



**OIR Group Independent Review of Anaheim Police Department's Use  
Of Force and Internal Affairs Investigations:**

**Fourth Quarter 2014 and First Quarter 2015**

*Report and Presentation to City of Anaheim Public Safety Board: October 2015*

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Issues surrounding police conduct and police use of force have dominated public discourse throughout the nation over the past several months. While recognizing the need to authorize officers to use force in order to fulfill their responsibilities, some voices have registered concern that, at times, the use of force may have been excessive and unnecessary. Controversial force incidents, some captured on videotape, have continued to fuel a national discussion about police officer performance and the degree to which sufficient mechanisms exist to objectively evaluate and address such conduct. One observation emanating from the attention is the paucity of reliable data about the occurrence of force incidents and public information available about them. In this report, by authorizing the publishing of cumulative data regarding force incidents and internal investigations, APD is making remarkable strides in this transparency to its residents.

The City of Anaheim Police Department serves the largest City in Orange County, California. Even before the recent uptick in dialogue and concern regarding police use of force, Anaheim recognized the value of having its police department's major force events and internal affairs investigations reviewed by an independent entity and contracted with OIR Group to provide such reviews. More recently, the City Manager requested that OIR Group's previously confidential audits of police force and internal affairs functions be presented publicly to the recently created Public Safety Board. In a major step toward providing more public information about these critical functions to its community, the City of Anaheim and its Police Department have created a level of transparency unmatched by any other police agency in Orange County.

As mentioned, the City continues to enhance its level of transparency and in April 2015, OIR Group issued a report in that reviewed a number of officer-involved shootings and one in custody death over a nine year period. To the degree APD adopts the systemic recommendations proposed in that report along with the significant advancements the Department has made as a result of its more intensive major incident review process, APD is well-positioned to keep its officers safer and enhance its training, policy improvements, and briefings aimed at reducing deadly force incidents in the City.

This report contains OIR Group's audit of the Anaheim Police Department's use of force incidents and internal affairs investigations. This audit builds on the officer-involved shooting review and allowed OIR Group to comprehensively review the full panoply of non-deadly use of force events and how APD investigated internal complaints. This report consisted of a review of a randomly selected percentage of use of force and internal affairs cases for a six month period commencing September 2014 and ending March 2015. Because the audit is also intended to capture all major force incidents, one use of deadly force incident that was closed during this audit period was also reviewed. Consistent with our past experiences, the Police Department

provided OIR Group complete and unfettered access to documents, tape recordings, and any other materials necessary to complete our work. To the degree that our observations, findings, and recommendations are insightful, they could not have been achieved without the cooperation of the Police Department. Because this is the first time that we have reviewed non deadly force events and because of the significant protocols APD has self-initiated with regard to the way in which it investigates and review such force, we intend to afford the Department time to consider our recommendations and institute its reforms. For that reason, we will conduct another review of force incidents after the first quarter of 2016.

#### **I. APD Use of Force Investigations and Review**

In the United States, the vast majority of police encounters with the public, including arrests, end without any resort to force. However, in part, because of this fact and the awesome authority provided to officers to use force when necessary, it is incumbent upon police agencies to fully investigate and carefully examine the relatively rare occasions in which force is used by its officers. In addition to determining whether the force deployed was within policy, the police department should also use each incident as an opportunity to determine whether additional learning can be gained from the incident for the officers involved as well as the agency as a whole. Each force incident should be examined for potential issues involving tactics, training, supervision, policy, and equipment. Each incident should also be reviewed to determine whether other strategies could have been deployed that would have reduced the likelihood of the need to use force.

A progressive police agency ensures that there is a thorough and objective investigation of each force incident so that the additional insight in each of these areas can be gleaned. As important, the agency should develop a robust force review process so that the force incident is reviewed, not only to determine whether the force was in policy but whether other learning can be gained and then exported back to the involved officers and the Department as a whole. We have previously commented in public reports how APD has improved substantially the level of review and development of remedial action plans for deadly force incidents. However, as detailed below, when lower level force is used, our review found significant room for improvement in the way the Department investigates and reviews those force incidents.

Our review of force incidents did not focus on whether in the cases reviewed, the force used was excessive or inconsistent with APD policy. Rather, this review examined the investigative protocols and review process deployed by APD when a force incident occurred. Based on that review, we found that the Department's investigative protocols for force could be improved starting from the initial field response in order that all necessary information was collected. We also found that a more robust and careful review of the force incidents could benefit the

Department and its officers. Following is a detailed discussion of APD's force incident review and investigative processes and recommendations intended to improve upon those processes.

To its credit, while our review was ongoing, APD was also working on improving its force investigation and review process. Accordingly, many of the observations and recommendations made here may have been fully or partially resolved by the improved mechanisms being developed internally by the Department itself. Our next audit period will examine force incidents to learn to what degree APD force investigations and reviews have been improved by the Department's internal reforms and/or its receptiveness to the recommendations presented here.

**Failure to Obtain Accounts of Involved and Witness Officers.** In one force incident, a sergeant performed a leg sweep on the subject, causing him to fall to the ground. However, there was no report from the sergeant in the police report with regard to his use of force. APD policy requires that any use of force by a Department member shall be documented in a report. The failure of the sergeant to document his force was an apparent contravention of this policy.

As opposed to officers who use force, there is no apparent APD policy that requires Department members who are witnesses to force by fellow officers to prepare a report. As a result, OIR Group's review of the force incidents found the following:

- An on-scene officer who was involved in the forcible extraction of a suspect from an automobile did not submit a report with regard to his observations.
- An officer was involved in the initial vehicle pursuit and was present at the time of the arrest of the two individuals did not submit a report with regard to his observations.
- An officer who witnessed a fellow officer forcibly extract an individual from a vehicle did not prepare or submit a report.

APD's failure to require officer witnesses to submit reports about their observations and actions results in an information vacuum about the force used.

In some force incidents, several officers used force against an individual. In documenting some of those incidents, the officers focused exclusively on the force used by the reporting officer, omitting any reference to force that other officers may have used and the reporting officer may have witnessed. Such reporting provides an incomplete and misleading account of the actions *and observations* of the report preparer. APD should require that each officer write about each force application and any application of fellow officers that were observed by the officer.

Moreover, APD did not always vigilantly seek information from other law enforcement witnesses about the force incident. For example, in one incident, two peace officers from another law enforcement agency were witnesses to at least part of the incident in which an

APD officer used force. While one of the peace officers was interviewed, the other witness was not interviewed because, according to the report, he did not answer his phone. The one attempt to interview the peace officer was inadequate and there should have been a greater effort to obtain an account of the event from the officer witness.

It is incumbent upon supervisors responsible for reviewing the force to undertake an exacting review of the report to ensure that all Department members who use force document that force in a thorough report. APD should also require that any officer who witnesses a fellow officer use force ensure that such force is timely reported and document his or her observations of the force in a supplemental report. Finally, when a force incident is observed by either civilian witnesses and/or law enforcement witnesses from another law enforcement agency, the force investigation should ensure that an account of the incident is obtained from those witnesses.

During our discussion with APD, it was suggested that the full-scale implementation of body cameras will potentially obviate the need to obtain accounts from witness officers about what they observed. However, as the Department has already experienced, even activated body cameras often do not capture the force used because of potential obstruction by the movements of the officers in responding to the incident. Moreover, body cameras will not have the same vantage point, perspective, or acuity of the witness officers and even unobstructed cameras may not be aimed at the same part of the incident as the officer, depending on where the camera is mounted and what is the area of officer focus. While body cameras will be an important evidence gathering tool, they will never replace the need for professionally trained human witnesses to report on what they observed with regard to the event.

***Recommendation One: APD should ensure that the review of a force incident requires the supervisor to ensure that each officer who used force timely reported his or her use of force and documented the force in a report.***

***Recommendation Two: APD policy should make clear through policy and training that officers who witness fellow officers use force should be required to timely report the force and document the observation of such force in a supplemental report.***

***Recommendation Three: APD should train its officers that when an officer both uses and observes other officers use force, the officer should document both the application and observation of force used.***

***Recommendation Four: APD should ensure that when force is observed by civilian witnesses or witnesses from another law enforcement agency, an account of those observations is obtained as part of the force investigation.***

**APD reports fail to fully document extenuating circumstances that prevented supervisors from responding to the scene to coordinate the force investigation.** APD expects its supervisors, when practicable, to respond to the scene to coordinate the force investigation. In some cases in which force was used, the reports indicated that the supervisors responded to the location to coordinate the force investigation, while in other cases there was no indication that a field supervisor responded to the scene. In those cases, the supervisor responded to the hospital or jail to interview the person upon whom force was used. In cases in which supervisors were not able to timely respond to the field to coordinate the force investigation, it would be helpful for supervisors to document the circumstances that prevented them from doing so.

***Recommendation Five: APD should develop force investigation protocols that instruct field supervisors to document the circumstances that prevented them from being able to respond to the scene to coordinate the force investigation.***

**Officers Who Use Force Interview Individuals Upon Whom Force Was Used.** In several incidents reviewed, officers who used force were involved in interviewing those individuals about the incident, including the use of force. Best investigative practices highly recommend that the person upon whom force was used should not be interviewed by the officer who used force but by an uninvolved supervisor. For the officer who used force to be tasked with collecting the version of the event from the suspect that he or she used force upon provides a basis for challenge regarding whether the Department has undertaken a dispassionate or objective investigation of the facts surrounding the force event.

***Recommendation Six: APD should modify its force investigation protocols to require a supervisor who was not involved in the force incident to interview the person upon whom force was used.***

**Officers Who Use Force on Arrestee Provide Transport to Hospital and/or Police Station.** In several of the force incidents reviewed, the officer who used force on the arrestee transported the arrestee to the hospital. In our experience with other agencies, officers who use force and then end up transporting the arrestee away from the location have been accused of retaliation, further force, or harassment during the transport process. In a prophylactic move to avoid such accusations, some police departments have devised protocols that instruct supervisors to assign non-involved officers to transport the arrestee away from the scene if such personnel are available. Such policies necessarily reduce the likelihood of the officer who used force from receiving such a retaliation complaint from the arrestee.

***Recommendation Seven: APD should devise protocols that would instruct supervisors to have non-involved personnel transport the arrestee upon force is used away from the scene when such personnel are available.***

**Information Is Missing from Force Investigations.** In one case, there was information in the police report indicating that the arrestee was interviewed by an APD sergeant at the hospital regarding force used upon him. In fact, OIR Group did eventually review the tape recorded interview referenced in the police report. However, the documents contain no summary of the interview of the arrestee's statement. As a result, the force review package did not include written documentation of the arrestee's version of events.

In order to ensure a complete force investigation package, some police agencies have developed checklists of the minimal investigative tasks and documentation needed. Such a checklist could help ensure that APD's force investigations contained the materials necessary for the decision maker to make an informed decision about the appropriateness of the force.

APD is currently working to implement a new database in the near future that could well eliminate the problem of missing information. As part of our monitoring responsibilities, we will review the new database to ensure that the necessary information is captured within the new database once it becomes operable.

***Recommendation Eight: Once it becomes operable, APD should monitor its new force database to ensure that the information necessary for a complete force review is captured.***

**Involved Officers Not Identified in Force Review Document.** While summary information about each officer is included in APD's force review document, the identity of each officer is not included. As a result, the reviewer must reference the police reports to determine which officer used force. The lack of identification was apparently an accession to the Police Association's concerns that containing such identity might transform the force review documents into an employee performance tracking system.

Several law enforcement agencies have developed and many more are considering development of an early identification system to track officer performance, including use of force. While APD developed a force review system that had the capacity to track officer performance, at least as to uses of force, it determined not to take advantage of the system by determining not to identify the involved officers.

***Recommendation Nine: APD should revisit the decision not to identify officers who use force in its internal tracking and force review data base.<sup>1</sup>***

**Audio Recordings and Body Worn Cameras Have Frequently Not Captured Force Events.** In most of the force events reviewed, officers' audio or video recorders did not capture the force

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<sup>1</sup> As noted above, the new database to be adopted by APD may address this recommendation.

events.<sup>2</sup> This phenomenon was sometimes explained by officers who indicated that they either thought they had activated their recorder but in fact had not or that they did not feel there was enough time to activate their recorders.

While there may be times when an officer comes upon an event in progress where there is insufficient time to activate the audio or video recorder, APD could increase the likelihood of capturing the force event by slightly modifying its current policy. Such a modification would instruct officers to activate the audio or video recorder when officers are being dispatched to a call or when they determine to activate emergency equipment. Under such a policy, officers would already have activated the body worn cameras prior to coming up on the scene when there may be a need to immediately prioritize tactical and other concerns.

The OIR Group review also found that officers would reference in their reports that the body worn camera or audio recorder was activated and recorded the incident when in fact the camera was only activated after the force event had transpired and the arrestee was in custody. APD should instruct its officers to be more precise in their reports about when the body worn cameras were activated.

***Recommendation Ten: APD should modify its audio and body worn camera policies to instruct officers to activate the recording devices when being dispatched to a call for service or officer assistance or when activating emergency equipment.***

***Recommendation Eleven: APD should train its officers to include in their reports when in the sequence of events the body worn camera was activated.***

**APD's Force Review Analysis Does Not Reference Video Capture of Force Incident.** While, as noted above, the majority of force incidents were not captured by video or audio recorders, in two reviewed cases, the force used by the officers was captured by body worn cameras. However, during the review analysis process, the supervisors neither referenced nor described what was depicted on the videos. In fact, there is no documentation that the force reviewers even viewed the body worn camera evidence in assessing the propriety of the force. Key investigative materials such as body worn camera video that captures the force event must be reviewed, referenced and summarized by the reviewer, and considered in determining whether the force used met Departmental expectations.

***Recommendation Twelve: APD should modify its force investigative policies to require that reviewers of force review any body worn camera footage of the force incident, summarize***

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<sup>2</sup> The audit period captured a transition period in which most APD officers were each provided body worn cameras to deploy while in the field. Prior to that time, APD officers were provided audio recorders.

*what is depicted on the footage, and use the footage in order to opine about whether the force is within policy.*<sup>3</sup>

**Use of the Taser: Available Data Not Preserved.** In a number of the incidents reviewed, a Taser was deployed in an effort to assist bringing persons into custody. When a Taser is deployed, data can be downloaded from the device that provides information about the deployment. Most importantly, the download provides the number of times and the duration of deployment for each use. Such information can be used to verify whether the deployment was consistent with the reports prepared by the officer and the Department's Taser use policy and training. In the Taser deployments that were reviewed, the download information was not provided to OIR Group for review. As a result of this audit and resulting discussions with APD, the Department has agreed to provide such information on a forward going basis.

**Force Review Should Review and Assess Events Leading Up to the Force Incident and Include Related Review Documents.** In several of the force incidents reviewed, there was concerted police activity prior to the force such as a vehicle pursuit, a traffic collision, or the use of a police dog to assist in the apprehension. In force incidents in which there is related police activity such as vehicle pursuits, traffic collisions, or other documents prepared analyzing the incident, such materials should be included with the force review materials and considered when assessing the force incident. The force review should ensure a broader focus so that police activity preceding the force incident is similarly assessed and evaluated.

***Recommendation Thirteen: APD should ensure that its force review package contains reports related to the incident in which force was used such as vehicle pursuit reports, traffic collision reports, and canine assessment reports.***

**APD Force Reports Generally Well Document Existence of Injuries and Apparent Lack of Injuries.** In investigating the force incidents, APD regularly timely photographs any injuries sustained by arrestees as well as any areas of the body where the arrestee complains of pain but there is no evidence of injury. APD also routinely photographs any injuries sustained by its officers. The timely documentation of any injuries or lack of injuries through photographs of the force incidents is consistent with best investigative practices.

**Most APD Police Reports Evidence Thorough Articulation of the Observed Threat or Resistance But a Minority of Others Rely on Unhelpful Terms.** In order for the reasonableness of force to be assessed, it is incumbent upon the officer to document his or her observations of the behavior exhibited by the individual that required the deployment of force. Instead of relying on non-specific and general terms, it is important to specify precisely what the

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<sup>3</sup> The new database to be adopted by APD in the near future may address this recommendation.

individual was observed doing prior to the force being deployed. Our review of these force incidents found that officers regularly articulated and documented such observations in their police reports. For example, while in one report the officer wrote that the individual displayed “pre-assaultive” behavior, a not particularly helpful description, his narrative continued to relay that he saw the individual rock back and forth, clench his fist, and stand up. This precision and detail about the officer’s observations provide important information to the reviewer in determining whether there was an objective basis for the officer to use force.

This report writing can be contrasted to another force report where the officer indicated that the suspect began making “furtive” movements without further explanation of what actions were observed. Such terms do not help the reviewer determine the specific actions that formed the basis for the officers’ decisions and should be supplemented with precise descriptions of what the officers observed. It is incumbent upon the supervisor who reviews and approves the report to examine whether the officer has sufficiently articulated the observations that became the basis for using force.

***Recommendation Fourteen: APD should continue to remind its officers of the need to document with precision the individual’s actions that formed the basis for the officer’s suspicion or action.***

***Recommendation Fifteen: APD should ensure that its supervisors review police reports to ensure that the officer sufficiently articulates the basis for using force in the report and return reports that provide insufficient articulation.***

**Sound Tactical Decisions Reflected in Review of Force Incidents.** In one incident, the sergeant who was first on scene and observed an intoxicated man in a car, rather than immediately initiate contact, appropriately waited for back up. As a result, when the man proved uncooperative, the sergeant had two additional officers on-scene to assist in bringing the person into custody.

In another incident, the officers responded to a call for service and were approached by the subject who had been harassing the victim and then observed the subject run away. The officers appropriately noted that they did not pursue the subject because they had an insufficient legal basis for doing so.

**Concerning Tactical Decisions: Insufficient Scrutiny by the Force Review Process.** In one force incident, the officer attempted to use a Taser on a moving bicyclist. While the Taser was not effective, the consequence of using the Taser to incapacitate a traveling bicyclist could have been dire had the deployment been successful. In this same force incident, the officer later reported that he believed the bicyclist may have been armed, yet tried to physically block his path. In the force review documents, there is no discussion of the potential consequences of

using a Taser on a moving bicyclist or the officer safety issues of intercepting a believed to be armed suspect by blocking his path. In not doing so, APD lost an opportunity for further learning and discussion with regard to the officer's tactics and potential learning to other APD members.

***Recommendation Sixteen: APD's force review process should require the reviewer to determine whether there are any potential systemic issues emanating from the force event worthy of policy and/or training review.***

***Recommendation Seventeen: APD should consider whether it should provide training or revise policy to alert officers to the potential repercussions of using a Taser on a moving bicyclist.***

**APD's Force Review Analysis Is Terse and Often Does Not Even Document the Determination as to Whether the Force Was Within Policy.** The force review documents contain a summary of the incident but little analysis of whether and why the force was deemed to be in policy. In fact, many of the force review sheets do not even opine or document whether the force was consistent with the Department's use of force policy.

***Recommendation Eighteen: APD's Force Review Memorandum should set out clearly the reviewer's analysis regarding whether the force was in or not within policy in every force incident.***

**APD's Force Review Does Not Identify its Author.** The summary and sometimes conclusion that the force was in policy is contained in an unsigned unattributed document. While presumably prepared by a supervisor, without attribution it makes it difficult for a reviewer to determine who made the determination and it results in less ownership of the force review. As a result of discussions with APD, it is expected that the way in which this information is delivered will rectify this issue.

**APD's Force Review Contains Insufficient Attention/Analysis to Force Options Deployed by Officers or Recommendations for Briefing or Training.** As noted above, the vast majority of police/civilian encounters in Anaheim do not result in any use of force by officers. For that reason, in the rare occasions in which force is used, it is incumbent upon APD leadership to ensure that each incident be closely reviewed. It is critical that each force incident be reviewed to determine whether the evidence established sufficient justification for the officer to use force consistent with Department policy.

As importantly, however, is for the Department to conduct a close review of the incident to determine whether the force deployed was consistent with training and whether any of the lead-up tactical decision-making, choice of force option, or deployment of the force is worthy of discussion with the involved officer. This analysis is not for purposes of disciplining the officer

since the question is not whether the force was within policy but whether other strategies or force options were preferable that would have reduced the likelihood to use force or reduce the likelihood of injuries emanating from the force. Such careful scrutiny allows the Department to take full advantage of each use of force as a learning experience and teaching moment so that its members will be better prepared to handle future similar circumstances more proficiently. The following illustrations taken from the force incidents indicate that APD could make better use of these incidents as learning domains:

In one force incident, the officer reported that he was in foot pursuit of an individual when he “trapped” the subject’s arms to his side and tackled him, causing the subject to land face first. Not surprisingly, since he was unable to use his arms to break his fall, the subject suffered facial injuries as a result of this take down. Not discussed during APD’s analysis is whether this tactic is a trained technique or whether an alternative method of takedown should be deployed which would reduce the likelihood of a facial or head injury to the subject. If such an analysis had been undertaken, APD could have had a training discussion with the officer about various options of control and apprehension.

In another force incident, an officer reported that because a subject was on the ground and not complying with other officers’ orders to provide his arms so that he could be handcuffed, this officer placed his knee on the subject’s head and placed pressure causing the head to be up against the ground. Again, there is no discussion or analysis during APD’s review about whether this technique is taught, the potential for injury, and the efficacy of the force option considering the potential risk of injury to the suspect.

In another force incident, two officers reported punching a resistive subject repeatedly in the head in order to effectuate compliance. While punches to the head are authorized by APD force policy in confronting an assaultive subject, that force option has considerable risk of injury to both the subject and the officers. As a result, a number of progressive police agencies train their officers to avoid deploying head strikes in favor of force options that are arguably more effective and less likely to result in injury to subjects and officers alike. However, in APD’s force analysis of this incident, there is no discussion of this issue or a recommendation to have a discussion with the involved officers about the force option they deployed.

One force incident involved deployment of a police K-9. However, when the dog was deployed, the suspect began hitting the dog so the officer handler moved to pull the suspect to the ground and the dog ended up biting the handler in the leg. Later in the incident, an officer reported using multiple knee strikes to the rib area of the suspect but that the force had no apparent effect. In this case, two force options proved less than ideal, yet there was no apparent analysis or discussion about whether another force option rather than knee strikes would have been optimal. Per protocol, APD has a separate canine use review analysis

whenever a police dog is deployed. A review of that documentation indicated that the incident was discussed with the canine master trainer and debriefed with all handlers. The review further indicated that the officer's actions were appropriate when he saw the canine getting assaulted. However, there is no written analysis regarding the issue of whether alternative means could have been deployed by the officer so that the canine remained safe and the officer would not end up being bitten by his own dog

Another force incident involved a foot pursuit in which three officers ended up chasing four individuals and only one was apprehended. Yet there was no assessment or analysis with regard to the tactics of the foot pursuit and whether the pursuit was undertaken consistent with APD training expectations. In addition, there was no analysis regarding the basis for the chase and whether it met Constitutional requirements.

In another incident, officers attempted to force open a door in response to exigent circumstances but were not successful in doing so. Additional discussion with the involved officers could have resulted in further education or training on how to breach a door should the officers be faced with a future similar situation in the future. However, there was no evidence that the Department took advantage of this potential learning opportunity for the Department or its officers with regard to this tactical challenge.

Other than perhaps being indirectly informed that the use of force was found to be within policy, Anaheim police officers do not apparently regularly receive detailed feedback about incidents in which they use force. As a result, APD forfeits the opportunity to have a sustained discussion with the involved officers about the event, including issues of communication, tactics, the efficacy of the force option used, and other issues surrounding the incident. APD should consider the potential advantage to the officers and the Department of an alternative paradigm where every force incident results in a feedback loop and discussion with the involved officers and supervisors.

***Recommendation Nineteen: APD should consider developing a protocol whereby in every use of force incident there is a feedback loop including discussion and briefing of the incident with each involved officer and supervisors.***

## **II. Internal Affairs Investigations**

Internal Affairs investigations are one of the most important investigations that a police department can conduct. Such investigations must be thorough and fair so that the Departmental decision maker is armed with an objective set of facts upon which to make a decision. The decision maker must consider any potential violations of policy and determine discipline that appropriately addresses and is tailored toward remediating the conduct. Progressive police departments also use the internal investigations to provide feedback on

performance issues back to the involved officer as learning opportunities, to identify collateral issues and address them, and consider potential systemic issues worthy of remediation.

Our review of APD internal affairs investigations found them to be generally robust and thorough. In addition, we found the following exemplary aspects of APD's internal affairs function.

**APD has an excellent complaint form.** In some police complaint forms, there contain advisories that inform the complainant that if they make false statements they can be prosecuted for doing so, even though courts have indicated that such a prosecution would be unconstitutional. Other departments have advisories informing the complainant that they could be sued by officers for defamation if they make false complaints. As California courts have indicated, the upshot of these advisories is to potentially "chill" persons from making complaints against police officers. To APD's credit, there are no such advisories in its complaint form. The form is clear and straightforward and the Department also has a Spanish-language complaint form available.

**Anaheim Anytime Web-site Provides Additional Mechanism to Lodge Complaints.** We reviewed an investigation that was initiated as a result of APD receiving a complaint through the Anaheim Anytime Web-site. The City and APD should be commended for developing a web-based mechanism that provides community members an alternative way to lodge complaints against officers.

**Internal Investigators show significant patience and perseverance with complainants.** Our review of the internal investigations show that internal affairs investigators are professional and courteous with complainants and show tremendous patience in attempting to place potential complainants at ease. In one case, an investigator went to extraordinary measures in an attempt to interview the complainant so that a more robust investigation of the allegation could be conducted. In another case, an investigator tried to contact the complainant eight times in order to gain his cooperation for an interview.

**Witness and subject statements transcribed.** Consistent with best investigative practices, to assist the decision-makers, witness and subject statements are often transcribed.

**Letter to complainants are detailed and specific to the allegations and findings.** State law requires that all law enforcement agencies inform complainants of the results of the internal investigation. Some agencies satisfy this requirement by sending form letters to the complainant providing virtually no information except that the allegation was not proven. However, Anaheim generally provides a detailed response to complainants that advise them of the allegations investigated, the evidence reviewed, and the investigative outcome that is fact specific and tailored to the case. Anaheim is so vigilant in this regard that the Deputy Chief of

the Department personally ensures that the closing letter provides sufficient feedback to the complainant. While such a closing letter takes more time and consideration to prepare, it is time well spent to provide such information to the complainant, helps demonstrate that significant work was done in order to fully investigate the complaint, and is testament to the Department recognizing that the complainant is due the consideration of a tailored accounting of APD's work.

**Police/Citizen Encounter that Was the Subject of the Investigation Not Recorded.** Of significant importance to the investigator and decision-maker is the ability to review any recording of the incident. In fact, in one case when a complainant was interviewed by an investigator about her encounter with a police officer, the investigator assured her that one of the "great" things about the Department was that the officers record contacts and thus there would be a record for the investigator to review. Unfortunately, in this case, the critical parts of the event were not captured by the officer's recorder and, as a result, APD was unable to determine whether the actions complained of actually occurred.

**Not All Potential Policy Violations or Performance Issues Considered.** In one incident, an arrestee complained that he was subjected to excessive force. The police report indicated that the arrestee was charged with resisting arrest and force was used to effectuate the arrest. However, when a city attorney reviewed the police reports, it was apparently learned that an officer had participated in the arrest and used force by pulling on the individual. According to the officer, he was instructed by the city attorney to write a report documenting the force that he used. Eventually, the city attorney dismissed the resisting arrest charge against the complainant.

While the evidence from this investigation revealed that the officer had failed to document his use of force in apparent violation of APD policy, this fact was not considered or addressed by the decision-maker in the investigation. It is incumbent upon APD to ensure that any and all potential violations are addressed by the internal investigation, not just what is identified or raised by the complainant.

In another incident reviewed, the complaint involved an allegation that several hundred dollars was missing from the arrestee's wallet. While an audio recording between the officer and his partner indicated that money was discovered during the arrest, no wallet or money was booked by the arresting officer and the impound sheet was not fully completed. While the officer admitted to making an administrative error in keeping the arrestee's property safe, the officer was found not to have violated policy with regard to safeguarding property. However, even if APD determined that it could not be shown that the officer did not properly safeguard property

in this case<sup>4</sup>, the officer's performance in documenting evidence and property located during the arrest was admittedly subpar. Yet there is no documentation that the officer's performance was addressed through counseling, discipline or any other kind of remedial action.

***Recommendation Twenty: APD should communicate with its decision makers about the need to not limit their decisions to the policy violations complained of but should ensure that there is accountability with regard to any potential violations of policy.***

**Feedback to Officers Regarding Issues Identified in the Investigation Not Provided.** In one allegation, the complainant alleged that APD officers had lied with regard to their testimony against him at a preliminary hearing. To the investigator's credit, a transcript of the preliminary hearing was obtained and the review of the transcript apparently dispelled many of the allegations.<sup>5</sup> However, as the investigator acknowledged, there was a discrepancy between the police report prepared by one of the officers and his preliminary testimony that became the subject for cross examination and impeachment. While discrepancies do not necessarily or even usually mean that the officer is lying, whenever a discrepancy is identified, it can be used as a teaching moment in how important it is to prepare for testimony and to carefully review police reports before taking the stand. There is no evidence that APD used this investigation as an opportunity to relay that teaching moment to the involved officer.

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<sup>4</sup> In this case, it is unclear why APD came to the conclusion that the officer did not violate Department policy in ensuring the arrestee's property was secured, particularly since the officer admitted to subpar performance. Moreover, as indicated in the investigation, the audio recording between the arresting officer and his partner referenced a comment by the partner about money, presumably in the arrestee's possession at the time of the arrest. The officers were not able to satisfactorily explain that comment and why no money ended up showing up in the property paperwork submitted with the arrest.

<sup>5</sup> There was another issue that arose during OIR Group's review process. The preliminary hearing transcript provided to us was not complete and did not contain the passage specifically referred to by the APD investigator. When we requested the complete transcript we were informed that the Department's file did not contain the complete transcript but that the incomplete transcript contained sufficient information to address the Department's inquiry into the allegations. This statement cannot be correct because the page number of the transcript specifically referred to by the investigator was not contained in the materials initially provided to OIR Group. Most likely, the investigator was able to initially review the pages referenced in the inquiry report but they were inadvertently not copied and retained in the APD file and thus not available to us. It is important that relevant attachments referred to by investigators be included in the permanent file and that investigators and reviewers carefully check to ensure that such is done.

***Recommendation Twenty-One: When the investigation reveals no policy violations but does reveal less than optimal conduct, APD should relay that finding informally back to the impacted officer as part of its strive for continuing education and training.***

### **III. Officer-Involved Shooting (Non-Hit)**

During the relevant review period, one officer-involved shooting was closed out administratively. Unlike current protocols, the tactical review occurred significantly after the incident and did not have the intensity of review current protocols demand. However, we were invited to participate in the review that did occur and found the discussion thoughtful and rigorous. As a result of that review, one of the officers that used deadly force was eventually found to be out of policy and appropriate administrative action was taken.

Prior to that aspect of the incident, another officer left cover and approached the armed suspect who was seated in a vehicle and fired three rounds from his rifle at the driver's side front tire, intending to disable the vehicle, missing with all three rounds. As the truck began to move away, the officer transitioned to his firearm and fired three more rounds striking the tire. One of the officer's bullets fragmented, striking the leg of a fellow officer. The suspect accelerated and left the area.

The Department found that this officer's use of deadly force and decision to shoot at the moving vehicle was reasonable and within policy. APD policy only permits officers to shoot at moving vehicles or its occupants when an officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle or if deadly force other than the vehicle is directed at the officer or others. Clearly, the second condition of the policy was not met in this incident. With regard to the first condition, APD concluded that because the person in the truck was a major threat, the decision to try to shoot out the tires was within policy.

OIR believes that the rationale used by APD to excuse the use of deadly force by this officer could be similarly used in virtually any case in which an officer tries to shoot out tires, rendering the policy meaningless. Experience has taught, that unlike the movies, shooting at tires almost never immediately disables the vehicle and there are potential tragic unintended consequences to the technique, such as an uninvolved civilian or fellow officer being subjected to being hit with a bullet fragment, ricochet, or skip round, as actually happened in this case. OIR believes that the Department's shooting at moving vehicles should be rigorously applied and that APD should consider adopting a policy that would disallow patrol officers from shooting at vehicle tires.

***Recommendation Twenty-Two: APD should consider devising policy that would instruct its patrol officers not to shoot at vehicle tires in an attempt to disable a vehicle.***

#### IV. Cumulative Data

	2015 Jan-August	2014	2013	2012
Number of Officer Involved Shootings	3	3	1	9
Number of in-custody deaths	0	1	1	1
Number of administrative investigations in which the subject employee holds the rank of sergeant or higher *	1	7	7	14
Number of administrative investigations *	79	126	100	124
Number of citizen complaints #	29	55	58	46
Number of use of force (all force)	74	131	138	146

\*includes accident investigations, internally generated investigations, and externally generated investigations

#includes internally generated complaints, and externally generated complaints

Again, in another significant milestone toward increased transparency, APD provided OIR Group the above cumulative data; information that is not generally published by police agencies or readily obtainable upon request. The data is important because it allows the Anaheim community to learn how many times the police department uses force or receives complaints about the performance of its officers. Because the information has been provided over a span of years, interested persons can determine whether there have been any trends with regard to the data. For example, a review of annual comparisons shows a downward trend in APD's use of force and that the post-2012 years have not come close to reaching the nine shootings that occurred in that year, important facts for Anaheim residents to know. APD is to be commended for its willingness to provide this information to its residents.

