

Fullerton Police Department:

Audit of Force Reviews and Internal Investigations

August 2016



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Introduction

It has been four years since OIR Group completed its first review of the Fullerton Police Department. In that time, the Department has been committed to reform, measured in part by its progress toward implementing the 59 recommendations we laid out in our August 2012 report.

The changes the Department has made have been wide-ranging and broad. Not only do they respond to critical – and particularly germane – concerns about engagement with homeless individuals and those in mental health crisis, but they also cover topics, such as effective evidence preservation, that are key building blocks for sound law enforcement. Additionally, recent years have seen worthwhile initiatives that increase the Department’s positive interactions with the Fullerton community. Taken together, these steps reflect a conscientious agency that continues to evolve in the right direction.

This report, though, focuses on a more narrow set of reforms, dealing with the ways in which the FPD investigates and reviews uses of force by and allegations of misconduct against its officers. On these subjects, our 2012 report detailed 18 recommendations. For this report, we reviewed a sampling of use of force reviews and IA investigations, and then used those incidents and investigations as a window through which to gauge the Department’s progress.

Our review did not include any critical incidents or tragic outcomes – there were no officer-involved shootings by FPD officers or any in-custody deaths during the time frame of this review. Accordingly, our review is focused on less significant uses of force and on allegations of misconduct ranging from discourtesy during calls for service to questionable practices during vehicle pursuits.

Our examination of the documentation, investigation, and Department assessment of these events is an important barometer for how the Department may handle the next critical incident. Without the proper mechanisms and processes in place to effectively address these less significant events, the Department could find itself destined to repeat its past failings when it might again have to confront a serious tragedy.

Moreover, and to its credit, FPD has reached out to OIR Group when it was weighing allegations of more significant misconduct committed by its employees so that we could provide an outside review of the investigation and an independent perspective on the appropriate outcome. This demonstrated commitment to hearing from outside voices as it considers issues such as investigative thoroughness, objectivity, and accountability sets the FPD apart from many other law enforcement agencies.

Fortunately, we find that the FPD has used the past five years as a learning experience and a springboard toward systemic reforms. The leadership of the Department has embraced the City's goal of establishing the FPD as a model of progressive policing. The recommendations we made in 2012 are an important step toward that goal. Our review of cases from 2014 demonstrates that the Department has done much to address those recommendations. Nonetheless, we found cases that demonstrate our recommendations have not yet been fully implemented and others that show there is room for further improvement. We discuss those cases in this report, and make follow-up recommendations where we think the Department could benefit from changes to its policies or practices.

Our assessments and this report were greatly enhanced by the full cooperation of the FPD. In addition to providing us complete access to documents, policies, personnel, meetings, and events, the Chief and his team have been uniformly candid and helpful to us as we have conducted our audit and review. The Department's open approach to access helped make our work more efficient; more importantly, its receptivity has helped make that work more productive and useful to the citizens that FPD serves.

Scope of Review

Since our initial systemic audit, this report is the first report setting out the results of OIR Group's review of investigations and historical audits of complaints, force reviews and administrative investigations. Pursuant to our agreement with the City of Fullerton, OIR Group is responsible for conducting real-time review of investigations and providing recommendations for internal findings on all uses of deadly force, in-custody death investigations, significant force investigations, and any other internal investigation that the Chief of Police or City Manager request us to review. In addition, we conduct historical audits of all bias-based policing complaints, all internal investigations in which the subject employee is the rank of Sergeant or higher, and random audits of all uses of force reviews and administrative investigations.

Real-Time Consultation

During the audit period, the Chief of Police consulted OIR Group regarding two significant Internal Affairs investigations while those matters were still pending. This included his forwarding the internal investigative report for our review prior to making a decision on the disposition of the case. The allegations involved serious breaches of trust and unprofessional conduct by two officers, one on-duty and the other off-duty, and eventually resulted in serious administrative repercussions for those officers.

The real-time review process afforded OIR Group the opportunity to evaluate the internal investigation for thoroughness and objectivity prior to its completion; we also provided recommendations on potential additional investigation, outcomes

and appropriate discipline. While he retained the final decision-making authority, the discussions we had with the Chief during this process added an experienced and independent outside perspective to his deliberations.

As we have during our prior work with the FPD, we found the Chief to be candid, thoughtful, and receptive during these exchanges. The Chief's willingness to embrace outside input in an effort to strengthen the FPD process is reflective of his progressive approach – and a phenomenon that would have been unheard of in Fullerton just a few years ago.

Historical Audits

For this report, we received materials concerning all 51 use of force reviews and 77 administrative investigations conducted by the FPD in 2014. Of these, we selected 17 use of force reviews and 22 administrative investigations, roughly a third of the total in each category. We selected the cases to represent a variety of different types of complaints, allegations, and force used. For these cases, we reviewed all of the Department's investigative materials, including written reports, interviews, and Digital Audio Recordings. In addition, we talked with Department personnel regarding questions that were not addressed in the written materials, and observed the Chief interact with his staff on the review of force and administrative investigations.

Our analysis centers on the quality and thoroughness of the Department's internal investigation and review of each of the incidents presented. We look at relevant training and policy issues, and corrective actions initiated by the FPD. Without opining on the final outcomes as to whether individual policy violations occurred, we focus instead on the quality of the investigation and review process. Where we find issues that were not addressed or thoroughly examined, we suggest ways the Department can better handle these matters in the future.

Reviewing Uses of Force

An officer's authority to use force comes with a significant responsibility to use it judiciously and only when reasonably necessary. It is essential that a law enforcement agency critically review and evaluate each force incident in order to determine whether the use of force complies with Departmental expectations as set out by policy and reinforced in training. An effective inquiry, however, does not end there. The Department should also assess force incidents for potential issues with performance, training, tactics, equipment, policy, or supervision. This requires a commitment to comprehensive fact-gathering and dispassionate review. Such a holistic review of force incidents will increase the tactical and decision-making capabilities of officers, provide strategies and tactics to resolve issues without resorting to force, promote accountability, and leave the Department with better options to address tomorrow's challenges – a goal of any progressive law enforcement organization.

For our 2012 report, we reviewed a random sample of force investigations conducted by Internal Affairs, a process we replicate in Section Two of this report, while also examining other types of IA investigations. For this report, we also reviewed a sampling of investigations into so-called "lower level" force incidents – those conducted by field sergeants following force encounters that did not warrant an investigation by Internal Affairs, either because the force used was

minor or because the incident was deemed straightforward enough so as not to warrant a more exacting inquiry.

The FPD generally does a very good job collecting all relevant facts necessary to fully evaluate even these lower level uses of force. Its force reporting is consistent with or better than the general standards employed by most police agencies of similar size. The manner in which it reviews and scrutinizes these uses of force likewise is on par with other similar agencies we have assessed, and exceeds many in its rigor and scope.

Nevertheless, our aim is to help the FPD continue to evolve in its efforts to set a “gold standard” for agencies of its size. The observations and recommendations in this report are made with that objective. Our assessment of the way in which FPD documents, reviews, and evaluates force incidents is largely complimentary, but we nonetheless look for and identify ways the Department can improve its capacity to analyze these incidents to maximize learning opportunities, to identify institutional shortcomings, or to reinforce positive practices.

In this section, then, we address these areas of potential improvement as they arise in the context of uses of force that do not generate Internal Affairs investigations. We examine IA investigations – and the FPD’s implementation of recommendations set forth in our 2012 report – in the following section.

Reporting and Documenting Force

When an FPD officer uses force on a subject, he or she documents the force and the precipitating circumstances on a “General Offense” report that primarily is intended to document the facts surrounding the subject’s arrest. Officers who witnessed but did not use force may document their observations on a supplemental report that becomes part of the arrest report. A supervising sergeant then prepares a “Supervisor’s Use of Force/Prisoner Injury Review” that documents some important data points about the force (i.e., nature of initial contact and type of force used), summarizes the event based on reports from the officers and statements from the subject and witnesses, and provides the supervisor’s conclusions about the incident. The package is routed to the watch commander and the division commander, who indicate their concurrence with the supervisor’s conclusions. Unless a force incident generates an Internal Affairs

investigation for any of a number of reasons (see below), this is the only documented review of the incident the Department conducts.

The inclusion of force documentation in the general arrest report is an understandable way to conserve time and other resources, but is limiting in some respects. One document must serve dual purposes – providing the legal basis for prosecution of an individual while also providing a meaningful level of detail regarding the force officers used while effectuating his arrest – so that the force documentation could in some cases slide into a position of secondary importance.

Nonetheless, we generally found officers’ documentation of their force to be well written and sufficiently descriptive to allow the reader to understand the sequence of events. We also found that force reviews generally gather all relevant information. Sergeants either interview subjects – and record those interviews – or document why they did not. The same is true for civilian witnesses. Sergeants listen to officers’ digitally activated recorders (DARs).¹ Subjects’ and officers’ injuries are photographed. Where the Taser was used, sergeants download and review the Taser data. These are all markers of complete and thorough investigations.

However, the sampling of cases we reviewed revealed some room for improvement. In the few instances we found where descriptive detail was lacking in an officer’s written report (where, for example, an officer writes something like, “I subdued the subject to the ground”), there was no evident follow-up or kick back from the supervisor to ask the involved officer to provide a more substantive detailed description of the force used.

In some cases, officers who witnessed force did not prepare a supplemental report to describe what they witnessed. Those supplemental reports generally seemed to be written only when an officer had something substantive to add to the arrest report and not as a stand-alone report of witnessed force. Similarly, while in most cases reviewing sergeants interviewed any civilian witnesses to the force, we found one case where an officer from another law enforcement agency was present during a use of force but was neither interviewed nor asked to write a report.

¹ As noted in further detail below, subsequent to this review period, FPD outfitted all of its patrol officers with body-worn cameras, becoming the first police agency in Orange County to do so.

Recommendation 1: Officers who witness a use of force should be required to prepare a supplemental report to describe what they witnessed.

Recommendation 2: The sergeant preparing the Supervisor's Use of Force/Prisoner Injury Review should be required to interview or get written statements from all non-FPD personnel who witnessed the incident, including all civilians and members of other law enforcement agencies.

One of the most significant issues we identified was a failure to reconcile inconsistencies between a subject's assertions and an officer's written report. Where there were differences in those accounts, the sergeants responsible for the reports did not document efforts to acknowledge or account for those discrepancies. For example, in one incident a subject reported that the arresting officer "shoved his face into the ground" following a foot pursuit, but then said it was "no big deal" and the officer probably was just mad at him for running. He went on to say that the officer had not done anything wrong, and that he "probably deserved it." The officer's report does not mention any use of force, and the sergeant preparing the Use of Force/Prisoner Injury Review did not question the officer about the subject's claim, despite the fact he noted abrasions on the subject's face. Instead, the sergeant noted it was inconclusive whether the abrasions were "self-inflicted" when the subject went to the ground at the end of the pursuit, or were the result of a use of force. The sergeant relied on the fact the subject did not make a formal complaint and downplayed the injury to conclude that the officer's conduct was proper. These kinds of inconsistencies between officers' and subjects' accounts may not always be resolvable, but sergeants should document their attempts, including follow up conversations they have with involved officers.

Recommendation 3: In cases where the subject's account of any force used varies significantly from the officer's account, the reviewing sergeant should strive to resolve the conflict using all relevant investigative tools, including interviews of the involved or witness officers.

Finally, we reviewed a number of cases where on-scene sergeants witnessed, directed, or were involved in the use of force and then nonetheless were responsible for writing the use of force review and drawing conclusions about the

propriety of the force. For example, in one case we reviewed, the sergeant responded to a vandalism call along with three officers. They ultimately apprehended the suspect, with the sergeant participating in taking him down and securing him. The involved sergeant then was responsible for writing the Use of Force/Prisoner Injury Review, which concluded the force used was proper. In another incident, an on-scene sergeant directed an officer to fire a sponge gun at a mentally ill subject holding a knife. The less-lethal round missed but nonetheless caused the subject to drop the knife. The sergeant who directed the use of force prepared the written review and, not surprisingly, found the force in policy.

We do not mean to suggest that the force used in either of these cases was improper, and we understand that the sergeant's conclusion is reviewed by a lieutenant and captain who may disagree with their subordinate's conclusions about the propriety of the force. Nonetheless, the sergeant's involvement in this first level of decision making creates an obvious obstacle to objectivity, as no sergeant is likely to find force he or she directed or participated in to be unreasonable or out of policy. Additionally, there may be factors or considerations overlooked by an involved sergeant that may be clear to one who was not engaged in the incident and may lead to a more complete and objective review. At a minimum, incidents in which a sergeant either used or directed force should be assigned to an uninvolved sergeant or lieutenant for investigation and review and to make the initial recommendation about whether that force was within policy.

Recommendation 4: In cases where a sergeant uses or directs a use of force, the Department should assign the task of preparing the Supervisor's Use of Force/Prisoner Injury Review to an uninvolved sergeant or lieutenant.

Reviewing and Evaluating Force

The Supervisor's Use of Force/Prisoner Injury Review generally contains all of the relevant information necessary to evaluate a use of force (with the exceptions noted above), but is not a particularly useful tool for analyzing the force. The sergeant's summary of the event (which likely takes a considerable amount of time to write) simply re-tells the story that officers have written in their reports. Sergeants also summarize their interviews of subjects and witnesses, in what are

also often sizable narratives. The supervisor's conclusion, however, is generally one paragraph and includes little analysis of the incident.

After the sergeant has completed his or her work on the use of force review, the Watch Commander (generally a lieutenant) and Division Commander review the package, and complete simple check boxes ("in policy/potentially out of policy") and ("concur? yes/no") to indicate they have reviewed the documentation. The higher-ranking officers concurred with the sergeants in each of the incidents we reviewed. Without exception among the incidents we reviewed, the sergeant concluded that the officers' conduct was reasonable, necessary, and within policy, and the Watch Commander and Division Commander agreed.

We have no quarrel with any particular outcome, and understand that if a commander believed the force potentially violated Department policy, he would not sign off on the report and would instead initiate an Internal Affairs investigation. However, the rote quality of the written conclusions absent any documentation of further analysis creates a concern that the process of approving the use of force could become too shallow.

With every use of force, there are questions that should be answered by the written documentation of the incident, where applicable. A supervisor or higher-level executive performing a rigorous review of the incident should know the answers before concluding the force was within policy and in order to determine whether alternative strategies could have been deployed short of force. This information includes:

- What were the officer's words, gestures or actions prior to, during, and after the time he/she used force?
- Was there any relevant prior "interaction" or "relationship" between the officers using force and the person against whom force was subsequently used?
- What was the physical or mental condition of the person against whom force was used?
- Was there a reasonable opportunity to safely de-escalate the incident in order to lessen the likelihood of the need to use force or to reduce the level

of force necessary? If so, did the officer using force attempt to do so? If not, what was the reason?²

- Was there a reasonable opportunity to safely use tactical options such as increasing time and distance, using cover and concealment, using or creating barriers, calling and waiting for additional personnel, etc., which might have lessened the likelihood of the need to use force or reduce the level of force necessary? If so, did the officer attempt to do so? If not, what was the reason?
- What was the underlying offense, infraction, or conduct that precipitated the initial contact and the subsequent use of force?
- Was the force used reasonable when compared to the threat posed and all other surrounding circumstances?
- Was there a reasonable opportunity to safely use a weapon, device, instrumentality, or force technique that might lessen the force needed to overcome the threat posed? If so, did the officer attempt to do so? If not, what was the reason?
- Once the use of force commenced, was it reasonably decreased or stopped as the level of resistance/threat/harm decreased or stopped?
- Was there any evidence indicating that the force used by the officer was motivated in whole or in part by any improper purpose such as, but not limited to, punishment, retaliation, discrimination, bias, improper coercion, infliction of unnecessary pain, harassment, ridicule, abuse or any other improper reason?
- Did involved and witness officers notify a supervisor of the force incident in a timely way?
- Did involved and witness officers promptly write reports that thoroughly answered all relevant questions about the incident?

² The consideration of de-escalation techniques is gaining purchase by police executives and law enforcement agencies as part of the necessary evaluation of officer conduct in force incidents. In just the past few months, the Police Executive Research Forum has encouraged law enforcement to consider the use of de-escalation techniques in assessing force incidents and the Los Angeles Police Department's Police Commission has ordered that the principles be incorporated into the Department's use of force policy.

- Did the involved or witness officers have access to any video of the incident prior to writing their reports?
- Were the officers' written reports consistent with each other, and with any video of the incident? If not, account for and/or explain these inconsistencies.
- Were the officers' written reports consistent with inmate and witness interviews? If not, account for and/or explain these inconsistencies.
- Was the person against whom force was used provided prompt medical assessment and care?
- What was the nature and extent of any injuries to the person against whom force was used?
- What was the nature and extent of any injuries sustained by the involved officer(s)?
- Were the injuries noted and/or documented by medical providers consistent with the level of force reported?

Further, expanding the simple in policy/out of policy determination on the force review documentation to include some additional questions about tactics and training would provide a mechanism for recording and tracking issues surrounding a particular use of force or investigation that do not rise to the level of a policy violation. By focusing only on the question of whether the use of force was within policy, the supervisors reviewing that force at all levels may miss the opportunity to scrutinize the incident for other purposes and through different prisms.

For example, we reviewed a number of force incidents that were preceded by foot pursuits. In each, the force was considered to be within policy and there was no written record of an evaluation of the officers' decision to pursue. In other cases, officers deployed Tasers that proved ineffective, yet once the application of the Taser was found to be within policy, there was no record of the Department's evaluation of why it did not work. Finally, there was one case where a police canine's incessant barking was documented as a distraction in the interviews of civilian subjects and witnesses during a vehicle stop, yet there was no documented evidence that the Department ever considered or devised remedial action so that future interactions would not be similarly compromised.

Reviewing these incidents from the perspectives of tactics, training, supervision, and equipment may lead to a meaningful assessment of officer or agency shortcomings that should be addressed in non-punitive ways. Or they could lead the Department to identify effective practices that it could then reinforce in briefings for the benefit of the entire organization. In short, looking beyond the “bottom line” issue of legal justification for force creates potential learning opportunities with each force incident.

Through our conversations with Department members and attendance at a staff meeting conducted by the Chief, we understand that these issues frequently *are* discussed between the Chief and his operations and training staff. That level of attention to all of the circumstances surrounding a force incident is commendable. Any remedial measures coming out of these discussions, however are not documented as part of the force review, making it difficult for the Department’s outside reviewers to understand clearly how the Department’s own internal review assessed a given incident and failing to create a paper trail to demonstrate that command staff is attentive to force incidents from a risk management and civil litigation perspective.

One way to develop a more well-documented exacting review of force incidents while at the same time ensuring that all the relevant facts are gathered is to employ detailed checklists that specifically lay out the Department’s expectations for investigation and review. Such a tool could help ensure uniform and thorough coverage of the fact collection and review process, prompting supervisors to ask the right questions and confirm that the final force review package provides an answer at each level of investigation and review. For example, rather than expect the sergeant to prepare a narrative description of the event and then write a free-form conclusion that summarizes his or her reasoning on the question of whether the force was in policy, a checklist could walk him or her through questions about threat perception, de-escalation efforts, adherence to force reporting policies, medical review, tactical concerns, and equipment issues, such as those delineated above.

Similarly, a checklist employed by watch commanders and division commanders could require consideration of the same issues of threat perception, force options, de-escalation efforts, discrepancies in reporting, and, ultimately, whether the force used was reasonable. By creating prompts for all levels of reviewers to verify certain issues are addressed and all relevant information is collected, this more detailed review would also ensure the elimination of some of the oversights we

saw in the force reviews we audited (missing witness interviews and witness officers who did not prepare written reports, for example).

This revised force reporting and review process also would facilitate compliance with a number of recommendations we made in our 2012 report. In recommendations number 28, 29, and 32, we emphasized the importance of promoting alternatives to force, acknowledging officers skilled at resolving confrontation without force, and targeting training to recognize that certain force options should be used only in life-threatening situations.³ Checklist items would include consideration of other force options, de-escalation, and alternatives to force. By regularly reinforcing the Department's philosophy on use of force with sergeants, lieutenants, and captains, the documents will cement them as core values of the Department and promote their general acceptance among all of its officers.

Recommendation 5: FPD should consider changing the way it documents force to include specific questions about threat perception, de-escalation efforts, adherence to force reporting policies, medical review, tactical concerns, and equipment issues that the sergeant would complete in lieu of the free form narrative of the incident.

³ Consistent with these recommendations, the Department has made significant expenditures in recent years to upgrade its training facilities and to improve scenario training to emphasize the skills officers need to de-escalate in situations where force might be justified but is not necessary.

Internal Affairs Investigations

In our 2012 report, we reviewed a random sample of FPD force investigations by Internal Affairs. For this report, we examined IA investigations into a variety of allegations – some use of force and some other types of alleged misconduct. We looked specifically at the recommendations we made in 2012 to gauge the extent to which FPD has embraced those recommendations in its practices, but we also evaluated investigations independent of the findings in our prior report and make some new recommendations here.

In general, we found the Department has substantially addressed many of the shortcomings we noted in our 2012 report. The internal affairs investigations we reviewed for this report were mostly thorough and objective. However, we found a number of cases where investigators did not fully explore tactical issues or potential policy violations that may not have been central to the incident but were nonetheless presented by the officers' performance. These deficiencies with investigations, however, point to an issue with the Department's processes for reviewing and analyzing these cases as much as they indicate a problem with investigators' performance. If the Department commanders reviewing investigations more formally analyzed all the possible issues presented by an incident or allegation, they would direct a more searching and well-documented probe of all relevant facts. Investigators would quickly catch on to what their superiors expected of them, and would broaden the scope of their investigations.

Investigative Issues

Review of 2012 Recommendations

OIR Group made 11 recommendations specifically related to force investigations in its 2012 report. These were Recommendations 39 (containing eight subparts, a through h) through 42 (pages 33-37). In his August, 2015 response, Chief Dan Hughes indicated the Department's compliance with each of these recommendations, noting changes to the Administrative Investigation Guide and policies on which personnel should be responsible for interviews and force investigations.

In the investigations we reviewed for this report, we found that investigators are largely complying with the new guidelines and policies. Specifically relating to Recommendation 39:

- a. **Every officer who used force or witnessed force should be interviewed.**

Update: With one exception among the cases we reviewed, investigators interviewed all officers who used or witnessed force in cases we reviewed.

The one case where officers were not interviewed by the IA investigator involved a vehicle pursuit that ended in a fatal crash. Consistent with FPD policy in cases where a subject dies, an accident investigator from the FPD Traffic Bureau conducted a criminal investigation of the incident and interviewed the involved officers. The administrative investigator relied on those interviews to complete his work, rather than conducting his own interviews. Here, the issues surrounding the pursuit were straightforward and the accident investigator did a good job covering the relevant questions in his interview of the involved officers.

Because the scope of an administrative investigation should be broader than a criminal investigation, it is generally not a good practice for IA investigators to defer to interviews performed for a criminal case. The criminal case examines only the potential criminal liability of those involved and does not focus on potential policy violations or issues relating to training or tactics that should be a subject of a thorough IA interview. For example, in an accident investigation, an officer's state of mind concerning his initial decision to pursue may not be relevant to the facts surrounding the eventual accident but could be central to an administrative investigation concerning the incident. The criminal investigator

examining the accident is not likely to fully probe the issue to the degree required for a thorough administrative investigation. Nonetheless, we do not endorse a blanket rule that requires unnecessary busy work. Where, as in the one case we discussed above, it is clear from the criminal investigation that no further information is necessary, an administrative investigator should have the discretion to rely on that criminal investigation.

- b. When the force incident is dynamic, the force investigator should ask witnesses to diagram the positioning and track the movement of the participants. The diagram should be initialed and included in the investigative file.**

Update: Though the Administrative Investigation Guide instructs investigators to have witnesses prepare diagrams in dynamic incidents, we did not see any diagrams in the investigations we reviewed, though they would have been helpful in some cases.

- c. A preference of in-person interviews should be articulated. Should geography or other issues prove to be an obstacle to in-person interviews, that fact should be included in the investigative report.**

Update: Interviews were conducted in person in cases we reviewed.

- d. The interviewer should obtain sufficient information from participants and witnesses so that the force used is articulated with specificity. The report narrative should contain a detailed description of the officer's actions.**

Update: Officers' actions and force used was articulated with specificity.

- e. The report narrative should indicate how it is that a civilian witness was in a position to witness the force and whether the witness was known to the individual upon whom force was used, and if so, how.**

Update: Investigators provided adequate documentation of positioning and involvement of civilian witnesses.

- f. **Contact information of complainants and witnesses should be obtained and included in initial reports.**

Update: Investigative reports included all contact information for complainants and witnesses.

- g. **A discussion of whether any charges were filed against the person upon whom force was used and the status of those charges should be included in the report.**

Update: Though the Administrative Investigation Guide instructs investigators to include information on the status of any charges brought against persons upon whom force was used, that information was not included in cases we reviewed.

- h. **Instruction to investigators to refrain in the factual narrative of the report from characterizing or editorializing about the facts compiled in the case.**

Update: Investigators largely refrained from obvious editorializing in the cases we reviewed.

Recommendation 40 in our 2012 report stated: “FPD should develop policy that would prohibit officers who used, directed, or witnessed force from interviewing the person upon whom force was used or civilian witnesses about the force incident.”

Update: FPD did enact such a policy, and we found no instances of involved officers conducting interviews in the cases we reviewed.

Recommendations 41 and **42**, respectively, stated a preference for a greater number of force complaint investigations to be handled by the Professional Standards Bureau (PSB), and for the Department to no longer schedule the Bureau’s sergeants to regular patrol duties to facilitate compliance with the former recommendation.

Update: In his August, 2015 response, Chief Hughes indicated the Department’s acceptance of both recommendations, stating that all major use of force investigations would be completed by a Professional Standards Bureau sergeant,

that a greater number of force complaint investigations would be handled by PSB, and that PSB sergeants would no longer be assigned collateral patrol duties.

The need for these changes is highlighted by some of the cases we reviewed which pre-dated the FPD's new staffing model. In several cases, sergeants completing IA investigations on force incidents or vehicle pursuits were involved in or witnesses to the incident. In one of these cases, the investigating sergeant included a section in his report for his own observations and actions, noting that he had monitored the broadcast of the pursuit from its start to finish. In his conclusion at the end of the report, he wrote, "[b]ased upon . . . my personal observations of the pursuit as it unfolded . . . it appears that [the officers'] actions during the pursuit were appropriate and consistent with Fullerton Police Department policy." Since he, as a supervisor of the pursuit, would have had an obligation to order its termination had it not been appropriate, the investigator here was clearly not in a position to provide an impartial opinion on the propriety of the pursuit.

While the recent staffing changes may eliminate these concerns going forward, at least in major use of force incidents, we believe the Department would be best served by making it clear that sergeants involved in or witness to any force incident cannot be responsible for the administrative investigation of that incident, just as he or she should not prepare the Supervisor's Use of Force/Prisoner Injury Review. As we noted above, the sergeant's involvement creates an obvious obstacle to objectivity, and these incidents should be assigned to uninvolved personnel for investigation. While our review demonstrated adherence to this tenet by FPD under the leadership of the current Chief, the creation of a written policy will better ensure continued compliance for FPD in the generations to come.

Recommendation 6: FPD should adopt a policy prohibiting a supervisor who was involved in a force incident from conducting an administrative investigation of that incident.

Evidence and Documentation

The investigations we reviewed were generally thorough and complete, in that investigators recorded interviews of all witnesses and involved personnel; included excellent photos of scenes, injuries, and other evidence; attached any video evidence as well as dispatch recordings or other audio evidence; and

included all recordings from officers' DARs. While there were some instances where investigators asked leading questions in the interviews we reviewed, none of these was so blatant or obvious that it would lead us to conclude the investigation was biased or not impartial.

None of the cases we reviewed, however, contained transcripts of interviews. Transcripts are helpful for those up the chain of command responsible for reviewing and adjudicating cases, and while we understand the challenges of resource allocation, we reiterate our recommendation that the interviews and DARs be transcribed for all administrative investigations into significant force events.

We note one minor issue regarding the form of investigative reports – a table of contents at the beginning of each would be useful for reviewers, and would serve as a sort of check-off for completeness of the file. That is, if an investigator forgot to include a particular audio recording or piece of documentary evidence to the report, his or her memory might be triggered while preparing a table of contents listing each exhibit and attachment.

Investigating Citizen Complaints

In our 2012 report, we reviewed only force investigations. For this report, we examined a variety of investigations, including a number of investigations into non-force related citizens' complaints. We found these investigations to be generally regarded as serious matters to be investigated thoroughly. For example, in one case the complainant refused to be interviewed after initiating a personnel complaint alleging officers had been discourteous and discriminatory in their treatment, but the investigator still interviewed the two individuals listed as witnesses in the complainant's written complaint. In other agencies we have reviewed, investigators tend to suspend their efforts when the complainant is uncooperative and other agencies drop the complaint investigation altogether.

In two of the complaints alleging profiling that we reviewed, we were concerned about the tone and demeanor of the sergeant handling the investigations, who seemed to be trying to explain the officer's conduct to the complainant rather than just gathering information for purposes of investigating the complaint. While it is an instinctive tendency for supervisors to try to explain to citizens why an officer may have taken certain actions, in the complaint intake process such an approach likely will make the complainant as though the investigator is not interested in

collecting facts but has already pre-determined the outcome. We addressed this issue with the Chief, who agreed with our assessment and counseled the sergeant regarding the proper role in handling citizen complaints.

With respect to the evidence documented and reviewed in IA investigations, we note that the value of having all officers employ DARs is unquestionable. In one case a complainant alleged he was handcuffed for over an hour and the officer never explained to him why he was being detained. It was resolved when the DAR demonstrated he was cuffed for 12 minutes and the officer had given him an explanation of what was happening and why. In another case, a complainant alleged that an officer was rude and inappropriate. The DAR proved the allegation to be true and the officer was appropriately reprimanded and counseled. Neither of these complaints would have been easily, conclusively, or satisfactorily resolvable without the DAR recording.

Since the period of our review, FPD has equipped its patrol officers with body worn cameras (BWCs) to replace the DARs. As the Department developed its policy regarding use of the BWCs, we were provided drafts and asked for our input. We look forward to reviewing cases that include evidence from the BWCs, and expect to see the same type of officer cooperation and valuable corroborating evidence from the video as we saw from audio recordings.

Finally, at the conclusion of investigations that initiated as citizen complaints, the letters sent by the Captain to the complainants are exceptional in the amount of detail provided. Rather than simply sharing a conclusion and citing state law protecting officers' privacy, as we have seen in other agencies, the letters sent by FPD outline the steps taken to investigate the complainant's allegations as well as some description of what the evidence showed – the content of officers' DARs, conduct that was apparent in video recordings, and witness statements, for example – before reporting the outcome of the complaint while also complying with officer privacy rights as set out in current state law.

We often hear complaints from citizens who do not trust that a law enforcement agency has fairly investigated their complaints. This mistrust frequently stems from the fact that virtually no information is provided at the end of the process. It is easier to distrust the outcome of an investigation when the citizen has no information about the basis for that decision. The substantive letters sent by FPD help citizen complainants understand the reasoning behind a given outcome, and hopefully lead to a greater level of trust in those results.

Scope of Investigations

In our review of IA investigations, we saw some force or vehicle pursuit cases where investigators did not document an examination of tactical issues surrounding the incident in a meaningful way. We also found a few cases where potential policy violations were not enumerated, adequately explored in interviews, or discussed in the investigative summaries. Again, we found that the FPD does as good or better than many agencies at not limiting the scope of its investigations to the most immediate questions presented – whether the force is in policy or whether a particular allegation can be sustained – but rather looking at all of the circumstances surrounding an incident. Nonetheless, we found some investigations that could have been more broadly scoped, to address not just the narrow question presented by the allegation but also the peripheral issues that can sometimes have great importance.

For example, we reviewed several cases where a use of force was preceded by a foot pursuit. Some of these seemed potentially problematic, but investigators focused almost exclusively on the force, hindering our ability to evaluate that aspect of these events.

In another case we reviewed, officers were performing a welfare check when they encountered an aggressive dog. One officer fired one round at the dog, but missed. The investigation evaluated the reasonableness of the shooting, and appropriately concluded it was within policy, but did not question the officers' failure to prepare for the possibility of an encounter with the dog, despite having been warned there was a dog that sounded "big and mean" inside. Officers assumed that the dog was confined to a backyard and were surprised when the dog entered the house through an open door. Department policy requires officers to develop a "reasonable contingency plan" when there is advance notice they may encounter a dangerous animal, but in the interviews and investigative report we reviewed, officers' conduct did not appear to be scrutinized for compliance with this aspect of the policy.

Review and Analysis of Investigations

At the conclusion of each administrative investigation, the Department's Command Staff present the case to the Chief during their weekly meeting and make recommendations on findings and disciplinary or other remedial outcomes.

The Chief serves as the ultimate decision maker. This review process appears to be both thorough and significant. The Chief asks pertinent questions to probe beyond the most basic allegations, and the group seems willing to and capable of having a meaningful discussion about appropriate outcomes. While we questioned the lack of documentation regarding much of the review and analysis of these incidents, we do not believe the lack of a paper record is indication of a failure to consider the important tactical issues raised in many force incidents. However, a paper trail would be helpful for purposes of outside review and could provide an additional benefit should any of the incidents give rise to civil litigation.

We made seven recommendations in our 2012 report relevant to the review and analysis of investigations:

Recommendation 43: FPD should improve its force review process to ensure that not only is the incident centrally reviewed to determine whether the force used was in policy but also to examine whether there was tactical decision making that was consistent with FPD policy and expectations.

Update: Among the cases we reviewed, we found some where we questioned the degree to which the investigation and subsequent reviewers scrutinized officers' tactical decision making, particularly with respect to the decision to engage in foot pursuits. We discussed each of those cases at length with the Chief. While we had some disagreement with the Chief over the wisdom of the decision to pursue or continue pursuing in some of those cases, we left the conversation satisfied that the tactical issues had been thoroughly considered, albeit not documented. We also gained an understanding of the Chief's position and an appreciation for the level of scrutiny he and his staff had given these incidents.

Recommendation 44: FPD's force review should also consistently reinforce officer conduct that is consistent with or surpasses the Department's expectations through formal or informal commendations.

Update: The review structure the Department has in place can and does appropriately acknowledge exceptional performance, consistent with this recommendation.

Recommendation 45: At the end of the force review, officers involved in every force incident should be debriefed regarding how the Department considered the handling of the incident including the tactical decision making.

Update: The Chief's response to this recommendation references the Force Review Board and Tactical Review Committee, neither of which was convened to review any of the cases we evaluated for this report. The response also states that the Command Staff's conclusion about a force incident should be discussed with involved officers and on-scene supervisors. Any such discussions or debriefings that occurred in the cases we reviewed were not documented in the case files, even in those cases where we believed some type of counseling or debriefing would seem appropriate. This is among the issues we discussed with the Chief and will revisit this in future audits to examine whether debriefings or counseling of officers following use of force reviews are documented.

Recommendation 46: In addition to deciding whether the force was in policy, FPD should examine force incidents to determine whether there were issues of supervision, policy, or training that it should address.

Update: The Command Staff meetings convened weekly examine force incidents holistically, with an eye on the performance of supervisors as well as the involved officers. Professional Standards Bureau staff also attends these meetings to address any training or policy issues that arise.

Recommendation 47: FPD should develop protocols so that training staff reviews force incident investigations and provides meaningful input in an individual and systemic way to improve the training of officers.

Update: The training sergeant reviews use of force investigations where there is an indication of a training issue. The sergeant is a participant in the Chief's weekly Command Staff meetings and has the opportunity to provide input into any noted training deficiencies, either particular to that officer or Department-wide.

Recommendation 48: FPD should consider designing protocols whereby significant force incidents and a sampling of less significant force incidents are reviewed by a force review committee. The force review committee should develop a written action plan for each force incident reviewed and ensure an effective feedback loop to present the results of any action plan back to the committee at a later time.

Update: The Chief's weekly Command Staff meetings include the IA sergeants, training sergeant and lieutenant, and the captains function as a de facto force review committee, evaluating force incidents with the goal of quickly identifying trends and training issues. This constitutes substantial compliance with our earlier

recommendation, though the committee should improve its documentation and tracking of command staff discussion, analysis, and outcomes.

Recommendation 49: FPD should continue to use mechanisms, such as training bulletins or briefings to ensure that information learned is exported back to the line officers and first level supervisors in a meaningful way.

Update: The inclusion of the Professional Standards Bureau staff in the review of force incidents and investigations facilitates the meaningful distribution of important lessons learned from various incidents. Among the cases we reviewed, we saw one case that resulted in Department-wide training on handcuffing techniques. In several other cases, the command-level review resulted in specific targeted training for the officers involved in particular incidents, most frequently with respect to a violation of the DAR policy.

Foot Pursuits

Two recommendations from our 2012 report address the issue of foot pursuits, which we noted preceded a number of the force incidents we reviewed. Because foot pursuits are inherently dangerous and present a heightened risk of harm to both officers and suspects, we encouraged the Department to look closely at its already comprehensive foot pursuit policy and to include a more formal review mechanism for these pursuits that would hold officers accountable for violation of the Department's standards for performance.

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

Update: The Department amended its foot pursuit policy to include being non-uniformed with less available equipment on the list of those conditions for which officers should "consider alternatives to engaging in or continuing a foot pursuit" absent "exigent circumstances." The policy stops short of ruling out pursuits by non-uniformed personnel or any other particularly dangerous pursuits, instead calling on officers to "consider alternatives." We will continue to engage with the Department on this issue.

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

Update: The Chief discusses all of the tactics surrounding a force incident at his weekly staff meeting, including any foot pursuit that may have preceded the force. However, the force investigations themselves generally contain no written analysis of the pursuit issues, and we did not review any cases in which an officer's performance was evaluated for adherence to the Department's policy enumerating guidelines for foot pursuits. This lack of attention and written analysis hinders our ability to assess the degree to which the Department has embraced this recommendation.

Transparency, Outreach, and Reform

In the years that we have been reviewing and working with the FPD, the Department has made extraordinary efforts to increase the level of transparency of its operations, to reach out to and engage the Fullerton community on issues of greatest concern to community members, and to reform the way it trains its officers. We highlight some of these efforts here, to credit the Department for these efforts and to encourage it to maintain its progress.

The Department's cooperation with OIR Group, and its acceptance and publication of these reports, is a significant statement of its willingness to be open and transparent. Beyond that, it has gone further than most agencies and published on its website its policy manual as well as a regular update of statistics of its administrative investigation outcomes. Very few law enforcement agencies are willing to cast light on internal investigative processes, so the FPD stands out for its willingness to provide total number of investigations, broken down in several different ways – by types of cases, type of force used in force cases, and type of discipline received.

The Department also recently formed a social media team with the goal of improving community engagement via postings on Facebook, Twitter, and

Instagram. The team operates around the clock, providing information on ongoing operations, crime trends, and other information that residents and business owner may find important.

Many of our prior recommendations related to the way in which the Department trains its officers regarding the use of force, including instruction on which force options are authorized in particular situations, and efforts to reorient officer's approach to the use of force by promoting tactical alternatives. To aid in these efforts, the Department has committed substantial resources to upgrade its training facilities, including a new video-based interactive training system that presents over 200 scenarios that officers must confront. The technology allows the scenario to change based on the tactics or commands the officer employs, creating as realistic a challenge as possible in a safe training environment.

Similarly, the Department has created a new training room that allows officers to simulate entry scenarios and practice de-escalation techniques while deploying simunition weapons.⁴ Again, trainers may change the scenario and its outcome based on the officer's responses, reinforcing positive behavior and highlighting tactical deficiencies. These upgrades in training facilities allow trainers to emphasize the importance of tactical alternatives to force, particularly deadly force, and to assess how well officers have incorporated those lessons into their performance. Training facilities and programs are only effective if officers have the opportunity to use them. The largest expense associated with training is the cost of paying officers to work an assignment behind someone who is at training. The Department's has committed considerable resources to ensure that all its officers receive updated and ongoing training.

Since 2011, the Department has shifted its approach to dealing with homeless individuals, most notably by dramatically increasing funding for its Homeless Liaison Officer program to address people's immediate needs with the hope of moving them into housing. Rather than arresting people or simply moving them along, officers with the liaison program – in partnership with the Coast to Coast Foundation – have the tools and resources to connect them with basic goods and services, such as bus passes, water, food gift cards, clothing, or motel vouchers. The Department is understandably proud of the fact that over 170 previously

⁴ Simunition weapons are actual firearms loaded with ammunition similar to paintballs that allow officers to safely train in live-fire scenarios.

homeless individuals have been reunited with family members or placed in housing due to this outreach program.

The Department also recognized a need to shift the ways in which its officers communicate with people in mental health crises and ensured that every member received Crisis Intervention Team training, in which officers learn about major mental illnesses and acquire techniques for de-escalating situations involving individuals experiencing these symptoms. In addition, the Department has partnered with Orange County Mental Health to have an outreach clinician ride with FPD officers each week.

The Department also has engaged in other significant community outreach efforts over the past five years, working hard to build relationships with community partners and to gain the trust of the public it serves. The Chief of Police worked with churches, schools, government leaders, businesses, services organizations, and residents to create service days called LOVE Fullerton. In its third year, nearly 3000 residents volunteered on over 70 projects, with the Chief serving as the local coordinator. Department members also spend considerable time reaching out to young people and their families to provide mentoring support, reduce delinquency, educate and prevent drug and alcohol use, limit gang interaction, and promote cyber safety through programs such as Lunch Bunch, School Attendance Review Board meetings, Richman Community Center Partnership, Teen and Parent Conferences, Las Mamas mentoring group, Team Kids, and the OC Gang Reduction Intervention Partnership.

We recognize the Department's efforts to improve the relationship between the police and the community through active engagement and increased transparency as evidence of the agency's strong desire to move forward. The Department's recognition of the importance of community partnerships as it engages in its own internal reform is a key to the success of those efforts.

Conclusion & Recommendations

The recommendations we made in our 2012 report regarding the way the Department investigates and reviews uses of force by and allegations of misconduct against its officers have largely been adopted and are being followed by FPD personnel. The resulting investigations are complete and thorough and lack indication of bias. The review and disposition by Department executives, while not always well documented, appears to be thoughtful and inclusive of critical tactical issues as well as some tangential concerns. In reviewing the Department's investigation and review of force incidents that do not generate Internal Affairs investigations – types of cases we did not examine in 2012 – we found a number of ways in which the Department can improve, and we make the following recommendations:

- 1 Officers who witness a use of force should be required to prepare a supplemental report to describe what they witnessed.
- 2 The sergeant preparing the Supervisor's Use of Force/Prisoner Injury Review should be required to interview or get written statements from all non-FPD personnel who witnessed the incident, including all civilians and members of other law enforcement agencies.

- 3 In cases where the subject's account of any force used varies significantly from the officer's account, the reviewing sergeant should strive to resolve the conflict using all relevant investigative tools, including interviews of the involved or witness officers.
- 4 In cases where a sergeant uses or directs a use of force, the Department should assign the task of preparing the Supervisor's Use of Force/Prisoner Injury Review to an uninvolved sergeant or lieutenant.
- 5 FPD should consider changing the way it documents force to include specific questions about threat perception, de-escalation efforts, adherence to force reporting policies, medical review, tactical concerns, and equipment issues that the sergeant would complete in lieu of the free form narrative of the incident.
- 6 FPD should adopt a policy prohibiting a supervisor who was involved in or witness to a force incident from conducting an administrative investigation of that incident.