getting darker up there, because we didn’t have direct sunlight and I was actually getting pretty concerned about it.”

The detective asked that a decision about whether to leave or recover the remains be made as soon as possible. The detective recalled the Coroner captain wanted to see photographs of the remains first so he could understand what was being described as a skull, pelvic bone and leg. The detective twice attempted to e-mail the photos he had taken with his cell phone to the command post, but they never successfully arrived. The final time that the detective and the captain from the Coroner spoke, the detective recounted to investigators how he believed he received permission to remove the remains:

[The Coroner captain] said, “Listen, we still haven’t received those photographs, either from you or from the park rangers.” And I’m telling him, I said, “This is what is here, [Captain]. This is what we see.” He actually had said, “Okay, listen, go ahead and bring those out, bring what’s there out, what you see, out.” I said, “Okay, that’s fine. We’ll do that.”

The detective only spoke with the Homicide lieutenant and the Coroner captain. He never spoke to the Coroner’s Assistant Chief of Operations. He said, “The person I had a conversation with, [the Coroner captain], he never even mentioned [the Assistant Chief].” The Search and Rescue sergeant also never spoke with anyone from the Coroner’s Office. His only communication was by radio mainly with the Search and Rescue command post and Air-5.

In the meantime, after about a half hour hike, the rangers arrived at the Pioma Road location where they had started their hike in the morning. After they arrived, both supervising rangers drove to the command post at Lost Hills Station so the photographs taken of the visible remains could be downloaded from the camera’s flash drive. The ranger who had supervised the team at the site recalled that Sheriff’s personnel downloaded the images to a computer in the command post trailer so the photos could be reviewed. The ranger recalled Sheriff’s personnel being present but could not remember whether representatives from the Coroner’s Department were present.

considering the compelling interest in absolutely ensuring recovery of the remains in this case. Certainly, if LASD had abandoned the scene and the remains had gone missing during the night or were somehow significantly compromised, the degree of outrage about that circumstance would have been exponentially greater than the concerns that have been articulated about the way the remains were, in fact, recovered.

The second supervisor from the state park rangers, who had set up the initial command post, recalled he witnessed the photos being downloaded and had the impression the decision to remove the remains was a consensus of the personnel in the command post trailer. The supervisor recalled a representative from the Coroner, but not the Assistant Coroner, saying something to the effect of *“let’s go ahead and get the body.”*

The Search and Rescue sergeant at the remains site recalled overhearing the detective speaking with the captain from the Coroner by cell phone. The sergeant was familiar with the captain because the Search and Rescue Team had worked with him *“quite a bit over the years.”* The sergeant told investigators the personnel at the remains site were aware a special response team from the Coroner’s Office was waiting to be airlifted to the location by Air-5, but that the helicopter had been diverted to an emergency call. He said, *“Everybody was waiting for Air-5 to get back in the area.”*

The Search and Rescue sergeant recalled overhearing the Homicide detective convey all the information about their concerns to the command post. *“He was conveying exactly all of those issues. That it was dark. It was too late to insert the Coroner’s team because Air-5 was out of time and out of fuel.”* He recounted there was a suggestion which originated from the command post to stay at the scene overnight. The sergeant believed the idea of staying overnight at the remains location was problematic because it was surrounded by poison oak and had a higher concentration of insect infestation. In addition, because of the nature of the terrain, there was no place to lie down, no one had sleeping bags and they were only a few feet from the edge of a rock formation from which one could fall several yards into the creek bed.

The sergeant could overhear the LASD detective talking to who he believed was the Coroner captain. The detective ended the phone call and said, *“Okay, we’re good to move her.”* The sergeant told investigators, *“I was clear on that that he’d obtained permission directly from the Coroner to remove the remains.”*

Investigators also interviewed a reserve captain who was part of the Malibu Search and Rescue team at the remains scene. He recounted the location was hazardous and there were fire ants and poison oak throughout the location. The reserve captain overheard the detective justifying why the remains should be removed at that time and, in the captain’s opinion, was getting *“push back.”* The captain heard the detective give *“very good reasons”* why the remains should be removed, and he ultimately got the *“okay.”* The captain was right next to him during that conversation and he recalled the detective saying, *“We got it. Remove the remains.”* The captain specifically asked the detective who he got permission from so that he would be able to document the operation later. The detective told the reserve captain that it was the captain from the Coroner who the reserve captain knew and *“trusted.”*

At the remains site, there appears to have been very clear communication. The Search and Rescue sergeant was the only person in communication with Air-5 while the detective was the sole contact with his supervisor, the Homicide lieutenant, and the captain from the Coroner. In turn, both the sergeant and detective shared information as each learned it with the rest of the personnel at the scene. At the command post at the Lost Hills station, though, communications were not as clear.

The Homicide lieutenant arrived at the Lost Hills command post from Pioma Road and was unaware the Coroner captain was talking to one of his detectives at the remains site until that detective called the lieutenant by cell phone at around 6:45 p.m. The detective informed the lieutenant about Air-5's second diversion. The Search and Rescue sergeant also spoke with the lieutenant and gave his assessment that staying overnight was not an option and that the personnel at the remains site would need to either be extracted by Air-5 or they would have to hike out on foot in darkness and that the latter would be dangerous. The lieutenant advised the Assistant Chief Coroner about his concerns.

The Assistant Chief of the Coroner recalled the call of the remains discovery came in to the Coroner around 3:00 p.m. on August 9, 2010. He was told the site area was treacherous and it was decided that when SORT arrived they would be flown in by Air-5. While at the Pioma Road command post, the Assistant Chief did not have direct communications with any of the personnel at the remains site. The Assistant Chief was aware Air-5 was diverted to a rescue in the Azusa Canyon area. When interviewed by investigators, however, the Assistant Chief incorrectly believed the Eaton Canyon diversion of Air-5 had been cancelled. The Assistant Chief believed one of the Air-5 emergency calls was at around 4:30 p.m., when, in fact, the first emergency dispatch of Air-5, to Eaton Canyon, was at about 5:25 p.m. and the second one, to Colby Canyon, was at about 6:00 p.m.

After arriving at Lost Hills Station, the Assistant Chief was aware the Coroner captain was on the phone with the Homicide detective. The Assistant Chief stated the captain asked if he wanted to speak to the detective, but that he declined. The Assistant Chief recalled he never communicated with the detectives, Malibu Search and Rescue members or the rangers at the remains site. The Assistant Chief did speak with the Homicide lieutenant at the command post who informed the Assistant Chief a skull, a possible pelvic bone and maybe a femur had been observed. The Assistant Chief stated to investigators he told the captain, "Just tell them to leave it be and we and we'll get you now, you got to get an investigator on the ground." The Assistant Chief believed at around 5:00 or 5:15 p.m. there was a discussion between the captain and the remains site about the need of Coroner personnel to see the photos so a decision could be made about the recovery of the remains.

The Assistant Chief stated he was not aware there were sporadic communications with the remains site. He told investigators, "Nobody said anything about communications problems at

that time, that evening. None.” Later during the same interview he stated he didn’t recall if the Coroner captain had told him that he had lost a call or signal. The Assistant Chief also recounted that he was not part of any discussion about Air-5 having a fuel situation. He asserted, “Nobody said anything about fuel.”

The Assistant Chief believed that around 5:45 p.m. he learned Air-5 was about five minutes from Lost Hills when it was diverted to what he thought was Azusa Canyon. The Assistant Chief recalled at about the same time an LASD employee handed the Coroner captain a phone. He learned the detective from the remains site wanted permission to recover the skull, the pelvic bone and the leg bone. The captain and the Assistant Chief then discussed the request and reached the opinion that they first had to look at the photos.

The Assistant Chief recalled the park rangers arrived with the camera flash card. They went into the command post trailer with the Coroner captain, the SORT coordinator and the Assistant Chief. He recalled the lieutenant from Homicide asked the Assistant Chief to come outside the command post. Once outside, the lieutenant told him the detectives at the site had discovered there were more skeletal remains after they had moved leaves aside. The Assistant Chief recalled that he told the Homicide lieutenant, “Fine. Tell them don’t touch it. Leave it alone. Let us look, let me look at the photos.” The Assistant Chief went back inside the command post trailer where other personnel were having trouble downloading the photo from the flash card.

During the interviews in November, the Assistant Chief was asked if there was any conversation with the Coroner captain about permission to pick up the remains:

Q: “So, at some point in time [the captain] tells you that there’s contingencies, if you look at photos, if it’s only these three bones, then you have permission to move them. Do I understand that right or am I paraphrasing that correctly?”

A: “That yeah, yeah. Give us a few minutes, let us check and if that’s all it is, then we don’t have, we’d let you know, yeah, you can go ahead and remove them.”

The captain from the Coroner recalled learning Air-5 had “an ETA verified of about five minutes.” The SORT team was then getting their packs, harnesses and helmets ready when they learned “Air-5 had been diverted to a rescue, and we were in stand-by mode at that time.”

The captain stated that later a lieutenant from Malibu Search and Rescue came out of the command post trailer and handed a cell phone to him. The Homicide detective at the remains site was on the phone to discuss the developing situation. The captain recounted the detective told him Air-5 was on the way back yet it was getting darker and “he wanted permission to move the bones or remove them without us actually going in and being able to help them with it or conduct any kind of scene investigation.”

The captain recalled the detective providing him with extensive concerns about the remains site personnel's safety and the security of the scene:

He told me that he saw only a skull and pelvic bone and leg bone. He believed that the rest of the remains had been, or the remains had probably washed down into that location and that animals had scattered the rest of the remains and that we would probably not be successful in any subsequent search of the area to find anything additional.

Because of spotty communications, the detective and captain had to reconnect as the captain was explaining his concerns:

What I was trying to communicate to him and again the phone kept falling out, in and out, very sporadic, lots of call backs, was that, you know, we want to go into the area to, with our people to search for the rest of the bones. We need to you know, do everything we can to make a complete recovery and that we're going to have to go back anyway if all he has is a skull and a pelvic bone and a leg bone. So best if he could just leave it there and we'll pick, go back in tomorrow with you know, when, under daylight conditions and do a complete search of the area.

The captain recalled he and the detective going "back and forth," and that the detective was insistent he "wasn't comfortable leaving the bones here overnight." The captain was aware the detective's attempts to e-mail photographs to him were unsuccessful and that the rangers were coming to the command post with photographs they could download so the Coroner personnel could view the scene.

Once the rangers did arrive, the captain believed there was a delay in downloading the photographs because the camera card wasn't compatible with the computer system in the command post, but "they were eventually looked at." The investigators asked the captain where the Assistant Chief and the Homicide lieutenant were when he was having his phone calls with the detective at the site. The Coroner captain recalled they were in the vicinity and it was "possible" they were close enough to hear the discussion. He did recall that he would relay to the Assistant Chief Coroner what the detective was saying or, at the very least, summarize his comments.

By this point, the Homicide detective was telling the Coroner captain that Air-5 was "inbound" but it was getting dark and there was a potential that they could not be extricated by the helicopter. The captain recounted:

...he needed the decision right now as to permission to remove the remains. So what I communicated to him was that if it turns out the helicopter cannot extricate

you and am and the remains tonight, then absolutely leave the bones there. Do not remove them, but I went on to say, *“If you can get them extricated by the helicopter, and all you have there is a skull, and a leg and a pelvic bone and that’s it, okay. Bring them up. You’re good to go,”* or words to that effect.

The final witness to the decision-making who investigators spoke to was the reserve lieutenant at the Search and Rescue command post in Lost Hills who handed the cell phone to the Coroner captain.

The reserve lieutenant stated he was in a support role at the command post coordinating communication and personnel. He said that at one point he walked out of the command post and saw the captain from the Coroner speaking on a cell phone. The lieutenant was told that the Coroner captain was talking to someone at the remains site. The lieutenant recounted, “He was doing more listening than talking, and then he said, ‘go ahead and recover the remains.’” At some point later, he recalled the Search and Rescue team radioing in to have Air-5 come pick them up.

The reserve MSAR lieutenant had the impression that the Assistant Chief Coroner was opposed to the recovery of the remains. It was the lieutenant’s perception that the Assistant Chief was in the background talking to other people and saying that “we should be getting those remains ourselves.”

D. The Recovery of the Remains

After receiving permission from the Coroner captain to remove the visible remains, a search and rescue team member picked up the skull and placed it on a plastic sheet which was laid out in a body bag. No effort was made to brush away debris from the area where the remains rested. When the pelvic bone was lifted out of the debris, they discovered a good portion of the skeleton, which was not visible before, was still intact. The detective instructed the deputies to place the remains on the plastic sheet. The recovery personnel gathered all the small bones they could see and placed them with the rest of the remains. The remains were then wrapped in the plastic and kept in the body bag. The clothing which was recovered from further down the canyon was placed in the body bag but “outside the plastic” which contained the remains.

The recovery process was documented with a camera which time-stamped the photos. The first photo, of the skull, was taken at 7:00 p.m. The next photo was at 7:04 p.m. and it showed the skull had been moved. The next six photos were taken between 7:06 and 7:18 p.m. and culminate with the entire remains on the plastic sheeting at 7:18 p.m. A final photo, of the mandible, has a time-stamp of 7:21 p.m.

Within about twenty minutes of receiving permission from the Coroner captain to remove what they initially thought were just the skull, pelvic bone and leg, the detective called his lieutenant and informed him of the discovery of the additional remains. He recalled advising the lieutenant

that the remains were now in the plastic sheet and that he would not be leaving the remains at the site but bringing them along on Air-5.⁶⁴ During his interview with investigators on November 30, 2010, the Homicide detective stated this was the last phone call he had with anyone at the command post, “I know that I hung with him [the Homicide lieutenant] and I didn’t have a conversation with anybody else after that.”

During the investigators’ interview, the detective was asked:

“Did you receive a directive from the Coroner’s office to leave the stuff there?”

“No. To leave it there? No. No. We were given permission to remove what was there. And then they, obviously when the pelvic bone was lifted up, there were more bones attached and still, we were, we still had the same situation that was presented to us. We still had the bones and especially abandoning them at that point wouldn’t have been an option either.”

When interviewed on November 30, 2010, the detective recounted:

I learned that, subsequently, later on down the road, that they had concerns about us hiking the bones out, but we had two options as to get out of there, by helicopter or by hiking out, and whether those bones came with us, or whether they didn’t, if, I mean I know the Coroner’s position and I, if they, if they would have actually told us,

“Absolutely no, one hundred percent, you’re leaving that stuff there,” I mean, that’s just going to be documented and we’re, but ultimately, whether they say leave it there or not, I’m ultimately a Homicide guy out there. I’m ultimately responsible for whether or not that stuff is secure. And there is no way to secure it, but had they said, “No, you are not touching it. You are not bringing anything out,” we would have had to have lived with that, and I . . . the discussions that we were having, based on our situation up there and the concerns that we had and them trying to make a decision without seeing the bones, the decision was made and it was relayed to us to go ahead and remove what we saw, and we did and it just turned into a little bit more, which we had to bring out also.

The Air Support Patrol Activity Report indicates the extraction at Dark Canyon occurred at approximately 7:35 p.m.

⁶⁴ Investigators did not ask the detective why he called the Homicide lieutenant rather than the Coroner captain after he discovered there were more remains than he had originally believed or why he waited to call until after the personnel moved all the discovered remains to the sheet.

The Homicide lieutenant recalled that the detective called him and said that they had received permission from the Coroner captain to remove the three visible bones and that it turned out to be almost “a full set of skeletal remains.” The detective advised the lieutenant that the remains were on a plastic sheet and they agreed that the remains could not be left overnight in that condition. The Homicide lieutenant told investigators he advised the Assistant Chief Coroner of the situation. The Homicide lieutenant recalls the Assistant Chief asking, “Who authorized them to remove the remains?” The Homicide lieutenant told the Assistant Chief authorization was given by the Coroner captain who had been in phone contact with the detective.

The Assistant Chief’s recollection was that the Homicide lieutenant told him the remains were removed about ten minutes after their last conversation when he had instructed the remains should not be moved. According to the Assistant Chief, when he asked the lieutenant why the remains were removed, the lieutenant apologized and said it was a “personnel issue” and he’d “take care of it.” When asked by the investigators, the lieutenant denied apologizing for the removal of the remains, but stated he responded to the Assistant Chief’s question, “Why did he (the Coroner captain) do that?” According to the lieutenant, he answered, “I’m sorry, I can’t answer that question right now. When [the detective] gets down, I will have a conversation with the detective.” Nevertheless, the lieutenant explained to the Assistant Chief, the remains had to either be secured with personnel posted at the remains scene or removed.

The lieutenant from LASD Homicide told investigators he then spoke with the captain from the Coroner and confirmed the latter had told the detective the remains could be removed. The lieutenant recalled the captain saying, “Yes, I told them they could move those three bones, but there ended up being additional remains attached.” The lieutenant recalled he never saw the Assistant Chief and the captain communicating with each other.

During the preparation of its report, OIR received additional information from the Homicide detective who recovered the remains. OIR interviewed the detective and he recounted that he recalled that he did have a phone call with the Coroner captain after the discovery of the additional remains. According to the detective, this conversation took place after the detective spoke with his lieutenant about the discovery. The detective recounted that he explained to the Coroner captain that there were more remains found and that they were now on the plastic sheet. The detective told OIR that the Coroner captain told him, “Whatever you’ve got on plastic, just bring it out.”

The detective told OIR that he may have spoken to his lieutenant one more time after speaking to the Coroner captain to confirm that the team was coming out. He said that Air-5 arrived about 15 to 20 minutes later. When asked about the order of events, the detective told OIR that the extraction took place about thirty-five minutes after the photos of the remains were taken. OIR asked the detective why he had told investigators that the only conversation he had after the additional remains were discovered was with his lieutenant. The detective responded that he didn’t know, but said, “That one’s on me.”

To follow-up on the detective's assertions, OIR then interviewed the Coroner captain whether he recalled having any conversations on the phone with the detective about the additional remains. The Coroner captain denied having any such phone call other than the call specifically relating to the skull, leg bone and pelvis. He stated he only learned about the additional remains either from the Assistant Chief Coroner or the Homicide lieutenant at the command post and that he and the detective did not discuss that topic whatsoever.

Analysis

A. THERE MAY HAVE BEEN UNNECESSARY DELAY BEFORE SHERIFF'S HOMICIDE WAS NOTIFIED.

The LASD's policies mandate that the handling deputy on the scene has the responsibility to notify his or her watch commander and to immediately notify the Homicide Bureau when handling an incident involving death. Here there was no initial handling deputy, as the discovery of the remains was called into Lost Hills Station by the supervising State Parks ranger at some point after he was notified by his dispatcher that the reconnaissance team had located human remains. According to the supervisor ranger's recollection, he received the notification from his dispatcher between 1:00 and 1:15 p.m. If the supervisor's recollection is correct, it is not clear why personnel from the Lost Hills Station apparently did not notify the Homicide Bureau until more than an hour after the State Park ranger reported the discovery. Alternatively, the supervisor ranger may have misremembered the precise time he received the notification from his dispatcher and there are no apparent logs to indicate when the dispatcher notified him. Although it perhaps was not immediately apparent to Lost Hills personnel, as it turned out, every hour that went by until the loss of daylight mattered. The question of whether there was a considerable delay between the time when the Lost Hills Station was notified and the call was made to Homicide, and if so, any reason for the delay was not addressed during the investigators' interviews.

B. LASD HOMICIDE BUREAU PERSONNEL PROPERLY NOTIFIED THE CORONER.

According to reports reviewed by OIR, Lost Hills Station notified the Homicide Bureau of the remains discovery at approximately 2:45 p.m. on August 9, 2010. It is the practice of LASD that the Homicide Bureau notifies the Coroner of a case involving a deceased person. Based on the Coroner's own records, LASD Homicide notified the Coroner of the discovery at 2:58 p.m. The notification included the contact information both for the supervising Homicide Bureau lieutenant and the sergeant from Malibu Search and Rescue. The records also indicate the accurate address of the initial command post on Piuma Road. The notification to the Coroner occurred at approximately the same time the two assigned detectives were dispatched to Lost Hills station.

The notification was consistent with Health and Safety Code section 102850 that the coroner be “immediately notified” when a person has knowledge that a death has occurred following an injury or accident or under circumstances where there is “a reasonable ground to suspect that the death was caused by the criminal act of another.”

C. THE CONDUCT OF PERSONNEL BEFORE THE REMAINS WERE RECOVERED WAS APPROPRIATE.

The events that took place from the time that the LASD and Coroner began their response shortly before 3:00 p.m. to when the remains of Ms. Richardson were airlifted out at approximately 7:35 p.m. were marked by decisions driven by limited daylight, a remote and treacherous location, an unclear chain of command, and difficult communications.

According to data from the U.S. Naval Observatory, sunset on August 9, 2010 was at 7:48 p.m. in the Malibu Canyon area. However, sunset refers to when the Sun is on the horizon which is “unobstructed relative to the location of interest,” in other words there are no buildings, mountains or other obstructions blocking an observer’s view of the horizon. Dark Canyon is remarkable for its very heavy vegetation and tree cover through the drainage and southern face of the canyon. Directly to the south and west of the remains site are steeply rising canyon walls which climb to a ridge at approximately 400 feet above the canyon floor. From the vantage point within the canyon, there is, of course, no view to the horizon along the Pacific Ocean just a few miles away. Thus, it is reasonable to conclude that, while sunset on a visible horizon was at 7:48 p.m., personnel in a relatively deep canyon, beneath a thick tree canopy and surrounded by steep canyon walls, would experience sunset considerably earlier.

The critical moments in this incident occurred between 7:00 and the time of the extraction by Air-5. During this period, multiple communications occurred between numerous individuals. The Air-5 crew chief was giving updates to the Search and Rescue sergeant. That sergeant was communicating what he was learning from Air-5 to the Homicide detective. The detective, in turn, was carrying on two conversations – one with his lieutenant and the other with the Coroner captain. Meanwhile, the lieutenant from Homicide was discussing his concerns about needing to remove the remains with the Assistant Chief. It does not appear that the Assistant Chief was directing orders to his captain who was in direct phone contact with the on-scene detective.

From OIR’s review of the statements made during the interviews, it appears the Coroner captain was initially reluctant to give permission to the detective to move what was then believed to be a skull, pelvic bone and a leg without first having an opportunity to view the photos that were being delivered by the rangers. Through no fault of anyone, the photos taken by the detective could not be e-mailed to the command post probably due to the remoteness of the remains location. At the time the rangers arrived at Lost Hills, the personnel at the site and on Air-5 were aware they were facing a dilemma – the helicopter was low on fuel and would either be able to make only one entry into the canyon to pick up

the personnel already there or would have to refuel and then not have enough light to extract them safely. What was apparently no longer considered an option by 7:00 p.m. was airlifting the SORT into the canyon and then everyone leaving Dark Canyon either by Air-5 or on foot. The experts in wilderness survival were the Search and Rescue team and the rangers. All consistently related that the conditions at the remains site were potentially treacherous and that no one was equipped to stay overnight.

Once it became clear Air-5 would only have enough light to fly into Dark Canyon and extract the personnel and remains without first refueling, the only decision facing the detectives and the Coroner's officials was whether to leave the remains where they were found or to retrieve and fly the remains out.

From the Homicide Bureau's point of view, they were in a difficult position. This was a high profile case where public accusations had already been made that the Department had engaged in a range of misconduct pertaining to the arrest, release and disappearance of Ms. Richardson. Should the detectives have left the scene as it was and the remains were disturbed or went missing overnight, as unlikely as that possibility seems, legitimate concerns would have emerged that the identification process would be more difficult or impossible, the Department would then have certainly been subject to more accusations of wrong-doing.

The alternative was to remove the remains without the presence of the Coroner's personnel. The Homicide detective was aware he could not do so without permission from someone at the Coroner in a decision-making capacity. Based on the statements made by the detective and the captain to investigators, it appears that the detective believed he had permission to remove the remains.

The detective, as acknowledged by the Coroner captain, outlined his concerns about darkness, staying overnight and leaving the remains behind. The detective also explained those concerns to his lieutenant who, in turn, told the Assistant Chief of Operations. While the Assistant Chief states he told the Homicide lieutenant that no remains should be moved until the ranger's photos were examined, the Coroner captain gave the detective at the scene somewhat different guidance.

While the recollection of the exact words differs, everyone who was either a direct participant or was in a position to overhear either end of the conversation confirmed that the captain gave permission to the detective to remove the visible remains. Moreover, they were all familiar with the Coroner captain from prior cases. It is important to note the organizational structure of the Coroner's operations was not apparent to non-Coroner personnel. Field investigators from the Coroner normally report to that captain. The Homicide detective, the full-time Search and Rescue sergeant, and the reserve captain and lieutenant from Search and Rescue knew the Coroner captain from prior investigations and it does not appear they had reason to believe the

captain was not authorized to act as a decision-maker for the Coroner.

What was not apparent was that the Special Operations and Response Team did not report to the captain, but reported directly to the Assistant Chief of Operations. Representatives from the Coroner, though, apparently did not advise personnel from LASD that someone other than the captain was the decision-maker in the field for this particular incident.

It also appears the lines of authority were further blurred by the Assistant Chief deferring to the Coroner captain to communicate with the personnel at the remains site after the search and rescue reserve lieutenant came out of the command post trailer and handed a phone to the captain. When interviewed, the Assistant Chief revealed the Coroner captain had asked him if he wanted to talk to the Homicide detective:

It was [the Homicide lieutenant], myself, and Captain [] and [the Homicide lieutenant] had the phone and he said, "It's the detective at the scene, [name omitted], and [the captain] said, "Do you want to talk -," and I said, "No, you've been you know, go ahead and talk to him you know, find out what's going on."

According to the Assistant Chief, the critical discussion about moving the visible remains and waiting for the park rangers to arrive with photos, took place at about 6:00 p.m. From OIR's review of the additional evidence, the conversation likely took place about an hour later. The Assistant Chief recalled the captain relayed to him the detective wanted to recover the skull, pelvic bone and the leg bone: "Well not to my knowledge. The only instruction was if it is just those bones and if we can look at the photos, then yeah, we would get permission, but we need to have somebody on the ground and we need to look at the photos." The Assistant Chief went on to explain any permission to move the three visible bones was contingent on first seeing the photos.

While the Coroner captain recalled "relaying" what the detective was saying to the Assistant Chief, it appears the Assistant Chief was not aware the captain had given permission to remove the visible bones without first seeing the photographs. The effort to remove the visible remains, which were believed to be the skull, pelvic bone and leg bone, was done with apparent permission from a decision-maker from the Coroner.

There is an unresolved factual issue with regard to events at the command post. The Homicide lieutenant, Coroner Assistant Chief of Operations and the captain stated the park rangers' photos were not seen before a decision was made to remove the remains. On the other hand, both the reserve lieutenant from MSAR, who ran the command post trailer, and the second ranger supervisor (the one who was never at the remains site) recalled the photos were viewed by officials. The ranger supervisor stated that an unidentified Coroner's employee said, upon seeing the photos, "Let's go ahead and move the body." The lieutenant recalled he heard the captain give permission to move the remains after the photos were seen. His recollection is the conversation took place

just after he emailed the photos to the SORT coordinator. The email was sent at 7:32 p.m., which is after the remains had been moved onto the sheet. While this factual conflict cannot be resolved conclusively, it appears most likely the photographs were not reviewed by the captain before he provided authority to remove the leg, skull, and pelvic bones. Another interpretation is the remains were removed at the site before permission was given by the Coroner captain. Such a scenario, however, is in OIR's view unlikely based on the statements by the search and rescue sergeant and the volunteer reserve captain that the Homicide detective finished his telephone conversation with the Coroner captain and said he had just received permission to remove the visible remains. That statement is consistent with what the Coroner captain told investigators about the end of that particular conversation.

In reviewing the events that took place, OIR had the opportunity to meet with the Coroner's Chief of Operations. He explained the discovery of remains in remote areas is not rare. Typically, a hiker will come across remains and alert a ranger or possibly the Sheriff's Department directly. Normally, however, a significant period of time goes by until the Coroner is made aware of the discovery and is able to assemble personnel to respond. The Chief of Operations explained that in such instances it is not unusual for the Coroner to only have enough daylight to have the SORT personnel go to the scene to make an initial assessment of the scene to determine what tools, equipment and staffing are necessary to properly process the scene and then return the next day to conduct a thorough excavation and recovery of the remains – often with the assistance of a forensic archaeologist or anthropologist.

OIR also discussed the potential of guarding the scene overnight with the Chief of Operations. He indicated that in his experience the law enforcement agency in charge will decide whether to guard a scene overnight if security is a concern. For the most part, though, remote areas “are generally not threatened by hikers [or] looky-loos.” He also explained if the Coroner SORT leader felt guarding a site was important and the law enforcement agency declined to do so, the appropriate decision would be made at the time. During the interviews, both the Coroner captain and the Homicide detective mentioned that the prospect of posting guards was brought up but the detective felt posting guards at the upper and lower ends of the canyon would not sufficiently guard the remains site. The Coroner and Sheriff should have better coordination when making decisions about scene security in remote areas because it appears this option was not fully considered by personnel at the command post or at the remains site.

The decisions and actions by LASD personnel before the recovery were reasonable and appropriate. The detective relayed accurate information both to his lieutenant and the captain from the Coroner. At the same time, the crew chief aboard Air-5 was timely passing information he obtained from the pilots to the Search and Rescue team on the ground. The team at the remains site reasonably assessed the remaining daylight, their equipment, safety conditions and the dilemma faced by Air-5. Under the circumstances it was reasonable for the detective to have advocated for the removal of the remains. It was also reasonable for the detective to assume that

the captain had the authority to give permission to remove the remains. More, however, could have been done to consider the prospect of leaving the site as discovered and posting deputies around the canyon area until a more extensive search could be conducted the next day.

D. ONCE ADDITIONAL REMAINS WERE DISCOVERED, IT IS UNCLEAR WHETHER LASD SOUGHT ADDITIONAL GUIDANCE FROM THE CORONER ABOUT HOW TO PROCEED.

There is factual disagreement about the decision made to remove the remains once investigators discovered more were present than expected. The Assistant Chief told investigators he was advised by the Homicide lieutenant that leaves were brushed aside at which time it was learned more remains were present and he said the remains should not be touched. He told investigators that about ten minutes later, the Homicide lieutenant told him the remains were, in fact, on Air-5 and on the way to Lost Hills Station.

The Homicide lieutenant recalled he told the Assistant Chief the detective told him he had received permission to remove the three visible bones and, when he did so, more skeletal remains were recovered. He told investigators he told the Assistant Chief that LASD would not be leaving the now exposed remains at the site and would be bringing them out. The Homicide lieutenant did not say to investigators the Assistant Chief told him the discovered remains should not be touched, moved or put back to where they were discovered.⁶⁵

Once the Coroner captain gave permission to the Homicide detective to, in the language of the Health and Safety Code section 27491.2(b), “disturb or move” the remains, there is a dispute between the Assistant Chief and the Homicide detective about whether he rescinded the apparent permission that was given to the detective. The discrepancies in the recollection of the conversation which went on between the Homicide lieutenant and the Assistant Chief also cannot be resolved. Even if the Assistant Chief did tell the Homicide lieutenant the remains should not be moved at that point, such an instruction was not communicated to the personnel at the remains site or to Air-5.

Despite the apparent initial authority to remove the remains, however, the Sheriff’s Department personnel should have made a greater effort to confer with the Coroner once the additional remains were found. It is not clear why the detective first contacted his lieutenant rather than the Coroner captain from whom he received the initial permission to move remains. The Coroner captain did appear to give permission to remove what the detective thought were the only remains at the scene. The situation changed, though, once the additional remains were

⁶⁵ In follow-up consultation in preparing this report, the Coroner maintains that once the remains were determined to be more than the three reported single bones, recovery efforts should have ceased and left for the following day.

discovered. At that point, the conditional authority by the Coroner's captain to remove what were believed to be three bones had now morphed into retrieving a largely intact skeleton. At that point, it was incumbent upon the Homicide detective to inform the Coroner's captain of the changed circumstances and receive direction from him about whether his authority to remove the remains still held.

As detailed above, our initial review of this matter found that such a conversation did not take place, however, towards the end of OIR's process, the Homicide detective recalled that he had, in fact, had a conversation with the Coroner's captain and he had received permission to fly out all of the remains. Because of this conflict in the evidence, we will never know for certain whether such a request was made. If in fact, the detective had only contacted his supervisor rather than a Coroner's representative about the additional finds it was a significant lapse of judgment on behalf of the detective. If the contact had not been made it would not have allowed the Coroner's representative, who under state law is the ultimate authority on remains removal, to reassess his conditional permission based on the new findings. If, as the Homicide detective now avers, such re-contact was made and additional permission had been given, LASD would not be subject to this criticism.

Unfortunately, because of the now existent factual dispute, we are unable to determine which scenario occurred. This dispute does highlight the main thrust of this report; namely, the need to better coordinate and document the efforts of the two Departments in future body recovery efforts. If, in fact, there had been no effort to re-contact the Coroner by the Homicide detective once the additional bones were discovered, the failure to re-contact would have been mitigated by the fact that by the time the detective was aware that they had more than three bones, the remains had been disturbed. It was impossible at that point to turn back the clock and reinter the remains back to the exact same manner in which they were discovered.

VI. OIR Proposed Recommendations

As a result of the review of the arrest and release of Mitrice Richardson, as well as other incidents brought to the attention of OIR, an issue was identified regarding the retention of property at the time of the arrest. There were occasions in which a person would be arrested and cell phones, credit cards and other personal items would be placed in the trunk of the vehicle. This technique became potentially problematic when the arrestee was released from custody and property that could have facilitated arrangement of transportation was no longer readily available to the arrestee. If the cell phone and credit cards remained with the arrestee and were transported to the station, the arrestee would have a far easier time in contacting friends and family and/or arranging transportation.

Once this issue was identified, OIR raised it with the Sheriff and he agreed to develop department-wide policy that would make it likely that cell phones and credit cards went with the arrestee to the station. The LASD adopted this new department-wide policy on May 22, 2011:

5-03/200.03 PROPERTY RETAINED AT TIME OF ARREST

The arresting Deputy shall, when practicable, book with the arrestee certain personal items or items of personal identification in possession of the arrestee at the time of arrest (e.g., driver license, passport, credit cards, cellular telephone, etc.) when the items would provide proof of identification and/or facilitate the identification/booking or release procedure.

The “when practicable” provision recognizes there will be times when it is not practicable to follow this procedure, such as when an arrestee needs immediate medical attention.

Based on concerns presented during the August 9th recovery, as well as later efforts to assure all remains had been recovered, OIR made a number of recommendations to improve operations and communications with the Coroner in the March, 2012 report:

1. The Department should provide training and advisement to its field units of the importance of immediate notification to the Homicide Bureau.
2. The Department, particularly the Homicide Bureau, needs to become aware of Coroner policies, their chain of command structure and the role and capabilities of the Special Operations Response Team
3. At incident scenes, the Department member in charge of the scene or Command Post must identify the Coroner member who has decision-making authority. Only Coroner members to whom authority has been clearly delegated should be relied on for making decisions.
4. Department units should conduct exercises with the Coroner’s Special Operations and Response Team to better manage complex inter-agency situations, such as multiple casualty events and remote remains locations.
5. Sheriff’s Homicide personnel should always be present when Coroner personnel return to a scene for additional investigation.
6. Aero Bureau should not insert members of other agencies into remote locations without interoperable radios when unaccompanied by either Search and Rescue or Emergency Services Bureau members or other appropriately trained Department members.

OIR is encouraged that the Detective Division of the Sheriff and the Coroner have met and initiated a dialogue discussing the issues and recommendations raised in the March, 2012 report.

Eye on the Antelope Valley

Allegations of Discrimination Against Minorities on Section 8 Housing Vouchers

In the summer of 2011, media attention focused on the Antelope Valley after a lawsuit was filed in federal court against the cities of Lancaster and Palmdale alleging “intentional race-based exclusion of and discrimination against black and Latino families and individuals, and on the unjustified racially disparate impact of [the cities’] policies and practices upon them.”⁶⁶ The lawsuit specifically alleged that recipients of Section 8 vouchers⁶⁷ were being discouraged from living in Lancaster and Palmdale because of their race. Shortly after the lawsuit was filed, the Department of Justice (DOJ) initiated an investigation into the Housing Authority of the County of Los Angeles’ (HACoLA) practices regarding participants in the Section 8 Housing Choice Voucher Program in the cities of Lancaster and Palmdale. The investigation was to determine if HACoLA had violated the Fair Housing Act’s prohibition against discrimination in housing on the basis of race and national origin. HACoLA is the second largest housing authority in Southern California with more than 23,000 Section 8 voucher holders.⁶⁸ It receives funding from the United States Department of Housing and Urban Development (HUD) to provide subsidies to eligible low income, disabled, and/or elderly families in the unincorporated areas of Los Angeles County and in 62 of the 88 participating cities in the County.⁶⁹

The lawsuit was filed by the Community Action League, the National Association for the Advancement of Colored People (NAACP), and two individual participants in the Section 8 voucher program (collectively referred to as “Plaintiffs”). The program was started by the federal government to allow subsidized housing recipients an opportunity to leave public urban housing, which was ridden with high crime rates, and relocate their families to safer suburban neighborhoods with better schools and other opportunities for their families. The Antelope

⁶⁶ *The Community Action League, et. al. v. City of Lancaster and City of Palmdale* (Case No. CV11 04817 ODW VBK) filed June 7, 2011.

⁶⁷ The United States Department of Housing and Urban Development (HUD) provides rental subsidies commonly referred to as Section 8 vouchers to low income and special needs households. Once an individual qualifies for the voucher, it is portable and can be taken anywhere in the country. The program was created under the Nixon administration to allow economically disadvantaged individuals to move to the suburbs, where there was a promise of better jobs and schools for their children. Tenants pay 30% of their income toward rent and utilities and HUD pays the rest. [As of May 2012 HACoLA had about 199,440 families on their waiting list.]

⁶⁸ The largest housing authority in the County is the Housing Authority of the City of Los Angeles (HACLA). HACLA is responsible for administering approximately 47,000 Section 8 vouchers. (See <http://www.hacla.org/about-hacla/>)

⁶⁹ According to statistics updated by HACoLA in May 2012, 63% of families have an elderly and/or disabled household member.

Valley has attracted many families receiving Section 8 vouchers because housing is plentiful and rental rates are lower than in other parts of the County. As early as 2004, however, some residents and politicians started blaming rising crime levels in the Antelope Valley on the influx of Section 8 recipients from other parts of the County.

When applying for Section 8 vouchers, all applicants must sign documents under penalty of perjury listing the persons who will be living in the home, their income, and any prior criminal convictions. Rigorous background checks of applicants are currently conducted, but this was not always true prior to 2005. The average length of time current Section 8 voucher recipients have received assistance from HACoLA is nine years.⁷⁰ Grounds for termination of benefits include having a household member engage in drug-related or violent criminal activity, failing to disclose a household member's prior criminal record, failing to disclose income, committing fraud or any other criminal act in connection with the program, allowing someone to live at the residence who was not approved by HACoLA, allowing an adult on probation or parole to live at the residence, or allowing a registered sex-offender to live at the residence.⁷¹ The cities of Lancaster and Palmdale stepped up their efforts to terminate the benefits of Section 8 recipients who were either violating the rules or were committing fraud by providing HACoLA with funding to hire three additional investigators, who were housed at the Lancaster and Palmdale Sheriff's Department stations. The investigators, focused on enforcing the rules of the program by conducting unannounced "compliance checks" of Section 8 residences. Unlike a pre-noticed annual inspection of the premises which tenants must permit or risk termination of their benefits, compliance checks required the consent of the resident. The failure to consent to a compliance check in itself could not be used as a ground for termination of benefits.

HACoLA's guidelines specifically required investigators to get consent to enter the residences from a person who the investigator believed had authority to give consent. The consent had to be voluntary and could not be obtained through submission to express or implied authority. Some tenants, however, confused the compliance checks with annual inspections and believed their benefits would be jeopardized if they did not consent. Section 8 investigators chose which tenants to investigate based on a number of different approaches including, but not limited to: (1) following up on information received on their Fraud Hotline; (2) cross-referencing crime

⁷⁰ According to statistics provided by HACoLA, as of May 2012, 32% of recipients received benefits for less than five years, 29% received benefits for five to nine years, 31% received for 10-19 years, 7% received for 20-29 years, and 1% received for over 29 years.

⁷¹ Until recently, individuals who were on probation or parole were prohibited from living in a Section 8 home. However, on April 3, 2011, the Board of Supervisors approved an exception to this rule for homeless probationers and parolees. Homeless individuals who are on probation or parole now qualify for Section 8 benefits which have been set aside for them, and the prohibition against allowing tenants who have committed drug-related or violent crimes within three years has been shortened to two years.

reports and sexual registrants with their list of addresses for Section 8 voucher recipients; and (3) accompanying Sheriff's Department personnel on probation and parole searches of Section 8 homes. As the lawsuit alleged, the vast majority of Section 8 voucher recipients in the Antelope Valley were minorities. According to the lawsuit, 2008 statistics showed 84% of Section 8 tenants in Lancaster were minorities (70% African American and 14% Latino) and 85% of Section 8 tenants in Palmdale were minorities (67% of African American and 18% Latino). Hence, intended or not, the focus of resources on terminating Section 8 benefits for rule violations and pursuing fraud prosecutions in those cities had a disproportionate impact on minorities in the Antelope Valley. Because fair housing laws prohibit discrimination based on race or national origin, if a city or agency's program has a disproportionate impact on housing for minorities, the burden shifts to the city or agency to prove a legitimate business justification. The city or agency must also show that there are no less discriminatory alternatives to accomplish its legitimate business justification in order to avoid being held in violation of fair housing laws.

Not surprisingly, because the remainder of the County had a total of only three Housing Authority investigators working on terminations, more than 50% of the proposed revocations in the entire County apparently came from Lancaster and Palmdale. Meanwhile, the Lancaster Mayor made statements that it is unfair "African Americans comprise 78% of the recipients but are only 20% of the population," and that it is "unjust" to have to house a higher percentage of Section 8 recipients in the Antelope Valley than in other parts of the County, given the limited social and health programs available in the Antelope Valley. Some community members and organizations concerned about the disparate impact of these investigations on minorities came to believe that the decision to enforce Section 8 rules in the Antelope Valley was based on an intent to harass low income individuals based upon their race or ethnicity.⁷² In addition, news reports following the filing of the lawsuit reported Section 8 investigators were being accompanied by law enforcement officers whose presence was intimidating and who sometimes threatened to return with search warrants if occupants did not consent to a compliance check. The contracts for the three Housing Authority investigators expired at the end of June 2011, and HACoLA has agreed not to renew their contract as part of a settlement agreement reached in March 2012.

Response to Allegations of Discrimination

While the Los Angeles Sheriff's Department (LASD or Department) was not named as a defendant in the case, both the Sheriff and OIR were concerned about the Department's alleged inappropriate involvement in Section 8 compliance checks. Immediate efforts to gather data

⁷² On March 14, 2012, the City of Lancaster filed a Housing Discrimination Complaint with HUD alleging HACoLA engaged in discriminatory housing practices by not investigating fraud in the Antelope Valley, steering Section 8 recipients toward the Antelope Valley when there are insufficient health care services to accommodate them, and favoring individuals of African American descent. (*The Antelope Valley Times*, Lancaster alleges "housing discrimination" in ongoing Section 8 conflict, March 14, 2012.) The allegations in this claim have since been rejected.

regarding the number of compliance checks, the names of the deputies who accompanied Housing Authority investigators, the number of Section 8 criminal prosecutions investigated, the procedures followed during compliance checks, and the sharing of information between the Housing Authority and the Department were commenced. It was initially believed Housing Authority investigators were only accompanied by deputies when there was an officer safety issue or their initial investigation led them to believe a significant chance of illegal activity would be found at the location. It was later discovered, however, that Housing Authority investigators were sometimes given an advance list of addresses for individuals whose homes were to be searched pursuant to probation or parole sweeps organized by a team of deputies. These Housing Authority investigators would then cross reference the addresses with their list of Section 8 homes, and would be permitted to accompany the deputies and interview the tenants for possible termination proceedings.

By mid-July, it was clear that accurate records of when deputies accompanied Housing Authority investigators on compliance checks or Housing Authority investigators accompanied deputies on law enforcement operations had not been kept and no formal or informal protocols had been established to determine when and under what circumstances deputies were permitted to accompany Housing Authority investigators to Section 8 homes for compliance checks. Prior to September 2009, Housing Authority investigators likewise did not have protocols establishing when they could request deputies to accompany them nor when they could accompany deputies conducting probation or parole sweeps. Documentation of the assistance requests and instances in which Housing Authority investigators accompanied deputies was so sparse that it was impossible to determine the extent of the Department's involvement in compliance checks, which of the compliance checks led to law enforcement action, or whether separate consent was given to both the Housing Authority investigators and law enforcement. Immediately upon learning how difficult it was to gather accurate and complete information, OIR started working with Department executives to draft a protocol which would require all such assistance requests to be documented and outline procedures to be followed when accompanying Housing Authority investigators on compliance checks.

Initial OIR recommendations included requiring pre-approval by a Watch Commander based on facts indicating a safety concern, separate *written* consent to enter, documentation of each assistance request, and a prohibition against allowing Housing Authority investigators to accompany deputies on law enforcement operations such as probation and parole sweeps. It soon became evident, however, that in order to draft a comprehensive protocol, more research was necessary to determine the extent of the Department's involvement in Section 8 enforcement efforts, whether or not any deputies had potentially engaged in misconduct, and whether or not there were any systemic issues or practices which unjustly targeted Section 8 voucher recipients for harassment and prosecution. In the midst of consulting with the Department on these issues, the DOJ was independently looking into expanding its ongoing civil rights investigation against HACoLA to include the Sheriff's Department.

On August 19, 2011, Assistant Attorney General Thomas E. Perez announced that the DOJ's ongoing civil rights investigation into allegations of discriminatory behavior against Section 8 voucher holders in Lancaster and Palmdale would include investigating "allegations that the Lancaster and Palmdale stations of the LASD are engaged in a pattern or practice of discrimination on the basis of race or national origin." Perez further indicated the DOJ would be investigating whether or not the Department engaged in a "pattern or practice of harassing or intimidating African American families in Lancaster and Palmdale" by systemically harassing minorities, by seeking to identify Section 8 tenants during routine police business, and by "conduct[ing] warrantless searches of African American families' homes under the auspices of the Housing Authority compliance inspections." Perez further specified that the DOJ was troubled by reports that the Palmdale and Lancaster stations appeared to have "disproportionately high rates of misdemeanor and obstruction arrests compared to the rest of Los Angeles County" and "particularly high rates of arrests of African Americans" in particular.⁷³

Following the DOJ's announcement, OIR continued to work with the Department to gather and review information. The information obtained and reviewed by OIR included select complaints filed by citizens, all police reports involving arrests for Section 8-related fraud or theft charges since 2008, a year's worth of emails sent and received by the Housing Authority investigators assigned to the Antelope Valley, and the emails of approximately 50 Department employees who worked with or most likely worked with Housing Authority investigators, obstruction arrest reports from January 1, 2011 through August 1, 2011, and the 29th Semiannual Report published by Los Angeles County Special Counsel Merrick J. Bobb in July 2010,⁷⁴ which reported that a disproportionate number of African American individuals were arrested for obstruction arrests in Lancaster and Palmdale. OIR's review focused on looking for evidence of racial animus, the targeting of minorities for prosecution, the sharing of confidential information, search and seizure issues, and any other issues relating to the enforcement of Section 8 fraud. In addition to concluding that new protocols were necessary to ensure best practices enforcement activities on Section 8 recipients in the Antelope Valley, OIR's review disclosed a need for better record keeping, training and other forms of corrective action, including the opening of administrative investigations against several Department members for engaging in conduct which was inconsistent with the Department's Core Values and/or policies.⁷⁵ OIR's specific findings and recommendations to date are discussed in more detail below.

⁷³ A full copy of Perez's speech can be located <http://www.justice.gov>

⁷⁴ Hereafter referred to as "Bobb Report." A full copy of this report can be located online at <http://www.parc.info/home.shtml>.

⁷⁵ LASD's Core Values are as follows: "As a leader in the Los Angeles County Sheriff's Department, I commit myself to honorably perform my duties with respect for the dignity of all people, integrity to do right and fight wrongs, wisdom to apply common sense and fairness in all I do and courage to stand against racism, sexism, anti-Semitism, homophobia and bigotry in all its forms."

OIR Findings and Recommendations:

1. Grounds for Assistance Requests

Although initial information provided by the Department indicated that deputies only accompanied Housing Authority investigators to Section 8 homes for compliance checks when there were safety concerns, accurate records of such operations were not kept. It was therefore difficult to determine the exact number of such operations. After September of 2009, a Housing Authority protocol required investigators to articulate their safety concerns to their supervisors prior to requesting that law enforcement accompany them to a Section 8 residence.

There was also evidence that investigators would sometimes be asked to conduct compliance checks of homes where an individual who was under investigation for having committed a crime was believed to reside. The precise number of such instances is unknown since such requests were not systemically documented by the Department. While OIR did not find any evidence to substantiate claims that 15-20 deputies would sometimes accompany Housing Authority investigators to homes for compliance checks,⁷⁶ it was not uncommon for an investigator to be permitted to accompany deputies on law enforcement operations such as parole or probation sweeps, which did involve large numbers of LASD personnel. Under the 2009 protocol, the Housing Authority investigator was required to seek separate consent to enter the residence under these circumstances. However, OIR was concerned that the investigator's presence together with law enforcement officers who had a legal right to search the home might, at a minimum, be confusing to residents and could have the effect of intimidating residents into consenting to have the investigator conduct a compliance check out of submission to express or implied authority. OIR's review disclosed a case wherein a Housing Authority investigator appears to have entered a Section 8 residence with deputies conducting a search as part of a parole or probation search condition. It was not until he was inside that the investigator requested permission to conduct a compliance check. There were also a couple of cases where a Housing Authority investigator, accompanied by one or two deputies, responded to a Section 8 residence to conduct a compliance check and one of the deputies assisted with the request for consent and subsequent compliance check investigation.

In addition, OIR recommended that whenever a Housing Authority investigator wants a deputy to accompany him to a Section 8 residence for a compliance check, a written request articulating

⁷⁶ It is understandable that residents may have honestly misunderstood the type of action engaged in by the deputy teams and, for example, parole sweeps or other law enforcement actions in which groups of LASD personnel participated may have been thought to be initiated as a compliance check, particularly if a Housing Authority investigator was allowed to tag along. This potential confusion is illustrative of the need to ensure separation between the roles of Sheriffs' deputies and the Housing Authority investigators.

the basis for the request and concern for safety must be approved by a supervisor and documented to permit transparency and oversight. Moreover, in order to address some of the public misperceptions that the Department was sending 15-20 deputies to accompany investigators on compliance checks, and to avoid confusion regarding the lead agency and purpose of law enforcement's presence, OIR recommended that Housing Authority investigators not be permitted to accompany Department personnel on law enforcement operations such as warrant services, probation or parole searches, sex registrant compliance checks, etc. OIR also recommended that deputies who accompany Housing Authority investigators on compliance checks be prohibited from both questioning residents regarding Section 8 rule violations and from encouraging residents to consent to a compliance check. The Department adopted all of these recommendations.

2. Section 8 Prosecutions

OIR did not have access to all of HACoLA's investigative reports that did not lead to criminal prosecutions. However, OIR reviewed every Section 8-related fraud police report which could be located from 2008 through mid-2011, as well as a handful of audiotapes of compliance checks. During that time period, 58 cases involving a total of 66 defendants were presented to the District Attorney for filing in the Antelope Valley. Only three of the cases presented to the District Attorney were rejected – two for insufficient evidence and one in the interest of justice because the suspect was sentenced to a substantial state prison term in another case. The remaining 55 cases (95% of the cases presented) were filed as felonies. At the time of this writing, 91% of the cases filed have resulted in felony convictions and the other 9% are pending in court.

Reviewing all of the criminal cases assisted OIR in gaining a more complete understanding about how and under what circumstances the Sheriff's Department worked with Housing Authority investigators, the reasons for the initial entries into homes, and the type of cases pursued criminally. An analysis of the criminal cases showed that only about a third of the cases stemmed from compliance checks wherein a Housing Authority investigator sought consent to enter the residence to see if the tenant was abiding by Section 8 rules. Two thirds of the cases resulted from entries into Section 8 homes for law enforcement purposes, such as to serve arrest warrants, to serve search warrants, or to conduct searches based on one of the tenant's probation or parole search conditions authorizing the search of their residence.

Of utmost concern to OIR were the allegations that compliance checks were being used against Section 8 tenants to circumvent the Fourth Amendment; specifically, OIR was concerned that Section 8 residents were consenting to entry because they were confused about their rights and believed their benefits could be terminated if they refused to allow either the Housing Authority investigators or deputies to enter their homes, or were being intimidated into consenting by a deputy's presence or actions. Pursuant to the Housing Authority protocol adopted in 2009, Housing Authority investigators were required to get written consent from residents, and were required to inform them that their refusal to grant consent was not grounds for termination of their benefits. If

the investigator was present as part of a law enforcement operation, such as a probation or parole search, the investigator was required to secure separate consent to enter. Conversely, deputies were to seek their own consent to enter the residence if accompanying an investigator on a compliance check. However, because the Sheriff's Department was not a party to the Housing Authority's protocol and had not established any guidelines on how and when to secure consent to enter a Section 8 residence when accompanying a Housing Authority investigator on a compliance check, it is unclear whether separate consent to enter was uniformly secured or documented.

As a result, we recommended that the Department adopt a policy which would require deputies who seek to enter a Section 8 home under the auspices of a compliance check to obtain separate consent in writing. This would mean that a Housing Authority investigator accompanied by a deputy on a compliance check could not simply ask, "Can we come in?" OIR further recommended that residents be informed of their right to refuse consent, that they be informed that their refusal would not be used to jeopardize the household's assisted housing benefits, and that the consent would be limited to providing security to the investigator. Eventually, the Department agreed to incorporate all of OIR's recommendations. As a result, the new policy prohibits deputies from insisting that consent be given, prohibits deputies from suggesting that a search warrant will be sought if consent is not given, requires the person giving consent to sign a form which limits the deputy's permission to enter to provide security, and specifically requires advising residents that refusal to consent will not jeopardize their benefits.

Additional recommendations made by OIR and adopted by the Department include making sure that if the Housing Authority investigator records any part of the compliance check, the existence of the recording must be documented in the arrest or supplemental report and obtained by the Department so it can be readily provided to the defense in any prosecution arising from a compliance check. Department members are also required to obtain a copy of the consent form provided to the investigator for this same purpose.

3. Sharing of Information

HUD prohibits Housing Authorities from providing the names and addresses of Section 8 recipients to law enforcement or other individuals except under limited circumstances. Housing Authorities, for instance, may provide information on any recipient of assistance who is a fugitive felon, parole or probation violator.⁷⁷ Moreover, Department policies prohibit providing certain confidential information such as juvenile records to other agencies, including the Housing Authority. OIR's review of Department records and emails disclosed evidence that information regarding the names and addresses of Section 8 tenants was being shared by the Housing Authority investigators with LASD upon request. Requests ranged from asking if a residence was Section 8 because criminal activity was suspected therein to requests for lists of Section 8

⁷⁷ See U.S. Department of Housing and Urban Development, Notice PIH 2003-07 (HA).

homes which could be cross referenced with lists of probationers and parolees. In some cases where criminal activity was suspected at a Section 8 home, deputies would ask a Housing Authority investigator to conduct a compliance check and the deputies would accompany the investigator to see if they observed any criminal activity in “plain view” while they were there. In addition, in at least one instance, information regarding a juvenile arrest was shared by a Department member with a Housing Authority investigator, who then attempted to use the information to initiate termination proceedings against a Section 8 voucher holder.

OIR recommendations with respect to the sharing of information were threefold. It was recommended that: (1) LASD personnel be prohibited from asking or securing either a list of the names or addresses for Section 8 residents who receive housing vouchers; (2) LASD personnel be prohibited from providing any non-public information to Housing Authority investigators; and (3) reserve deputies working as Housing Authority investigators be prohibited from accessing the Department’s confidential data bases. All of these recommendations were adopted by the Department.

4. Asking About Section 8 Status During Traffic Stops

Of the criminal cases reviewed by OIR, two of them started as traffic stops. In the first case, a deputy was writing a citation for a Hummer SUV which was parked in a space reserved for individuals with disabled placards when she was approached by the suspect. The suspect told the deputy she had a placard inside her vehicle and produced it. While being questioned, the suspect admitted the placard was not hers and told the deputy she had received it from a client for hairdressing services she rendered. The suspect also boasted about being paid very well as a hairdresser. A Housing Authority investigator thereafter reviewed the report written by the deputy and determined the suspect was receiving Section 8 benefits. Suspicious that the suspect was not reporting her income as a hairdresser, he conducted an investigation which revealed she had reported being unemployed. In addition, her application stated she did not have a criminal history when she had in fact been convicted of felony grand theft and forgery. The Housing Authority investigator confirmed the suspect was employed and further confirmed she was making payments on two vehicles. The suspect was charged with felony grand theft and perjury. She pled guilty to both counts and her Section 8 benefits were terminated.

In the second case, deputies detained a husband and wife in a Mercedes SUV for a minor traffic violation. During the detention, it was discovered the wife had a warrant for driving without a license and the husband was a parolee. According to the police report, when they were asked for their home address, the husband said they did not live together because his wife is on Section 8. A Housing Authority investigator was contacted by one of the deputies and he subsequently conducted a compliance check at the wife’s residence. His investigation revealed her parolee husband did live with her and she was gainfully employed, but had not reported her income to the Housing Authority. The wife’s Section 8 benefits were terminated and she was convicted of felony grand theft.

Neither of these two cases involved deputies asking whether the individuals stopped were receiving Section 8 benefits. Nonetheless, OIR had received information indicating that citizens were being asked if they received Section 8 benefits during routine traffic stops. OIR was concerned that asking such a question would not only target Section 8 recipients, but could also contribute to already strained relations with the Section 8 community in the Antelope Valley. OIR recommended training in this area to encourage deputies to discontinue this practice. Additionally, the Department, as part of its negotiations with the Plaintiffs in the lawsuit, agreed to prohibit deputies from asking any individuals if they received Section 8 housing assistance during traffic stops. OIR concurred with this decision. Current policy specifically provides that: “Sheriff personnel will not ask any individual whether he or she receives Section 8 housing assistance (e.g. on traffic stops or checking suspicious persons), nor will they seek such information from other sources.” (See FOD 12-02 a copy of which is attached at the end of this report.)

The new guidelines and procedures regarding the handling of Housing Authority requests for security and the Department’s participation in Section 8 related issues are set forth in FOD 12-02.

5. Obstruction Arrests

Recent reports, including the Bobb Report, have raised concerns that a disproportionate number of African Americans have been arrested for obstruction arrests, i.e., arrests in which it has been alleged that the individual has committed an action that has interfered with a deputy’s performance of duties. Colloquially, these arrests have been referred to as “contempt of cop” arrests, because sometimes the actions that form the basis for the arrests show disregard for the peace officer in the performance of his/her duties. As a result of these concerns and the sheer total number of stand-alone obstruction arrests in the County, the Department looked more closely at its training and issues presented in the individual obstruction arrests.⁷⁸ The Department analyzed the recommendations made in the Bobb Report and worked closely with OIR regarding possible training and policy changes. In early August 2011, the Department instituted procedures in the Antelope Valley which would assist in tracking and reviewing all obstruction arrests. At that time, OIR began reviewing obstruction reports from January 1, 2011 through August 1, 2011 and unearthed concerns about report writing, a lack of understanding regarding an individual’s First and Fourth Amendment rights, and a lack of training in the area of tactical communication. Discussions on issues presented in obstruction arrest cases are ongoing between OIR and the unit commanders at the Palmdale and Lancaster stations. These

⁷⁸ The Chief of the Region, responsible for the Antelope Valley stations as well as six other stations in the County, directed all Captains at his stations to stress the importance of good judgment and to require watch commander review and approval of all misdemeanor and felony obstruction arrests. The Chief further directed each station to create and maintain an automated tracking system to record each new arrest to allow review by supervisors and asked his Region Commanders to thereafter review each obstruction arrest report filed.

discussions have led to training recommendations, counseling sessions, and administrative investigations.

The number of stand-alone obstruction arrests in the Antelope Valley has dropped dramatically since additional tracking and reviewing procedures were implemented at the Palmdale and Lancaster stations in August 2011. In the first four months of 2012, for instance, less than a dozen stand-alone obstruction arrests have been made by deputies at both Palmdale and Lancaster stations combined. It is expected that the County-wide number of stand-alone obstruction arrests will also drop this year as a result of the Department's March 2012 adoption of Department-wide guidelines and procedures on how to document, review and handle obstruction arrests. OIR is hopeful that the increased scrutiny given to obstruction arrests will reduce not simply the overall number of stand-alone obstruction arrests, but will also increase the quality of such arrests and reduce the number of "contempt of cop" arrests by LASD personnel. The new guidelines and procedures are set forth in FOD 12-01. (See FOD 12-01 a copy of which is attached at the end of this report.)

Conclusion

While OIR and the Department initially worked together on drafting policies to address the Housing Authority and obstruction arrest issues in the Antelope Valley specifically, the Sheriff adopted all of OIR's recommendations and implemented the policy changes Department-wide in March 2012, to prevent similar concerns from arising in other LASD patrolled jurisdictions. OIR looks forward to continuing to work with the Department on monitoring assistance requests by Housing Authority investigators and reviewing obstruction arrest reports in an effort to identify potential problems and improve the quality of the arrests made.

Los Angeles County Sheriff's Department



FIELD OPERATIONS DIRECTIVE

Field Operations Support Services, (323) 890-5411

FIELD OPERATIONS DIRECTIVE 12-02

Issue Date: 03-14-12

Effective Date: 03-14-12

ISSUED FOR: LEADERSHIP AND TRAINING DIVISION
FIELD OPERATIONS REGIONS
DETECTIVE DIVISION
COURT SERVICES DIVISION
HOMELAND SECURITY DIVISION

HOUSING AUTHORITY NON-CRIMINAL INVESTIGATIONS/INSPECTIONS

BACKGROUND

The Department receives many requests to provide security and ensure the safety for agency workers who are not law enforcement officers such as Housing Authority, Code Enforcement, et cetera. These agencies have their own policies and procedures for requesting law enforcement and interacting with law enforcement. They also have their own policies and procedures on how to handle the incident for which they are requesting security.

PURPOSE

This directive establishes procedures for deputy personnel who are called to ensure the safety of non-law enforcement agency workers of the housing authorities. This directive does not apply to LASD personnel working under a Memorandum of Understanding or Inter-Departmental Agreement with a housing authority.

The Housing Authority worker's role is to conduct administrative investigations/inspections for compliance in its programs. These Housing Authority investigations/inspections are generally non-criminal in nature. Deputy personnel are not to participate in these non-criminal investigations/inspections but are merely there to ensure the safety of the Housing Authority worker whether inside and/or outside of the location/residence. Deputy personnel do have an obligation, if a non-Section 8 related crime occurs in their presence, to take law enforcement action. If an arrest results from such law enforcement action, the name of the investigator/inspector shall be included in the report and any audio or videotape of the consent and/or compliance check shall be referenced in the report and a copy shall be requested from the investigator/inspector. Evidence of Section 8 rule violations identified by a Housing Authority worker may not serve as the basis for law enforcement action.

The procedures set forth in this directive are intended to provide a safe, controlled, and consistent response to requests from the Housing Authority. It is not the intention of this directive to dissuade the Housing Authority from conducting their lawful function within an LASD jurisdiction and in accordance with their policies and procedures. It is this directive's purpose to minimize any potential appearance of oppressiveness or harassment on the part of LASD members while accompanying Housing Authority investigators.

POLICY AND PROCEDURES

The Department shall not participate in the Housing Authority's non-criminal investigations and inspections, except as set forth in this directive or unless there is a specific Memorandum of Understanding with a Housing Authority.

When a station/unit receives a call for service by a Housing Authority worker requesting our presence, to ensure the worker's safety, the Housing Authority worker shall respond to the station/unit and complete a "Non-Criminal Investigation/Inspection Security Request" form. The form is required and must be approved by the station/unit Watch Commander before dispatching a deputy to this type of call for service. The Watch Commander shall require written proof from the Housing Authority investigator that his/her Section 8 enforcement action is approved by his/her supervisor.

Watch Deputy's Responsibility

The Watch Deputy shall run the location/residence on the "Non-Criminal Investigation/Inspection Security Request" form in the CAD system for any "hits," known gang affiliation, or any other safety factors. The Watch Deputy shall submit the completed form to the Watch Commander for approval. If the request is approved by the Watch Commander, the Watch Deputy shall dispatch a deputy to the location/residence. The Watch Deputy shall not release any non-public information to the Housing Authority worker. Examples of such non-public information include but may not be limited to confidential reports, sex crimes reports, and reports indicating an identifiable juvenile.

Watch Commander's Responsibility

The Watch Commander shall:

- Ensure the "Non-Criminal Investigation/Inspection Security Request" form is complete and signed by the Housing Authority worker;
- Ensure that the Housing Authority investigator provides a copy of his/her written documentation authorizing his/her investigation;
- Review the "Non-Criminal Investigation/Inspection Security Request" form;
- Submit the approved or denied form to the Watch Deputy for processing.
- Evaluate the appropriateness of the request, including the reasons articulated on the Security Request form i.e. prior confrontations with a resident, threats made by a resident, or known gang membership of an occupant or resident, and any other factors relevant to the Housing Authority worker's safety;

- Determine the appropriate number of deputies to respond to the request. The number of deputies shall generally be no more than one, absent specific reasons for more. If more than one deputy is authorized, the Watch Commander shall document the reason on the request form.

Responding Deputy's Responsibility

Deputy personnel shall not play any role in the Housing Authority's non-criminal investigations/inspections except as described in this directive.

The responding deputy shall respond to the location/residence with the goal of ensuring the Housing Authority worker's safety. The responding deputy shall abide by the Sheriff's Department's policies and procedures and laws. The responding deputy shall not release any non-public information to the Housing Authority worker. Examples of such non-public information include but are not limited to confidential reports, sex crimes reports, and reports indicating an identifiable juvenile. In addition, Reserve Deputies working in their capacity as a Housing Authority investigator/inspector shall not have access to confidential data bases such as JDIC.

If the Housing Authority receives consent to enter the location/residence, the responding deputy must obtain a separate written authorization to enter the location/residence from the person having authority to give consent. The deputy shall have the person giving authorization to enter the location/residence sign a "Sheriff's Department Consent for Entry" form. The handling deputy shall not insist that consent be given, shall not suggest that a search warrant will be sought if consent is not given, and shall make it clear that giving consent for his/her entry is truly volitional. Consent to enter in this context does not constitute consent to search – entry shall be solely for the purpose of protecting the Housing Authority worker. If the person giving authorization to enter the location/residence gives authorization to the Housing Authority worker but not to the deputy, the deputy is not authorized to enter the location/residence even if the Housing Authority worker enters the location/residence, absent exigent circumstances.

Upon entering the location/residence, the role of the deputy is to ensure the safety of the Housing Authority worker. The Deputy shall not take law enforcement action such as questioning residents/occupants regarding Housing Authority rule violations or encouraging residents/occupants to give the Housing Authority consent to enter or inspect the premises. The deputy shall not participate or assist in the Housing Authority worker's investigation or search of the home.

If no law enforcement action is taken, the deputy shall obtain an URN with the statistical (stat) code of 787 and place it on the "Non-Criminal Investigations/Inspections Security Request" form. The "Non-Criminal Investigations/Inspections Security Request" form, along with the "Sheriff's Department Consent for Entry" form and the Housing Authority's written documentation authorizing his/her investigation attached, shall be submitted to the Watch Sergeant for processing.

If law enforcement action is taken, the deputy shall follow Department policies and procedures. If a criminal report is written, the report will contain the appropriate criminal stat code, along with the 787 stat code.

An MDT entry will be made for all Housing Authority related calls, observations, or incidents. The MDT clearance will include the 787 clearance code.

Watch Sergeant's Responsibilities

The Watch Sergeant shall:

- Ensure that the responding deputy has submitted the "Non-Criminal Investigations/Inspections Security Request" form and attached the "Sheriff's Department Consent for Entry" form and the Housing Authority's written documentation authorizing his/her investigation.
- In instances where a criminal Incident Report (SH-R-49) is also written, the Watch Sergeant shall ensure that the "Non-Criminal Investigations/Inspections Security Request" form, the "Sheriff's Department Consent for Entry" form and the Housing Authority's written documentation authorizing his/her investigation are attached and that a stat code of 787 is included.
- After review by the Watch Sergeant, all of the reports/forms shall be forwarded to the station secretariat for processing.

Secretariat Responsibilities

- All "Non-Criminal Investigations/Inspections Security Request" and attached forms shall be processed by the secretariat and treated as an "Inactive" Incident Report. The forms will be filed with the station's Incident Reports and eventually sent to Records and Identification Bureau for archiving according to the Department's retention policy.
- All Criminal Incident Reports will be processed normally, with the "Non-Criminal Investigations/Inspections Security Request" form, the "Sheriff's Department Consent for Entry" form and the Housing Authority's written documentation authorizing his/her investigation attached and a stat code of 787 included.

Department Operation (or Search) Entries

Housing Authority personnel shall not be notified in advance of Sheriff's Department operations such as warrant services, probation/parole sweeps, "Cease Fire" operations, COPS surveys, DCFS checks, sex registrant compliance checks, or warrant checks. They shall not be invited to participate in ongoing Sheriff's Department operations even if department personnel become aware that a particular residence or individual receives Section 8 housing assistance. Reserve Deputies, working in the capacity of a Housing Authority investigator/inspector, shall not be permitted to accompany Sheriff personnel during field operations.

If Department personnel conduct an entry of a location/residence for law enforcement purposes and a Housing Authority worker happens to be present, the Housing Authority worker shall not enter the location/residence until all law enforcement action is complete. Law enforcement entry into the location/residence does not give the Housing Authority

worker implied consent to enter the location/residence. The Housing Authority worker will need to obtain his/her own consent for entry.

Requests for Information Regarding Section 8 Residents

Sheriff personnel shall not ask for nor secure names or addresses for Section 8 residents who receive vouchers for housing from Housing Authority personnel or any other source to conduct Sheriff's Department operations such as warrant services, probation/parole sweeps, "Cease Fire" operations, COPS surveys, DCFS checks, sex registrant compliance checks, or warrant checks.

Sheriff personnel will not ask any individual whether he or she receives Section 8 housing assistance (e.g. on traffic stops or checking suspicious persons), nor will they seek such information from other sources such as landlords or neighbors. Responsibility for enforcing Section 8 non-criminal rules and regulations rests with the Housing Authority and not with the Department.

Los Angeles County Sheriff's Department



FIELD OPERATIONS DIRECTIVE

Field Operations Support Services, (323) 890-5411

FIELD OPERATIONS DIRECTIVE: 12-01

Issue Date: 03-14-12

Effective Date: 03-14-12

ISSUED FOR: LEADERSHIP AND TRAINING DIVISION
FIELD OPERATIONS REGIONS
DETECTIVE DIVISION
HOMELAND SECURITY DIVISION
CUSTODY DIVISION

PROCEDURES FOR PROCESSING “RESISTANCE, DELAYING, AND OBSTRUCTION ARRESTS” (148(a)(1) PC, 69 PC, and 243(b) PC)

BACKGROUND

Arrests for Penal Code sections 148(a)(1), 69, and 243(b) are lawful in instances where an individual resists arrest, delays, obstructs, or interferes with the police in the lawful exercise of police powers or batters or fights or injures a police officer. A suspect's verbal response, without a physical act, no matter how degrading or provocative, does not constitute resistance or obstruction unless the words used are so inflammatory as to constitute a threat or incite immediate breach of the peace. These arrests typically receive more scrutiny from the criminal justice system and therefore merit discretion and good judgment by deputies and enhanced scrutiny by supervisors and managers.

POLICY

All “Resistance, Delaying, and Obstruction Arrests” (148(a)(1) PC, 69 PC, and 243(b) PC) shall be reviewed carefully by supervisors to determine whether they have a strong factual basis and can withstand legal scrutiny, with special attention to the potential controversy and civil liability.

Deputies are to use discretion and good judgment when deciding to arrest for these sections. Generally, verbal resistance or disrespectful behavior alone are not sufficient to justify resistance or obstruction arrests.

ARREST AND REPORT REVIEW PROCEDURES

Pursuant to the Arrest Review Procedures set forth in MPP 5-03/010.00, Watch Commanders must review and approve 148(a)(1) arrests. Additionally, misdemeanor 243(b) PC arrests shall also require Watch Commander review and approval, just as felony 243(c)(2) PC and 69 PC already do. This review shall be required whether the obstruction charge(s) are the sole/primary charge or are the secondary charge(s).

The arresting deputy shall document in his arrest report the name of the Watch Commander who approved the arrest.

Furthermore, the Watch Commander that reviewed/approved an arrest that includes a charge for 148(a)(1), 69, or 243(b) shall make every reasonable effort to **also read and co-sign** the arrest report and any supplemental reports after the Watch Sergeant has signed them.

When reviewing the arrest reports, special scrutiny shall be undertaken with respect to the deputy's documentation of the duties that were interfered with and the suspect's actions causing the resistance, obstruction, battery, delay or interference. The Watch Commander is accountable for ensuring that the elements and details of the arrest that were described verbally by the arresting deputy are included in the report.

Watch Commanders and Watch Sergeants shall refer to the attached "Resistance, Delaying, and Obstruction Arrest Guidelines" and consider its contents when reviewing these arrests and when reading the reports.

If the report(s) are not completed by the end of the Watch Commander's shift, the report(s) will be processed without his/her signature. He/she will, nevertheless, be required to read a copy of the report within five calendar days of the arrest. The Watch Commander shall also document all "Resistance, Delaying, and Obstruction Arrests" in the Watch Commander's shift log.

In any case in which the approving Watch Commander feels the report is so deficient that prosecution is jeopardized, he/she shall confer with the Detective Bureau Lieutenant or prosecutor. The Watch Commander shall also advise the arresting deputy of his/her concerns and take appropriate action as to the deficiency.

The Watch Commander shall be responsible for forwarding to the Captain a signed copy of the 148(a)(1) PC, 69 PC, or 243(b) PC reports for which he/she approved the arrest. The Captain shall maintain a file of 148(a)(1) PC, 69PC, and 243(b) PC reports and shall review each report for both quality control and civil liability.

DETECTIVE BUREAU PROCEDURES

Pursuant to MPP 4-21/035.00 governing Resisting Public Officer charges, all "Resistance, Delaying, and Obstruction Arrest" reports shall be assigned to a station detective to handle as an active investigation, the principal deputies shall be listed as victims, and the report shall include a 145 statistical code. The assigned detective will make every reasonable effort to conduct a recorded interview of the suspect prior to presenting the case for filing.

Each instance where the prosecutor rejects a "Resistance, Delaying, or Obstruction Arrest" case will be assessed by the Detective Bureau Lieutenant. The Detective Bureau Lieutenant shall discuss any rejected cases with the prosecutor, if he/she disagrees with the filing decision, or with the Watch Commander who approved the arrest and the victim deputy, if appropriate. The reasons for the rejection and whether the case could or should have been handled differently should be addressed in these discussions. The Detective Bureau Lieutenant will provide a quarterly report to the Captain in which he will address the reasons for the rejections.

AUDITING PROCEDURES

Data Systems Bureau will develop an "Obstruction Arrest Database" for compiling information regarding 148(a)(1) PC, 69 PC, and 243(b) PC arrests.

The "Obstruction Arrest Database" and quarterly reports will be reviewed quarterly by each Division Headquarters.

Questions regarding the content of this Field Operations Directive can be directed to Field Operations Support Services at (323) 890-5411.

Attachments:

Resistance, Delaying, and Obstruction Arrest Guidelines

Summary Of Systemic Changes

Year Ten

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
JITF witness summaries sometimes inaccurate	Transcribe all witness interviews before submission to D.A.	ICIB/JITF agree to transcribe statements	In progress, see page 14
Unit level force investigations and review were not thorough and accurate	Significant force incidents that do not meet the standard for an IAB roll-out and EFRC review should be investigated by specially trained investigators rather than unit supervisors	Adopted the Custody Force Review Team (CFRT) which oversees and assists in force investigations while primary investigatory responsibility is still with unit level sergeants and lieutenants	Partial, see pages 17-18
Essential internal force analysis not shared with OIR	Require supervisors to forward to OIR force analyses, studies and statistical findings	Proposal has been discussed with the Department	Under consideration, see page 18
Internal force analyses not shared with LASD executives	Require supervisors to forward systemic reports to the Office of the Sheriff, the Undersheriff and OIR	Proposal has been discussed with the Department	Under consideration, see pages 18-19
Deputies writing force reports with other deputies	Deputies should be separated after a significant use of force and not share computers to write their reports	Proposal has been discussed with the Department	Under consideration, see pages 19

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Accusatory and non-objective interviews of involved inmates and inmate witness	Unit level force investigators should receive ongoing training in conducting force interviews of inmates and witnesses	Agreed that custody supervisors need additional briefing and training bulletins regarding effective interviewing of inmates	Yes, see pages 18-19
Unit level force investigators failed to identify and interview all possible non-sworn witnesses to an event	Amend policy to specify that in Custody force cases “all potential witnesses” expressly includes medical staff, chaplains and other civilians who may have been present	The proposed policy amendment is under consideration	Under consideration, see pages 18-19
Deputies who used force were present during supervisors’ interviews of involved inmate	Involved deputies should never be present during an inmate interview	Policy adoption under consideration that, except in the most compelling of circumstances, involved participants, witnesses and supervisors directing force shall not be present when the interview is conducted	Under consideration, see pages 19-20
Interviews of involved inmates and force investigations conducted by sergeants who directed or were involved in the force incident	A sergeant who is involved in a force incident, whether using force or directing it, should not interview the involved inmate or write the force package	Policy adoption under consideration that a supervising lieutenant shall determine whether it is appropriate for a sergeant who directed force to complete the investigation	Under consideration, see pages 19-20

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Supervisors interviewing inmates who were involved in force while the inmate is still in obvious medical distress or in need of treatment	Where practical, supervisors should not interview inmates in the clinic either while waiting for treatment or during treatment. When an inmate is obviously in pain or distress the interview should occur after the treatment	Policy adoption under consideration that suspects or inmates should not be interviewed during actual medical treatment	Under consideration, see pages 19-20
The review of unit level force investigations was not thorough and failed to hold users of inappropriate force and their supervisors accountable	Significant force incidents that do not meet the criteria for EFRC should be reviewed by a panel of custody commanders	Adopted the Custody Force Review Committee, a panel of three commanders modeled on the Department's EFRC, to review significant custody force incidents	Yes, see page 20
Jail medical staff not reporting allegations by inmates of assaults and injuries at the hands of jail staff	Adopt or amend policy to incorporate a mandatory reporting provision	Policy adopted that any claim to medical staff that an injury was committed by a LASD member or other law enforcement personnel shall be reported to the Watch Commander with "extreme priority"	Yes, see page 24
Supervisors repeatedly not learning of the severity of injuries to an inmate once he is sent to LAC/USC hospital	Additional training of staff to place extra emphasis on the importance of learning a diagnosis and adoption of policy making it a supervisor's responsibility to follow-up with the facility to learn if an injury is more serious than initially believed	Agreed to additional training and briefing of supervisors. Policy proposal is under consideration	In progress, see pages 25-26

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Allowing personnel to review video footage before writing force reports could hamper the investigation of possible policy violations	Adoption of a policy requiring that personnel first document their actions and then be provided an opportunity to review video footage and supplement their initial report if necessary	The Sheriff has agreed to implement OIR's proposed policy, the details are still being finalized	In progress, see pages 27-29
The current recommended discipline range of five suspension days to discharge for unreasonable force is too lenient	Raise the minimum suspension for unnecessary force to 15 days	The Department has agreed to the proposal but its implementation is still under consideration	Under consideration, see pages 36-38
The Department's FAST database does not track inmate complaints by deputy name	Modify the FAST system to allow for the entry and tracking of inmate complaints by deputy name	The Department is now fulfilling the representation made in 2004 to track inmate complaints by deputy name	In progress, see page 40
The Department's PPI system does not include inmate complaints made against personnel	PPI should be modified to include inmate complaints	The Department maintains that the existing PPI database may not be able to support the volume of data of inmate complaints and no permanent solution has been adopted	Under consideration, see page 40
Inmate complaint forms are not readily available to all inmates	Develop a more robust system to assure that all inmates have the ability to lodge complaints with the LASD	A detailed proposal is pending to the LASD is pending	Under consideration, see page 43-44

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Instructing inmates to defecate in bucket with plastic covering (instead of using toilet) for easier retrieval of contraband	Have inmate use toilet (with water shut-off) to prevent undue stress and humiliation	Policy and protocol modified to have inmates use toilets and stop use of buckets	Yes, see pages 73-74
Individuals being improperly served as members or associates of a gang and no mechanism for gang members or associates to be “delisted”	Put mechanisms in place to ensure certain levels of fairness in how the gang injunction is enforced	The Sheriff and OIR worked together to create protocol where instead of a deputy, a detective with gang expertise makes determination to serve injunction and new protocol for appeals to be “delisted”	Yes, see pages 76-77
No consistent form being used for Performance Log Entries advising deputies of right to file written response and file grievance	Create one form for Performance Log Entries and have every unit in department use it without modification to the form	New form created that shall be used by all units in Department stating deputies’ rights; policy modified to prohibit modifications by units	Yes, see pages 78-81
Department members with Blood Alcohol Content of .16 percent or higher was not considered aggravating nor resulting in more discipline	When Blood Alcohol Content is .16 percent or higher, it should be an aggravating factor with minimum discipline of 16 days	In process of modifying Guidelines for Discipline to reflect 16 days for .16 percent or higher	Yes, see pages 98-99
The Manual of Policies and Procedures for LASD not available online to members of the public	Place the Manual of Policies and Procedures online to provide transparency regarding LASD’s policies and procedures	The Sheriff immediately agreed and the manual is now available online	Yes, see page 107
When a person is arrested, their cell phone and credit cards may be placed in trunk of their vehicle, which they don’t have access to upon release	Have the arrestee’s personal items, such as phones, money and credit cards, taken to the station	Policy implemented to book certain personal items with arrestee when practicable	Yes, see pages 166-167

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Records were not uniformly kept when deputies accompanied Housing Authority investigators on Section 8 compliance checks	Implement policy requiring documentation and tracking of each Housing Authority request for a deputy to accompany an investigator on a Section 8 compliance check	Policy implemented to require documentation and tracking of all Housing Authority requests for assistance from LASD personnel	Yes, see page 171
No guidelines or protocols existed to guide LASD personnel regarding when and under what circumstances they may accompany Housing Authority investigators on Section 8 compliance checks	Implement policy requiring requests for LASD personnel to accompany Housing Authority investigators on Section 8 compliance checks be in writing, articulate safety reasons for request, be approved by watch commander and limit the deputy's activity to providing security	Policy implemented requiring written request for LASD assistance, watch commander approval, articulation of safety reasons for request, and limitation on deputies' duties during compliance checks	Yes, see pages 173-174
Section 8 residences were being entered by deputies and searched during compliance checks without search warrants or documentary proof of consent	Implement policy requiring deputies who accompany Housing Authority investigators on compliance checks to secure their own separate consent to enter in writing, advise residents that their failure to consent will not jeopardize their benefits, and refrain from threatening to get a search warrant if the residence does not consent	Policy implemented requiring deputies to obtain written consent to enter a Section 8 residence and an advisement that the failure to give consent would not jeopardize their benefits. The policy also prohibits deputies from threatening to get a search warrant in order to secure consent.	Yes, see pages 174-175

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Confidential law enforcement information was being shared with Housing Authority investigators	Implement policy prohibiting the sharing of confidential law enforcement information with Housing Authority investigators	Policy implemented to prohibit the sharing of confidential law enforcement information with Housing Authority investigators	Yes, see pages 175-176
Lists of Section 8 recipients were being provided to law enforcement upon request by Housing Authority investigators	Implement policy prohibiting LASD personnel from requesting or obtaining the names or addresses of Section 8 recipients to conduct routine law enforcement operations	Policy implemented to prohibit LASD personnel from requesting or obtaining the names or addresses of Section 8 recipients to conduct routine law enforcement operations	Yes, see pages 175-176
African American Section 8 residents were being disproportionately impacted by increased efforts to pursue fraud against the Housing Authority	Implement training to educate deputies on how their increased efforts to pursue Section 8 fraud investigations can disproportionately impact minorities	Deputies received training to educate them on how increased efforts to pursue fraud investigations can disproportionately impact minorities and implemented policy prohibiting deputies from asking individuals if they receive Section 8 benefits during law enforcement contacts	Yes, see page 177
Deputies in the Antelope Valley were arresting a large percentage of African Americans for obstruction-related crimes compared to other units in the Sheriff's Department	Implement a tracking system of obstruction arrests to allow review of patterns, problems, and the need for training. In addition, require watch commander approval of arrests and guidelines	Policy implemented requiring tracking of obstruction arrests Department-wide, watch commander approval of arrests, and guidelines on when such arrests are appropriate and when they are not	Yes, see pages 177-178

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Physical and documentary evidence obtained by Housing Authority investigators such as audio of interactions with Section 8 residents during compliance checks was not routinely referred to LASD personnel nor documented in their incident reports	Implement policy requiring evidence obtained by Housing Authority investigators to be turned over to LASD personnel and documented in their reports when a compliance check leads to law enforcement action	Policy implemented requiring deputies who arrest individuals during or after a compliance check to list the Housing Authority investigator's name in their report, refer to any audio or videotaped evidence obtained by the investigator in their report, and secure copies of any such evidence	Yes, see pages 179-183