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Executive Summary

I. Introduction

The audit project that ends with the issuance of this Report is one that began in July of 2006. Our goal in the intervening months has been to provide the San Diego County Sheriff's Department with an independent assessment of how the Department uses and reviews force, with a special emphasis on shooting cases and other "critical incidents." In turn, that assessment was intended to place the Department's current practices into a larger context, to inform a judgment about the Department's relative strengths and weaknesses, and to provide the basis for reform recommendations that, in our view, should be considered.

The primary subject matter of our audit was actual incidents that occurred between January 1, 2003 and December 31, 2005. We reviewed the investigation files from all 25 deputy-involved shootings that took place in those three years. We also looked at official reports describing over 500 other force incidents from that period, covering a wide range of techniques, circumstances, and consequences.

As invaluable as those materials were in providing us with direct evidence of deputy activity on patrol and in the jails, the actual cases were a means to an end. The County did not seek, and we did not attempt to provide, our specific conclusions about the legal, administrative, or tactical legitimacy of any particular incident that we reviewed. We have not made, and do not imply, any judgments relating to individual officer accountability. Instead, we looked back in order to have a foundation from which to help the Department look ahead

Our Report has three major components, all of which are intertwined throughout the various sections. One is the description of what we learned, one is our analysis of that material, and the last is the numerous recommendations in response to those first two elements.

II. Deputy-Involved Shootings

A. Overview of Findings

The initial focus of our efforts was on deputy-involved shootings that occurred within the audit period. The 25 shootings that occurred in those three years included the three shootings in the Vista patrol area that took place within five days, and prompted the concerns and additional scrutiny that were part of the impetus for this project. By reviewing the investigation files and related materials from all 25 cases, we developed a detailed grasp of these incidents in relation to a few different key concepts.

In terms of its deadly-force policy, the Department adheres to the legal standard and compares closely to other jurisdictions. It requires the officer who uses deadly force against a suspect to have a reasonable belief that such force is needed to stop an imminent threat of death or bodily injury to himself or others. We also looked at the Department's policies with regard to "fleeing felons" and "shooting at vehicles," and we offer recommendations intended to clarify and define the Department's sound philosophy regarding both of these issues.

During the audit period of 2003 through 2005, 25 "hit" shootings involving the Department's officers occurred according to the Department's records. The Department's statistics in terms of number of shooting incidents are below the average of most other major law enforcement jurisdictions in Southern California.

All of the cases we reviewed were investigated and presented to the District Attorney's Office, and in all 25 instances, the D.A. determined that the use of deadly force was legally justified.

B. Homicide Investigation Protocols

Our cumulative impression of the Homicide "books" that we reviewed for the cases in the audit period was that they were professional, well-organized, thorough, and in some respects exemplary. However, we identified several practices, procedures, or potential issues that the Department, and Homicide Bureau officials in particular, may wish to revise or at least reexamine.

To cite one major example, we noticed several cases in which deputy *witnesses* to shooting incidents were not formally interviewed as part of the investigation. We saw other instances in which language barriers impeded the Department's ability to obtain statements from civilian witnesses, at the expense of completeness in the evidence-gathering process. We also saw situations in which respect for the rights of witnesses and uninvolved residents were not sufficiently considered during the investigative process.

Others of our suggestions relate to procedural adjustments that are intended to promote greater efficiency, or to enhance the completeness of the files (such as by adding information, where relevant, about related criminal charges against the suspects and/or transcriptions of radio traffic connected to the incident).

C. Holistic Review of Shooting Incidents

Though the Homicide Bureau investigations are creditable in many respects, they are consciously limited in their scope. The goal is to collect facts and evidence necessary for the District Attorney to determine whether each deputy's use of deadly force was legally justified. As important as that question is, it represents only one dimension of the Department's proper interest in each shooting incident.

We believe strongly that officer-involved shootings merit one of the highest and

most comprehensive levels of self-scrutiny that a law enforcement agency has to offer. These critical incidents all raise internal issues of tactics, training, supervision, risk management, equipment, and policy that the Department should seize as opportunities for self-examination and, where indicated, reform.

Certainly, such issues emerged to at least some extent in each of the 25 shooting cases we reviewed. This reality, by itself, was neither surprising nor troubling – by their very nature, these critical incidents put tremendous demands on the involved officers and test the Department’s procedures and training in ways that routine events simply do not. We did come to believe, however, that many of the issues we identified seemed to warrant more rigorous attention from the Department than what they received.

During the audit period, the Department did have a protocol for the administrative consideration of shootings, in-custody deaths, and other significant events. It involved an entity called the Critical Incident Review Board (“CIRB”). CIRB was comprised of Department executives of different ranks who gathered at Sheriff’s Headquarters to hear a presentation about the incident, identify issues, and discuss potential approaches to remediation.

We did find examples of useful initiatives arising from the CIRB meetings, such as training bulletins and “tactical tips” that offered reminders and shared lessons from the incidents. Nonetheless, the CIRB process had deficiencies as well.

In terms of *content*, the Board relied extensively on the Homicide investigations. In our view, the narrow focus of those investigations left gaps in the Department’s ability to conduct a full and comprehensive review. We noted many instances within the 25 shooting cases in which issues that should have relevant to the Board’s consideration had not been pursued during the Homicide investigation, and may not even have been identified.

Additionally, “non-hit” shootings – which are not investigated by Homicide – were not ever presented to the CIRB. This was in spite of the fact that, even though the suspect was not struck, the deputies used deadly force, and the same potential issues and opportunities for necessary and beneficial review clearly presented themselves.

In terms of its *structure*, the CIRB’s high number of attendees had its benefits, but it also tended to diffuse responsibility to the point where loose consensus seemed to take the place of concrete decision-making. Board members rarely saw the Homicide file or had the chance to develop a thorough familiarity with the cases ahead of time, thus contributing to the inconsistency in addressing all potentially relevant issues.

We also found that CIRB’s *outcomes* did not fully exploit the potential of the process as a review mechanism. In our view, the CIRB process should force Department supervisors to make decisions about deputy performance and to address issues of accountability, policy, supervision, equipment, and training through a concrete action

plan.

With these factors in mind, one of our central recommendations is a major revamping of the Critical Incident Review Board.

We urge the creation of a separate team of investigators outside of Homicide Bureau to roll to the scene of officer-involved shootings – including both hit and non-hit incidents – and take responsibility for a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.

We recommend appointing a small panel of Commanders to review the investigative reports, hear a presentation by the administrative shooting review investigators, and make decisions on each case, as advised by legal counsel, Training, and the unit commander of the station of origin for the incident.

We advocate a heightened willingness to promote officer safety and sound policing practice by holding deputies accountable when policy violations or performance issues influence shooting incidents.

Finally, we recommend that the Department expand the jurisdiction of the Critical Incident Review Board to address a range of other matters that warrant this heightened level of scrutiny. These include deaths incident to arrest by Department deputies, non-hit shootings, a selection of serious force incidents, and bites by the Department's K-9 unit.

III. Other Uses of Force

A. Overview and Reporting Procedures

The Department's Training Division impressed us in several ways as we assessed the range of other force options in use by the deputies. We had great regard for the professionalism, thoughtfulness and thoroughness of the instructors and Training supervisors whom we met. Moreover, the actual programs offered to the recruits and the deputies as continuing professional development reflected those qualities, and reflected an admirable commitment by the Department to preparing its people as effectively as possible.

In our review of hundreds of arrest and incident reports, we noted that the deputies' uses of force were well-documented and appeared to be reasonable in the overwhelming majority of cases. We did, however, develop some concerns about the *process* by which force is reported and reviewed. Those concerns stemmed from limitations in the Department's protocols, and its failure to assess individual incidents in a systemic way – not from shortcomings on the part of deputies in terms of meeting their obligations.

Because the force reporting is currently subsumed in the overall arrest report,

rather than treated as a separate focus of inquiry and documentation, we believe the Department's gathering and assessment of useful information is inevitably weakened. The question is one of focus – for example, we noted cases in which civilian witnesses to force were not interviewed regarding their observations, even though they did offer statements relating to the criminal activity that prompted the arrest. At other points, we saw gaps in documentation of injuries, and places where potentially useful suspect statements acknowledging culpability were noted but not taped or otherwise confirmed.

Because of this lack of a separate process, cases also are not reviewed for policy and training and performance issues that force incidents can often create. For this and other reasons, we advocate the creation of a new protocol involving separate “force packages” for incidents that rise above a certain level of significance, and for all cases in which the suspect is injured or complains of injury. This new approach would involve an active role for supervisors in gathering information, and would provide a formalized means of ensuring the holistic review of each case. In addition, we offer other observations and recommendations designed to enhance the fact-gathering and documentation in force cases.

B. Other Force Issues

We encountered several other potential issues in our review of cases, some related to specific types of force taught to the deputies and deployed in the field or in the jails. For example, the Report assesses the Department's K-9 program, which makes ambitious, varied, and often effective use of more than thirty police service dogs. Though we recognize the potential value of the dogs as an aid to law enforcement and a boon to officer safety, we are also aware of the inherent risks involved in their use. A rigorous commitment to training is essential for the continued success of a large program like the Department's. We developed concerns as to whether the current structure of the unit and the distribution of the dogs throughout the county put excessive strain on the ability to meet those training demands. Accordingly, we make recommendations as to attainable ways the Department can potentially alleviate those dynamics.

The Report also discusses three particular force options – the sap, nunchakus, and the carotid restraint – that in our view pose special challenges in terms of training and safe use. Though our review of cases and our discussions with Training personnel persuaded us of their potential effectiveness, we continue to have reservations that we discuss and address through recommendations.

The Department's responsibility for the thousands of inmates in the county jail system has numerous distinct implications regarding force, its documentation, and its internal review. The Report includes our general impressions about force training and reporting in the jails, many of which are quite favorable. We also offer several specific ideas for tightening existing procedure for documentation and for enhancing the review of certain large scale incidents, such as inmate riots.

IV. Additional Systemic Issues

In the course of our review, we took an interest in several topics that related to our audit of force and shootings, but also had wider applicability to the Department. One example of this is the Department’s ongoing efforts to implement a computer-driven “Early Intervention System.” Collecting information about deputy activity and behavior in a central repository and updating it continuously on a flexible and accessible database has proven utility at many law enforcement agencies. We enthusiastically endorse the Department’s efforts in this direction. We also encourage them to prioritize the implementation – and creative, comprehensive use – of the system they have long been designing.

Our review of force incidents resulting in Internal Affairs Bureau investigations for deputy misconduct gave us a valuable insight into the Department’s disciplinary system. We were impressed by several cases in which serious allegations against deputies were proven, with significant consequences. Though the underlying behavior is far from ideal, the Department’s commitment to addressing the problems reflected well on it. Even more impressive were the numerous instances in which deputies either acknowledged their own wrongdoing or belied popular beliefs about the “code of silence” by testifying truthfully about the actions of their peers.

At the same time, we noted a slight inconsistency in the discipline that the Department meted out in the founded cases. The Department does not have a set of formal guidelines or “matrix” for determining the appropriate “sentence” in a given case. The Department has refrained from creating such an instrument, preferring instead the flexibility of tailoring appropriate outcomes to the circumstances of each investigation. While we understand this rationale, we nonetheless urge the Department to consider the benefits of a matrix and reconsider its approach.

We also found that, while the Department’s Manual calls for a rigorous “Risk Management Unit” to “enhance professionalism, prevent/reduce liability costs, and increase operational efficiency by identifying, assessing, and controlling high level exposures to risk,” the actual practices fell well short of the ambitious and detailed vision that the Manual sets forth. This gap did not necessarily reflect a large substantive shortcoming. We found that certain worthwhile Risk Management activities did occur at times within the audit period; moreover, the laborious structures and protocols the Manual set forth were not all, in our view, equally worthwhile. Still, the relevant parts of the Manual speak to a significant and admirable commitment to Risk Management that the Department should be sure to honor.

V. Conclusion

From the beginning of our interactions with the Department in July of 2006, we have been struck by the patience, cooperation, and receptivity that we encountered at every point. We appreciate the treatment we received on its own considerable merits. However, we also hope that it is part of larger dynamic in which the Department seeks to improve upon a long and proud tradition.

A greater commitment to community outreach has been evident in recent months, with the new “Sheriff’s Advisory Committee” in the Vista patrol area as one significant example. We hope it will continue. We strongly believe in the benefits of increased communication between law enforcement and the public it serves – a dynamic that benefits both sides.

The Department’s release of this Report to the public will ideally contribute to that process. It should, at the very least, enhance people’s understanding of how the Department works. This, by itself, is no guarantee of enhanced appreciation, but an increase in knowledge will add to the potential value of criticisms by ensuring that they are informed ones.

We found much to praise in the Department, and much reason to believe that its members have the will to grapple productively with the recommendations we offer. We look forward to seeing what the coming months will bring in that regard.

**Use of Force Audit of the
San Diego County Sheriff’s Department
by OIR Group:
Audit Recommendations**

Recommendation
Number

Recommendation Text

1. **We recommend, with regard to the Department’s use of deadly force policy involving fleeing felons, that it reconcile potentially inconsistent language in the Policy and Procedures sections of the Manual in order to provide clarity to its deputies, and, in doing so, adopt the more restrictive calculus set out in the Procedures section.**

2. **We recommend that the Department revise its “shooting at vehicles” policy to provide more guidance to deputies regarding the decision to shoot. We further recommend that the Department revise the policy to address related tactical decisions – such as the advisability and effectiveness of moving into the real or potential path of a moving vehicle.**

3. **We recommend that the Department create a foot pursuit policy that states that deputies will be expected to:**
 - ✓ **broadcast the pursuit and their position as soon as possible**
 - ✓ **reassess the pursuit if the suspect enters a structure**
 - ✓ **desist pursuing if the deputy loses sight of the suspect**
 - ✓ **not split from their partners**

- 4. We recommend that the Department adopt a standard practice of interviewing all deputy witnesses to the shooting and/or events leading up to the shooting.**
- 5. We recommend that the Department consider adopting a practice of conducting a brief “walk-through” of the scene for all investigators prior to conducting any interview of involved personnel.**
- 6. We recommend that the Department adopt a practice of documenting the comments made by the deputy shooters during the walk through. We also recommend that the Department consider adopting a practice of consistently documenting how deputies were transported and separated when performing these “walk-throughs”.**
- 7. We recommend that the Department consider ways in which the Medical Examiner can be afforded access in a more timely fashion without compromising the integrity of the scene.**
- 8. We recommend that the Department not be deterred by language-related obstacles to information gathering, and that it continue its recent emphasis on bolstering the relevant foreign-language skills of its officers.**
- 9. We recommend that the Department formalize its protocols for promoting the cooperation of witnesses and acknowledging**

their rights under the prevailing circumstances. One option is to promulgate a form and waiver system that clarifies the status of witnesses and their options about traveling to the station to be interviewed.

10. When, for instance, investigators need to enter a suspect's residence or look in a parked car for evidence, we recommend that they consider developing a protocol whereby they will obtain warrants or consent and document those efforts in the investigation file.

11. We recommend that the Department adopt a protocol to ensure that relevant information about criminal charges and prosecutorial or judicial decisions regarding persons shot by deputies be included or updated in investigation files in shooting cases.

12. We recommend that, when radio traffic has a significant bearing on the incident and how it unfolded, a transcript of that traffic be included in the investigative books.

13. We recommend that the Department explore ways to provide Risk Management personnel with a limited authority to

respond to shooting scenes and immediately provide appropriate compensation to innocent parties who have suffered damage as a result of Department actions.

14. We recommend that the Department revamp its Critical Incident Review Process in the following ways:

14 a. By assigning a separate team of investigators outside of Homicide Bureau to roll to the scene of officer-involved shootings – including both hit and non-hit incidents – and take responsibility for a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.

14 b. By changing the structure of the Critical Incident Review Board to foster clear lines of authority, focused decision-making, continuity, and follow-through. We recommend appointing a small panel of Commanders to review the investigative reports, hear a presentation by the administrative shooting review investigators, and make decisions on each case, as advised by legal counsel, Training, and the unit commander of the station of origin for the incident.

14 c. By encouraging a heightened willingness to promote officer safety and sound policing practice by holding deputies accountable when policy violations or performance issues influence shooting incidents.

14 d. By requiring timely investigations and review presentations.

15. We also recommend that the jurisdiction of the re-designed CIRB be expanded to include a protocol for the automatic review of additional categories of incident, as itemized and explained below:

- Deaths incident to arrest by Department deputies**
- Non-hit shootings**
- A selection of serious force incidents**
- Bites by the Department's K-9 Unit**

16. We recommend that a supervisor take responsibility for interviewing the suspect on tape about force in cases where injury either resulted or is complained of.

- 17. We recommend that the Department develop a separate team of investigators that can respond to a selection of critical force cases (based on extent of injury and other pre-determined standard) and assume responsibility for compiling the facts and information needed for a a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.**
- 18. We recommend that the Department create a separate “force package” protocol to document significant force in a thorough and comprehensive fashion, and an accompanying review process at the supervisory level to address attendant issues of policy, training, officer performance, and risk management.**
- 19. We recommend that the Department require per policy that deputies who witness force deployed by fellow deputies report and document those observations in a timely manner.**
- 20. We recommend that the Department encourage responding supervisors and/or handling deputies to interview civilian**

witnesses to force incidents, especially those that appear likely to engender controversy.

21. We recommend that the Department standardize and improve its attention to collecting evidence in force incidents as follows:

- by photographing suspect injuries
- by obtaining records of medical treatment of arrestee
- by documenting where applicable the suspect's refusal of medical treatment.

22. We recommend that the Department explore the restructuring of the K-9 unit. While centralization may not prove to be preferable, the Department could nonetheless take constructive lesser steps to mitigate existing weak points:

- by commitment of necessary time and resources for more meaningful regular training.
- by assigning a high-ranking supervisor to head the unit, so as to strengthen its internal workings and reduce friction with various patrol supervisors
- by better integrating the K-9's with regular patrol functions, through training bulletins, video presentations, recurrent briefings, and other relevant techniques.

23. We recommend that the Department modify its carotid restraint policy to require that suspects exhibit assaultive behavior or “aggravated active resistance or aggression” [SDSD Use of Force Options Chart] before deputies are justified in using the technique. We further recommend that the carotid restraint be viewed as an important perishable skill that merits frequent refresher training at mandatory periodic training.
24. We recommend the Training Division develop and promote a teaching scenario which guides deputies on the best range of options for dealing with unruly suspects in the back of patrol cars.
25. We recommend that the Department implement a requirement for deputies who wish to continue to carry saps and nunchakus that they receive recurrent training and remain proficient in their use. The Department should also maintain documentation of this recurrent training. If those requirements prove to be impracticable, the Department should consider eliminating saps and nunchakus as authorized force options.

- 26. We recommend a revision of the Taser policy to clarify the threshold for use as being assaultive behavior on the part of the suspect, and we encourage the Department to review and adapt its relevant Training and practices as more information about actual Taser deployment in the field becomes available.**
- 27. We recommend that significant force incidents in the jails should be handled as separate force investigations, similar to the protocols we recommend for investigating force in the patrol setting.**
- 28. We recommend that Detentions incidents involving injuries requiring hospital care, or recognizable significant failures in equipment or procedures, be subject to the Department's CIRB review process.**
- 29. We recommend that inmate assaults that are criminal in nature and result in injury should be referred to the District Attorney when sufficient evidence exists, regardless of the stated preference of a deputy victim or inmate victim.**

- 30. We recommend that the Department prioritize the design and implementation of its proposed Early Intervention System, and that it maximize that system's effectiveness by promoting its varied and widespread use among Department managers.**
- 31. We recommend that the Department explore means of regularly sharing information with the public about numbers of shooting and force incidents, types of uses of force, numbers and types of internal affairs investigations and the number of times in which investigations were sustained.**
- 32. We recommend that the Department develop a set of disciplinary guidelines that set out penalty ranges for particular policy violations and assist the decision maker in considering how aggravating and mitigating factors are to be applied. At the very least, it should articulate principles that would help promote consistency and reduce arbitrary penalties.**
- 33. We recommend that the Department reexamine its Manual in relation to Risk Management issues, and create and memorialize a feasible action plan and structure that will achieve the objectives behind the ambitious current language.**

- 34. We recommend that the Department adapt its training curriculum in dealing with the mentally ill in jail to the patrol setting and provide that training to its patrol deputies.**

- 35. We recommend that the reference in the Department's policy Manual to an advisory requiring complainants to acknowledge that it is a crime to make a false statement against peace officers be removed.**

PART I: Introduction

Over a five-day period in the summer of 2005, San Diego County Sheriff's deputies from the Vista patrol station shot and killed three suspects in three separate incidents. Like any officer-involved shooting, each individual case attracted public attention and presented issues that warranted careful review. However, it soon became apparent that the shootings had a collective impact that raised community tensions and concerns to rare levels of intensity.

Beyond the statistical anomaly of three fatal officer-involved shootings within days of each other anywhere in San Diego County, these deaths had of course occurred within the same city. Furthermore, each of the three decedents was Hispanic, and two of the three had been unarmed. (The third allegedly threatened deputies with a barbell.) Concern soon gave way to widespread controversy. And, in some circles, that controversy was fueled by outrage and hostility toward the Department and its practices.

The customary protocols for investigation of such events seemed to compound the frustration and skepticism that existed among some critics of the Department. The idea that the Department's own detectives and criminalists were controlling the shooting scenes, conducting the interviews, and presenting the evidence seemed inherently problematic to those who doubted the legitimacy of the shootings. The District Attorney's role as final arbiter of the shootings' legality also did little to calm a contingent of angry community members, especially given the close and systemic

collaboration between the D.A. and law enforcement. Finally, the thoroughness and deliberation that customarily extend the timeline in a shooting investigation clashed with people's desire to have immediate answers about these high-profile events. While the Sheriff himself endeavored to address the community's concerns over the shootings at a public forum soon after the events, his understandable inability to provide factual answers with regard to pending investigations left many attendees unsatisfied.

In the midst of the ensuing turmoil and ongoing media coverage came the calls for an independent review of the Department, and of these shooting cases in particular. This put the Department – like other police agencies in similar circumstances throughout recent history – in a difficult position. On the one hand, a reluctance to embrace the critical scrutiny of outsiders is hardly unique to law enforcement. It is also a familiar aspect of police culture to assume – with some justification – that outside critics can't possibly understand the nuances and realities of police work with the completeness needed for a valid appraisal. Additionally, to cede control of its responsibilities for investigating such incidents in the face of public pressure would entail a concession that the agency itself is not best suited to perform this important task.

On the other hand, the Department also recognized that the cluster of shootings was a troubling phenomenon that it wanted to address proactively. It also wanted to be responsive to public concerns. Accordingly, while continuing to handle the individual case investigations in keeping with its existing protocols, it began to contemplate an

outside audit of its broader, more holistic strengths and weaknesses with regard to shootings and force.

In June of 2006, the District Attorney for San Diego County held a press conference to announce her findings for each of the three Vista shootings. She had determined that each was legally justified in light of the actual circumstances and the reasonable perceptions of the shooting deputies. The press conference was itself an unusual step that reflected the high priority of the cases and the D.A.'s desire to communicate openly and answer lingering public questions thoroughly. Accordingly, she took the opportunity to discuss the relevant law and present the evidence in each case in considerable detail.

Though there were common threads on the surface of the three events, the D.A.'s presentation also served to illustrate the many distinctions that separated the individual cases – in spite of their understandable grouping in the public's mind. Moreover, the passage of time put those five days into perspective as an extraordinary aberration and not a trend. (The several months that have passed since the press conference have continued the return to statistical "normalcy," with one additional shooting in the Vista Station area having occurred.)

Meanwhile, the Department (and County) had devised an audit project that would involve a substantial, systemic, and independent review of its shootings and other uses of force. It accepted proposals and eventually chose three attorneys from the Los Angeles

County Office of Independent Review (“OIR”) to conduct the audit.¹ That project began in July of 2006, and concludes with the presentation of this Report.

As we began our work auditing the San Diego Sheriff’s Department, we soon realized that the Department was committed to openness in making its files, records, and personnel available. Indeed, we commend the Department for the professionalism and cooperation that we encountered at each juncture of our work. Department personnel accommodated all of our requests for information and materials, and did so with an efficiency that impressed us and greatly facilitated our efforts. Even more noteworthy was the patience, candor, and thoughtfulness of the many people from all ranks whom we talked to over the course of eight months. Their sharing of experiences and insights supplemented our “paper review” in ways that were invaluable.

Receptivity to outside views and commitment to ongoing improvement are two hallmarks of a progressive law enforcement agency. During our review, we observed both of those qualities in abundance within the Sheriff’s Department.

¹ The OIR is the current group responsible for independently reviewing all shooting investigations and significant force investigations of the Los Angeles County Sheriff’s Department (“LASD”). The OIR is a team of private attorneys who have a contract for services with the Los Angeles County Board of Supervisors. As a fundamental part of their contractual obligations, the OIR attorneys review LASD’s internal investigations for thoroughness and objectivity and provide independent assessments regarding the quality of those investigations. In addition, the OIR is empowered to provide recommendations regarding investigative outcomes. Over the six years of its existence, the OIR has reviewed hundreds of shooting and force investigations involving the Los Angeles Sheriff’s Department and made scores of recommendations regarding improving the quality of investigations, and individual and systemic outcomes.

PART II. Scope of Project

As framed by the initial agreement between the parties, the primary substance of the audit was the review and assessment of officer-involved shootings and other uses of force between January 1, 2003 and December 31, 2005. That time frame made sense for a few reasons:

- It was long enough to provide a representative sample of incidents.
- It was recent enough to reflect current demographics, trends, policies and procedures and therefore ensure relevance.
- It was previous enough that the individual incidents would have completed their journey through the various external and internal review processes.

The last of the above points merits further attention, because it relates to what our mission as auditors was – and was not – from the outset of our shared understanding with County and Department officials.

The review of individual cases was a necessary and fundamental aspect of our work. Specific incident reports offered the best evidence of how and why deputies actually used force during the audit period. They also allowed us to measure how the reality in those years compared to Department standards, relevant training, and recommended alternatives. Accordingly, we reviewed investigations files for all of the twenty-five deputy-involved shootings that occurred during the audit period. We also

reviewed hundreds of case reports relating to significant and less than significant force of varying kinds.

However, we wish to emphasize at the outset of this report that our evaluation of individual cases was always in the service of a larger and holistic review of Departmental practices. The County did not seek, and we did not attempt to provide, our specific conclusions about the legal, administrative, or tactical legitimacy of any particular incident that we reviewed. Though we do allude to specific cases in the body of the Report, we do so only to illustrate systemic points; accordingly, we have removed identifying information from our cited examples. We have not made, and do not imply, any judgments relating to individual officer accountability.²

Our goal instead was to provide an independent assessment of how the Department uses and reviews force, with a special emphasis on shooting cases and other “critical incidents.” In turn, that assessment was intended to place the Department’s current practices into a larger context, to inform a judgment about the Department’s relative strengths and weaknesses, and to provide the basis for reform recommendations that, in our view, should be considered. The cases from the audit period allowed us to accomplish that goal.

Additionally, the project entailed a review of Department policies relating to force. We accordingly became familiar with those policies and studied the ways in which

² This includes the three Vista shootings from the summer of 2005, though we reviewed each of them; they occurred, of course, during the audit period.

they shaped training, practices, and the documented force incidents themselves. In selected categories that we set forth below, we also compared the Department's materials and statistics to those of other law enforcement agencies in California. This exercise was intended to help place our findings about the Department into a larger framework, and we have included several tables that itemize the comparisons. Where applicable, we have drawn conclusions about San Diego's relative status in these different categories. We have also used the information from other agencies, and our familiarity with evolving concepts of "best practices" within law enforcement, to guide our different recommendations for change.

Although the time period covered by the audit ended in 2005 for the reasons discussed above, both we and the Department recognized that our monitoring efforts and subsequent recommendations would be most meaningful and useful if they were conscious of relevant changes that have occurred in the last eighteen months. During that time, the Sheriff's Department has – in a manner appropriate for an agency of its size and resources and evolving challenges – adjusted its policies and training in significant ways. (One noteworthy example would be its commitment to the Taser – a handheld weapon that temporarily incapacitates suspects via electric current – as a less-than-lethal force option for patrol deputies. A two-year effort to equip and train all patrol deputies is now more than half complete, and Taser use is a new cornerstone of the Department's approach to force.) The Report takes that information into account at various points.

PART III: Methodology

The core of the audit was a review of actual Department records relating to shooting and force cases that occurred during the 2003 through 2005 time period. For all officer-involved hit shootings we read the Homicide “book” that was presented to the District Attorney’s Office in each case. For both the shooting and other force incidents, we also acquired information about related materials that might supplement our understanding of each incident – and of the Department’s response. These included the following (not all of which applied to each case):

- District Attorney’s Letter of Opinion re legality
- Related civil litigation
- Internal Affairs investigations arising from the case
- Relevant performance history for involved officers
- Documentation of related Critical Incident Review Board³ meetings
- Departmental policy applicable to the incident
- Other Departmental actions (training bulletins, transfers, policy changes, etc.)

³ The Critical Incident Review Board is a panel of Department supervisors that meets to assess shootings and other major events for the Department’s own internal purposes. We discuss the functions of that Board in more detail below.

- Reports by the Citizens' Law Enforcement Review Board.⁴

For the force cases, we reviewed actual incident/arrest reports from the time period. Because of the large number of force incidents documented each year by the Department, we agreed to work with the Department to obtain a representative sample. We selected substantial numbers of cases covering all geographic areas served by the Department, uses of force in Law Enforcement as well as Detentions and Court Services, and uses of specific weapons and techniques. Our goal was to review a sufficient total and a wide variety of incident reports so that we could see how the Department actually uses force in the field and how it investigates and documents those uses of force. Then we evaluated those uses of force in light of the Department's written policies and training as well as best practices among California law enforcement agencies. In the end, we reviewed over 500 force incidents.

With regard to the force cases, we focused first on cases that involved significant injury to the suspect, had led to complaints by the suspect, or had led to Internal Affairs investigations of possible officer misconduct. From there, we looked at a range of incidents that showed some of the different weapons and force options available to the deputies. Several of the cases took place in the custody setting, an arena that presents its own tactical challenges.

⁴ The Citizens' Law Enforcement Review Board ("CLERB") is an independent oversight panel that has monitored the Department per county charter since 1990. We discuss it in more detail below.

As we moved through the document review over the course of several months, our efforts were supplemented and shaped by interactions with a number of knowledgeable and interested parties whom we sought out within and outside the Sheriff's Department. Within the Department, we spent considerable time at Sheriff's Headquarters learning the structures and protocols of the Department. We toured two jail facilities and paid visits to the training Academy. We became familiar with the scope and diverse character of the Department's patrol responsibilities across the county. We met with the Sheriff, Undersheriff, and other executive staff members on numerous occasions. We spoke to members of the Deputy Sheriff's Association board. And we spoke with numerous Department members of varying ranks and responsibilities, from deputies in the field and at the jails to supervisors at all levels, members of specialized units, and training staffers.

Our inquiry into perspectives outside the Department included the following:

- Meetings with past Executive Directors of the Citizens Law Enforcement Review Board.
- Attendance at a "Town Hall Meeting" event sponsored by CLERB in the city of Vista, where members of the public had the opportunity to learn about CLERB's functions and raise questions and comments of their own.
- Meeting with the Executive Director of the local chapter of the American Civil Liberties Union.

- Meeting with a local plaintiffs' lawyer who specializes in the police misconduct arena.
- Meetings with the San Diego County District Attorney and members of her staff, including those prosecutors and investigators specifically assigned to review deputy-involved shootings.
- Meetings with a prominent North County activist familiar with Sheriff's Department issues, and other local residents.
- Meeting with two attorneys affiliated with the "Deputy Sheriffs Association" (union for San Diego deputies) who regularly represent officers in force and misconduct investigations.

Consistent with our contractual arrangements, we also met monthly with Department executives and provided monthly reports. These regular communications allowed the Department to follow our progress and provide initial responses to our questions and observations. This exchange of ideas added to the efficiency of our work: it clarified our understanding at several key junctures, and gave the Department a chance to contemplate our interim recommendations in a thoughtful and ongoing manner.

PART IV: The San Diego Sheriff's Department: An Overview

The San Diego Sheriff's Department is the fourth largest sheriff's agency in the United States. Its more than 4,000 deputies and professional staff serve a population that has experienced tremendous growth as well as continual economic and demographic changes over the last decade. The Department's 2,200 sworn peace officers are divided among the patrol function (called the Law Enforcement Services Bureau) with 991 deputies, and the Detention Services and Court Services Bureaus with 873 and 336 deputies, respectively. The Department contracts with nine cities within San Diego County to provide complete law enforcement services. It is also responsible for law enforcement throughout all unincorporated areas of the county.

The Department serves the public through seven Sheriff's stations, five substations, and several Rural Deputy outposts throughout the vast and sparsely populated eastern areas of the county. The Department operates the county's seven jail facilities, accommodating an average of 5,175 inmates each day. Sheriff's Department personnel also staff the County's ten state courthouses, securing and moving incarcerated defendants and witnesses, protecting court personnel, serving civil court papers, and screening over 10,000 people per day for weapons. The Department operates the Crime Lab that serves law enforcement agencies throughout the county. It also frequently provides a wide array of specialized law enforcement support services to other police and public agencies throughout the region, such as:

- helicopter air support for surveillance, pursuits, firefighting, and narcotics investigations
- assistance with homicide investigations
- assistance with officer-involved shooting investigations
- crowd control assistance
- providing regional academy trainers and resources
- leadership in regional gang taskforce.

PART V: Officer-Involved Shootings

Every officer-involved shooting reflects both the dangers the public expects the police to confront and the authority it gives them to do so. And, while the public genuinely appreciates the services that the police provide, the trust that is accordingly provided to law enforcement is tempered by high expectations and demands for accountability. For any progressive law enforcement agency, it is therefore critical that every shooting incident be subject to a careful and multi-faceted review process.

When an officer uses deadly force, the questions that arise can be divided into categories: the factual (what happened), the legal (was the use of force lawful), and the administrative (did the officer follow his Department's policy and training, and what can/should that agency learn from the incident). Obviously, these categories overlap to some extent, but a separate focus on each one is needed in order to provide a holistic – and therefore effective – review.

That an exercise of deadly force be justified under the law is of course of primary significance. The prevailing standard requires the officer to have reasonably believed that, under the prevailing circumstances, such force was needed in order to end the imminent threat of death or bodily injury to himself or someone else. It is important to note that the officer need not have been factually correct in that belief. For example, a suspect brandishing a replica handgun is not an actual threat to kill someone, but a deputy's belief that the gun is real would establish a legal basis for his own use of deadly

force. Indeed, the law recognizes that much decision-making by police officers in critical incidents is necessarily of the split-second variety – to the point that a suspect’s gesture of tugging at his own waistband rather than showing his hands and surrendering may, in certain circumstances, be justification for deadly shots, even if it was later established that the suspect had been unarmed.

With so much turning on the officer’s state of mind, and with so many deadly force cases turning on split-second decision-making, it is extremely rare that a police shooting leads to a criminal prosecution. The prosecutor would either have to prove beyond a reasonable doubt that the shooting was malicious – a knowingly wrongful act – or that it was the product of a subjective belief and subsequent reckless act that was so unreasonable under the circumstances as to be unacceptable in the eyes of the law. It is a very high standard, and one that reflects society’s acknowledgement of the life and death challenges of law enforcement.

Nonetheless, the public expects a thorough and dispassionate gathering of the evidence, including a full and truthful accounting by involved officers as to what occurred. The ongoing trust that the community reserves for police officers depends in large part on the assumption that investigations are legitimate and that officers are accountable.

The public’s emphasis on the legal legitimacy of a shooting remains appropriate and understandable. However, the determination of whether a shooting violated the

strictures of the Penal Code – a decision reserved in California for the District Attorney’s Office – should not end the assessment of a deadly force incident for the involved law enforcement agency. This is true for several reasons.

First, the standard needed to prove a crime is “beyond a reasonable doubt,” while policy violations of the Department’s deadly force requirements can be established at the much lower level of “preponderance of the evidence.” Second, because police agencies can impose stricter standards on their own personnel than what might be permissible under the law, it is possible that a particular shooting could be “legal” while violating internal policy. (For example, as discussed below, the San Diego Sheriff’s Department has developed policy that circumscribes the discretion of deputies to shoot at moving vehicles – independent of what the Penal Code allows.) Each agency, then, should assess the officer’s performance and take action to the extent that the expectations about deadly force that are framed by policy and reinforced through training are not met in the field.

Additionally, the instant in which the trigger is pulled always takes place in the context of a larger incident or encounter. Depending on the circumstances of each case, each involved officer is usually required to make several choices and take several actions leading up to the deployment of deadly force that implicate his or her judgment, training and understanding of applicable Department policy.

For example, an officer who returns fire in an alley and kills an armed suspect clearly had legal justification to use deadly force. But a set of related facts is readily

conceivable that might concern that officer's supervisors – a lack of communication with other officers, for example, or a tactical failure to use available cover and concealment, or an inadequate consideration of the backdrop, or even inefficient and unsafe handling of an initial detention of that same suspect, allowing him the opportunity to flee in the first place. Each of these potential issues merits further attention – be it training, clarification or change of policy, or even internal discipline of the involved deputy.

This administrative response has traditionally been less transparent – and therefore less understood or appreciated by the public – than the District Attorney's decision about the legality of the shooting. Appropriately, it is also more often forward-looking than punitive in its orientation and impact. However, its importance to officer safety and effective policing must not be underestimated. And it is a kind of scrutiny that does influence the frequency of future shootings in significant ways.

Considering the extremely low frequency of cases in which it will be established that a police officer maliciously or recklessly used deadly force, it is in the administrative arena in which a critical assessment of officer performance in a shooting can be used to the advantage of the Department, as well as the individual officer. Through a careful evaluation of any shooting incident, a law enforcement agency can use that experience to learn how best to equip its officers with the knowledge, training and discipline for future similar encounters. Conversely, the lack of a robust review process does a disservice to the agency's personnel and to the public it serves.

A. Overview of Sheriff's Department Shootings in Audit Period

During the audit period of 2003 through 2005, 25 “hit” shootings involving the Department’s officers occurred according to the Department’s records. A hit shooting is one in which one or more deputies wound or kill the suspect by firing their firearms at him.⁵ (Of the 25 shootings we studied, the suspect died in 15 of them.)

All of these were investigated and presented to the District Attorney’s Office for review. In all 25 instances, the D.A. determined that the use of deadly force was legally justified.⁶

The Department’s shooting statistics are below the average of most other major law enforcement jurisdictions in Southern California. Three of the larger Sheriff’s Departments in the region, for instance, each had between .58 and .85 shootings per year per hundred sworn personnel for the last three years. San Diego County, which has

⁵ The other category of shooting is the “non-hit,” in which the deputies use deadly force by firing their guns, but do not strike the suspect with any of the shots. This category raises many of the same issues as the hit shootings do, as we discuss below.

⁶ Appropriately, an assessment of the legality of the shootings and/or a consideration of the District Attorney’s analysis was not part of our audit responsibilities, though we did have access to all investigation files and the individual letters of opinion that the District Attorney produced for each case. Nothing in this report is intended to make or imply a judgment about those decisions. We did, however, find our discussion with the District Attorney and her staff to be worthwhile and illuminating, and we appreciate the cooperation of that Office with this project. People who seek more information about the District Attorney review protocols regarding officer-involved shootings in San Diego may want to visit the District Attorney’s web site at www.sdcda.org.

approximately 2,200 deputies, averaged .41 shootings per hundred deputies per year, for the past three complete years.⁷

Agency ⁸	2006 Shootings (hits)	2005 Shootings (hits)	2004 Shootings (hits)	Approximate# of Sworn Personnel
San Diego Sheriff	9 (8)	12 (11)	(7) 6	2,200
Department A	47 (27)	48 (28)	58 (38)	8,700
Department B	13 (10)	20 (14)	8 (5)	1,800
Department C	9 (7)	Avg. 6-7/year (no specific data)	Avg. 6-7/year (no specific data)	1,400
Department D	17 (14)	13 (7)	16 (5)	1,800
Department E	6 (5)	9 (3)	9 (5)	1,900
Department F	51 (32)	52 (32)	56 (39)	9,800

B. Policy Considerations

**1. The Department’s Manual Contains an Internal Inconsistency
Regarding the Use of Deadly Force and Fleeing Felons**

The Department’s policy on the use of deadly force in general, and in particular,

⁷ San Diego Sheriff’s Department, like many sheriff’s departments, is also responsible for operating and maintaining security at the county jails and at the state courts throughout the county. Since sworn personnel in these assignments rarely employ their firearms, it can be argued that a fair comparison of shooting rates would remove these employees from the statistical pool. With that adjustment made, SDSD’s shooting rate still remains within the range of other large California agencies.

⁸ For purposes of comparison throughout this Report, we obtained information from other law enforcement agencies in California with policing responsibilities for large jurisdictions. We are grateful for their cooperation.

the use of deadly force against fleeing felons tracks closely the leading Supreme Court decision in this area, Tennessee v. Garner. In the case, the Court stated:

Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others [deadly force may be used to stop the threat],...or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape.

The Supreme Court added a note of caution as well: “Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force.” Tennessee v. Garner, (1985) 471 U.S. 1, 11

The Department’s Policy and Procedure Manual sets out its deadly force policy as follows:

“It is the policy of the San Diego County Sheriff’s Department that deputies shall use deadly force only as a last resort and only after the deputy reasonably believes that the force used is necessary:

In defense of human life, including the deputy’s own; or,

In defense of any person in immediate danger of death, or the threat of serious injury; or,

To apprehend a fleeing felony suspect, if the felony involves death or serious injury or the threat thereof, or the deputy has reasonable cause to believe there is substantial risk that the suspect, if allowed to escape, would pose a significant threat of death or serious physical injury.”

Furthermore, the U.S. Supreme Court in Tennessee v. Garner held that the use of deadly force to prevent the escape of an apparently unarmed, non-dangerous felony suspect is not constitutional.

Thus, the San Diego Sheriff’s policy is consistent with the Supreme Court’s formulation of the law with respect to use of deadly force in general and fleeing felons more specifically. With specific regard to use of deadly force against fleeing felons, the San Diego Sheriff’s policy is less restrictive than most other large law enforcement agencies in California.⁹

Use of Deadly Force Against Fleeing Felons

Agency	Policy -- Required before using deadly force against fleeing felon:
Department A	Tenn. v. Garner language, but no “and” or “or” issue. Requires a “fleeing felon” who poses “significant” threat of death or serious injury.
Department B	Suspect is suspected of committing a violent crime <u>and</u> poses a substantial risk of death or serious injury.
Department C	Felon has committed or attempted to commit violent crime <u>or</u> “suspect...may cause death or great bodily injury to an officer or others should the suspect escape.”
Department D	Prohibited except for the protection of the public from a felon who poses an immediate threat.
Department E	There is probable cause to believe suspect has committed felony involving death or threat of death or serious injury, <u>and</u> reasonable belief that suspect is armed with a deadly weapon, <u>and</u> escape would pose imminent threat to officer or others.
Department F	Suspected of a crime involving serious bodily injury or the use of deadly force <u>and</u> there is a substantial risk that the suspect will cause death or serious bodily injury to others if apprehension is delayed.

Note – all emphasis in entries is added.

⁹ While the Department has a general and non-specific policy regarding the use of deadly force, there are also individual manual provisions that relate to more particular issues within that broad topic. See, for example, the more specific “shooting at vehicles” policy discussed below.

The significant difference between the San Diego Sheriff's policy and the majority of other policies is that San Diego Sheriff's allow deployment of deadly force if either the felony involves death or serious injury or the deputy has reason to believe that there is risk that the felon, if allowed to escape, would pose a significant threat of death or serious physical injury. Most of the other jurisdictions polled require the officer to reasonably believe that the suspect be a felon and that there is a significant threat of death or serious injury should the felon escape.

A further wrinkle to the San Diego Sheriff's policy is that in the Procedures section of the manual, a fleeing felon suspect is defined as:

a suspect who is attempting to avoid apprehension, has committed a "forcible and atrocious" violent act, may or may not be armed, and would pose a threat of death or serious physical injury to others. No fleeing felony suspect should be presumed to pose an immediate threat to life in the absence of actions that would lead one to reasonably believe otherwise. The deputy's reasonable belief must be based on the suspect's actions that previously demonstrated a threat to or the wanton disregard for human life.

Accordingly, in the Procedures section of the manual, the fleeing felon definition requires both a "forcible and atrocious" violent act and a threat of death or serious physical injury to others which is suggestive of the more restrictive standard. What exists then, is some apparent discrepancy between the Policy section of the Manual and the

Procedures section of the Manual with regard to its deadly force policy on fleeing felons.¹⁰

While the deadly force policy as articulated in the Policy section of the Manual meets the legal standard of the law, we believe that the Procedures section of the Manual that defines a fleeing felon as one who is believed to have committed both a “forcible and atrocious” violent act and presents a threat of death or serious injury to others (as further defined in that section) to be the more progressive calculus (and adopted by most similarly situated agencies in California) as to when a deputy should use deadly force in that scenario. However, whatever the Department chooses to do, a revision of either section is in order to eliminate the apparent internal disconnect between the two manual provisions in order to provide clear guidance to its deputies on this important policy.

Report Recommendation # 1:

- **We recommend, with regard to the Department’s use of deadly force policy involving fleeing felons, that it reconcile potentially inconsistent language in the Policy and Procedures sections of the Manual in order to provide clarity to its deputies, and, in doing so, adopt the more restrictive calculus set out in the Procedures section.**

¹⁰The Policy version of the Use of Deadly Force policy is also repeated in Addendum F, an appendix to the Manual that elaborates on the Department’s use of force guidelines.

2. Tactical Concerns

Like all major California Police agencies, and consistent with Constitutional and legal mandates, the Department provides its deputies significant discretion in the use of deadly force. As important as the policy is, however, it provides only a starting point for an analysis of shootings in a given agency. Other key factors include how deputies are trained and how they actually use deadly force in the field. The three years of SDDSD shootings that we have studied do not display an aggressive interpretation of the Department's deadly force policy. Indeed, in our incident reviews we have observed instances of considerable exercise of restraint. Those concerns that we have identified, and which we discuss in more detail below, are related to tactical decisions and potentially insufficient regard for officer safety, rather than to a mindset that seeks out or exploits deadly force opportunities in troubling ways.

a. The Department's Shooting at Vehicles Policy Provides Insufficient Guidance to Its Deputies

The Department has a policy that specifically addresses shooting at moving vehicles, and it reads as follows:

“Firing at moving vehicles is generally prohibited. Experience shows that such action is rarely effective and is extremely hazardous to innocent persons.”

This terse formulation sounds clear and forceful in its message of discouragement, but it provides no specific guidance to deputies who are faced with the threat of a vehicle moving toward them. The incidents we reviewed illustrated the unique tactical challenges and dangers that arise from these events, and led us to believe that more concrete guidance would be useful.

CASE ILLUSTRATION:¹¹

A high-speed pursuit of a violent and suicidal suspect appeared to have ended when the suspect spun out of control, hit a stationary patrol car and came to a stop. One deputy approached the driver's window, broke it out with an expandable baton and reached in to grab the suspect. Another deputy approached toward the front of the suspect vehicle. Suddenly, the suspect began to drive forward again, dragging the first deputy along until he let go and brushing the side of the second deputy, who fired two rounds at the suspect. Both rounds hit the suspect's arm, but he kept driving and the pursuit started up again. It finally ended after a second crash, followed by the use of beanbag shotgun rounds and a K-9.

The Department's subsequent internal review of this shooting recognized that rushing in from the front of a suspect vehicle after a felony vehicle stop is imprudent and even issued a "Tactical Tip" about high risk felony stops. A more explicit policy on shooting at vehicles could help deputies make the connection between tactical choices

¹¹ This is the first of several examples that we have drawn from our review of actual case investigations and reports arising from the audit period. We present them throughout this Report in order to clarify, explain, or support the specific observations and points that we have gleaned from them – and not for purposes of criticizing individual deputy performance.

and the need to shoot in these situations.

CASE ILLUSTRATION:

A parked suspect vehicle was boxed in by one uniformed supervisor and two detectives in plain clothes. After the vehicle backed up and struck one of the unmarked Sheriff's cars, one of the detectives ran up to the passenger's side of the truck, ordered the suspect to stop, and then, when he did not comply, fired into the vehicle at the suspect because of his stated concern for the safety of the other two officers. That detective admitted that he did not know where his partner was, and mistakenly believed that the supervisor was directly behind the suspect vehicle when he had approached. The second detective indicated that he approached the suspect vehicle without having his duty weapon and placed a spike strip under the suspect vehicle. After the suspect vehicle struck the surveillance van, the second detective went back to the unmarked Sheriff's vehicle, retrieved his duty weapon, positioned himself to the right of the passenger's side of the suspect vehicle and fired four rounds at the tires.

In this case, there was no indication that the tactical issues surrounding the approach of the vehicle, the decision of one deputy to shoot into the window of the suspect vehicle, and the decision of another deputy to shoot at the tires were ever critically addressed by the Department. Moreover, the current "shooting at vehicles" policy provides little guidance to deputies with regard to each of these specific issues and what the Department's expectations are in conjunction with how to deal with violent

suspects in vehicles.

It could be suggested that the “shooting at vehicles” policy was specially designed to be limited to the actual decision to shoot into a car, but even in that narrow context the policy does not provide much guidance to deputies. The “generally prohibited” language provides no instruction regarding appropriate exceptions to the rule – circumstances when it might be consistent with Departmental expectations to shoot at vehicles. No factors are provided for the deputies’ consideration in deciding to fire, such as the backdrop, the possibility of crossfire, and whether the opportunity exists to move to a safer position.

Moreover, because the decision to shoot at vehicles is almost always intertwined with the tactical deployment and decision making preceding the use of deadly force, the Department’s policy and training on shooting at moving vehicles should concern itself not only with the deputy’s actions and intent at the moment of shooting but with the chain of tactical decisions that lead up to the shooting.

We are aware of no instances in which a Department member shot at a car and he or she received individualized training, counseling, or discipline behind those actions. More importantly, we are aware of no time in which the Department carefully considered a deputy’s decision to shoot into a car and evaluated that decision in light of the current “shooting at vehicles” policy.

Shooting at Suspects in Moving Vehicles

Agency	Policy -- Shooting at a suspect in a vehicle:
San Diego Sheriff's Department	General prohibition as dangerous and ineffective, but no indication of appropriate exceptions. Training bulletin says may fire at occupant of a vehicle only when deputy has a "reasonable belief that the suspect poses an imminent threat of death or serious injury...and the use of deadly force does not create a danger to the public that outweighs the likely benefits of its use."
Department A	Prohibited unless vehicle poses immediate danger of serious injury and deputy has no reasonable alternative course of action. Personnel shall not place themselves or remain in the path of a moving vehicle. Tactical decisions that put personnel in position to be harmed by movement of vehicle (such as tactical relocation, cover, tactical approach, regard for target acquisition, background, crossfire, and controlled fire) will be scrutinized for compliance with policy.
Department B	No Policy, but training generally disapproves of it.
Department C	Deputies shall not shoot at or from a moving vehicle unless there is reasonable assurance that such firing will not endanger innocent persons.
Department D	Tracks general use of deadly force policy. Permitted " <u>when all other means have failed</u> in the defense of a person's life or life of a department member."
Department E	Officers shall not fire at occupant of a vehicle unless subject or vehicle poses <u>immediate</u> threat of death or serious harm to officer or others and there is no reasonable alternative to avoid the harm. Officers shall not knowingly put themselves in path of moving vehicle.
Department F	Officers shall not fire at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force <u>by means other than the vehicle.</u>
IACP Model Policy	Decision to shoot at a vehicle should track the general use of deadly force model policy, but is prohibited if it presents an unreasonable risk of harm to others.

Note – emphasis in all entries has been added.

Report Recommendation # 2:

- **We recommend that the Department revise its “shooting at vehicles” policy to provide more guidance to deputies regarding the decision to shoot. We further recommend that the Department revise the policy to address related tactical decisions – such as the advisability and effectiveness of moving into the real or potential path of a moving vehicle.**

*b. The Department Should Formalize Its Guidance to Deputies
Regarding Foot Pursuits*

The decision to pursue a suspect on foot – especially for a deputy who has no backup – is one that almost always involves a high potential for risk and danger. When a deputy follows a desperate suspect over potentially unfamiliar terrain, it creates a conflict between an officer’s admirable impulse to protect the public and the tactical vulnerabilities that the officer may confront in these situations.

CASE ILLUSTRATIONS:

A deputy followed a car that he confirmed was stolen to an apartment building at night. When the suspect car stopped, the deputy blocked the car in and ordered the three occupants out at gunpoint. All three fled and the deputy gave chase, apprehending the driver. The deputy tackled the driver, still with his gun in his hand. When they fell, the deputy’s gun accidentally discharged, hitting the suspect in the arm. The deputy tried to broadcast his foot pursuit, but may have failed due to a problem getting a clear frequency. Had the accidental discharge injured the deputy instead of the suspect, or had the other two suspects returned to the scene to assist their companion, the failure to broadcast might have put the deputy at an especially grave disadvantage.

While driving in a park after nightfall, a deputy spotted a car that he believed contained armed robbery suspects. Without putting out radio traffic, he shined his spotlight on the vehicle, prompting the three suspects to flee, and then chased them for a considerable distance on foot. He had no backup. He wounded one of the suspects, then fired additional and fatal rounds at that person when he noticed a second vehicle approaching in his direction, perceived an additional threat, and realized that the wounded suspect had not yet shown his hands. A gun, possibly belonging to one of the other suspects, was later found in the park and had apparently malfunctioned.

Foot pursuits are one of the most controversial topics in law enforcement today. Agencies struggle with the need to balance a strong signal of support for the courage and energy of their peace officers with the desire to protect those officers from avoidable harm and to use their human and technical resources to their maximum effect. Law enforcement leaders are also justifiably reluctant to send a signal to criminals that may be mistakenly interpreted as a license to flee with impunity. Some agencies have shied from the formidable task of codifying these competing values in a formal policy. But a growing number of agencies have found it possible and productive to implement directives that tell their sworn employees what is expected of them when they make the decision to pursue on foot.

Foot Pursuits

Agency	Policy -- When initiating and/ or sustaining pursuit of suspect on foot:
San Diego Sheriff's Department	No policy. Training bulletin advises against pursuit if no observed or suspected criminal activity. If suspect flees from vehicle, preferable to stay with vehicle. Avoid any foot pursuit into building. Multi-deputy pursuit is preferable to lone deputy. If separated from partner, re-evaluate the risks. No directive about the need to make radio broadcasts when going into foot pursuit.
Department A	At initiation, broadcast immediately or discontinue. Multi-deputy pursuits strongly preferred. Partner splitting in the course of a multi-deputy pursuit is against policy. If lone deputy pursuit, pursue only to maintain visual contact in order to contain; discontinue pursuit if visual contact with suspect is lost; do not attempt to apprehend and do not follow into a building.
Department B	Multi-deputy pursuits are preferred. If partners are separated during pursuit, re-evaluate the risks. If suspect flees from vehicle, generally preferable to stay with car.
Department C	No Policy
Department D	May be initiated without supervisor approval. Immediate broadcast required. Partner-splitting discouraged, but not prohibited.
Department E	No Policy
Department F	No Policy, but training says no solo foot pursuits. Leaving one's partner for a foot pursuit is below standards and subject to discipline.
International Association of Chiefs of Police (IACP)	Broadcast as soon as practical. No partner splitting. No solo pursuits unless exigent circumstances warrant; if solo, keep suspect in sight from a safe distance while coordinating containment. Do not follow into buildings; do not pursue if identity of suspect is established and information exists to allow for apprehension at a later time.

Department executives have been more than willing to engage in a dialogue about the significant issues and competing values that come into play when evaluating foot pursuits. A sizeable percentage of them have also consistently stated a clear preference for allowing deputies relatively unfettered discretion to decide when to chase a suspect or not. The training staff as well emphasizes a “proactive” approach to apprehending suspects and imposes few restrictions in this area.

Notwithstanding this reluctance to constrain the situational judgment of its deputies, the Department has recently formulated some written guidance for foot pursuits

in the form of a training bulletin. The bulletin, "Foot Pursuit Considerations," is an extensive series of suggestions about factors to consider at crucial points in the course of a pursuit. It recommends that deputies consider pros and cons of certain tactical judgments without admonishing them to take or rule out a specific course of action. It cautions deputies, for instance, to stay with a partner during a pursuit to increase the likelihood of a safe and successful outcome. The bulletin teaches that if a suspect flees into a building, deputies should avoid continuing the pursuit because of the danger of ambush, a hostage situation, or the suspect's access to weapons. Deputies are also reminded that they must be physically capable of gaining and maintaining control of a suspect even at the end of a lengthy pursuit. If a suspect disappears around a blind corner or over a high obstacle, the bulletin advises that deputies should exercise caution and recommended safety tactics and consider calling off the pursuit. Deputies are also given multiple examples of the benefits of putting out a radio broadcast at the outset of a foot pursuit.

This document clearly manifests the Department's careful deliberation and an earnest desire to provide deputies with useful guideposts regarding foot pursuits. We believe, however, that the Department should consider going beyond the training bulletin to provide firm mandates to deputies in this crucial area of police tactics. The department has taken a key step in expressing its values and preferences with regard to how, when and where deputies should pursue fleeing suspects on foot. The next step would be to extract from the training bulletin the most important and concrete components of those values and express them as departmental expectations for deputy performance. By

formally codifying the indispensable core of its appropriate foot pursuit precautions into a policy, it can provide firm instruction on those issues without unduly constraining deputy judgment where greater discretion is appropriate.

Report Recommendation # 3:

• **We recommend that the Department create a foot pursuit policy that states, at a minimum, that deputies will be expected to:**

- ✓ **broadcast the pursuit and their position as soon as possible**
- ✓ **reassess the pursuit if the suspect enters a structure**
- ✓ **desist pursuing if the deputy loses sight of the suspect**
- ✓ **not split from their partners**

C. Investigation Protocols: Homicide Bureau

Of the 25 hit shootings that occurred during the audit period, three of them took place in other jurisdictions: one involving an off-duty deputy who witnessed a bank robbery in another jurisdiction, one involving officers who, in separate incidents, got into a shooting while assisting another agency and a third involving officers who pursued a suspect into another jurisdiction where they eventually used deadly force. Primary responsibility for handling those three matters fell to the presiding police agency in each

respective location. In the other 22, however, it was the Department's Homicide Bureau that had responsibility for conducting the investigation into what had occurred.¹²

In the arena of officer-involved shootings, Homicide's responsibility is to gather all relevant evidence of what occurred and to present that evidence to the District Attorney's Office. Accordingly, the District Attorney's review is usually entirely reliant on the facts collected by the Homicide Bureau.¹³ We assessed the product of those investigations for all 22 cases, and also spoke at length with Homicide personnel in order to gain a refined understanding of the Bureau protocols.

When a deputy-involved shooting occurs within the San Diego County Sheriff's Department, a series of responses begins with the deputies' obligation to put out radio traffic about the event as soon as it is safe to do so. Supervisors and other deputy personnel from the patrol area go to the scene immediately, and a number of formal notifications ensue. The involved officers remain at the scene long enough to ensure that it is stable and secure. They also provide preliminary initial statements to explain what happened. As soon as possible, they are then escorted from the scene and usually return to their patrol station to await the formal interview process.¹⁴ It appears that, in keeping

¹² The Department's Homicide detectives often handle the officer-involved shooting incidents of other independent cities within San Diego County as well, as a courtesy to those entities and as a reflection of the experience and resources that the Bureau possesses.

¹³ That being said, it should also be noted that a District Attorney investigator rolls to the scenes of all hit shooting investigations, and the D.A.'s Office has the ability to request further investigation of Homicide should it feel the need for additional information.

¹⁴ It appears that the deputies' union has a fairly constructive and trusting relationship with Department management. This has relevance to the shooting investigations arena, in that the common practice is for

with sound investigative practices, the Department makes it a priority to separate involved officers from each other to keep them from influencing each other's version of events inappropriately.

The following parties all roll out to assess the scene, commence the formal investigation, or perform other responsibilities related to the Department's internal and external handling of the incident:

- Two teams of Homicide investigators and supervisors
- A representative from the Department's Internal Affairs Bureau
- A representative from the Department's Risk Management Unit
(responsible for potential issues of civil liability, among other things)
- One or more executives from the Department, one of whom is on call at all times.
- A "peer support" counselor
- A representative from the Department's Training Bureau (to begin the process of assessing possible tactical or policy concerns)
- Union counsel for the involved deputies
- Legal counsel for the Sheriff
- Crime Lab technicians.

deputies to provide voluntary statements to Homicide while represented by their union lawyer. This clearly benefits the information-gathering process. (See Footnote 16, below.)

This breadth of response appropriately reflects the seriousness of each shooting incident, and obviously gives the Department a good beginning in addressing the different dimensions of each case.

With some exceptions that we discuss below (and for which we make reform recommendations), Homicide, and the crime lab and forensic technicians that work with them, do a creditable job of fulfilling this important investigative function. Homicide's investigation books reflect a solid and often excellent set of protocols. Homicide's careful and well-established approach shapes and guides the investigation from the moment of notification that a shooting has occurred. The Bureau's systematic approach helps insure the integrity of the crime scene, promote the thorough and methodical gathering of facts, and provide the foundation for a legitimate and comprehensive assessment of the relevant legal questions.

Among the impressive features we noted in our review were the following:

- A deputy is assigned to keep a log at the scene and track all activity until Homicide arrives to take control of the scene.
- All personnel who respond to the scene and take part in securing the area, providing ongoing security, transporting witnesses, or otherwise contributing to the effort are required to document their actions in a report that is included in the case file.

- The forensics technicians use sophisticated forms of evidence collection and analysis in order to provide their own report. In each file, that report proved to be extremely clear and illuminating as a means of depicting the physical action in a shooting incident: explaining how a sequence of shots unfolded, showing people's positions in relation to each other, etc. The use of excellent crime scene diagrams and the clear, coherent application of scientific evidence to other facts and testimony were consistently instructive – in fact, in our experience those materials are unsurpassed in quality by any comparable agency. Furthermore, the technicians were careful to qualify their conclusions and explain the range of possibilities when their findings were not definitive.
- The investigation team photographs the scene and individual pieces of evidence in exhaustive detail.
- Investigators are generally thorough about interviewing civilian witnesses and including a summary of their statements in the file, even if they do not obviously add to the body of evidence. At the very least, these statements eliminate the possibility of later surprise testimony and reflect the Bureau's commitment to completeness.
- When applicable, the investigation files include the complete autopsy report that is independently produced by the County Coroners' Office.

- In virtually every investigation, the shooter deputies voluntarily provided statements about their actions within hours of the event¹⁵, and these were audiotaped, transcribed and included within the investigative file.¹⁶
- The investigation files occasionally included newspaper accounts of the incidents and attendant events – even when those events were protests or public criticisms of the Department.¹⁷

CASE ILLUSTRATIONS:

Due to a miscommunication, a crisis counselor interviewed one of two deputy shooters before Homicide did. Such an event could appear to taint eyewitness evidence and create evidentiary problems in the future, especially if revealed unexpectedly. Homicide's thorough documentation ensured that the problem was recorded and allowed it to be weighed appropriately by reviewers.

After a night-time deputy-involved shooting, by the time that the deputy was interviewed and the scene processed, it was daylight. Accordingly, in order to learn the lighting

¹⁵ One exception involved a case in which one of the shooting officers had himself been seriously wounded by the suspect. That officer, who was hospitalized, was interviewed five days later.

¹⁶ These statements are obviously important evidence, and it is worth noting that the officers routinely waive their Fifth Amendment right against self-incrimination in the course of making them. Such a practice allows the District Attorney to consider the deputies' interviews in evaluating whether the shooting was lawful. There are other notable law enforcement agencies in California where officers in shooting incidents routinely do *not* provide these voluntary statements, thereby complicating the prosecutors' ability to review those shootings.

¹⁷ Interestingly, we came across more than one instance in which Homicide investigators followed up with civilian witnesses whose potential knowledge of relevant facts came to the Department's attention via comments that emerged in news stories.

conditions at the time of the shooting, the interviewing Homicide detective returned to the scene at night and carefully documented his observations.

When an investigator took control of a case months after the shooting itself had occurred, he realized that the initial canvass of the area had identified a few potential witnesses whose statements had not subsequently been taken. This detective spearheaded the efforts to find these individuals and acquire statements, and went so far as to ask the Navy to submit questions to a sailor who had been deployed since witnessing part of the event. Though some of these additional people did not have helpful information, more than one had actually seen important aspects of the incident.

After one shooting involving a response to a sniper in a semi-rural setting, Homicide investigators took elaborate steps to assist evaluation of the incident, which covered a large crime scene featuring structures, a hillside, trees and boulders. They had aerial photographs taken of the large scene and arranged to bring some of the involved deputies to the scene for a reconstruction of personnel positioning and sight lines.

A mother contacted deputies to report the erratic and suicidal behavior of her adult son. When deputies responded to the location, the man emerged from a house and charged deputies while holding a gun. Two deputies fired, killing the man. One of the theories of the case became “suicide by cop.” Homicide documented this persuasively through interviews with the mother and evidence of a suicide attempt by the man the day before that had caused injuries separate from the gunshot wounds.

When a detective who was running an errand happened to observe an armed robbery suspect walking on the street in daylight hours, he called for backup. A responding deputy blocked the path of the suspect, who turned and went back in the direction of the original detective. The suspect pulled a gun from his waistband in an apparent attempt to discard it, but the detective perceived a threat and fired one round, wounding the man. The timing of the suspect's tossing of his own gun in relation to the shot became an issue, and interviews with two Department witnesses to the shooting established that the gun was already in the air when the shot was fired. These observations, though arguably unfavorable to the shooting deputy, were included in their entirety in the case file. Also included was the suspect's own statement, which conceded the potential for a misperception of his actions and included his view that the deputy was not necessarily at fault, given the sequence of events.

D. Issues in Homicide Investigations

As well-designed and well-executed as the Homicide Bureau investigations appear to be, several issues of note and potential concern came to our attention in the course of reviewing the twenty-two case files from the audit period. They range in type, from the systemic to the more fact-specific. They also range in other ways, including the frequency with which we encountered them and the extent of their potential impact on the affected cases.

None of these issues tips the balance away from our overall sense of the integrity and legitimacy of the Homicide investigations. However, each of them warrants the Department's attention as it strives to enhance the quality of its product. We also offer recommendations that address the issues in light of potential, and readily attainable, reforms.

Witness Deputies Should Be Interviewed Regarding Their Observations: In several instances in which deputies were percipient witnesses to a shooting (but not shooters themselves), they were not formally interviewed by Homicide but merely required to document their observations in a report.

CASE ILLUSTRATIONS:

Three deputies, armed with AR-15 rifles approached an apartment building. The deputies observed a man with a revolver who then pointed it at them. Two deputies fired multiple rounds at the suspect, killing him. The third deputy, who was positioned in the same area as the other two deputies, was not interviewed about his observations of the shooting.

Several deputies responded to a call regarding a man behaving strangely behind the wheel of his own vehicle, which was running. The man failed to cooperate and instead drove his truck recklessly down a long narrow driveway, and then back toward the street. Two deputies ended up firing to protect themselves, killing the suspect. Homicide

detectives interviewed the two shooter deputies within hours of the incident. Though one of the three witness deputies gave a detailed briefing at the scene to investigators and Department officials, and all wrote reports, none of them were formally interviewed regarding their observations.

Three deputies took positions in the back yard of a home where a team of officers intended to arrest a parolee at large. The suspect emerged from a back door unexpectedly and charged one of the officers in his efforts to escape. Two of the officers perceived a threat and fired, killing the man. Though the shooters were interviewed, the third deputy on the scene was not.

A disturbed man shoplifted a machete and tools from a department store, threatened a store detective, hit a female customer in the head with the machete and carjacked her truck from the parking lot. Deputies pursued the truck, which ran onto a lawn and collided with trees. Two deputies shot at the suspect, hitting him in the legs, when he came at them with a butcher knife. Two other deputies who saw, but did not participate in the shooting were not interviewed. Their short supplemental reports raised many questions, such as whether the suspect reached into his waistband for a possible firearm before or after the first few shots were fired by the shooter deputies.

Witness deputies – like all other percipient witnesses – are a critical source of information as to what occurred in a shooting case. Indeed, as trained observers and peace officers themselves, they have a perspective that is particularly important and

useful. Though a written report is obviously better than nothing, it lacks the capacity of an interactive interview to provide a full and detailed account of the witness's perceptions. By dictating the information that is covered, developing details, and asking clarifying questions, an investigator can glean far more from an interview than even the most thorough written statement is able to provide.

Report Recommendation # 4:

- **We recommend that the Department adopt a standard practice of interviewing all deputy witnesses to the shooting and/or events leading up to the shooting.**

Detectives Should Do a Brief Walk-Through of the Shooting Scene Before Interviewing the Involved Deputies: We noted inconsistency in the Homicide Bureau's approach to "walk throughs" of the actual crime scene as part of the investigative process. The first of the problems related to whether the detectives assigned to interview the shooter deputy or deputies were themselves familiar with the basic physical characteristics of the crime scene. Apparently, after traveling to the command post and receiving an oral debriefing, investigators assigned to interview the shooter deputies are sometimes then sent to the relevant patrol station to coordinate and conduct the interview process without receiving a walk-through of the shooting scene. This approach, while efficient on the one hand, leaves the detective needlessly unclear about basic and important information.

CASE ILLUSTRATION:

A shooting incident in an apartment complex resulted in multiple rounds being fired at an armed suspect and stray rounds striking vehicles and apartments. The interview of the shooting deputies became needlessly disjointed as an apparent result of the Homicide detectives' relative unfamiliarity with the layout of the apartment complex and the deputies' positioning at the time of the shooting in relation to that complex.

While we recognize some competing concerns about the need to conduct timely interviews, that concern is outweighed in our estimation by the interviewer's need to have a good grasp of the shooting scene. While a detailed assessment of the evidence need not be required of the interviewing Homicide personnel, a quick "lay of the land" for those individuals will result in more effective interviews of involved deputies.

Report Recommendation # 5:

- **We recommend that the Department consider adopting a practice of conducting a brief "walk through" of the scene for all investigators prior to conducting any interview of involved personnel.**

"Walk Throughs" by Involved Officers Should Be Documented: A separate "walk-through" issue concerns Homicide's general custom of interviewing each deputy shooter

at the station, then requesting that each participate in a walk-through back at the scene. This walk-through is doubtless often a very valuable investigative tool that shapes the impressions and understanding of investigators, but the substance of the deputies' comments is rarely recorded.

Over the years, law enforcement has increasingly recognized the value of documenting fact collection and “showing its work” in terms of how investigations were conducted and how evidence was collected and preserved. This attention to detail not only helps ensure a methodical investigation but also insulates the agency from challenges – in court or from skeptical members of the public. In accord with this principle, the Department provides good documentation of its fact collection process with the exception of the “walk through” of deputies. In order to close the loop on the fact gathering process, the information provided by involved personnel at the scene should be included and documented in the Homicide investigative report.

Related to this issue is the interest in ensuring the integrity of information provided by involved personnel at the “walk through” process. Consistent with its Policy and Procedure Manual, the Department is careful to transport involved deputies away from the scene separately and works to ensure that those deputies do not talk about the incident among themselves at the station before being interviewed by Homicide Bureau personnel. “All shooters involved in a crime scene incident shall be separated and segregated as soon as practical. It is of paramount importance that the integrity of

the investigation is not compromised with respect to obtaining clear statements from deputies involved in a shooting situation.”

The value of comparable precautions extends to the “walk through” process. While we have no evidence of carelessness or collusion in this regard, a practice of separate transport and separate “walk throughs” would comport with best investigative practices, and should be documented if followed.

Report Recommendation # 6

- **We recommend that the Department adopt a practice of documenting the comments made by the deputy shooters during the walk through. We also recommend that the Department consider adopting a practice of consistently documenting how deputies were transported and separated when performing these “walk throughs”.**

The Medical Examiner’s Time of Access to the Shooting Scene Should Be Re-evaluated: We encountered several instances in which the delay before turning the suspect/decedent’s body over to the Coroner’s Office had lasted several hours and may have had significant impact on the body’s condition. If the body remains at the scene, delay can also heighten tensions in connection with a shooting, especially when family members, neighbors, etc., are close by. While some delay is unavoidable, and while the dictates of the investigation itself should not be compromised, we wonder if timely access

to the Coroner can and should be more of a priority to the investigating team.

CASE ILLUSTRATIONS:

After a fatal officer-involved shooting that occurred in the morning outside a condominium complex, the Coroner's office did not take control of the suspect's body for some eight hours. The day was apparently a warm one, and the autopsy report described the skin on the body as reflecting "post-mortem thermal artifact" that affected its condition.

A disturbed man with a steak knife in his hand charged three deputies in the street of an urban neighborhood. The deputies backed up and ordered the man to stop; he kept coming, and they shot him fatally. The suspect's brother arrived at the scene hours later, refused to stay outside the police tape and was arrested. The coroner arrived at the scene 7 hours later. The presence of the body in the street for this period may have exacerbated lack of cooperation and resentment from the suspect's family members as well as the community. Negative publicity culminated in a community protest march 10 days after the shooting.

A man was killed in a yard by a deputy who had perceived aggressive action. The incident occurred on a hot summer afternoon. Representatives of the Coroner's Office did not arrive on scene until over seven hours after the shooting. By that time, the decedent had received numerous ant bites. The autopsy report reflects "extensive post

mortem ant activity” and notes that the body was sprayed with an insecticide before the examination could begin.

There are certainly competing concerns regarding the need to secure and preserve the integrity of the scene before the Medical Examiner is provided access to the body on scene. We have also been informed that the Medical Examiner is timely notified about the death but to avoid needless waiting around, Homicide does not request them to come until the scene has been processed. It should also be noted that we are not aware of any complaints registered by the Medical Examiner about the delay in providing access to the scene. That being said, means of potentially facilitating more timely access – without compromising the investigation – should be explored by the Department.

Report Recommendation # 7:

- **We recommend that the Department consider ways in which the Medical Examiner can be afforded access in a more timely fashion without compromising the integrity of the scene.**

The Department Should Not Allow Language Barriers To Hinder the Fact-Gathering Process: We encountered several instances in which language barriers caused investigators not to pursue statements from otherwise potentially viable witnesses to shooting cases or where language issues prevented the interviewing personnel from understanding the witnesses’ rendition of events with clarity.

CASE REVIEWS:

In an incident when a deputy shot and wounded the suspect during daylight hours and in public, the suspect was questioned at the scene. Officers relied on translation from a civilian witness to the shooting, who was himself later questioned about his observations.

Deputies responded to a call regarding a burglary in progress. Eventually, a deputy-involved shooting occurred. When a Homicide detective interviewed a witness about the acts of the suspect leading up to the shooting, he admitted being "confused" by the witness because of the language barriers between the detective and the primarily Spanish speaking witness.

Interviewing detectives canvassed an apartment area for potential witnesses to the shooting incident. On some of the canvassing forms, there was no witness summary but only a notation that people were contacted but were not interviewed because they did not speak English and the interviewing Detective did not speak Spanish. The canvassing form asked the Detective whether a follow up interview was necessary. That box for follow-up was not checked on the form.

On several occasions, interviewing detectives from Homicide requested a Border Patrol Agent to serve as a translator for them because of no Spanish-speaking capability on the part of Homicide.

The above episodes are problematic for two reasons. First, the fact-gathering process should not be undermined by language hurdles between the interviewer and the potential witness. The reviewer should be entitled to all information from all potential witnesses regardless of potential language challenges in obtaining such information. Secondly, when witnesses are disregarded or overlooked because they cannot communicate effectively in English, it has the potential to exacerbate feelings of tension or alienation from the Department that some members of minority communities may already possess. Though we have no reason to believe that past episodes reflect an intentional effort to marginalize non-English speakers, an effort to strengthen the Department's multi-lingual qualifications and its resolve to gather information from all witnesses is certainly warranted.¹⁸

Report Recommendation # 8:

- **We recommend that the Department not be deterred by language-related obstacles to information gathering, and that it continue its recent emphasis on bolstering the relevant foreign-language skills of its officers.**

The Rights of Civilian Witnesses Should Be Respected During the Investigation:

We encountered several instances in which it is unclear whether the handling of

¹⁸ The Vista patrol station, which provides services for a population that is approximately 40% Hispanic, has focused on this issue as part of its attempts to increase public confidence and strengthen ties with the community in the aftermath of the shootings in 2005. We discuss those commendable efforts in more detail below.

witnesses has been consistent with their own rights not to be detained without appropriate justification.

CASE ILLUSTRATION:

In one incident, deputies approached three individuals and chased one individual who began running away. The pursued individual was eventually fatally shot by a deputy. The other two individuals were “detained”, placed in a patrol car and eventually transported to the station without any evidence that they had committed a crime. While the interview summaries of the witnesses indicated that they had agreed to accompany Sheriff’s personnel voluntarily, once at the station the witnesses were read their Miranda rights, a procedure generally reserved for persons who are in “custody”. The witnesses were never charged with a crime.

If a police officer has no evidence that a person has committed a crime, there is no legal basis to detain him or transport him to another location. On the other hand, investigators clearly have an interest in ensuring that witnesses to critical events remain available in order to assist the investigator in her investigation. While that interest is certainly acute, law enforcement must be reminded at times that witnesses sometimes have the right not to cooperate in investigations should they desire not to.

We have no evidence that the Department intentionally or systematically deprives such witnesses of their civil rights in these situations. However, our experience with this

review and with other agencies suggests that providing both investigators and the witnesses themselves with an overt clarification – perhaps in the form of a waiver that the witness could sign – makes sense. This concern is not merely theoretical – we are aware of litigation from other local agencies that has resulted in payouts to witnesses who claimed that they were improperly “arrested” and transported against their will and then interrogated at the police station.

Recommendation # 9

- **We recommend that the Department formalize its protocols for promoting the cooperation of witnesses and acknowledging their rights under the prevailing circumstances. One option is to promulgate a form and waiver system that clarifies the status of witnesses and their options about traveling to the station to be interviewed.**

The Investigation Should Recognize and Respond to Fourth Amendment Issues that May Arise During Evidence Gathering: We encountered occasional instances in which the retrieval of evidence at a shooting scene has seemingly proceeded without sufficient regard to Fourth Amendment issues of search and seizure. As obvious a priority as the investigation must be for the Department, we believe its goals can be achieved while still accommodating the relevant protections.

CASE ILLUSTRATIONS:

A bullet hole was discovered in the trunk of a nearby and uninvolved parked car after a shooting incident. Rather than seek a search warrant or consent from the owners, Homicide detectives gained access to the trunk of the car by calling a tow truck operator, who then opened the trunk. There is no indication in the investigation file that a warrant was obtained or consent was sought from the owner of the vehicle.

Deputies shot and killed a suspect in the driveway outside his own residence, where he had lived with other individuals in a “halfway house” rehabilitative environment. During the subsequent investigation, detectives entered the home and relied on the consent of a fellow resident to search the suspect’s own bedroom and seize several different drugs/medications for evidentiary purposes. The report did not indicate whether a warrant had been obtained or whether exceptions to the warrant requirement had been considered and satisfied.

In investigations of critical events such as deputy-involved shootings, heightened precautions are in order since every action by the investigators could potentially be scrutinized at some point in the future. For that reason, these cases demand particular vigilance that investigative practices are done “by the book”. Again, in the cases cited, there is no indication that the investigators intended to inappropriately invade the privacy rights of the owner of the parked car, or to thwart the Constitutional requirements for searching for and seizing evidence of the suspect’s possible drug use. However, because

of the sensitive nature of deputy-involved shootings, the adherence to and documentation of Fourth Amendment considerations calls for taking the appropriate precautions.

Report Recommendation # 10:

- **When, for instance, investigators need to enter a suspect’s residence or look in a parked car for evidence, we recommend that they consider developing a protocol whereby they will obtain warrants or consent and document those efforts in the investigation file.**

The Investigation File Should Contain Updated Charging Information Against Suspects in Shooting Cases Where Applicable: Oftentimes, a suspect who is non-fatally struck by bullets is charged for aggressions on the deputies related to the shooting. While the Homicide book sometimes makes reference to these charges, there is no document that routinely reports on the status of those charges at the time that the investigative book is completed and sent to the District Attorney – or updates them for purpose of later review.

CASE ILLUSTRATIONS:

One deputy-involved shooting investigation described a response to a burglary in progress and a resulting deputy-involved shooting when the suspect appeared to be aggressing on the deputy with a weapon. The Homicide investigation did not indicate

whether charges were sought against the suspect for his acts of assault, and if so, the disposition of those charges.

In one deputy-involved shooting investigation involving multiple suspects, one suspect was killed but two escaped on foot. Investigators later found a gun that had misfired in the park where the incident occurred, and speculated that the weapon may have been used in an effort to shoot the pursuing deputy. These suspects, who were also accused of armed robbery, were later arrested, but the file is unclear as to their legal status and whether charges related to the shooting incident were ever filed.

In cases in which the suspect survives a shooting, information about subsequent criminal proceedings has potential relevance to the assessment of the shooting itself. For example, a charge or conviction relating to alleged aggression by a suspect that provoked the deadly force reveals that an independent assessment of the facts has reinforced the deputy's version of events in an important way. While another outcome would not be definitive proof of a problem, a decision not to prosecute or a verdict for the defendant might help indicate that further scrutiny of the shooting is warranted. Either way, completeness is served by the added effort to include information from a related criminal case.

Report Recommendation # 11:

- **We recommend that the Department adopt a protocol to ensure that relevant information about criminal charges and prosecutorial or judicial decisions regarding persons shot by deputies be included or updated in investigation files in shooting cases.**

Transcripts of Relevant Radio Traffic Should Be Included in the File: Radio traffic is often essential to any analysis of what information was being supplied to deputies as they responded to the scene. That information is important verifiable evidence that is helpful in assessing the shooting deputies' state of mind that resulted in the use of deadly force. For example, broadcast information immediately preceding the incident that the suspect is armed certainly goes to the heightened concern of any deputy who confronts that suspect. Additionally, what the deputy may have communicated over the radio about his observations reflects "present sense impressions" that have evidentiary value. Radio communications made by the deputy may also be helpful in assessing the strength of the deputy's tactics and his handling of the overall situation, relative to training and Department expectations.

CASE ILLUSTRATIONS:

One deputy-involved shooting investigation described a response to a burglary in progress and a deputy-involved shooting after partners had split. There is no transcript

or summary of any radio traffic between the deputies after they split up in the Homicide investigative book.

One deputy-involved shooting investigation described a foot pursuit of a reportedly armed suspect through yards, with a number of deputies responding and much radio traffic between them. One Sergeant indicated that he ordered deputies to stop pursuing, form a perimeter, and allow the K-9 handler to take the lead. However, one deputy saw the suspect on the fence, closed distance, struck the suspect with a sap, and then fired and killed the suspect as he came off the fence. While the Homicide books refer to the radio traffic, no transcripts of it are contained in the investigative file.

It should be clarified that the Homicide Bureau does collect the relevant radio traffic and makes the audiotapes of that traffic available to the District Attorney for review. However, in order to ensure and facilitate a review of the traffic by the relevant authorities, and the Department itself, a transcript of that radio traffic included in the book is preferable, in the same way that the taped interviews of the shooting deputies are transcribed and included in the investigative report.

Report Recommendation # 12:

- **We recommend that, when radio traffic has a significant bearing on the incident and how it unfolded, a transcript of that traffic be included in the investigative books.**

E. Risk Management and Officer-Involved Shootings

Sometimes, as a result of the shooting incident, there is collateral damage to non-involved citizens. While we saw at least two instances in which civilians received gunshot wounds from having been in the line of fire – a serious situation that requires its own careful protocols – more common are situations in which property damage occurs as a result of stray rounds that go into houses or vehicles. We believe that the Department’s response to a situation like this should be immediate and proactive.

Though the Risk Management Bureau currently sends a representative to the scene of a shooting, in part to locate and assess this type of damage, that person apparently does not have the authority to offer immediate compensation to those impacted. The ability to attend to those potential claims and concerns in a timely manner has various benefits to offer – including sending a very appropriate message to those bystanders who suffer harm through no fault of their own. We have seen other agencies successfully pursue the dual goals of good citizenship and fiscal responsibility by giving Risk Management personnel limited immediate claim-settling authority.

CASE ILLUSTRATION:

A deputy-involved shooting resulted in multiple stray rounds being fired into apartments and vehicles of nearby residents. While Risk Management personnel rolled

to that location, they had no authorization to provide compensation or even provide claim forms to those persons who suffered property damage as a result of the shooting.

In cases where it is clear-cut that persons have received property damage as a result of “collateral damage” from an officer-involved shooting, it is advisable to make those persons whole as soon as practicable. In addition to being liable for such damage, having potential claims “adjusted” on the spot signifies a Department responsive to the interests of the public caught in the middle of a deputy-involved shooting.

Report Recommendation # 13:

- **We recommend that the Department explore ways to provide Risk Management personnel with a limited authority to respond to shooting scenes and immediately provide appropriate compensation to innocent parties who have suffered damage as a result of Department actions.**

F. Shooting Review Protocols

We believe strongly that officer-involved shootings merit one of the highest and most comprehensive levels of self-scrutiny that a law-enforcement agency has to offer. As we have said before, each one potentially implicates the public’s confidence in the exercise of police power. More than that, though, these critical incidents all raise internal issues of tactics, training, supervision, risk management, equipment, and policy that the

Department should seize as opportunities for self-examination and, where indicated, reform.

As effectively and comprehensively as Homicide may gather factual evidence and provide the foundation for a valid assessment of the legal questions relating to deputy-involved shooting incidents within the Sheriff's Department, its focus is unmistakably a narrow one. Its exclusive concern with questions of legal justification for the deadly force inevitably influences concepts of "relevance" and shapes the range of evidence that those investigators initially compile.

In turn, that range – in the absence of a supplementary fact-gathering and review process – inevitably creates the strong likelihood that important information relating to officer performance or other administrative issues will not emerge. This does not happen for sinister reasons, but as an inevitable function of Homicide's relatively narrow mission. That said, the mindset of Homicide detectives and their focus on the legality of the deadly force limit the Department's ability to address the shooting with proper completeness.

For example, in one shooting in which deputies used "AR-15" long-range rifles in response to the suspect's threat – firing seventeen rounds and striking nearby apartments and vehicles with some of them – there is no indication that Homicide detectives

confirmed that the deputies were qualified in the use of that specialized weapon.¹⁹ The question would, of course, have little to no bearing on the issue of whether the officers used deadly force in a legally justified way. It should, however, matter a great deal to the Department in terms of whether its standards for officer performance are being met.

Furthermore, the Homicide interviews in that case did not address or develop information about relevant tactical issues such as ability to seek cover, fields of fire, conservation of ammunition, and backdrop. While these issues may not seem greatly important to the decision whether to deploy deadly force, the issues are of critical importance to the sort of effective holistic review to which the Department should aspire.

Similarly, the usual Homicide investigation book presents virtually no information regarding the past history of involved deputy personnel. The Homicide book does not contain a use of force history of the shooter deputies, nor a record of any prior discipline, nor a list of training and qualifications. While this absence is not an issue relevant to every shooting, the inclusion of these facts may help department decision-makers to recognize, for instance, a pattern of recklessness, poor judgment, or inadequate training in a particular deputy. These factors are clearly germane to an effective approach to risk management, officer safety, administrative accountability, and future performance.

¹⁹ We have no reason to doubt that the deputies were, in fact, qualified. We raise the point only to show that checking the deputies training records was – understandably – not a priority for the Homicide investigation.

The limitations of Homicide’s scope are particularly apparent in the investigators’ interviews of deputy shooters. The questions tend to be brief and straightforward, and, apart from the deputy’s initial narrative answers about the incident as a whole, then revolve around the perceived threat and the decision to shoot. Even in the presence of glaring issues of tactics in the moments leading up to the shooting, Homicide investigators rarely seek clarification or elaboration regarding those facts.

This dynamic can be frustrating at times (especially since significant deviations from policy or training arguably have a bearing on the deputies’ state of mind, decision-making, judgment, etc.). In fairness to Homicide investigators, though, the approach is consistent with their mission as guided by Department management. The question, then, is how the remaining elements of a comprehensive review can be satisfied. When Homicide’s scope of work approach is not supplemented by a parallel and expanded review that does address these issues, it leaves a significant gap in the Department’s review process.²⁰

For the deputies in the midst of a fast moving, dangerous shooting scenario to fall short of ideal tactics is as common throughout law enforcement as it is understandable. The reasons are numerous, and the best strategies for remediation are similarly varied. However, in some instances when conduct shows a significant disregard for established Department policy or training, it may be appropriate for the Department to take corrective action in an effort to hold those individuals responsible – up to and including a

²⁰ For these and other reasons, as detailed below, we recommend below the creation of a separate investigative team to focus on administrative issues at deputy-involved shooting scenes.

disciplinary suspension. Less egregious tactical missteps can be more appropriately addressed at the individual level, through targeted training and individualized debriefing – but certainly should be addressed in some fashion.

From a systems analysis, shootings present an opportunity to assess current Departmental policy, training, practices, and equipment as they apply to the gravest of real-life circumstances. The products of this scrutiny can be beneficial on a going-forward basis, not only to the involved officers but the Department’s membership as a whole. Less directly, but no less importantly, the public stands to benefit from the insights, adjustments, and reforms that a thorough review would help produce.

Our impression that the Department’s assessment of shootings has room for growth is further reinforced by current review practices for “non-hit” shootings, that is, shootings in which deputies fire their guns but do not strike a suspect with the rounds. The difference in outcome and results compared to a hit shooting is obviously significant, and we understand the reasons for limiting the full-fledged Homicide investigation and District Attorney Review to the latter context. Nonetheless, the Department’s interest in rigorous review of the administrative issues in the incident should be the same conceptually. These incidents raise the same questions about performance and tactics as do hit shootings, and are just as serious in terms of deputy intent and state of mind.²¹

That said, we were struck by the fact that assessment of the incidents is left to the

²¹ We elaborate on this idea in a recommendation that appears below.

individual stations – and even at that level seems less than rigorous. Perhaps the best evidence of the apparent lack of concern traditionally afforded non-hit shootings is the struggle that the Department had in identifying how many non-hit shootings had occurred over the three-year audit period. At the outset of this project, we requested all non-hit shootings for the 3-year period under review based on our conviction that they would provide an important window into tactics, training, force practices, investigative practices and evaluation processes. The Department had difficulty locating and retrieving documentation of non-hit shootings despite its repeated efforts.²²

Ultimately, the Department was able to identify and produce documentation for only two non-hit shooting incidents. This total may well be inaccurate for the entirety of the three-year period, if the statistics from other agencies are any guide.²³ Even if it were correct, though, the Department’s uncertainty and lack of a formalized tracking process for these events is itself telling. More attention is warranted.

The following case examples are drawn from incidents during the audit period, with an emphasis here on the tactical issues each one presented apart from the legal justification for deadly force. In raising these issues here, we do not intend to convey any

²²When we asked the Department to go one step further with its search, it readily agreed. We met with Communications Center personnel and designed with them a search of computer records of dispatch communications that might detect otherwise undocumented non-hit shooting incidents. However, this effort was to no avail.

²³Two out of a total of 27 shootings for the 3-year period would comprise a non-hit rate of approximately 7%. This would be an extraordinarily low rate of non-hits relative to the six other comparable California law enforcement agencies we have examined. They report non-hit shooting rates that range between 16 % and 69 % when viewed over three recent years. Even among this group, a one-year rate below 22 % is very rare.

judgment on the propriety of the deputy's actions – indeed, we recognize that in many instances the actions we cite may have been entirely appropriate for the circumstances and consistent with Departmental training and expectations. Our point is that a formal and systemic review process is essential to ensure that these matters receive the attention (and, where necessary, corrective action) that they deserve.

CASE ILLUSTRATIONS:

A deputy involved himself in another agency's pursuit of a stolen vehicle suspect – and continued on at speeds of up to 80 MPH and without lights or sirens when the other agency decided to stand down. The deputy eventually tracked the suspect vehicle to a parking lot, where he collided with it. When the suspect fled, the deputy began to pursue on foot with gun in hand. He closed the distance when the suspect fell, began grappling with the unarmed suspect with his gun still in his hand, and then accidentally shot and wounded the suspect during the struggle.

Among the issues presented by this case, and potentially warranting administrative review, were the following:

- ✓ Was the decision by the deputy to join the pursuit started by another agency within Departmental policy or expectations?
- ✓ Was the manner of pursuit (without lights or sirens) consistent with Departmental policy?
- ✓ Should the deputy have persisted after the other agency terminated its pursuit?

- ✓ Could or should the collision with the suspect vehicle have been avoided?
- ✓ What was the substance and effectiveness of the deputy's radio communications?
- ✓ Should the deputy have gone into foot pursuit of the suspect?
- ✓ Was it tactically advisable for the deputy to grapple with the suspect with his gun out of his holster?

A deputy volunteered to extend his long day on patrol in order to cover a staffing shortage. He heard reports of an armed robbery, and used his familiarity with the location to find possible suspects in two cars at a nearby park. Rather than calling for backup and waiting, he used his spotlight to get a better look at one of the vehicles; this prompted three suspects to flee. The deputy pursued them on foot deeper into the dark and remote park, realizing too late that he was not carrying a flashlight and that his hand-held radio needed a new battery. Alone and unable to communicate, he focused on one of the fleeing suspects, and shot him when he perceived the suspect was reaching for a weapon. The deputy, aware of two more suspects at large, unable to see the hands of the fallen suspect he had wounded, and concerned when the second car began to approach him, fired several more rounds, killing the suspect.

Among the issues presented by this case, and potentially warranting administrative review, were the following:

- ✓ Did staffing or resource shortages affect the incident by contributing to fatigue on the part of the involved deputy?
- ✓ Would it have been preferable for the deputy to call for backup before

engaging the suspects or engaging in a foot pursuit?

- ✓ Should the deputy have backed off when he realized that he was not equipped with a flashlight and a functioning radio?
- ✓ Apart from the legality of the shooting, did the use of deadly force satisfy the Department's expectations and policy requirements?

A deputy and his partner respond to an alleged burglary in progress. They split from each other and he proceeded to the back of the residential development. When he arrived at the back of the residence, he ran immediately toward a chain link fence. When he saw the suspect running in his direction, he continued toward the chain link fence and did not seek cover. Eventually, he saw the suspect with a shiny object in his hand (later found to be a screwdriver) and, believing the suspect was about to fire on him, fired one round at the suspect, killing him.

Among the issues presented by this case, and potentially warranting administrative review, were the following:

- ✓ Was it tactically advisable for the deputies to split from each other?
- ✓ Was it tactically advisable for the deputy to run towards a fence rather than remain in a position of cover?
- ✓ Was it tactically advisable for the deputy not to seek cover when he saw the suspect running in his direction?

One plain-clothed detective approached a felony suspect in his parked vehicle without his duty weapon in order to place a spike strip under the tires of the car. A second detective

fired into the suspect vehicle after the suspect had backed into a Department vehicle responding to the incident. In the meantime, the first detective went to the Department vehicle to retrieve his duty weapon, moved up to the side of the suspect vehicle and fired four rounds at the tire of the suspect vehicle. The detective at first denied firing his weapon, but the next day admitted to trying to shoot out the tires. At first, the detective, who had received an eye injury, attributed the eye injury to the suspect vehicle striking the police vehicle which in turn struck his arm, causing him to strike himself in the eye. Later, the deputy told his treating doctor that he received the eye injury either when he shot his gun and glass shards from the shooting went into his eye or when the recoil of his weapon firing caused him to hit his hand against his eye.

Among the issues presented by this case, and potentially warranting administrative review, were the following:

- ✓ Was it a tactically sound decision for the first detective to approach a felony suspect without his firearm?
- ✓ Was it a tactically sound decision by the second detective to fire into the suspect vehicle?
- ✓ Was it tactically advisable and consistent with Departmental training for the second detective to fire at the tires of the vehicle?
- ✓ Why did one of the detectives offer inconsistent explanations for the injury he received?
- ✓ Did the deputy who initially denied shooting the tires make deliberately false statements that warranted discipline?

A detective in plainclothes spotted a robbery suspect unexpectedly and called for a containment. The suspect, on foot in a public area during daylight hours, eventually ran back toward the original detective, who in response ran in the suspect's direction in spite of seeing him draw a weapon. As another unmarked Department vehicle arrived on the scene and inadvertently drove between the suspect and the detective, the detective perceived a threat and fired from a few feet away. The suspect was wounded and taken into custody. Civilian bystanders later questioned why they were not given a warning about the potential danger of the containment.

Among the issues presented by this case, and potentially warranting administrative review, were the following:

- ✓ Was it tactically advisable for the detective to run towards the suspect after seeing him draw a weapon?
- ✓ How effective was the communication and coordination among responding deputies?
- ✓ Would it have been preferable tactically for Department personnel to have alerted bystanders about the dangers presented by the suspect?

We were neither surprised nor dismayed by the type or number of potential performance and/or tactical issues revealed in our review of the shooting cases from the audit period. By their very nature, these critical incidents put tremendous demands on the involved officers and test the Department's procedures and training in ways that routine events simply do not. We did come to believe, however, that many of the issues we identified – and which emerged to at least some extent in every case we reviewed –

seemed to warrant more rigorous attention from the Department than what they received.

This problem was a function of a few different phenomena. One recurrent theme that emerged in our discussions with Department personnel was the existence of a historical and customary reluctance to delve into shooting incidents with the thoroughness we describe above. More than one executive expressed the viewpoint that the mission of law enforcement is to chase and catch “bad guys.” They believed that the value of any post-incident scrutiny, or changes to policy or training, must be weighed against their possible effects on the motivation and morale of well-meaning officers in the field.

The operative culture and traditions are understandable: support of the deputies in the field is never more important than when they have been involved in a traumatic event such as a shooting, and the Department has traditionally chosen to err on the side of reticence rather than providing meaningful or remedial feedback or taking other actions that may be perceived as undermining and critical of deputy performance.

We believe, however, that the potential lessons and the opportunities to improve performance – and enhance officer safety – are worth the growing pains that sometimes accompany a cultural shift.²⁴

²⁴ Nor are we alone in this view: a competing “school” of Departmental executives whom we encountered during our review is clearly willing to pursue a more rigorous line of review for individual performance and systemic issues in the wake of shooting incidents.

We now turn to structural hurdles that potentially limit the effectiveness of the formal administrative review process that does exist, namely, the Critical Incident Review Board (CIRB).

G. The Critical Incident Review Board

Critical Incident Review

Agency	Criteria and Procedures for Executive Review of Critical Incidents :
San Diego Sheriff's Department	Critical Incident Review Board comprised of top executives. Presentation by Homicide. Traditionally only for hit shootings.
Department A	Executive Force Review Board comprised of commanders, for all shootings and uses of significant force. Presentation by Internal Affairs. Board may request formal internal affairs investigations, and recommended discipline, individualized training, de-briefing, and/or policy review.
Department B	All shootings go to Board of Chiefs for review. All alleged excessive force cases go to review board after IA investigation. All discipline goes through review board.
Department C.	Shootings reviewed by executive staff after internal affairs investigation. Other force investigation is part of Homicide/IA investigations; no separate review board.
Department D	All shootings reviewed by a Shooting Review Board. The board consists of a chief from a bureau other than that of the person under review, a captain, a sergeant, and two peers from stations other than that of the person under review. Sheriff has discretion to call a review board for other situations.
Department E	All shootings go to Shooting Review Board to evaluate training, tactics and weapons. Weekly meeting of commanding officers to review critical force incidents. For exceptional incidents, after action report by involved unit must be done for executive review.
Department F	"Categorical" uses of force (shootings, other lethal force, serious injuries) go before Use of Force Review Board comprised of division chief, officer's bureau commander, training representative and a peer. Board may recommend discipline.
IACP Model Policy	All incidents involving suspect's death or hospitalization should be referred to internal affairs for investigation. Unit commander should review other uses of force and submit findings to internal affairs to determine adherence to agency policy and procedures.

The Department's Policy and Procedures Manual lays out the purpose of the Critical Incident Review Board ("CIRB"): "The purpose of this board is to consult with department legal counsel when an incident occurs which may give rise to litigation. The focus of the CIRB will be to assess the department's civil exposure as a result of a given incident and to carefully review those incidents from multiple perspectives with the ultimate goal of identifying problem areas and recommending remedial actions so that potential liability can be avoided in the future."

During the audit period of 2003-2005, CIRB was comprised of Department executives of different ranks who gathered at Sheriff's Headquarters to hear a presentation about the incident, identify issues, and discuss potential approaches to remediation. These meetings were usually scheduled after the District Attorney's Office had completed its review and issued a letter of opinion regarding legal justification for the deputies' actions.

For hit shootings, the group of attendees (which could easily be twenty or more people on a given day) would discuss the case after a factual presentation from the Homicide Bureau and decide what, if any, further action was needed. At least theoretically, the goals of this process were very much in keeping with the comprehensive approach to review that we advocate. And we did find examples of useful initiatives arising from the CIRB meetings.

CASE ILLUSTRATIONS:

Deputies fired numerous AR-15 rounds in an apartment complex at a man armed with a gun. A number of the stray rounds entered apartments of innocent neighboring residents. As a result of the CIRB, it was determined that a different type of ammunition should be used for the AR-15 rifles that is not as likely to penetrate walls. Also, a "Tactical Tip" was distributed to deputies from the Training Bureau, reminding them of the less lethal options that are at their disposal.

In a review of a deputy-involved shooting at night, it was discussed by CIRB members whether a tactical light would have provided better lighting to the deputy.

In a review of an off-duty shooting by a Detention Services deputy, it appeared that the deputy's actions had been valorous and his tactics sound. However, though he was entitled to carry his weapon off-duty, the restricted status of Detention Services deputies arguably meant that he was acting without all the protections from civil liability that Law Enforcement Services deputies carry. The CIRB panelists discussed the issue and called for a bulletin reminding deputies of these legal questions for their own information and protection.

In a review of a deputy-involved shooting, the tactics of the shooting deputy were discussed by CIRB members. Included in the discussion were the issues of shooting at moving vehicles and its effectiveness; the decision by the deputy to "close the gap" and

reduce the safety margin between himself and the suspect vehicle; the decision whether to stay or leave the patrol car when the suspect vehicle attempted to ram the patrol car; and the failure of the air bags to deploy. A training bulletin emanated from this CIRB.

In a review of a deputy-involved shooting following a high-speed chase and collision where the suspect had started driving again barely missing a deputy, CIRB members agreed that there was room for improvement in the way deputies approached the suspect vehicle immediately and from the front. This resulted in the distribution of a “Tactical Tip” addressing felony high-risk stops.

While often constructive, the CIRB process is hampered by systemic flaws that keep it from providing a greater benefit to the Department. We have organized our discussion of these around four topics: content, structure, outcomes, and timeliness.

1. Areas of Concern re CIRB: Content

The *content* issue arises from Homicide’s role as virtually the sole collector of the facts behind any shooting, their role as presenter of that information at the CIRB, and the imperfect match between Homicide’s focus and the holistic aims of a broader and multi-faceted review.

CASE ILLUSTRATIONS:

When interviewed after a fatal shooting, deputies indicated that they had difficulty hearing each other because the Department's helicopter was low and loud. The issue of the helicopter impacting on deputies' ability to coordinate tactically was not followed up on by Homicide and apparently not presented to the CIRB.

In one shooting incident, prior to the shooting of the suspect, other deputies felt threatened by the suspect and could have shot him, but instead took cover and placed themselves out of harm's way. This fact was not presented to CIRB for assessment and possible recognition of the restraint displayed by the deputies who did not use deadly force.

During an interview of a deputy involved in a shooting, he admitted to having received a concussion two weeks earlier. There was no follow up by investigators regarding whether this fact should have been reported at the time it occurred and whether the prior incident diminished the deputy's ability to perform within expectations on the day of the shooting. In addition, the information about the deputy reporting a concussion two weeks prior to the incident was not presented by Homicide to the CIRB.

A detective approached a felony suspect vehicle on foot without being in possession of his duty weapon. As a result, he was forced to return to his car when the suspect aggressively slammed his truck into the officer's vehicle. This fact that the deputy

approached a felony suspect without being armed was apparently never presented to the CIRB nor subject to critical review.

Two deputies shot at an enraged man who was coming toward one of the deputies in a cramped residence swinging heavy objects in each hand. One deputy shot one round just before the suspect threw one of the objects at him, which glanced off his arm. The deputy shot a second round. The second deputy shot one round as well, fatally injuring the suspect. When Homicide interviewed the two deputies, they related similar versions of the incident, with one crucial difference: Deputy One believed that the suspect no longer had anything in his hands when the deputy shot him a second time. The deputy in fact acknowledged that he saw the suspect move his empty hands toward his bulging pockets and, suspecting that his assailant might pull out another weapon, shot again. Deputy Two was simply not clear as to whether the suspect was still swinging something when the second and third rounds were fired. The Investigative Summary however, created a third narrative whereby the suspect possesses and actively swings the other object until he is shot a second and third time. The presentation to CIRB did not develop this discrepancy, and presumably many panel members were unaware of it.

Rather than saddling Homicide with additional and perhaps unwelcome (or even competing) responsibilities, the Department should develop and implement other formal mechanisms with which to obtain additional information about the shooting. Formal investigation is needed that will flesh out tactical and supervisory issues and will gather facts necessary to assess policies, Departmental expectations, and deputy performance for

every deputy-involved shooting.²⁵

While we advocate another body within the Department assigned to collect information surrounding potential training, tactical, and other administrative issues, we do not intend to suggest that this is a function that need be carried out by Internal Affairs. Rather, any administrative team of investigators knowledgeable about current policies, practices, and training could obtain the information needed for a thorough review. However, the evidence collection must be collected through formal interviews of witnesses and involved personnel. Those interviews will often involve inquiry into tactical considerations and supervisory questions that will not be covered by the initial interviews by Homicide. Because these administrative interviews may result in discipline imposed on deputies who violate policy, the full panoply of rights afforded deputies should be afforded them in the interview.

As noted above, when a deputy-involved shooting occurs outside the regular jurisdiction of SDDS, another law enforcement agency will usually conduct the investigation of the shooting that is forwarded to the District Attorney. In these cases in particular, there will likely be a need for further inquiry into tactical and supervisory issues since the outside agency will have little familiarity with the Department's training and policy on those issues. Moreover, the breadth of any investigation conducted by an

²⁵ It should be noted that a protocol to have Training Bureau personnel roll out to shooting scenes, and to informally discuss the case with willing deputy participants at the conclusion of the District Attorney's review, was initiated in 2005. It has endured some growing pains, and has not translated into the sort of probing and full-fledged administrative review we advocate. Nonetheless, it reflected an encouraging impulse on the part of Department management to explore broader issues in the shooting context.

outside agency will be limited to its investigative protocols and accordingly, it will likely be the case even more so in these situations that an administrative investigation by Department personnel will be needed to fully collect information in order to ensure a thorough administrative review.

2. Areas of Concern re CIRB: Structure

The *structure* of the CIRB also falls short, in our view, of best practices for effective review. The high number of attendees was obviously intended to promote knowledgeable discussion across the spectrum of Departmental experience and expertise, and it provided a mechanism for debriefing Department executives about a shooting. In our view, though, the size of the crowd and range of ranks is just as likely to chill meaningful dialogue. Additionally, the shared authority among participants may actually have thwarted momentum by spreading responsibility too thinly. This seems especially true given the lack of formal decision-making structure in the process: no votes are taken, rulings made, etc. This dynamic is compounded by the fact that almost none of the Board's members have access to the files in advance of the meeting, and therefore may be less inclined to take strong positions or even have the chance to recognize potential issues.

CASE ILLUSTRATION:

In a deputy-involved shooting that occurred in the visiting area of a detention facility, a

lieutenant shot an unarmed suspect who had just attempted to wrestle his gun away. A sergeant who arrived at the scene also shot the suspect, fearing he was a threat to the lieutenant. There were several sworn and civilian employee witnesses to the incident. Their interviews reveal conflicts and contradictions in some key facts, such as whether the suspect was moving toward or away from the lieutenant or even lying on the ground when the second volley of shots was fired. The CIRB discussion focused on holster design and the training and management expectations of Detentions deputies – both of which were relevant issues. However, the contradictory witnesses were reportedly not mentioned and, therefore, not addressed.

3. Areas of Concern re CIRB: Outcomes

The *outcome* of any Departmental review process is also an area deserving of attention. At this point, with the exception of isolated examples of accountability or training memoranda, there does not appear to be a sufficiently robust response to any information learned from the reviews of shootings. Under the current CIRB review, the menu of remedial options appears to be limited to considering promulgation of training bulletins and reviewing equipment issues. In other words, the focus of CIRB remediation has only been systemic, and no attention has been directed to individualized issues of performance on behalf of the involved deputies.

While these two responses are certainly laudable, the customary CIRB actions lack sufficient vigor and flexibility. The CIRB process should force Department

supervisors to make decisions about deputy performance. The question of whether the shooting and attendant tactical decisions were within Departmental policy should be presented and answered by a panel of supervisors. If there was no violation of policy, the same decision-makers should decide whether the actions of the deputies warranted targeted training, counseling, and/or briefing. In our view, issues of accountability, policy, supervision, equipment, and training not only need to be discussed, but also should result when appropriate in a concrete action plan. A coordinator assigned to CIRB should be responsible for ensuring that any action plan is implemented by the station command.

Finally, there must be some type of feedback mechanism to the CIRB whereby it receives confirmation when its action plans are implemented. We are aware of other agencies in which peace officers, for example, were being ordered to training, counseling, or briefing as part of a remedial plan in which, because there was no feedback mechanism in place, no one ensured that the peace officers were completing the remedial actions. A CIRB coordinator should be designated and systems should be developed to ensure that, when individual or systemic action is ordered by the CIRB, it is actually completed.

Our review of the CIRB protocol in place during the audit period revealed gaps in documentation that left significant questions about follow-through, even on those occasions when the meetings produced constructive analysis and results in the administrative arena.²⁶ In our view, it is vitally important that such outcomes be

²⁶ For the 24 shootings that had been through the CIRB process by the end of 2006, there was a record of the Department's discussion, findings, and actions (if any) for only 16 of them. This is true, despite the

documented so that the Department's diligence is memorialized, and so that accountability and efficiency supplement its commitment to corrective action.

CASE ILLUSTRATIONS:

The Department had developed a training curriculum with regard to foot pursuits. One tactical consideration was that partners should avoid splitting with each other during a foot pursuit. At the outset of an incident that led to a shooting, two deputies approached three individuals working on a car in a residential area. When one of the individuals began to run, one deputy went into foot pursuit while the remaining deputy remained with the other two individuals. There is no evidence that this tactical decision-making was discussed by Departmental executives at the CIRB process.

The CIRB discussed a shooting incident in which there was little articulated probable cause that formed the basis for the responding deputies to go into foot pursuit of a suspect that eventually resulted in a fatal shooting. While acknowledging this fact at the CIRB review, the Board did not pursue any remediation through Department-wide or individualized training, briefing, or further investigation.

A suspect who was believed to be armed was discovered at the top of a fence. A police

Department's Manual of Policy Procedures provision that mandates that a copy of each "CIRB Confidential Report" prepared to document the outcome of the CIRB meeting is to be forwarded to the Undersheriff. Significantly, the three Vista shootings in the summer of 2005 were among those for which there was no documentation of the CIRB review, though we are aware that the review did occur in 2006.

dog attempted to grab the suspect with no success. Several deputies were in the vicinity and observed the suspect. Suddenly, without communicating to fellow deputies, one deputy closed distance and struck the suspect in the leg with a sap to no effect. The suspect then came off the fence. Because of his belief that the suspect now presented a threat, that deputy fired from close range and killed the suspect. While a member of the CIRB panel questioned the tactics of the deputy who closed distance on a suspected armed suspect, rather than assisting with an already-initiated containment, no further Department-wide or individualized training, briefing, or disciplinary action was undertaken.

The CIRB was presented with a deputy-involved shooting in which deputies had tried to ensure that a parked suspect vehicle would not be able to get away by placing a spike strip behind one of the tires of the vehicle. The spike strip did not disable the vehicle causing the deputies to feel the need to use deadly force. There was no remedial plan or follow up after the CIRB proceedings to learn why the spike strip did not work when it was deployed.

It is significant that, of the 25 shooting cases that we reviewed, only one of them even resulted in a formal Internal Affairs Bureau investigation for the purpose of developing evidence of possible policy violations by involved personnel.²⁷ And the Internal Affairs investigation and resulting discipline in that case did not result from the CIRB process, but instead was the product of one supervisor's immediate concerns and

²⁷ In that case three supervisors were ultimately disciplined for poor planning and/or communication in the operation that led to the shooting; the actual shooter deputies were not subjects.

initiative.

It is not surprising that the CIRB process led to no administrative investigations, given that it was not configured for such a result. Obviously, in the shooting cases, this meant there was little chance that discipline would occur as a consequence of potential policy violations, or that the Department would have a definitive record of its own concerns for future reference regarding the relevant officers.

The same is true for decisions to order deputies to training or individualized briefing. Again, because of the limited scope of information presented and the traditional orientation of the CIRB process, to suggest individualized training or briefing as an option has not been a consistent menu choice. We believe, however, that the CIRB process can and should be reoriented to include these and other outcomes that reflect the insight, expertise, or thoroughness that the Department could bring to bear if it so desires.

4. Areas of Concern re CIRB: Timeliness

The *timeliness* of CIRB review and intervention also presented a potential concern to us. Routinely, CIRB meetings for incidents that occurred during the audit period were held many months, or more than a year, after the incident in question. There is an unavoidable tension between timeliness and thorough preparation for review, but the value of review usually diminishes with every month that goes by. Very tardy reviews also subject the Department to criticism that it is not as serious about self-

examination as it professes to be.

The Department has recently developed a thoughtful way to address this issue: by implementing a Phase I CIRB shortly after a critical incident to identify issues of concern and a later Phase II CIRB to address those issues more thoroughly. We applaud this initiative and recommend that the Department continue to focus on the twin goals of timeliness and thoroughness.

Report Recommendation # 14:

- **In light of the above, we recommend that the Department revamp its Critical Incident Review Process in the following ways:**

14 a. By assigning a separate team of investigators outside of Homicide Bureau to roll to the scene of officer-involved shootings – including both hit and non-hit incidents – and take responsibility for a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance;

14 b. By changing the structure of the Critical Incident Review Board to foster clear lines of authority, focused decision-making, continuity, and follow-through. We recommend appointing a small panel of Commanders to review the investigative reports, hear a presentation by the administrative shooting

review investigators, and make decisions on each case, as advised by legal counsel, Training, and the unit commander of the station of origin for the incident;

14 c. By encouraging a heightened willingness to promote officer safety and sound policing practice by holding deputies accountable when policy violations or performance issues influence shooting incidents;

14 d. By expanding the options of CIRB to include ordering individualized training and briefing of involved personnel;

14 e. By requiring timely investigations and review presentations.

The Department's Manual of Policy and Procedures anticipates that CIRB would be available to review other uses of force besides hit shootings: "The following incidents may be reviewed by the CIRB:

In custody death;

Pursuits ending with any injury, property/vehicle damage;

Death or serious injury resulting from action of a member of this Department;

Discharge of a firearm by sworn and/or corrections deputy personnel."

Accordingly, Departmental policy provides that CIRB review is potentially available for many more critical events than CIRB was convened for during the audit

period. As noted above, CIRB reviews during the three year audit period were limited to hit deputy-involved shootings.

It is critical that CIRB review be expanded beyond hit shootings in light of the apparent demise of the Department's Use of Force Review Board. Apparently, at one time, the Department did convene a Force Review Board to consider uses of force similar to the current CIRB review for deputy-involved hit shootings. In fact, the Department's Policy and Procedures index retains a reference to a policy manual provision concerning the Use of Force Review Board, but the manual provision describing the Force Review Board no longer exists. It is critical that the Department return its attention to major uses of force. Rather than reviving the defunct Use of Force Review Board, we recommend taking advantage of the CIRB's inherent ability to review major uses of force, non-hit shootings, and in-custody deaths.

Report Recommendation # 15:

- **We recommend that the jurisdiction of the re-designed CIRB be expanded to include a protocol for the automatic review of additional categories of incident, as itemized and explained below:**
 - **Deaths incident to arrest by Department deputies**
 - **Non-hit shootings**
 - **A selection of serious force incidents; particularly those resulting in serious injury to the suspect**

➤ Bites by the Department's K-9 Unit

The following few pages explain in more detail our rationale for urging the expansion of CIRB's subject-matter jurisdiction to cover these additional categories.

Deaths Incident to Arrest by Department Deputies

CASE ILLUSTRATION:

Pepper spray was used on an arrestee who was acting bizarrely and resisting the deputies. They eventually took the arrestee to the ground. On the ground he received punches to the shoulder. A spit sock was placed over the arrestee to prevent him from spitting on the deputies. Eventually, the arrestee was placed into maximum restraints, a procedure in which his legs and arms were restrained. The fire department arrived on scene and they, along with the deputies, carried the arrestee and placed him on a gurney. He was secured to the gurney with soft restraints, and the maximum restraints were removed. The arrestee went into cardiac arrest on the way to the hospital and died. The cause of death was listed as a heart attack following restraint by law enforcement for excited delirium with violent aggressive behaviour due to acute methamphetamine and cocaine intoxication. The manner of death was listed as accidental.

The above incident received media attention, and it was reported by the Department that it was conducting an investigation into what had happened. In fact,

homicide detectives from the Department did roll to the location and conducted an extensive investigation. Unlike the deputy-involved shootings however, the incident was not forwarded to the District Attorney for review.

As a result, no formal or informal review of this incident was conducted by the Department or any other entity. Nor was the incident presented to the CIRB for any administrative review. This was true in spite of the fact that the evidence suggested a potentially significant policy issue: whether the arrestee had remained on his stomach for an extended time while maximally restrained, which is inconsistent with Department policy regarding positioning of such individuals for safety reasons. In the absence of a formal protocol for administrative review of the case, there is no indication that these issues were explored or that potentially appropriate/needed corrective action was taken.

Under the current approach, such incidents can sometimes either slip through the cracks or receive a level of scrutiny that lacks the proper rigor and thoroughness for the circumstances. Death cases are so inherently serious and so sensitive from a risk management perspective that it behooves the Department to apply its CIRB process to them.

Non-hit Shootings

As mentioned above, these incidents implicate the same performance, policy, and training issues that hit shootings do. They are, accordingly, fertile ground for the type of

review that CIRB can and should offer.

CASE ILLUSTRATIONS:

A suspect fired shots into his neighbor's house and sped off in a van. A deputy heard the broadcast of this information, saw the van and pulled it over. The deputy drew his gun and approached the van. The driver stared straight ahead, would not show his right hand, and made incongruous statements. Then he turned and pointed a gun in the deputy's face. Reeling back, the deputy shot at the driver and fell to the pavement, but kept shooting at the van until his magazine was empty of rounds. Then the suspect drove away. The deputy broadcast the situation, reloaded and pursued. The van soon came to a stop, then reversed and rammed the deputy's radio car, activating its air bag. The van again sped off, but other deputies pulled it over and took the suspect into custody after a brief struggle.

Several deputies pursued a man suspected of brandishing a shotgun from a car. When the suspect pulled up to a house and ran in, deputies established a hasty perimeter. There were many other civilians in and around the house. Two deputies observed the suspect furtively leaving through the back door with a shiny cylinder in his hand, climb a fence and crouch in the weeds. They approached and ordered the suspect to put his hands up. The suspect stood up abruptly with his hands, and the cylinder, held at his side. The first deputy fired one round at him and missed. The suspect turned, jumped

back over the fence, and ran around the house toward the front. The second deputy then shot one round just as the suspect ran around the corner of the house. The suspect was immediately apprehended by the other deputies and lay on the ground. He had a rolled up magazine in his hand with a silvery cover. It may be important to note that this was a daytime event. Unfortunately, due to an oversight in the initial evidence gathering, the shiny magazine was never recovered. The two deputies who fired each wrote a supplemental report, which briefly addressed the suspect's actions and their state of mind when they shot. It is not clear, however, whether either was ever subjected to any questioning on this unavoidably crucial issue.

Both of these investigations were conscientious and reasonably thorough, especially considering that they were planned and executed at the station level. Nonetheless, they lacked the resources and the long-term coordination necessary to attempt to accurately re-create the chain of events. Furthermore, there was no available process promoting evaluation of the incidents from a Department-wide perspective. These incidents, and others like them, are opportunities that the Department can and should be pursuing in the CIRB process.

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A Selection of Serious Force Incidents

CASE ILLUSTRATION:

While one deputy was dealing with a resistant arrestee on the floor, a second deputy approached and kicked the arrestee five times in the arm. The other deputy hit the arrestee in the back of his head with his hand. One deputy suffered a sprained thumb and the arrestee sustained a fractured rib. Beyond the review of the arrest report, no other review was undertaken of this use of force.

One arrest report described a force incident in which a deputy used a sap to strike the arrestee on the floor in the right side of his neck, struck the arrestee in the right side of his head, and used his left knee to strike him in the shoulder twice. Another deputy reported using his flashlight six to eight times on the arrestee's back. A security officer enlisted to help the deputies reported striking the arrestee 10-15 times in the facial area, and striking the arrestee 10-15 times in the abdomen and forearm. The report also indicates that the security officer inadvertently struck one of the deputies, causing the deputy to lose his grip on the arrestee. Beyond the ordinary review of the arrest report, there is no indication that the force used in this incident was reviewed to learn whether it met departmental expectations.

One arrest report described the use of knee strikes to the face to overcome a resisting suspect. At one point, the suspect had grabbed the gunbelt of one of the deputies. The

suspect sustained injuries to the eyebrow and ear. Beyond the regular review of the arrest report, there is no indication that the force used in this incident was assessed to learn whether it met departmental expectations.

One arrest report described the pursuit of an individual for a suspected stolen vehicle. A police dog was deployed who bit the individual in the jaw. A deputy used his baton several times on the arrestee and a second deputy struck the arrestee several times with his flashlight. The arrestee sustained injuries to his jaw, back, arms, legs, head, hip, and back, including a fractured ankle. Beyond the routine review of the arrest report, there is no indication that the force used in this incident was reviewed to learn whether it met departmental expectations.

One arrest report described two deputies using their car in an effort to strike a fleeing suspect because of their belief that the suspect may have been armed and was about to fire on the deputies. One deputy was successful in striking the suspect. Beyond the regular review of the arrest report, there is no indication that this use of potentially deadly force was reviewed to learn whether it met departmental expectations.

One arrest report described a riot in the jail involving twenty inmates. The tactical response team and rapid response team were both deployed to address the situation. One deputy deployed a pepper ball launcher on the inmates at the behest of a sergeant and fired 10 rounds at which time his launcher jammed. He then fired five more rounds and the launcher jammed again. Another deputy deployed another pepper ball launcher 57 times. Another deputy fired a launcher six times. Yet another deputy reported that his

pepper ball launcher was not working properly. A number of inmates received significant injuries, some from the riot and some from the deployment of the less lethal munitions. Beyond the regular review of the arrest report, there is no indication that the force used in this incident met departmental expectations. Moreover, there is no indication that the apparent failure of some of the less lethal weapons was ever addressed by the Department.

Bites by the Department's K-9 Unit

As noted below, we have reviewed the deployment of police dogs by the Department and have specific recommendations for it to consider with regard to training, organization, supervision and deployment.²⁸ We also recommend that the Department consider having dog bites reviewed by the CIRB process. While an extremely helpful resource from an officer safety perspective and in terms of their range of potential uses, the dogs are also inherently less predictable and controllable than other resources. Furthermore, history makes clear that dog bites in the law enforcement context can be controversial. The bites obviously have the potential to cause serious injury, and they provoke a visceral reaction from outside observers in a way that other less lethal options simply do not.

Given that the Department has chosen to deploy its dogs in varied ways, and given that the de-centralized approach to assigning the dogs presents challenges to consistent and comprehensive assessment of these incidents, it makes sense to include the

²⁸ A more detailed discussion of the K-9 unit follows below.

bite cases as a topic for review by the CIRB. Though it would not necessarily require the efforts of a separate investigative team, the packages and assessments already being conducted by the K-9 unit should be presented in some form to the panel – perhaps by the K-9 supervisors themselves. With a minimum of additional effort, the Department could increase the scrutiny of the program in worthwhile ways and help tighten training and protocols as needed.

PART VI: Other Uses of Force

A. Introduction

The Department's primary policies on the use of force by deputies are contained in its Policy and Procedure Manual. The addition of "Addendum F – Use of Force Guidelines" in 2006 adds greatly to the useful guidance provided by the Manual. Force related policies in the Manual provide, in many cases, both elaborate admonitions and useful information. However, the Manual is generally drafted in an advisory tone and only occasionally indicates what is clearly authorized and what is forbidden. This clearly reflects a conscious decision on the part of the Department to focus on guidance rather than on defining misconduct. This approach can serve the Department well so long as it makes clear – through its disciplinary system -- that there is a line beyond which rules cannot be bent; that deputies will be held accountable to uphold the Department's standard of performance. To that end, we have identified, in the discussions below, certain force policies that we believe would benefit greatly from modification or clarification.

We have had extensive conversations with Department staff at all levels of the Training Division and have reviewed the Department's training manuals, bulletins and audio-visual materials. We have focused on training relevant to uses of force, but we have also derived a broad sense of the way Training Division operates.

In the course of this interaction and review, we have been consistently impressed by the dedication and professionalism of the training staff. We are also struck by the Department's devotion of significant time and resources to training its personnel and maintaining perishable skills. Two examples provide a concrete measure of this.

First, routine and required training are kept on schedule. Despite the size of the department and its vast geographic range, there are few detectable bottlenecks or backlogs in the process of keeping sworn personnel on the desired training schedule. When units do fall behind in their training, they are promptly reminded of where they stand through a compliance report generated by Training.

Second, the Department has been both ambitious and conscientious in undertaking the formidable task of training all field personnel in the use of the Taser – a less-lethal weapon that resembles a handgun, and that works by delivering an electrical current to temporarily incapacitate the suspect.²⁹ Rather than using a “quick and dirty” approach to certify everyone with a minimum of time and effort, Training Division has taken its standard three-day perishable skills update course and built it around the introduction of the Taser as a law enforcement tool. It appears to be on schedule to put all relevant personnel through the program within one year.

²⁹ We discuss the new Taser program in more detail below.

Additionally, the Training Division supplements face-to-face instruction by issuing a steady stream of Training Bulletins (monthly), Tactical Tips (weekly) and occasional videos on special topics such as Tasers and maximum restraints. These items are of high individual quality; collectively, they also reflect a Departmental emphasis that is laudable.

We were pleased to note the emphasis on officer safety that runs through the Training Division as a consistent and often overt theme. Officer safety is an essential consideration for virtually every action taken by peace officers. Meaningful guidance on officer safety cannot be codified in a single rule or standard. It must emanate from the training and supervision that the Department provides its deputies throughout its operations. The quality of this guidance can best be judged by its results – the decisions and actions of deputies in the field. The hundreds of force incidents that we have reviewed generally show Departmental deputies to be well trained and appropriately prudent in their tactical decision-making. Indeed, we have seen many striking examples of deputies developing well-constructed entry and containment strategies involving layers of less lethal and lethal weapons that exhibit both a safe and a humane approach to volatile suspects.

CASE ILLUSTRATION:

Before confronting a parolee armed with a kitchen knife and yelling threats, deputies arranged to deploy with a pepperball launcher, a beanbag shotgun and conventional

firearms. When the suspect refused to cooperate, rounds of pepperballs, beanbags, then more pepperballs eventually secured his compliance. Deputies effectively layered their arrangement and use of less lethal weapons, and the use of conventional firearms was avoided.

B. Force Reporting and Review

1. Introduction

Uses of force are, of course, far more common than shootings and are understandably approached differently from a review and investigation standpoint. The Department's policies require deputies to report significant force to a supervisor as soon as is practicable after the occurrence, and they are later obligated to document the force they used, the justification for it with respect to the suspect's actions, and the results of the force (effects on suspect, injuries, etc.) as part of a written report. In the patrol context, this documentation happens most commonly as part of the arrest report. In the jail setting, the suspects are already in custody, and the force paperwork is part of an incident report that may or may not become part of a criminal filing.

In reading hundreds of these reports regarding force incidents that occurred in the audit period, we learned a great deal about substantive force issues in the Department, but also developed some impressions and thoughts about the mechanics of reporting themselves. We begin with a look at that aspect of the process.

Obviously and inevitably, the system relies a great deal on the accuracy as well as the integrity of reporting officers. As with the shootings, the public recognizes the necessity of force and the reality that deputies deal with dangerous, uncooperative, and/or unstable people on a regular basis. And, as with the shootings, the public expects accountability to accompany the authority and discretion that officers possess. It is therefore extremely important that the deputies who use force are conscientious about their report-writing responsibilities.

We were, on the whole, impressed with the detailed information about force that the reports contained. As written, the reports afforded reviewing supervisors a solid basis for understanding what happened and why, and for evaluating the propriety and effectiveness of the deputies' actions. While there were exceptions in which we would have liked to have seen more detail, overall the quality and level of detail of arrest reports prepared by field deputies was excellent. That being said, our concern about force reporting stemmed from limitations in the Department's protocols, and its failure to assess individual incidents in a systemic way – not from shortcomings on the part of deputies in terms of meeting their obligations.

2. Lack of a Separate Process

SDSD requires that deputies immediately notify a supervisor whenever any force used results in a complaint of injury or an injury that necessitates medical treatment.

Policy requires that, upon notification, a supervisor will respond to the scene or medical facility to investigate the force. Yet there are no protocols or guidelines in the policy that specify what steps the supervisor should take in order to fully “investigate” the force. As a result, our review of the arrest reports found no significant documentation of the force investigation mandated by policy.

While, as noted above, we found the reports documenting arrests in which force was used to be well-written, complete, and detailed, the reports were written with one primary goal: to articulate the circumstances and facts that substantiated the arrest of the person. While Departmental policy requires that any force used be documented in the arrest report, and while we have no information to suggest that deputies are skirting this responsibility, there are certain implications to this approach that potentially limit its sufficiency or effectiveness.

While SDSO has created admirable protocols in which deputies document the force used by them, and while supervisors are clearly aware of that force on some level, the review procedures have not been formalized in a way that ensures a holistic and well-documented assessment. In other words, the existing approach may accomplish some or all of the goals of supervisory review in many or most of the individual cases, but the system has inherent limitations. These become especially noteworthy in cases involving injury to the suspect.

The subsuming of force documentation into an arrest report inevitably shapes the emphasis it receives from both the reporting deputy and his reviewing supervisors. When the primary purpose of a report is to explain the basis for an arrest and ensure the existence of probable cause, it affects the mindset of both writer and readers. The complete and accurate description of the force and its justification, and the assessment of policy and training issues, will be secondary considerations at best.

Moreover, efforts to substantiate the crime at issue through witness statements and physical and photographic evidence will take precedence over the “investigation” or review of the force itself. Since in most instances, the collection of information about the crime is left to the arresting deputy, one usually is left with a crime report in which the deputy collects supporting information to establish the crime. Only as an afterthought is any supporting (or detracting) evidence obtained with which to assess the force used by the deputy.

The creation of a separate protocol that is focused exclusively on the force issues of a given incident would greatly enhance the thoroughness of force review and potential for constructive assessment. It would have positive implications for officer accountability, risk management and training – all of which certainly warrant the required resource dedication. Furthermore, by establishing particular responsibilities for the supervisor in terms of information-gathering and review, a new protocol would be likely to improve the objectivity and thoroughness of the Department’s scrutiny.

For example, in several of the arrest reports we reviewed, the suspect was interviewed by the arresting deputy and apologized or otherwise took responsibility for the actions that required the deputy to use force. This is obviously extremely useful evidence of what happened and why. Nor do we doubt that it occurs – people throughout the Department described the phenomenon as a common one. However, when the sole source of that evidence is the deputy who used force, the value is diminished by the inherent conflict of interest. Furthermore, because these interviews are generally not taped, it opens the door for a later denial by the suspect, should the force become an issue.

CASE ILLUSTRATION:

Deputies went to a residence to serve an arrest warrant. The fugitive resisted, prompting deputies to take him to the ground and spray him with pepper spray. Eventually, the suspect was required to be placed in maximum restraints. According to the arrestee, the take down caused the caps on his teeth to be knocked out. The arrest report indicated that the suspect had abrasions and scratches. The arrest report also indicated that the suspect apologized for his poor behavior. There is no formal record of this apology in the arrest package.

If a supervisor routinely afforded the suspect in a significant force incident the opportunity to make a taped statement about the deputy's actions, while also documenting any injuries and other relevant information, the process would be more

thorough and more dispassionate. This separate inquiry would also avoid some of the “blurred lines” between a discussion of force issues and statements by the suspect about the crime underlying his arrest.

Report Recommendation # 16 :

- **We recommend that a supervisor take responsibility for interviewing the suspect on tape about force in cases where injury either resulted or is complained of.**

A separate and thorough force package would also be useful in the event of a subsequent complaint by the suspect. In the event that a suspect waited several days or weeks to complain about force, the Department’s ability to respond is limited under current practices. Under current practices, Internal Affairs often can rely only on the arrest report, which may not be entirely responsive to the substance of the complaint, and is certainly likely to lack all the evidence that might be relevant. While further investigation is always possible, the inquiry has begun at a disadvantage that a separate and automatic force investigation would help overcome.³⁰

As importantly, the undertaking of a force review independent of a complaint is consistent with progressive policing, in which agencies are proactive instead of defensive

³⁰ The county would face the same “information deficit” should the complainant later decide to file a claim or lawsuit regarding a force incident.

in assessing the critical actions of their officers. The existence of a separate force protocol could send a valuable message to the public in this regard.

Treating force as a separate inquiry will also help form the building blocks of any early intervention system. As noted elsewhere in the Report³¹, the Department is committed to devising an Early Intervention System. Part of the building blocks of these tracking systems is a collection of instances in which deputies use force. If the Department develops protocols whereby independent force packages are created, those packages can be simply inputted into any Early Intervention System to document and categorize instances of force by a particular deputy.

One potential benefit of this record keeping is the identification and response to potential training deficiencies. Again, the narrow focus of an arrest report could easily leave gaps in the thoroughness of assessment and follow-up, even if the incident raises questions about a deputy's skills or tactics with specific force options.

CASE ILLUSTRATION:

During an encounter with an intoxicated person, a deputy chose to use his baton in order to respond to the threat presented by the individual. During his baton deployment, the arrestee caught the baton and the deputy and individual then struggled for possession of the baton. There is no indication that this issue regarding the ineffectual deployment of

³¹ See below.

the baton was ever addressed by a supervisor during the review of the arrest. A focus on the force used could have resulted in a refresher course on baton use for the deputy if warranted.

Moreover, an Early Intervention database could use force documentation to identify trends in deputy performance that might guide useful individualized training. For example, a deputy who is involved in a high number of punching incidents could benefit from the exploration of other force options. This type of tailored guidance can be extremely effective, and is certainly realistic with available technology and the necessary emphasis from the Department.

3. Elements of a Revised Review Process

We recognize the practical realities that might make elaborate new procedures seem daunting in this arena. With that in mind, we would limit our recommendation of a new and distinct protocol to cases in which force rises above a certain minimum level of significance, while allowing a lesser documentation and review for common actions such as pointing weapons, control holds, and unresisted handcuffing. And we reiterate that the Department is already accomplishing much of the substantive labor and analysis that we advocate. Our point is to encourage a separate process that will formalize and enhance what is already being done, and make more comprehensive use of the results.

Additionally, we advocate the use of a separate investigative “roll-out” team to

respond and take fact-gathering responsibility for a selection of force cases that meet established standards for severity of force, seriousness of injury, etc. The expertise and special focus of this team would make them well-suited to assemble the materials for a holistic review. The concept is the same as the one we recommend for the administrative review of deputy-involved shootings, and which we discuss above at page 83. Ideally, the cases handled by the force investigation team would be presented to the redesigned Critical Incident Review Board, in keeping with Report Recommendation # 15, above.

Report Recommendation # 17 :

- **We recommend that the Department develop a separate team of investigators that can respond to a selection of critical force cases (based on extent of injury and other pre-determined standards) and assume responsibility for compiling the facts and information needed for a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.**

Report Recommendation # 18 :

- **We recommend that the Department create a separate “force package” protocol to document significant force in a thorough and comprehensive fashion, and an accompanying review process at the supervisory level to address attendant issues of policy, training, officer performance, and risk**

management.

We also encourage the Department's consideration of the following elements of the more rigorous and formalized process we propose.

Deputy Witness Statements: While each deputy who used force in a particular incident is required to document that force, and add his or her supplement to the main package, current practices do not require deputies to write about the force that they *witnessed* other deputies using in the same incident. This creates potential gaps in the documentation of what occurred.

For example, in a situation in which an arrestee is struggling with several deputies, deputy A may use two strikes to the leg with baton, while deputy B may use two punches to the face, and deputy C may use three elbow strikes to the arrestee's arm to bring him into compliance. However, deputy A's memorandum may only discuss the baton strikes, deputy B may only write about the punches to the face, and deputy C may only denote the elbow strikes. While there may be some logic to having a deputy only write about the force used by him/her, the resulting memoranda, even in sum, result in an incomplete and confusing recitation of what occurred.

If deputies were responsible for writing not only any force they used, but also force that they witnessed, then all potentially critical observations would become part of the reporting process.

Report Recommendation # 19:

- **We recommend that the Department should require per policy that deputies who witness force deployed by fellow deputies report and document those observations in a timely manner.**

Civilian Witness Statements: The Department appears to have no consistent policies or practices with regard to the effort to obtain civilian witness statements with regard to the use of force. This lack of consistency causes lost opportunities for the Department to learn whether civilian witnesses support the deputies' versions or events or dispute the account provided by the deputies. This investigative gap shows up whether the witness is a relative of the victim or arrestee, the reporting party, a paramedic or even an off-duty firefighter or peace officer.

This is inconsistent with the Department's commitment to thorough and objective documentation of its uses of force as well as a poor risk management strategy. In many of these cases, the problem could be easily cured by taking a short statement from civilian witnesses at the scene about their observations of the use of force. For force incidents where the involved deputies become aware of hostile civilian witnesses or unruly neighbors or family members, it would also be beneficial for supervisors to send a detective or supervisor back to the scene to take statements from potential complaining witnesses.

CASE ILLUSTRATIONS:

Force was used by deputies against a juvenile who was eventually arrested for interfering with an arrest. Only one witness was interviewed by on- scene deputies whose version of events supported the deputies' accounts even though a number of additional witnesses were able to observe the deputies' actions. Eventually, the juvenile's defense attorney provided witness statements; those parties were then interviewed by a District Attorney investigator. After the additional witnesses were interviewed, the District Attorney determined not to proceed with the criminal case against the juvenile, and a subsequent lawsuit by the arrestee caused the County to pay out a settlement.

A deputy approached a man standing in the middle of a street apparently under the influence of a drug. As the deputy was trying to search the suspect, he squirmed away and tried to punch the deputy. The deputy used control holds to take the man to the ground, then punched his arm to gain compliance and apply handcuffs. Observing this nearby, an off-duty corrections officer came to the deputy's aid and assisted with the handcuffing. The suspect received minor injuries. The deputy got a factual statement from this civilian witness, but obtained no observations about the use of force or the source of the suspect's injuries, even though the witness was a peace officer and had been actively involved in the arrest.

A deputy interrupted an assault that was occurring in the parking lot of a business. He used force himself to subdue the suspect and take him into custody. While the victim of the initial assault – and a companion of his – were named in the report and offered testimony about the crime, their observations of force were not included in the write-up. Here, their presumably supportive perspective on the need for physical intervention by the deputy was lost due to a lack of focus on its possible importance.

Report Recommendation # 20:

- **We recommend that the Department require responding supervisors and/or handling deputies to attempt to interview civilian witnesses to force incidents.**

Photographic and Medical Evidence: The Department’s Use of Force Guidelines as set out in the Policy Manual actually require that “photographs should be taken of any injury to deputies or others as well as damage.” While our review showed consistent compliance in photographing injuries to deputies, there was a much more uneven and inconsistent response to the Manual’s instruction of photographing injuries to arrestees – or at least in including that material with the arrest reports.

CASE ILLUSTRATION:

Deputies responded to a domestic violence call in which the suspect had allegedly assaulted a female. One deputy struggled with the fleeing suspect, injuring his ankle. More force was used by two other deputies to detain the suspect. After the suspect was placed in the patrol car, he kicked out the window to the car. Deputies then pepper sprayed the suspect and eventually pulled him out of the car and guided him to the ground. The suspect was taken to the station and, due to a head injury, was then transported to the hospital. Deputies took photographs of the injuries sustained by the domestic violence victim, the deputy's injured ankle, a scratch of a knuckle sustained by another deputy, and the property damage to the patrol car. There is no documentation however, that Deputies photographed the head injuries sustained by the suspect.

Better practice would suggest that in all cases in which there is evidence of an arrestee being injured, it should be photographed. Even in cases in which the arrestee is complaining of injury and pain and there is no apparent physical evidence of injury, a photograph of the alleged injured area will be helpful in dispelling later claims of injury.

Our review of the arrest reports found even less evidence of any efforts to obtain the medical records of any injuries incurred by the arrestee. We attribute this gap to the

lack of focus in the arrest report on the force used.³² Again, within the natural parameters of a separate process, the acquisition and preservation of such material would become routine.

We also reviewed some reports in which it was documented that the arrestee refused medical treatment. Certainly, this is a believable scenario, and the Department must be wary of imposing unwanted assistance on suspects – in violation of their rights – on the theory that it is “for their own good.” At the same time, though, the Department should be careful about establishing that the choice was the suspect’s – ideally through a signed waiver or taped statement.

Report Recommendation # 21:

- **We recommend that the Department standardize and improve its attention to collecting evidence in force incidents as follows:**
 - **by photographing suspect injuries**
 - **by obtaining records of medical treatment of arrestee**
 - **by documenting where applicable the suspect’s refusal of medical treatment.**

³² We recognize that there are sometimes legal obstacles to obtaining medical records; however, we have noted that arrest reports often fail to take note of the comments or conclusions of paramedics and emergency room personnel.

C. Other Force Issues

1. K-9 Program

The Department's K-9 program is an ambitious one that makes wide-ranging use of more than 30 dogs. It has been part of the Department for some forty years. The dogs are trained to perform a variety of law enforcement functions, including article searches, narcotics searches, and the tracking of suspects. They are also a less-than-lethal force option: under certain circumstances, the dogs are directed to bite suspects in order to help neutralize threats and effectuate a safe arrest.

The track record of the program has been strong in many respects. The dogs have a documented record of success as a tool that aids the deputies across the spectrum of intended applications.³³ Moreover, the number and amount of litigation payouts connected to bites – the bane of other K-9 programs from a risk management perspective – has historically been low. These realities have helped keep the program “off the radar screen” of many Department executives, and good results do speak for themselves to some extent. Still, Department personnel who are more directly familiar with the daily challenges of the program shared several concerns that merit attention. Additionally, we saw examples of individual incidents which reinforced the unpredictability and risk entailed by use of the dogs, and the need for rigorous training and review.

³³ In one notable and recent example, the K-9 unit assisted in locating the suspect alleged to have shot and killed an Oceanside officer in December of 2006.

CASE ILLUSTRATIONS:

Deputies responded to a call regarding a large amount of non-prescription drugs that were allegedly stolen from a pharmacy. The suspect attempted to flee on foot after being contacted by deputies. A K-9 deputy deployed his dog during the pursuit, but the suspect quickly got the advantage over the dog and began choking it. Other deputies closed the distance and began grappling with the fiercely resistant suspect. Meanwhile, the dog began to bite one of the deputies on the head as he struggled on the ground, obviously complicating the encounter and commanding the attention of that deputy and the dog's handler. The suspect, who attempted to grab the gun of the bitten deputy, was shot and killed by another deputy.

A K-9 was released to find and bite a forgery/theft suspect who fled into brush land. When deputies caught up to the suspect, the dog was biting him on the thigh and he was pulling on the dog's ears. A deputy struck the suspect several times with a baton in order to protect the dog that the suspect was abusing.

A mother approached deputies and asked them to help her with her mentally unstable adult son. The son abruptly punched a deputy in the eye and ran. The deputies called in backup, found the suspect and took him to the ground using a pepper ball launcher and flashlight. While struggling to handcuff the suspect on the ground, deputies were using punches and baton hits, when a K-9 handler approached, brought his dog's face up to the suspect's buttocks and told the suspect he would be bitten if he didn't allow the deputies

to handcuff him. When he continued to struggle, the deputy let the K-9 bite the suspect's buttocks.

When two suspected gang members fled together on foot from a known stolen vehicle, the dog handler released the K-9 who brought down the passenger and bit him on the arm, injuring the passenger on the arm and forehead. The suspect driver was chased by another deputy. This procedure left the choice of priority suspect up to the K-9, who chose the suspect for whom there was decidedly less probable cause to use significant force to effect an arrest.

Deputies surrounded a stolen car and attempted to get the occupants to surrender. The passenger was especially resistant. A K-9 unit was on the scene, and eventually the handler sent the dog in through an open window in an effort to end the confrontation. The dog, however, did not engage the passenger, and eventually came back out of the car, forcing the deputies to explore other options.

We also saw several cases in which the K-9's were employed as a force option in conjunction with other approaches – and occasionally at the same time (e.g. a deputy using baton strikes on a resisting suspect while a deployed K-9 was still physically in contact with the suspect). This creates an obvious risk of injury to the other deputy. Like the cases cited above, it also raises a training issue that warrants systemic attention.

The training question is central to our assessment of the K-9 program. While we recognize the potential and actual value of police service dogs in law enforcement,³⁴ and while we do not hesitate to endorse the continued use of dogs by the Department, adequate training and supervision is crucial to the effectiveness of the K-9 unit. Based on our understanding of current conditions, we have some concerns.

The Department has a “de-centralized” K-9 program, which means that the dogs and their handlers are disseminated throughout the county and generally work regular patrol shifts. This differs from the approach of other comparable agencies, which keep the dogs together in one location, with multiple supervisors, and deploy them in the field on an as needed basis. There are advantages and disadvantages to both options.

Perhaps the biggest strength of the de-centralized approach is its relative responsiveness. The dogs are already in the field, accompanying handlers in regular patrol functions throughout the individual station areas. Obviously, this means they can perform their different functions in a much more immediate and proactive way.

The biggest weakness, however, arises from the same dynamic: the dispersal of the dogs poses a challenge to the coherence of the unit, the consistency and thoroughness of the training, and the effectiveness of the supervision. These issues are particularly

³⁴As off-putting as the image of snarling and dangerous police dogs can be, especially for those who remember the role of such dogs in civil rights abuses in the 1960’s, the reality is that the dogs can enhance not only officer safety but the safety of suspects. The bite injuries are generally quite minor, and the use of the dog often obviates the need for officers to put themselves in vulnerable positions and use significant – or even deadly – force.

germane to an agency that has chosen to use its dogs so extensively.

Inherent in the nature of K-9's is their unpredictability and variability relative to other force options. Accordingly, effective, ongoing training for the dogs and for their handlers is crucial to the success of any K-9 program. The more tasks the dogs are expected to perform, the more important is the consistency and depth of the training that is offered. Given the Department's choice to utilize the dogs in relatively diverse and ambitious ways, the need for a strong commitment to training seems particularly applicable.

Under the current approach, the Department appears to be meeting recognized standards in terms of the hours of monthly training that the dogs and their handlers receive. Undoubtedly, this time has benefits, and is of course better than nothing. But the individual attention, repetition, and skill assessment that each K-9 should receive during training time may not be physically possible under the current practical realities. It is also the case that the practice of deploying of dogs and handlers to assignments throughout the county, rather than operating as a dedicated unit from one or two centralized locations, creates inevitable obstacles to the unit's ability to come together for training.

The "de-centralization" of the K-9 unit is also a recipe for tension in that the deputies are *de facto* members of the stations they serve. It is easy to envision situations where the immediate needs and resource challenges of a station come into conflict with

the priorities of the K-9 unit on a given shift. This division puts the deputies in a difficult position, and is surely exacerbated when the ranking supervisor of their unit is not even a sergeant (as has recently been the case).

Report Recommendation # 22:

- **OIR encourages the Department to explore the re-structuring of the K-9 unit. While centralization may not prove to be preferable, the Department could nonetheless take constructive lesser steps to mitigate existing weak points:**
 - **by committing of necessary time and resources for more meaningful regular training.**
 - **by assigning a high-ranking supervisor to head the unit, so as to strengthen its internal workings and reduce friction with various patrol supervisors**
 - **by better integrating the K-9's with regular patrol functions, through training bulletins, video presentations, recurrent briefings, and other relevant techniques.**

2. Carotid Restraint

Based on a review of force reports, deputies appear generally well versed in hand-to-hand pain compliance and restraint techniques and able to respond creatively and effectively to rapidly changing situations. The carotid artery restraint – which is intended

to briefly induce unconsciousness by interrupting circulation – is used by Department personnel in many situations to control an uncooperative suspect or to curtail an attempt to escape.

CASE ILLUSTRATIONS:

A suspect punched a deputy on the side of his face and a struggle ensued. More deputies responded and assisted. One of the responding deputies placed the suspect in a headlock and then tried to deploy the carotid. While the suspect appeared to be losing consciousness, he was somehow able to extricate himself from the hold and struck the deputy repeatedly. The deputies were then required to go into additional pursuit to recapture the suspect and used additional force to bring him into custody.

An inmate sitting at a dayroom table refused to lock down after all other inmates had returned to their cells. A sergeant directed deputies to apply handcuffs. The inmate would not comply and stiffened his arms. A deputy attempted a carotid artery hold on the still sitting inmate and they fell to the ground. Two deputies wrestled with the inmate, punched his head, and attempted an arm lock to no avail. The sergeant decided to jump in and applied his own variation of the failed carotid hold, the “Kansas City Neck Restraint.” The inmate eventually complied.

The carotid restraint is controversial in some circles, partly for the problems associated with “choking out” a suspect in terms of potential for unintended serious

injury and associations in the public mind with excessive force or police brutality. Some jurisdictions pointedly do not teach or endorse it as a restraint technique. The Training staff in San Diego, however, (as with at least some other local jurisdictions), is clear in its view: the carotid restraint is a valid and effective option, but also one that must be taught carefully and executed responsibly – preferably with at least two deputies present.

Use of Carotid Artery Restraint

Agency	Policy – When it is appropriate to use carotid restraint:
San Diego Sheriff's Department	May be used on suspects who are actively resisting or assaultive. Classified as "controlling force." Advises caution not to compress windpipe. If not effective within 30 seconds, deputy should desist.
Department A	No policy, but training manual states may be used on suspects whose actions are assaultive/high risk. Never choke or apply pressure to neck with baton or flashlight.
Department B	Not used. Department uses the similar lateral vascular neck restraint (LVNR), which protects the front of the neck and compresses the sides. Viewed as a moderate level of force. Authorized on same occasions as O.C. spray and taser, but training teaches to use after other alternatives have been unsuccessful or when necessary during hand-to-hand struggle.
Department C	Limited to situations of self-defense or defense of another only.
Department D	May be used on suspects who are more than passively resisting apprehension.
Department E	May be used on suspects who are actively resisting or assaultive. Purpose is to gain control of suspect. Advises caution not to compress windpipe. If not effective within 30 seconds, deputy should desist. Do not use more than twice during an enforcement contact.
Department F	Considered deadly force. Authorized to protect officer or others from an immediate threat of death or serious bodily injury, to prevent a crime where suspect's actions place persons in jeopardy of death or serious bodily injury.
International Association of Chiefs of Police (IACP)	No specific policy, but general use of nondeadly force policy authorizes use of nondeadly force techniques that are "objectively reasonable" to protect officers or others from harm, restrain or subdue a resistant individual, to bring an unlawful situation safely and effectively under control.

While respecting the conscientious efforts of the Training Division in this arena, we remain concerned that the deployment policy in the Department's Policy and Procedure Manual governing the use of the carotid restraint may be too liberal. The policy provides that the technique may be used on suspects who are "actively resisting or

assaultive.” While the “assaultive” behavior threshold is generally clear to field deputies, “active resistance” is inherently more ambiguous and subject to interpretation.

Any technique that involves the neck or head and is intended to produce unconsciousness is an inherently significant use of force. We believe that it is prudent to provide a clear and relatively high threshold for use of the carotid restraint and to take steps to make sure deputies understand and comply with that threshold.

Within our review, we also saw several instances in which the unsuccessful attempt to apply the carotid restraint – along with the inherent risks of the technique itself – suggested the potential value of increased training.

Report Recommendation # 23:

- **We recommend that the Department modify its carotid restraint policy to require that suspects exhibit assaultive behavior or “aggravated active resistance or aggression” [SDSD Use of Force Options Chart] before deputies are justified in using the technique. We further recommend that the carotid restraint be viewed as an important perishable skill that merits frequent refresher training at mandatory periodic training.**

3. Unruly Suspects in Patrol Cars

CASE ILLUSTRATION:

An arrestee was placed in the back of a patrol car. He began kicking the window of the car. Deputies responded and one was struck by fragments of glass. OC spray was used on the arrestee, but it did not calm him down. The arrestee was then pulled by deputies through the window of the patrol car and then apparently hit his head as he landed on the ground.

In our review of the force cases, we have seen a number of times when force has been used on arrestees who have been handcuffed and placed in the back of a patrol car and then become unruly, usually evidenced by the arrestee kicking the windows and doors of the patrol car. We have seen myriad ways in which deputies have responded to this situation – spraying pepper spray on the arrestee while seated in the patrol vehicle and pulling the arrestee out through the window are but two examples. In a number of the scenarios described in the arrest reports, injury accrues to the arrestee and/or the handling deputy is the result.

Because a handcuffed suspect also does not have the ability to clear his eyes or leave the closed in space of a patrol car on his own accord, using pepper spray in a

vehicle can easily provoke suspicion about force being administered as punishment rather than for a legitimate purpose. The Department's Use of Force Guidelines as set out in the Policy Manual already recognize the issues when deploying OC spray on handcuffed individuals: "The decision to use non-lethal chemical agents on handcuffed prisoners must be carefully weighed."

At the same time, we recognize that doing nothing is not an option. Even though the handcuffed suspect in the back of a patrol car is not presenting a direct threat to deputies, the attempts to damage the car are unacceptable on their face and could potentially result in serious injury to the suspect and/or an escape attempt.

We suggest that because this situation presents particular challenges to deputies – not the least of which is the need to control the natural emotion experienced when a deputy observes an arrestee inflict damage on his/her patrol car – that the Department develop a scenario for purposes of training deputies on the most efficacious way to handle this situation. This would bring the considerable expertise of the Training Division to bear on a relatively common problem, and help standardize and improve the response of deputies in the field.

Report Recommendation # 24:

- **We recommend the Training Division develop and promote a teaching scenario which guides deputies on the best range of options for dealing with unruly suspects in the back of patrol cars.**

4. Sap/Nunchakus

The Department authorizes deputies to deploy both saps and nunchakus, weapons that are not used widely throughout the law enforcement community in the Twenty-First century.

Use of Other Impact Weapons

Agency	Policy – When it is appropriate to use other impact weapons such as SAP or nunchaku:
San Diego Sheriff's Department	Sap and OPN (Orcutt Police Nunchaku) are authorized for use as optional impact weapons/control devices. Must be certified competent by Defensive Tactics Coordinator. No regular mandatory training; refresher training upon request for SAP; no refresher training for OPN.
Department A	Sap is authorized. Nunchaku is not. Sap shall be used for defensive purposes, to repel or protect. Sap of specified size may be carried as a secondary intermediate impact device only.
Department B	Not authorized.
Department C	Not authorized, but officer may use weapons of necessity when other weapons are not available or practical.
Department D	Not authorized.
Department E	Sap is not authorized. Nunchaku (OPN) is authorized. OPN use is taught at academy and training is regularly updated.
Department F	Not authorized.
Intl. Assn. of Chiefs of Police (IACP)	Department-authorized weapons only.

Our review found relatively infrequent use of these force options by the Department. We

also learned that the use of these weapons is not the focus of recruit training.

Our concern with regard to the authorized use of saps and nunchakus stems not so much from the actual deployment of these weapons. Rather, our concern is that the Department has no systemic mechanism to ensure that deputies who choose to continue to carry and deploy these weapons remain proficient in their intended use. As with any force option, the use of any tool is a perishable skill. Yet at least with regard to saps and nunchakus, there is no assurance that deputies who continue to use these force options are receiving recurrent training on them.

CASE ILLUSTRATION:

In one deputy-involved shooting, a deputy closed distance on a suspect believed to be armed, and struck him repeatedly in the legs with his sap, to no apparent effect. Shortly thereafter, the suspect moved towards the deputy, causing the deputy to feel threatened and resulting in the deputy using deadly force.

In one force incident, a deputy struck a resisting suspect who appeared to be mentally disoriented twice with nunchakus and then used the nunchakus to apply a control hold on the person.

Report Recommendation # 25:

- **The Department should implement a requirement that for deputies who wish to continue to carry saps and nunchakus that they receive recurrent training and remain proficient with regard to their use. The Department should also maintain documentation of this recurrent training. If those requirements prove to be impracticable, the Department should consider eliminating saps and nunchakus as authorized force options.**

5. Taser

As discussed above, the Department made a decisive commitment in 2005 to feature the Taser as a new force option for all patrol deputies. It then supported that decision with an ambitious dedication of resources: a plan to train and equip the deputies with Tasers within a two-year period. The Department is approximately half way to its goal of training and equipping all patrol deputies with the Taser.

The implementation and results of the Taser initiative obviously post-date the review period for our audit. Even the deputies who now have the weapon are less than a year into the program. Accordingly, a study of the Taser's effectiveness and a comprehensive understanding of its advantages and potential limitations would not yet be meaningful. Nonetheless, given our familiarity with the Department's plans and with general issues

relating to the Taser as a force option, we offer the following remarks.

The advantages of the Taser as a less-than-lethal means of resolving confrontations with suspects are potentially numerous. Because of how the Taser is meant to work – by use of electrical current to incapacitate, rather than through pain compliance – it can be effective with suspects whose level of chemical impairment or mental illness might render them impervious to other techniques. It also can allow deputies to stay at a safer distance and avoid the perils of “hands-on” physical grappling. Many in law enforcement believe strongly, and with considerable justification, that the effectiveness of the Taser can help reduce instances in which lethal force is necessary to resolve a dangerous encounter.

As the table below suggests, use of the Taser is widespread and widely accepted among most law enforcement agencies. It is, however, not without its detractors and potential for controversy. The relative newness of the device and the variables associated with electric current have contributed to a medical debate over its safety under certain circumstances that is far from resolved. Like other weapons, it also has the potential to be abused by officers, and critics argue that the lack of physical evidence left by the Taser makes accountability all the more elusive.

Use of Taser

Agency	Policy – When it is appropriate to deploy a Taser:
San Diego Sheriff's Department	Use Taser only under circumstances where it is deemed reasonable and necessary to minimize the potential for human injury. Should not be used when subject may fall from significant height. Should not be aimed at head neck or groin. Evaluate subject's age and condition versus threat posed.
Department A	May be used on suspects displaying aggressive/high-risk behavior. Report as "significant" use of force. Do not use for compliance over persons who do not present immediate, credible threat. Except in emergencies, or with prior approval of watch commander, do not use Taser on persons in handcuffs, in police car, pregnant women, or persons in danger of falling from height or drowning. Separate criteria for use in jails.
Department B	Authorized if suspect is combative or threatening or deputy believes physical force is imminent (words or actions). Separate reporting form.
Department C	General Policy: When it will enhance public safety, enhance a tactical advantage or when directed to do so. Not permitted for passive resistance, near flammable environment, to arouse drunks/unconscious. When possible, wait for supervisor or videographer to arrive before deployment. Medical exam of suspect mandatory. Report required; expended cartridge booked into evidence.
Department D	Currently in pilot/study phase. Deployment requires more than passive resistance.
Department E	May be used on subjects exhibiting assaultive or life-threatening behavior; may also be used on "actively resisting subjects reasonably believed to possess or have immediate access to a deadly weapon." May not be used on handcuffed subject unless subject is displaying life-threatening behavior. Suspect must receive a medical examination. Must document circumstances surrounding the use of the Taser; include cartridge serial number.
Department F	For use against "Aggressive-Combative" suspects only, but no written policy.

The San Diego Sheriff's Taser policy is exemplary in many ways. It provides a well-drafted list of precautions and admonitions and gives clear directions as to post-incident medical treatment and reporting procedures. In one key area however, it is unnecessarily vague – the threshold of use. The policy states that the Taser is an "effective means" for gaining control of a subject "displaying assaultive behavior," but it does not say whether assaultive behavior is the required threshold before using the Taser.

In the great majority of instances, application of the Taser does not cause significant injury to the subject. This means that the Taser occupies an inherently ambiguous position in the continuum of force options. For this reason we believe that it

is particularly necessary to give clear guidance to deputies on when it is appropriate to use the Taser. This drafting problem in the policy can be cured by rewriting the pertinent sentence to specify that the Taser should only be used on subjects displaying assaultive behavior.

As the current Taser policy in Addendum F points out, “[T]asers...may have contributed to suspect/inmate deaths, so care must be exercised in their use.” Indeed we are aware of two arrests by the Department within the last four years where a Taser was deployed in the course of an arrest and the suspect died shortly after being taken into custody. The first of these incidents received an extensive investigation led by Homicide, on par with a shooting death. We understand that the most recent incident will also receive a similarly detailed investigation.

As the frequency of Taser deployment in the field goes from very rare to very frequent, the Department will need to monitor patterns of use with caution and evaluate how effective and durable its Taser training is. To this end, any deaths or significant injuries preceded by application of the Taser by Department members should be treated as force incidents that automatically meet the threshold for a formal investigation and review by the CIRB process.

As the Department moves forward with its Taser program, we encourage a thoughtful monitoring of it as a larger sampling becomes available, and hope the Department will remain as open to possible re-evaluation and reform as it was in choosing to initiate the

Taser requirement in the first place.

Report Recommendation # 26:

- **We recommend a revision of the Taser policy to clarify the threshold for use as being assaultive behavior on the part of the suspect, and we encourage the Department to review and adapt its relevant Training and practices as more information about actual Taser deployment in the field becomes available.³⁵**

³⁵ Certainly, in keeping with Recommendation # 15 above, we believe that any incidents involving the Taser that result in the death of the suspect should receive a high level of investigation and review by the Department and its Critical Incident Review Board.

PART VII: Jail Force Issues

A. Introduction

As described elsewhere in the Report, the Department has a separate Detention Services Bureau that is responsible for the more than 5000 inmates who are routinely in custody each day in the county jails. For several years now, the jail functions have been formally separated from the rest of the Department in terms of staffing and training: deputy recruits go through a separate academy and receive a different (and less complete) set of qualifications.³⁶ However, there is considerable overlap between the programs, and the Training Division personnel who impressed us greatly often wear two hats with regard to ensuring that jail issues are also met with appropriate care and quality.

In our review of jail force cases, we saw many examples of an effective and coordinated response, and we are aware of the Bureau's efforts to explore new technologies to enhance security and improve the effectiveness of force options. One example of this is the "Nova Shield," which aids in cell extractions by pinning suspects and then incapacitating them through electrical current so that their resistance can be

³⁶ The management decision to put Detentions deputies on a separate track dates back to the 1980's. It offers cost-efficiency as one significant advantage – the deputies are paid less than their counterparts in the field, based on a relatively limited range of qualifications and job responsibilities. Additionally, long careers in the custody environment allow deputies and their supervisors to develop a desirable level of familiarity and expertise with the relevant issues. There are, however, counterarguments to the system as well: the "cross-pollination" of deputies that used to exist allowed officers from both Detentions and Law Enforcement to develop a range of valuable experiences and perspectives, and tended to create supervisors who were well-equipped for whatever critical incidents might arise. It also allowed the Department more flexibility to meet staffing needs. The Department's upper management is involved in an ongoing process of evaluating its options and determining whether adjustments in the current structure make sense.

overcome quickly and efficiently.

B. Reporting

Detentions deputies, like their counterparts in patrol and in the courts, have an obligation to document and report the force they use against inmates. In the Detentions setting, this documentation usually occurs in an *incident* report, as opposed to the *arrest* reports in patrol that we discuss above at some length. The same dynamic that concerned us with regard to limitations in the force review process for patrol certainly pertained to the Detentions cases we reviewed. Accordingly, our central recommendation calling for a separate and more comprehensive review process for significant incidents pertains as well.

Many Detentions incident reports were well written, well organized and complete. But a disproportionately high number of incident reports coming out of Detentions clearly fell below the standard expected by the Department. Those report packages that appeared deficient were lacking in the areas of completeness, coherent chronology of events, and/or documenting the planning or supervision of directed force. At times, reports were also unclear or inconsistent about indicating when particular uses of force were directed by supervisors – information that is obviously relevant to the accurate and effective appraisal of the event.

CASE ILLUSTRATION:

An inmate refused to lock down and exhibited mentally disturbed behavior. A team of deputies was assembled, entered the inmate's area, deployed pepper balls and OC spray and engaged in a struggle with the inmate that included deputy kicks to his torso and (accidentally) to his head. The inmate was put into maximum restraints and taken to a safety cell.

All of the involved deputies in that incident produced reports, but each documented only the force he or she used and the injuries believed inflicted by that specific use of force. Because of the complicated nature of this incident, the collection of reports are disjointed and convey no coherent chronology or convincing picture of the reasons for the escalation of force. Nor was there information on the planning or the role of the sergeant or the team leader, if any. While the incident reports themselves do not indicate that this incident involved an improper use of force, the spotty documentation invites speculation rather than affirmation.

We are encouraged to note that the Detentions Bureau and Training personnel have recognized some of the quality and format problems with jail use of force reports and are in the process of producing a training bulletin addressing these issues and recommending that the initial handling deputy in such incidents generate a primary narrative. More generally, we also recommend that Detentions will explore adopting our “force package” concept to its particular needs.

Report Recommendation # 27:

- **We recommend that significant force incidents in the jails should be handled as separate force investigations, similar to the protocols we recommend for investigating force in the patrol setting.**

C. Other Benefits of Expanded Review

A more comprehensive review process would also be useful in addressing incidents and systems issues unique to the jail setting. Riots and other large-scale disturbances certainly comprise high-risk situations that warrant assessment from a variety of perspectives. We have learned that at least in one scenario, scores of rounds of less-lethal weapons were deployed on inmates, resulting in a number of strikes, yet the only documentation and review of the incident was the incident report prepared by the responding deputies. This was so even though the incident report noted several failures and jamming of weapons that deputies attempted to deploy. Yet there was no apparent significant or systemic review of this incident by Department executives.

After Action reports are prepared after jail riots or disturbances when the Tactical Team is called out and takes action and causes the Department to focus specifically on the force used to quell the riot. However, in cases in which the Tactical Team is not

called out or is called out but the situation is controlled before they arrive or are required to take any action, an After Action report is not required. Accordingly, in at least one case reviewed by us, significant uses of force occurred resulting in injuries to a number of inmates, yet beyond the incident report itself, there was no systemic review of the incident.

Additionally, incidents requiring uses of significant force can be a very illuminating window into systemic problems or vulnerabilities. If, for instance, a violent incident occurs when inmates take advantage of an unforeseen weakness in security procedures or a lapse in employee vigilance, the incident presents itself as a learning experience for the involved deputies and perhaps for the entire facility, and as an opportunity to fix a previously unseen problem.

CASE ILLUSTRATION:

An inmate was able to “pop” his cell door open, run to a dayroom and attack another inmate. The resulting fight left the victim inmate with a gash in his chin. The fight ended when a tactical team intervened. There is no indication in the reports that jail supervisors learned exactly how the inmate assailant escaped his cell or whether any effort had been made to correct the problem or how potentially widespread it might be.

Jail incidents involving significant use of force or exposing significant systems failures should be sufficiently well documented to receive an assessment by the CIRB

process. Such evaluations, whether they take place within the Detentions Bureau or in a Department-wide setting, can benefit the Department by functioning as a diagnostic tool that gives jail supervisors and training personnel concrete data about what is well understood and executed by Detentions personnel and what is not so well understood or executed. Such a process, approached earnestly, can provide swift feedback and a managerial perspective that takes advantage of the vast expertise and resources within the Department.

Report Recommendation # 28:

- **We recommend that Detentions incidents involving injuries requiring hospital care or recognizable significant failures in equipment or procedures be subject to the Department’s CIRB review process.**

D. Assaults in the Jails and Related Criminal Prosecutions

In our review of the force cases emanating from the jail, deputies are most often constrained to use force in response to assaultive behavior by inmates. In some of those cases, deputies are injured by the assault. The practice in the custodial setting is apparently to first ask the assaulted deputy whether he or she wishes to pursue the filing of criminal charges against the inmate. We suggest that the Department revisit this practice.

In our view, whether a criminal filing emanates from any assault of a deputy in the jail should be dependent on objective criteria, the seriousness of the assault, etc. To allow the deputy to determine whether a matter is pursued will likely result in inconsistent treatment of assault cases in the jail. Failing to punish inmate-on-staff assaults in a consistent and dispassionate manner can also risk promoting grudges, indebtedness, protected status, and other unhealthy influences on deputy-inmate relations. An objective assessment of each case should be made and in appropriate cases, the rights of the deputy to be free from unwarranted assaults should be vindicated using the criminal justice system and/or the jail disciplinary process.

CASE ILLUSTRATION:

After refusing an order of the deputy, an inmate attempted to strike the deputy with his elbow. After being brought to the ground, the inmate attempted numerous times to punch, bite, and kick the deputy, and managed to bruise the deputy's face and cause an abrasion to the deputy's shin. When the incident was turned over to the jail detectives for review, the case against the inmate was ultimately closed because the deputy who was assaulted did not desire prosecution.

Similarly, when inmates assault other inmates and deputies are required to use force to break up the fight, the resulting force reports sometimes indicate that the victim inmate was asked if he wanted to press charges against his inmate assailant. The dynamics of jail life make it likely that the victim inmate may decline the offer to press

charges, regardless of how clear cut the attacker's culpability may be. The jail culture often inhibits inmates from using the criminal justice process to vindicate their rights for fear of retribution; even worse, it causes some inmates to respond through their own retaliatory acts of violence, perhaps with the assistance of their cohorts.

We believe that both of the above procedures are flawed and may send the message to inmates and Detentions staff alike that security and accountability within the "system" are inconsistent and arbitrary.

CASE ILLUSTRATION:

An inmate was attacked by another inmate and received five stitches for the resulting injury to his face. The inmate victim was asked whether he wanted to prosecute his assailant and declined – as commonly occurs. There was no indication that the inmate-on-inmate assault would be taken any further or referred to a prosecutor for consideration, even though deputies saw the attack and evidently had no trouble discerning who was the aggressor.

While we acknowledge the difficulty of prosecuting cases involving uncooperative inmate witnesses, this decision is best left to the District Attorney. Otherwise the Department's inaction -- when a crime takes place in jail and the victim is an inmate – may be perceived as indifference to the inmate population.

Report Recommendation# 29:

- **We recommend that inmate assaults that are criminal in nature and result in injury should be referred to the District Attorney when sufficient evidence exists, regardless of the stated preference of a deputy victim or inmate victim.**

PART VIII: Additional Systemic Issues

In the course of this audit project, several items came to our attention because of their nexus with force, shootings, and/or the systems and processes associated with their investigation and review. Accordingly, each fell within the scope of our assignment, but at the same time we recognize the broader implications for the Department and its ongoing effectiveness. We encourage the Department to consider the following observations and recommendations in light of their general applicability as well as their relevance to the core issues of the Report.

A. Early Intervention System

Collecting information about deputy activity and behavior in a central repository and updating it continuously on a flexible and accessible database has proven utility at many law enforcement agencies. Agency managers can evaluate what a specific officer is doing in the field over time and can place that officer's actions or history in context with other similarly situated employees. They can track what types of force are used with what frequency by employee or by station or region. They can access disciplinary histories as well as the fuller picture of commendations and complaints garnered by an

employee. This type of database adds consistency and longevity to the collective institutional knowledge about individual employees as well as trends and patterns in behavior. It can improve the fairness of disciplinary processes and can provide the Department with a way to identify employees in need of training, mentoring or corrective action outside of the disciplinary system.

Interested public constituencies and some courts have come to view an early warning system database as an indispensable component of a modern, accountable law enforcement agency. They are becoming prevalent at very large agencies. While they remain rare among agencies similar in scope to this Department, some of these are anticipating implementing some type of personnel tracking database in the near term.

Early Warning Systems

Agency	Type and functions of system:
San Diego Sheriff's Department	None currently in place. Tentative plan to design and implement one in future. Currently, unit commanders may request limited disciplinary histories from Internal Affairs.
Department A	Personnel Performance Index (PPI) implemented in 1997. Tracks discipline, civil suits, uses of force, commendations and complaints for each employee. Used to generate early warning lists for performance mentoring program. Used to produce quarterly disciplinary report of patterns and trends.
Department B	None currently in place. Currently researching the issue.
Department C	New personnel tracking system has capacity for tracking use of force and for early warning, but these functions not currently being utilized. System does monitor complaints against deputies.
Department D	None currently in place. It has been discussed, but not implemented.
Department E	Early Warning System implemented in 2006 to alert to early signs of performance problems such as use of excessive force, negligence, and excessive leave.
Department F	Rudimentary system (TEAMS I) implemented in 1997. Much more robust system (TEAMS II, integrating several department databases) is in development. System is capable of comparing employee's performance history to performance histories of other employees who perform similar work.

We have been informed that the Department is committed to implementation of an early warning/early intervention database. We encourage it to move forward with its plans in as timely a fashion as is practicable. Though technological, logistical, and budgetary obstacles are common in the arena, they are not insurmountable, and turning existing concepts into reality should be a priority.

There is a great variety in both the design and use of such databases; not all of them provide optimum benefits. We recommend that the Department design the maximum flexibility into its system so that its uses may evolve with the needs of the Department. We also advocate that access to the system be available to the largest practicable cadre of managers. Such systems can provide conscientious supervisors with a wealth of information that functions in many different ways as a useful “reality check” to the accumulated assumptions and the “rumor mill” that are prevalent in any sizable police agency.

Report Recommendation # 30:

- **We recommend that the Department prioritize the design and implementation of its proposed Early Intervention System, and that it maximize that system’s effectiveness by promoting its varied and widespread use among Department managers.**

B. Transparency

The resolve by the Department to have this Report available to the public reflects a commitment to transparency that is encouraging, and that we hope will continue as a Departmental priority. Traditionally, law enforcement has emphasized confidentiality, privacy, and secrecy with regard to its operations and personnel issues. While this tradition is rooted in legitimate concerns for safety and the integrity of investigations, it also reflects a culture that has been historically and unproductively insular.

Certainly, it makes sense for law enforcement agencies to be careful about the information that they share. But they should also seek and take advantage of opportunities to heighten public knowledge and understanding about the work they do. Not all of the information that emerges will be flattering, of course, and there are obviously times when secrecy will be the more comfortable option. In the long run, though, the benefits of transparency will outweigh the difficulties, particularly for an agency that does considerable good work and that is willing to confront its challenges honestly.

For example, we are pleased to note the growth of a more constructive relationship between the Department and the Citizens' Law Enforcement Review Board (CLERB), an independent oversight entity established in the early 1990's. Like other independent oversight entities around the country, CLERB is meant to promote accountability and public confidence by serving as an external "check." However, while

CLERB does have considerable investigative authority under the county charter, the ability to take responsive action in misconduct cases and to institute recommended reforms still lies with the Department. Over the years, the Department's relationship with CLERB has been cool and even adversarial at times. The Department has occasionally been grudging about facilitating CLERB's investigations and impassive in its response to CLERB findings.

We have noted from both sides that a more constructive tenor is characterizing the relationship in recent months. The Department's liaison with CLERB has been cooperative and efficient in processing information, a phenomenon that CLERB officials specifically mentioned in discussions with us. We hope that current trends will translate into an even greater receptivity to CLERB's potential contributions. Under the right conditions, the same "outsider" status that perhaps tempted the Department to dismiss or marginalize CLERB in the past could actually serve as an asset to the Department's ongoing process of self-evaluation and reform.

* * *

A public that is educated about numbers of deputy-involved shootings, instances and types of uses of force, and the types and outcomes of internal affairs investigations will have the means to replace rumor and conjecture with information. Ultimately, this is helpful for all sides – increasing both accountability and public confidence.

Current laws in California reflect the competing interests in transparency and protecting the privacy rights of peace officers.³⁷ However, it is clear that so long as information about force, shootings, and investigations do not identify the individuals involved, law enforcement agencies may disseminate information regarding the number, type, or disposition of complaints, critical events, or investigations undertaken. In fact, as we learned in our audit, the Department has in the past shared some of this information with the public, including the number of investigations conducted by Internal Affairs and the number of matters sustained. Our recommendation here is simply to suggest that the Department consider a more systemic and accessible packaging of this data to provide more complete and regular information to the public.

Report Recommendation # 31:

- **We recommend that the Department explore means of regularly sharing information with the public about numbers of shooting and force incidents, types of uses of force, numbers and types of internal affairs investigations and the number of times in which investigations were sustained.**

³⁷ These legal changes have certainly affected CLERB; for example, its ability to conduct its proceedings in public and to report out its findings and recommendations has been significantly restricted.

C. Administrative Discipline

During our review, we took special note of force incidents that resulted in Internal Affairs investigations. Our review noted twelve force incidents in which the investigation established misconduct by the officer in question during the three-year audit period. Though the improper behavior is of course troubling, the Department's response to it was generally rigorous, and the cases offered several examples of high ethical standards on the part of deputies who refused to condone or look away from the wrongful actions.

The fact that virtually all of these cases emerged from the jails was significant. Inmates are especially vulnerable to misconduct given the control that deputies possess in the custody environment, and their allegations could be easy to marginalize if the Department were not committed to pursuing them appropriately.³⁸ The existence of several founded cases (as well as creditable investigations into several other allegations that we reviewed) speaks well of the Department's efforts in this regard.

Furthermore, Department executives told us repeatedly that honesty is a fundamental expectation,³⁹ but we are familiar with the real-world challenges that can

³⁸ On the other hand, the relative paucity of founded investigations regarding use of the force in the patrol setting is a phenomenon that perhaps warrants consideration by the Department.

³⁹ More than one Department official conveyed to us the notion that the Department is so unequivocal in its condemnation of false statements by its employees that "you lie, you die" is understood as the implication of such dishonesty for a deputy's career. We saw this borne out in the sampling of excessive force cases we assessed.

compromise this principle, even among well-intentioned officers. Nonetheless, in our study of these cases that revolved around allegations of excessive or inappropriate force, we noted that several of them turned out to be founded, with disciplinary consequences for the deputies who had engaged in misconduct. In most of these instances, it was other officers involved in the incident who provided the key testimony. Additionally, in some of the cases, it was clear that other officers had actually taken action during the incident in order to stop problematic behaviour. We find these cases noteworthy and commendable.

CASE ILLUSTRATIONS:

A deputy pulled over a female driver regarding a registration issue, and then pursued her when she sped away instead of complying with the deputy's instructions. In an attempt to stop her, he deliberately bumped her vehicle with his on three separate occasions as they traveled down the freeway. She eventually lost control of her car and received moderate injuries. While the deputy maintained that his tactic was an appropriate response to the danger that the suspect presented to other motorists, the passenger deputy who witnessed the entire incident did not support that characterization, and the Department found the force to have been out of policy.

A deputy was involved with others in subduing a recalcitrant inmate at one of the jail facilities. Once the situation was under control, the deputy used additional and unneeded force in an apparent emotional reaction. Though injuries to the suspect were not serious,

the actions were wrongful. At least one other deputy told him to “cool it,” during the incident, and the witness deputies gave testimony that reinforced the inappropriate nature of the force. The subject deputy – who initially attempted to cover his own wrongdoing – later resigned from the Department.

An inmate asked to go to the medical clinic at one of the jail facilities, but then refused to cooperate and dropped to the ground. A deputy proceeded to drag him by the arm along the ground for several feet in order to put him on an elevator for the clinic. The inmate was not injured, but the tactic was inappropriate, and the concern of a witness deputy who was startled by the action was a factor in the founded investigation for inappropriate force.

Deputies responded to a domestic dispute between a son and his frail, elderly mother. The mother became hostile and repetitive in her efforts to communicate with one of the deputies. He eventually put her in a wrist lock and broke the skin. He claimed that he felt threatened by her reaching for his badge, but a witness deputy provided testimony that the handling deputy seemed impatient and frustrated by the encounter. The force was deemed excessive.

A newly arrested suspect was extremely intoxicated and struggled to follow directions during the intake process at one of the jail facilities. Several of the jail deputy’s actions, including more than one application of force, were later called into question. The founded charges regarding inappropriate force were supported by testimony of the

arresting deputy, who expressed his disapproval of the jail deputy's conduct both at the time and in the investigation.

At the same time, we noted a range of disciplinary outcomes in the twelve cases. Though a variety of factors undoubtedly contributed to these differences, and though we do not question the propriety of any single result, the outcomes highlighted for us a potential issue for reform: the Department's lack of a disciplinary matrix or standardized set of guidelines to ensure fair and consistent results when deputies have violated policy.

The results of the founded force investigations were as follows:

	<u>Allegations</u>	<u>Result</u>	<u>Discipline</u>
Case 1	Unnecessary force (spray) Failure to Report False Report	Founded as to force and reporting	Discharge
Case 2	Unnecessary force (spray)	N/A	Employee resigned
Case 3	OC spray of inmate who refused to show wristband	Founded for force	5 day suspension
Case 4	Inmate placed on wall for verbal conduct	Founded for force	Written reprimand
Case 5	Inmate pushed into bus; False report; false initials	Founded for all charges	Discharge
Case 6	Inmate dragged on floor; Failure to document	Founded for force and documentation	2 day suspension
Case 7	Use of force to obtain property from inmate	Founded failure to meet standards	1 day suspension
Case 8	Use of force (wrist lock)	Founded for force	1 day suspension
Case 9	Use of force (patrol vehicle)	Founded for force	5 day suspension

Case 10	Use of force against recalcitrant inmate	Founded for force and dishonesty	Employee resigned
Case 11	Use of force (dragging)	Founded for force and Treatment of Persons in Custody	6 day suspension
Case 12	Use of force against recalcitrant inmate	Founded for force and general behavior	1 day suspension

The Department’s Policy and Procedure Manual notes that “supervisors of this Department shall administer a program of discipline that is fair, impartial, complies with statutory and case law, and is consistent with the mission and values of the Department”. However, the Department provides no guidance whatsoever to its supervisors in determining the appropriate level of discipline to be imposed. So, for example, the supervisor who makes the initial discipline recommendation, usually a lieutenant, is not given any guidelines, matrix, disciplinary guides, or guiding principles from which to make that recommendation. Thus, there is little opportunity for the Department to ensure consistency and achieve a system whereby a deputy who violates the force policy in one facility is subjected to a similar range of discipline than a deputy who violates force policy in the same way at another facility.

We recognize that there are countervailing reasons that the discipline be individually customized: to address past disciplinary history, performance, acceptance of responsibility and other factors that will be clearly unique to each case. However, the concept of having each lieutenant largely “at sea” with regard to any kind of guidance on a disciplinary range of penalties seems to invite the likelihood that discipline will be imposed arbitrarily and inconsistently.

CASE ILLUSTRATION:

In one force case, the disciplinary result passed through a number of decision-makers, and the amount of suspension days continued to be altered as the case moved through the Department's hierarchy. The length of suspension was set at one level, cut by more than half by the next level supervisor, returned to the original level by the next level supervisor, and then tripled by the executive above him.

The lack of any disciplinary guidelines or principles that Departmental executives can consult gives too much leeway to any disciplinary determination. In addition, there is no guidance provided to Department disciplinarians on what weight to give certain aggravating or mitigating factors that might exist as to any individual deputy and whether certain factors such as whether the deputy is a “good guy” should be considered at all. Because the imposition of discipline should promote principles of consistency in order to be fair, we suggest that the Department consider developing guidelines that provide a disciplinary range of penalties and afford supervisors assistance in determining the appropriate level of discipline for policy violations.

Report Recommendation # 32:

- **We recommend that the Department develop a set of disciplinary guidelines that set out penalty ranges for particular policy violations and assist the decision maker in considering how aggravating and mitigating factors are to**

be applied. At the very least, it should articulate principles that would help promote consistency and reduce arbitrary penalties.

D. Risk Management Bureau

The Department's Manual of Policy and Procedures sets out broadly the mission of the Risk Management Unit: "The goal of the Risk Management Unit shall be to enhance professionalism, prevent/reduce liability costs, and increase operational efficiency by identifying, assessing, and controlling high level exposures to risk in the Sheriff's Department daily environment." Responsibility for heading the unit and coordinating its various functions lies, according to the Manual, with a Lieutenant who is to be designated as the "Risk Manager."

The Manual indicates that a "Risk Management Steering Committee" shall direct the Risk Management Unit. The responsibilities of the Steering Committee are significant, and include policy recommendations, and a liaison function with County Counsel and with the County's Department of Human Resources. Per the Manual, the Steering Committee is to meet at least quarterly and keep a record of its proceedings.

Adding further detail to the Department's apparently expansive vision for concerted attention to risk management, the Manual stipulates that a "Risk Management Committee" is to meet at least bi-monthly and shall generate quarterly and annual reports of its findings and its recommended actions. Answering to the Steering Committee, the

Risk Management Committee is assigned “to review all high-level risk activities” and make appropriate recommendations regarding policy, procedures, and training.

The Manual also requires each Division within the Department to set up its own Risk Management Subcommittee consisting of representatives of the Division. The representatives of the Subcommittees are responsible for identifying and reporting high-level risk exposures within their respective day-to-day work environments. The Manual requires these Subcommittees to meet regularly and keep records of their proceedings.

Clearly, then, the Manual does not lack for the structure and process that are advisable for the proper identification and consideration of Risk Management issues. We very much support this level of emphasis and resource dedication. Unfortunately, though, the reality of the Department’s actual Risk Management efforts during the audit did not match the high and quite specific expectations set forth in the Manual.

Some of the relevant tasks may have been being performed in some way, and with some results; our review did find evidence of worthwhile activity from the Risk Management Unit during the audit period. For example, our review identified efforts by that Unit, particularly in 2005, to upgrade the Department’s record keeping on force events. Moreover, the Unit’s activity appeared to have been energized during the period as a result of the leadership of a new Captain who had overall responsibility for its operations.

At the very least, however, it appears that Department practices veered considerably from the path the Manual establishes. For example, the Risk Management Unit was not staffed by a lieutenant during the audit period, there was no person serving as the Department's Risk Manager as set out in the Manual, and the various committees neither met nor produced reports about their activities.

We are not necessarily surprised that the Department's articulated requirements were not followed to the letter. As with other large Departments, the noblest of intentions often go by the wayside, and for legitimate reasons relating to resource limitations and competing priorities. In fairness, it should also be noted that the efforts the Department did expend were greater than those of many similarly situated law enforcement agencies.

Still, renewed and more systematic attention appears to be warranted. Devotion and attention to risk management issues is critical to progressive law enforcement agencies. Law enforcement is necessarily a high-risk enterprise. For the safety of its deputies and citizens, it is critical that the risk be managed and consideration be given to any new ways of doing business that might reduce that risk. Policies, training, and practices of law enforcement must continually be evaluated and reevaluated through the prism of risk management and officer safety. To ignore doing so places the department as an organization and its individual members at unnecessary peril.

Report Recommendation # 33:

- **We recommend that the Department reexamine its Manual in relation to Risk Management issues, and create and memorialize a feasible action plan and structure that will achieve the objectives behind the ambitious current language.**

E. Mentally Challenged Suspects

Our survey of Departmental use of force incidents makes it clear that deputies throughout the Department are frequently called upon to deal with mentally challenged suspects. Deputies cannot count on a rational response to a show of power or even a standard physical response to pain compliance. These situations often lead to force in swift and unpredictable ways. We applaud the Department's expansion of its "Psychological Emergency Response Teams" (each composed of one specially trained deputy and one psychology clinician) that can intervene in critical situations as needed. We recommend that the Department provide the training and resources necessary to optimize deputies' ability to recognize early and prepare options for an encounter with a mentally disturbed violent individual.

Three deputies shot a man in the street who charged them holding a steak knife. They had had indications that he was mentally disturbed or violently suicidal. They did not confer, make a plan or secure any non-lethal weapons before exiting their cars and

approaching him, guns drawn. At least one pepperball rifle had been available to them. They were not able to find a barrier or back up rapidly enough to avoid using their guns.

Deputies shot an escaped juvenile who was armed with a knife and threatening not to be taken alive and seeking to be shot. The juvenile had retreated to his room and hid behind a small refrigerator, sometimes lunging, threatening and then retreating again. Deputies did request a bean bag shotgun to the scene – which did not arrive in time - but appear not to have considered backing away from this barricaded suspect to consider or prepare other options.

During the audit period the Detention Service Bureau of the Department initiated a training program for both sworn staff and nursing personnel to improve skills in dealing with the mentally ill. The training curriculum, developed by the jail's psychiatrist, and already provided to over 300 sworn and non-sworn staff, is intended to educate personnel on the unique challenges of dealing with the mentally ill. According to statistics provided us, the training program has had a significant impact in reducing use of force incidents at the facilities. For example, over one four-week period, after the training was provided, the force incidents in the jail went from 16 to 3 to 1 to 0.

We have reviewed the curriculum developed for this training module and find it to be highly informative and user friendly. The statistics showing a reduction in force incidents is the best evidence that the training has been effective in the custodial setting. According to those responsible for the development and training conducted in the jails, a

similar presentation could be adapted to deal with encounters with the mentally ill for patrol officers. Our review of force incidents in patrol find a healthy percentage of them to have involved efforts to take mentally ill persons into custody that oftentimes result in significant or deadly force being used. Exporting a training program that has worked from the jail to patrol setting would be a worthwhile venture to learn whether the training could effectuate a similar reduction in force incidents in patrol.

Report Recommendation # 34:

- **We recommend that the Department adapt its training curriculum in dealing with the mentally ill in jail to the patrol setting and provide that training to its patrol deputies.**

F. Complaint Advisory

California Penal Code Section 148.6 made it a misdemeanor to knowingly file a false complaint against a peace officer. The state statute required police departments to provide a warning to complainants regarding the possibility of prosecution for making a false complaint and to obtain a written acknowledgment from the complainant of the criminal implications of making a false complaint. In compliance with the enactment of the law, the Department's Policy and Procedures Manual tracked these requirements.

While the Manual contained provisions that allowed serious complaints to be forwarded for investigation, even in the absence of the complainant's refusal to sign the acknowledgement, it is clear that the usual effect of such a refusal was to limit the further action that the Department would take. This approach was understandable, and of course rooted in the need to comply with state law. However, the legal landscape has recently changed with regard to this advisory, and to our knowledge the Department still needs to update its own Manual and protocols.

The statute in question had been of concern to civil rights advocates for several years, primarily because the warning's potential to chill even legitimate complainants from exercising their right to speak out and attain redress for police misconduct.

In 2005, in United States v. Chaker, 428 F.3d 1215 (9th Cir. 2005) cert. denied, 126 S.Ct. 2023 (2006), the federal court of appeals found the Penal Code statute to be unconstitutional.

In light of this legal development, the Department's continued mention of the advisory requirement in the Manual seems inappropriate. We have no reason to believe that the problem is the result of a conscious choice or philosophical dispute with the notion of an unfettered complaint process – a position that would obviously be problematic. Still, it is important that the Department attend to this ministerial task and make sure that all relevant personnel are aware of the change.

Report Recommendation # 35:

- **We recommend that the reference in the Department's policy manual to an advisory requiring complainants to acknowledge that it is a crime to make a false statement against peace officers be removed.**

PART IX: Conclusion

Throughout the Report, we have tried to place our criticisms and recommendations into a larger context: one that recognizes the Department's high standards, the professionalism of its personnel and systems, and the prevalence of a culture that reflects genuine pride in the mission of law enforcement. None of these is a small thing, and none should be taken for granted.

Nonetheless, the Department is also at a crossroads of sorts. It is grappling with interesting internal issues like the separation of custody and patrol functions, it is testing the impact of a major new force initiative in the Taser program, and it is continuing to evolve with regard to systemic issues like Early Intervention. The County itself is also changing significantly in terms of its demographics and overall growth; in a conversation with a longtime supervisor for Rural policing in the east part of the County, we were struck by his sense of how rapidly the area is developing and how direct the implications were for the Department. The need for adaptability and responsiveness to changing circumstances is ongoing.

In the past several months, we have met a number of people from various ranks and assignments who left us encouraged about the Department's potential to meet that need for effective change. Our experience as outside auditors was quite instructive in that regard. Though everyone we encountered was unfailingly polite in dealing with us, we noticed early in our project that the willingness to share information and facilitate our

work was tempered at times by anxiety or hesitation about disclosure of materials that are traditionally kept “in-house.” We came to understand that the hesitation was not a function of embarrassment or a desire to keep things secret – on the contrary, many of these same Department members were disarmingly candid in discussing shortcomings or problematic incidents. Instead, it was more an institutional lack of familiarity with the kind of openness and information-sharing that the audit required.

Gradually, the Department seemed to become more comfortable, and we ultimately received all the information and records that we sought. We provided the Department with regular reports and briefings regarding our observations and concerns, and found that the dialogue was invaluable. It helped our understanding enormously and thereby improved our analysis and conclusions. Meanwhile, it gave the Department a constructive sense of where we were heading, so that its responses could be as informed and well-considered as possible. We did not always agree along the way. Nor do we expect the Department to adopt every one of our recommendations in full form. We have reason to believe, though, that the process itself has been useful: an example of how receptivity to outside ideas, opening the “vault” of Departmental information to outside professionals, and a full-fledged willingness to communicate can be signs of strength instead of weakness.

We end this Report where we began it – with a reference to the Vista shootings in the summer of 2005 that gave rise to this project. Since that time, the Department has taken several steps in an arena we consider exceptionally important: community

outreach. Some of these initiatives were directly responsive to the tensions that the shootings provoked, revealed, or exacerbated. Others were unrelated, but reflective of the same progressive mindset on the part of Department officials that we noted in their dealing with us.

As one Department executive observed during a conversation with us, the course of a controversial incident (or series of them, as Vista faced in the summer of 2005) is shaped in part by relationships that exist *before* the events in question ever occur. In the days and weeks that followed the shootings, the current of rancor and distrust that tinged the community's reaction was revealing. And, while each case obviously should have been judged on its own facts, the questions about their cumulative significance were as fair as they were inevitable.

To its credit, the Department has made tangible efforts to strengthen mutual understanding in the Vista patrol area. Two initiatives stand out in particular – the “Latino Advisory Committee” that meets regularly with the station captain in Vista, and the emphasis on Spanish-language immersion programs that can equip field deputies to communicate more fluently and productively with the large Hispanic population in the area.⁴⁰ A longtime area resident who serves on the Committee seemed to believe that the Department still had considerable room for improvement, but he also acknowledged the value of the recent overtures.

⁴⁰ An increase in Hispanic deputies at the station, and throughout the Department, is certainly a worthy and ongoing goal as well. The actual numbers do not comport with management's ambitions for recruiting and staffing, but this is, at least in part, reflective of a larger dynamic throughout local law enforcement: the need to fill available positions with qualified and interested people.

In our view, the Department would benefit not just from heightening its own understanding of community dynamics and concerns, but in continuing efforts to enhance the public's understanding of its procedures, protocols, and activities. This relates to the transparency we advocate above in this Report, and speaks to our belief that more explanation and disclosure would, in the long run, strengthen the community's sense of ownership and involvement with law enforcement.

We hope the progress continues. Meaningful reform in a large bureaucracy is a function of both openness to change and commitment to its execution. Our belief is that the observations and recommendations in this Report will prove useful to the Department. We know, however, that the Report's ultimate value lies in the hands of the Department executives who will consider it and – more importantly – act on it. By refining some of its procedures in the context of an updated and forward-thinking culture, the Department can enhance the excellent service it provides to the people of San Diego County. In so doing, it can also honor the best parts of its proud tradition.