

# **Report to the City of Santa Maria on Santa Maria Police Department**

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## INTRODUCTION

In modern day policing, there is no more potentially controversial incident than an officer-involved shooting. In order to carry out their public safety responsibilities, police officers are not only authorized to use force, including deadly force, in order to protect their own safety or others but are obligated to use force if necessary. However, the potential that such use of deadly force can result in the taking of a life will necessarily cause any use to be scrutinized and if questionable, subject the incident to public debate. This interest and concern about officer-involved shootings is exponentially heightened when fellow officers are shot or killed as a result of the incident. In a circumstance likely unparalleled for a law enforcement agency its size, the Santa Maria Police Department suffered two incidents within weeks of each other in late 2011 and again in early 2012. As information unfolded about these incidents, particularly the one resulting in the death of a Santa Maria officer, questions were raised regarding how these incidents were able to occur.

In the summer of 2012, we at OIR Group, a team of individuals experienced in police oversight, was commissioned by the City Manager to examine not only the two shootings, but to perform a substantive audit of various aspects of the Police Department and offer recommendations designed to improve the functioning of the Department. Our work began with a site visit where we interviewed SMPD command staff and key personnel. We also then requested and received hundreds of pages of documents and reports relating not only to the two shootings but to other critical incidents, force incidents, internal affairs investigations, policies and other related information.

As our audit progressed, major changes were occurring in the command staff of the Police Department. Within a month of our visit, the Chief retired and an interim Chief was appointed. At the end of 2012, the interim Chief was made permanent. Significant changes were then made of the command staff of SMPD by the new Chief. Because of the changes in leadership that were occurring in the Police Department and representations by him that he intended to institute major systemic reform, we determined that our audit would be more contemporaneous and insightful about any reforms interposed by the new leadership if more time was allowed for those changes to be made and any impact of those changes to be realized. For that reason, our audit was not limited to what the practices were at the time of the two officer-involved shootings but also is intended as an initial review of what reforms of those practices have been made since the change in Department leadership.

In the interim, as issues arose, we have served as a sounding board for the City's leadership with regard to both systemic and case specific issues. For example, within a few days of his arrival, the interim Chief soon determined that the Police Department had insufficient staffing of first level supervisors, an observation consistent with our initial review. To its credit, the City worked with the interim Chief to remediate this situation in a few short weeks.

What follows is our audit of SMPD. We would be remiss to first note that during our site visit, subsequent document requests, and numerous telephone calls to command staff, we received candid and unfettered access to information, which was essential to effective completion of our assignment. While recognizing that the officer-involved shootings were the impetus behind our review, we looked at the Department through a broader lens, shaped by City leadership. Our focus included how SMPD reports, reviews, and assesses force, conducts internal affairs investigations, and citizen complaints. We also looked at particular issues such as the need for more guidance and control with regard to the Department's Explorer Program and the Department's integration of the City's Mission Statement into its culture.

Our audit became more complex and attenuated because it was occurring while SMPD's new leadership was placing its imprimatur on significant reforms that we discuss here. To its credit, the new leadership, once installed, identified and addressed some of the major issues we were also seeing as we conducted our review. That being said, there remain additional issues that we found that became the core of our recommendations here. As importantly, we set out as recommendations the reforms that have been newly devised that should continue in order for SMPD to continue its progressive arc.

SMPD has been roiled in the inevitable turmoil that occurred as a result of one of its own being lost in the unfortunate circumstances that occurred in January 2012. To its credit, the City has striven to learn from that tragedy and other concerns to examine and reform its Department. Our audit is intended to lend an additional hand to that effort, provide transparency about how the Department has advanced in a short period of time, and to offer additional recommendations for consideration to improve guidance to its members and internal accountability so that its public safety mission can be further improved.

## **I. PROMOTION OF THE CITY OF SANTA MARIA'S MISSION STATEMENT AND CODE OF ETHICS**

In its Mission Statement, the City of Santa Maria sets out appropriately lofty goals: "To provide the highest quality service in the most efficient, cost-effective, and courteous manner possible." Included in the Mission Statement's organizational values are to "strive to treat all people with dignity, respect, and fairness" and to be "dedicated to high ethical and moral standards". During our review, we strove to learn to what degree the Mission Statement had been incorporated into the Police Department's culture. We learned that the Police Department cites to the Mission Statement when it finds that an officer has violated policy. In addition to listing the particular policy violation at issue, the Department's notice of discipline letter also includes a violation of the City's Administrative Code in general and the Mission Statement in particular. This citation is evidence that Police Department executives recognize that officer misconduct fundamentally violates the City's contract with its residents as set out by its Mission Statement.

There are other ways in which the Mission Statement could be further integrated into the ethos of the Police Department. Prominent postings of the Statement at the station counter and periodic briefings regarding the statement should be made to officers. During every new officer's orientation, he/she should be introduced to the Mission Statement and briefed on its importance in how the Department conducts its service to the community.

Santa Maria also has a detailed Code of Ethics with a Preamble recognizing the heavy responsibilities of City employees:

The residents and businesses in Santa Maria are entitled to have a fair, ethical, and accountable local government that has earned the public's full confidence for integrity. The proper operation of democratic government requires that public officials be independent, impartial and responsible in their judgment and actions to the people.

To date, the City's Ethics Policy has not been applied to SMPD's members. Considering the recent tumultuous past of SMPD, it is high time that the City's leaders made such a policy applicable to all Department employees.

**Recommendation 1: The Police Department should continue to embrace the City's Mission Statement and demonstrate that commitment by prominent posting of the Mission Statement in the station and by briefing its importance to current and new police personnel. Department members should also embrace the City's Code of Ethics and City management should make the Code applicable to all members of the Santa Maria Police Department.**

## **II. REVIEW OF USE OF FORCE INCIDENTS**

Police officers are afforded significant authority in order to perform their responsibilities. Included in those peace officer powers is the ability to use force to stop assaultive behavior to themselves or third parties, to overcome resistance, and to effectuate an arrest. However, when police officers use force, it is incumbent upon a law enforcement agency to ensure that the force is reasonable and necessary as defined by the Constitution and that it is consistent with the agency's internal expectations. For that reason, it is critical that each force incident receives a robust and impartial investigation and that the police agency reviews each incident with a critical eye. Best police practices teach that such a review should not only focus on whether the force was within policy and law but whether the decision to use force and the force option chosen was consistent with training and departmental expectations. Finally, the force review should examine whether there were any supervisory or equipment issues worthy of further inquiry and whether the force could have been prevented through use of other tactical options.

As part of OIR Group's review of the use of force of the Santa Maria Police Department, we looked at a sampling of force incidents from years past and more recently to determine the extent to which force was reported, investigated, and reviewed. Our inquiry determined that past review of force by SMPD was lacking in robust investigations and review processes. While we saw a marked improvement in both the investigation and review of force in more recent force incidents, we still found potential room for improvement of these processes and offer a number of recommendations designed to improve those mechanisms.

### **A. SMPD's Historical Force Review Process**

For SMPD, historically the use of force review process consisted of attaching a one page check list to the arrest report. The check list had boxes to fill regarding the involved officers and arrestee, whether any injuries were sustained, and if so, a brief description of them, whether there was video documenting the incident, whether photographs were taken of injuries and the type of force used. At the bottom of the sheet was a box that asked whether the force was in policy to be filled out by a sergeant. There were handwritten initials on the check list by the Commander and Chief of Police acknowledging receipt (and apparent approval of the findings) without comment.

This historical "review" of force by SMPD, while still the norm in many similarly-situated police departments, does not comport with progressive policing principles that require robust review of force. Limiting review of force to review of existing reports prepared for another reason with no evidence of any additional fact collection or analysis of the force does not leave a police agency sufficiently informed about the force incident, reduces the likelihood of accountability should officer performance fall below Departmental expectations, and prevents the Department from effectively learning and improving from the incident.

As a result of resort to the cursory check list method, there was no written documentation or other evidence indicating that SMPD addressed the following issues we identified from the attached arrest reports:

### **1. Insufficient Examination of Some Use of Force Options**

In one historical report, an officer described using “distraction blows” to the head in order to get the person to place his hands behind his back. The use of “distraction blows” to the head is controversial, with many police agencies disallowing the technique. However, because of the check off system described above, there was no discussion by the reviewer of the technique and whether it was authorized and taught by SMPD. The check off system simply did not require the force reviewer to provide sufficient analysis to explain the ultimate decision on whether the force was appropriate and in policy.

### **2. Arrest Reports by SMPD Appropriately Detailed**

Our review of SMPD historical reports found them to be generally detailed and of good quality with some significant exceptions. However, the arrest reports are intended to set out the facts of the incident so that there can be a determination whether charges should be filed against the arrestee. By themselves, the arrest reports should not be required to serve double duty as the document to be reviewed to also evaluate the propriety of the officer’s force used to effectuate the arrest. A separate force review document should be prepared to consider the use of force by involved officers. As explained in more detail below, under new protocols such documents are now being prepared by SMPD.

### **3. No Apparent System for Requesting Supplemental Information**

In one historical arrest report we reviewed, the officer wrote that he used a takedown of the suspect but provided no details on how the takedown was effectuated. The SMPD reviewer apparently accepted the narrative as sufficient to determine that the force was in policy. In this case, the reviewing supervisor should have asked for a more detailed description from the involved officer about the force but there was no apparent protocol for doing such. Rather, the reviewing sergeants seemed to rely on whatever description was provided in the arrest reports to make their finding of whether the force was in policy.

### **4. No First Hand Information From Officers Who Used Force or Witnessed Force**

Our review of SMPD historical arrest reports found references in the arrest reports to other officers who used force or were in a position to witness force. However, the arrest reports did not usually contain supplemental reports about the actions or observations of these additional on-scene officers. For the fact gathering of a force incident to be sufficient, protocols must be developed requiring any officer who uses force to prepare a written supplemental report



describing his or her actions and reasons for using force. Witness officers also should be required to prepare a supplemental report detailing their observations regarding the use of force.

#### **5. Insufficient Protocols to Ensure Civilian Eyewitnesses to the Force Are Interviewed**

In one arrest report, a witness to the force was interviewed and included in the review materials. However, there was no apparent SMPD investigative protocol to document whether there were civilian eyewitnesses to the force incident and have them interviewed. The force documentation should indicate whether there were civilian eyewitnesses, whether they were interviewed, and if not, why not.

#### **6. Relevant Materials Not Included With the Force Review Package**

As noted above, the only information attached to the force checklist cover sheet was the SMPD arrest report. Videos of the incident, tape recordings of interviews, photographs of injuries, or medical records of injuries were not included in the review materials. For there to be a thorough assessment of the force, such materials must be readily available to the reviewing supervisor.

#### **7. Photographs Taken of Injuries to Arrestees and Officers But No Apparent Photographs of Non-Injuries**

Our review of the historical reports found that generally speaking, SMPD did well in taking photographs of injuries sustained by arrestees and officers. However, sometimes arrestees complained of pain or excessive force and according to the reports, there was no observable evidence of an injury to the person. In those cases, it is important to photograph the part of the body complained of to document the existence of a non-injury. In our experience, that type of documentation becomes as important as documenting an observable injury. However, our review of SMPD historical reports did not find that the Department was doing so.

#### **8. Video Footage of Incident Identified and Collected**

The historical reports indicate that, in general, SMPD had a good history of searching for, locating, and collecting video footage that might have captured the force incident or actions prior to or subsequent to the force. However, the subsequently obtained video footage was not maintained with the force review materials eventually prepared as it should have been.

#### **9. Collateral Non-Force Constitutional Issues Not Addressed in the Force Review Process**

When force incidents are reviewed, it is also incumbent upon the law enforcement agency to identify non-force related issues that raise Constitutional issues. For example, in one force incident we reviewed, the officer made entry into a residence in pursuit of a suspect and then

eventually “cleared” the residence and searched for contraband. However, there is no written analysis about whether the officer’s actions in entering the residence were consistent with the Fourth Amendment. In another case, Miranda warnings were given to the arrestee who then invoked his right to remain silent but the officer continued to interrogate the arrestee anyway. With law enforcement agencies that have a wider focus of review, these type of issues can and should be considered so that the maximum learning from field decisions can be considered, evaluated, and when necessary, remedied.

#### **10. Outcome of Any Charges Against the Arrestee Not Included in Force Review Materials**

In most cases in which officers use force, once the suspect is taken into custody he or she is usually arrested for a crime. In some cases, the arrest is for resisting the officer; in those cases, the acts that form the basis for the arrest are often identical to those articulated by the officer as the justification for using force. As a result, what happens to the arrest charges, e.g., whether the charges are filed or rejected by the District Attorney, is important information for the SMPD reviewer of force to know. Unfortunately, that information was not being gathered by the reviewing sergeant as part of the force review process.

#### **11. Interview of Arrestee by Officers Involved in the Force**

Our review of the historical reports found that officers who used force subsequently interviewed arrestees upon who force had been used, both about the underlying circumstances which resulted in the call for service and also about the force the officer used on the arrestee. For obvious reasons, progressive police practices require that any interviews of arrestees about the force used on them and any underlying potential crime be undertaken by officers or supervisors who have not used force on the arrestee.

#### **12. No Regular Response to Field By Supervisor After Force Incident**

The historical reports reveal that there was no general expectation that a supervisor would be called to the scene of incidents in which force had been used. For example, in one case, as the arrestee was being placed into the patrol car, he told the arresting officer that he planned to sue him. However, there was no apparent alert to a field supervisor of this statement. This statement should have been a cue to the officer to call a supervisor to respond, yet the force review by SMPD did not identify this issue and therefore apparently did nothing to instruct the officer of the need in future instances to alert a supervisor when an arrestee made similar statements.

#### **13. Transport of Arrestee to Hospital or Station by Officer Who Used Force**

While often difficult to glean from the historical arrest reports, it appears that there were times in which the officer who used force then transported the arrestee he had used force on either to the hospital for medical treatment or to the station for booking. In our experience, we

have seen cases in which arrestees have complained about inappropriate statements or acts by the involved officer during these transports. And in a few instances, we have seen provable examples where inappropriate statements or acts have occurred in the transport process. Police departments can better insulate themselves from such allegations and reduce any likelihood of any inappropriate acts or statements occurring by having an officer not involved in the force transport the arrestee.

#### **14. Questionable Tactical Decision-Making Not Identified or Addressed**

Our review of the historical force review process found no evidence that the process was attuned to identification of tactical decision-making but exclusively focused on whether the force was within policy. More advanced and refined force review protocols recognize that officer tactical decision-making prior to the force has significant impact on whether, and if so, how much force ends up being required to be used. However, SMPD's historical reviews of force apparently failed to integrate this principle into those reviews. For example, our review of one report found that SMPD failed to address a decision by an officer to place a suspect in a patrol car without searching him, a decision that is often tactically unwise and which presents officer-safety issues.

#### **15. Exemplary Field Decision-Making Not Positively Reinforced**

Our review of the historical reports found times in which officers made decisions in the field that were tactically proficient but there was no evidence of positive reinforcement of those decisions. In order for there to be such reinforcement, the force review process must provide a mechanism for identification of those decisions. If the reviewer of the force incident is guided to detect these decisions, they will become readily apparent. For example, in one incident, the officer correctly identified a stop as high risk and waited for backup before contacting the suspect. This type of exemplary decision-making, while expected, should be continually reinforced and the force review process can provide an effective mechanism for doing so.

#### **16. Post-Incident Actions Not Reviewed**

OIR Group's review of the historical reports found that post-incident actions that should have been identified and addressed by SMPD were not done so during the force review process. For example, in one case when an arrestee complained of unreasonable force, one officer confronted the arrestee and denied that force had been used on him. However, unbeknownst to that officer, force had been used on the arrestee by another officer. The officer's incorrect rebuttal to the arrestee should not have occurred in the field and a robust force review would have identified this issue and developed a remedial plan to address the issue. However, SMPD's historical force review process was ill-equipped to even identify the issue, let alone address it.

## **17. Systemic Issues Not Identified**

In one case, a Taser was deployed on a person who was fleeing from the officer. The force review materials appropriately noted that the use was inconsistent with new direction provided to officers about whether to use a Taser on a fleeing suspect. The review further noted that the officer indicated that he was unaware of this new direction because he had just been returned to work after a long injury-related absence. While the fact that the officer had not been provided sufficient guidance on the new Taser use guidelines was an appropriate mitigating factor with regard to the officer's performance, there is no evidence that SMPD recognized that there might have been a systemic issue that needed remediation; namely, a better protocol to ensure that officers who are returned to work after lengthy absences be brought up to speed on new policies and expectations of the Department. The historical review process by SMPD was not oriented to this type of examination and on a going forward basis, the use of force review process should be on the alert to identify and address systemic issues.

## **18. No Mechanism in Place to Determine Trends**

Our review of the historical force incidents found multiple occasions in which take downs resulted in head injuries to the arrestees. This type of review can often detect trends that are deserving of study and the development of an action plan to address any concerns identified. However, under the SMPD historical review process, each force incident was reviewed by the officer's first level supervisor. Robust force review systems forward all use of force incidents to a supervisor, usually a force trainer, to identify trends and address them by additional training, bulletins, or policy development. There is no evidence that SMPD had such a process for identification of such trends.

### **B. SMPD's Newer Force Review Protocols**

In contrast to the historical force review process, the newer force review protocols recently adopted by the Department provide a vast improvement to what had been practiced by SMPD in years past. One fundamental and important difference is the creation of a separate document especially devised for purposes of reviewing the force. The check list face sheet is a relic of the past and the new documents point to a demonstrably heightened level of objective scrutiny of the force. Another critical distinction is evidence that sergeants are expected to play an earlier and more active role when force is used in the field. Examples of this increased responsibility are references to sergeants rolling to the force incident scene and arrestees being interviewed about the force incident by sergeants as opposed to involved officers.

Perhaps the most important improvement is tangible evidence of real and critical review. For example, in one case, while the finding was that the eventual use of force was ultimately reasonable, poor tactics had contributed to the problem. The narrative then went into detail about what those tactics were, namely that the suspect should have been searched immediately, that illicit narcotics found during the search should not have been placed in reach of the suspect

allowing him to swallow them, and that the officer should not have physically engaged the suspect until he had secured his firearm. Finally, the force review discussion notes that the reviewer intended to personally remediate the problem by speaking with the involved officers about the tactical deficiencies.

While we commend SMPD on the vast strides made in the quality of its use of force review protocols, because the new protocols are in their relative infancy, we offer the following recommendations for the Department to consider by devising written protocols setting out these expectations:

**Recommendation 2: SMPD should ensure that arrest reports, photographs, video evidence, tapes of interviews, and other related materials are included and maintained with the use of force packages.**

**Recommendation 3: SMPD should ensure that officers who use or witness force document their actions and observations in a supplemental report.**

**Recommendation 4: SMPD should develop protocols to ensure that there is a category in its use of force package to set out summaries of civilian eyewitness accounts of the force incident. When there are no identified civilian eyewitnesses to the incident, the force package should indicate such.**

**Recommendation 5: SMPD should ensure investigative protocols require photographing of any injuries sustained by arrestees or officers and when arrestees complain of pain or injury that the areas of the body complained of are photographed as well, even if there are no observable injuries.**

**Recommendation 6: SMPD should ensure that the force review package address any non-force related issues such as legal justification for residence entry, questioning outside of Miranda, etc.**

**Recommendation 7: SMPD should ensure that the force package provides any update on the status of any charges sought by the Department against the arrestee.**

**Recommendation 8: SMPD should ensure that protocols exist ensuring that any interviews of arrestees who have had force used on them be conducted by non-involved personnel.**

**Recommendation 9: SMPD should develop protocols requiring sergeants to respond to the field when officers use force and set out responsibilities for those sergeants upon arrival.**

**Recommendation 10: SMPD should ensure that protocols exist whereby the transport of arrestees away from the field is conducted by officers not involved in the force incident.**

**Recommendation 11: SMPD should develop protocols whereby force reports can be reviewed to identify concerning trends or systemic issues.**

**Recommendation 12: When tactical issues are identified, SMPD should not only address the issues personally with the involved officers, but should issue training reminders to the Department with regard to the issues identified.**

**Recommendation 13: SMPD should identify mechanisms such as commendable restraint citations providing recognition to officers who use exemplary tactics consistent with officer safety.**

**Recommendation 14: SMPD should ensure that any post-incident non force-related issues are identified and remediated when necessary.**

**Recommendation 15: SMPD should consider eliminating the practice of using distraction blows to the head as a way of attempting to achieve compliance.**

**Recommendation 16: SMPD should examine whether there are sufficient mechanisms in place to ensure that officers returned to work after a considerable absence are briefed on any new policies or protocols.**

### **III. REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS**

OIR Group reviewed a sampling of internal affairs investigation files between the years 2009 and 2012. Our overall impression of the internal affairs investigations into misconduct and allegation of excessive force cases was favorable. They provided a solid basis for SMPD executives to make relevant accountability determinations. However, we noted some inconsistencies where proper documentation was included in one investigation while another investigation lacked any such documentation.<sup>1</sup>

#### **A. SMPD's Internal Affairs Process**

Once SMPD becomes aware of a misconduct case, the case is assigned to a lieutenant to conduct the investigation. Upon completion of the investigation, the investigative file along with a summary of the facts including witness interviews and a recommendation of SMPD policy violations are sent to the appropriate Division Commander for review. Upon reviewing the investigation, the Division Commander may also make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.<sup>2</sup> The recommendations are then forwarded to the Chief of Police as well as all relevant materials supporting the recommendation.

The lieutenant who also serves as the investigator is the first to conclude whether based on his or her investigation there were any policy violations. While many law enforcement agencies have the investigator draw initial conclusions about the disposition of the case, we believe this practice can be seen as blurring the line between the investigator and the decision-makers. In our view, a better practice would be to authorize the lieutenant to identify potential policy violations, but leave to the Division Commander and Chief of Police whether the charges

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<sup>1</sup> Devising a checklist to ensure inclusion of all appropriate documents would aid the investigator and ensure consistency and completeness of documentation.

<sup>2</sup> SMPD Policy Manual section 341.5.1

should be sustained, not sustained, exonerated or unfounded. Such a process draws a distinct line between the fact collector and the decision-maker. However, because many law enforcement agencies do have their investigators make recommended findings, we leave this issue as a suggestion for consideration as opposed to a formal recommendation.

## **B. Adopting a Broad Scope of Internal Investigations**

Best practices have taught police agencies that they should not be confined to the nature of the allegations raised by a complainant or the perceived potential policy violations during administrative investigations. Rather, they should view the complaint as opportunities to not only conduct a thorough investigation into the allegations but to review all of the conduct surrounding the incident. Issues such as the employee's training, supervisory, equipment or systemic issues, gaps or ambiguity in policy, or the need to more effectively communicate Department expectations to employees often emanate from a thorough internal investigation. Therefore, an investigation should be broadly scoped so that the reviewers of the incident will have a robust set of facts from which to assess the actions through a variety of prisms and for a variety of purposes.

### **1. No Policy for Officers who Witness Force to Report the Observation to a Supervisor**

In one reviewed case, a SMPD police officer was the subject of an investigation alleging excessive use of force during an arrest and failure to report the force. The Department became aware of the incident when the arrestee filed a complaint with SMPD very shortly after the incident. During the course of the investigation, it was discovered that in addition to citizen witnesses (all of whom were appropriately interviewed during the administrative investigation), there was another SMPD officer who had witnessed the arrest and use of force against the complainant. Although this witness officer was interviewed as part of the investigation into the force, he did not write a supplemental report regarding what he witnessed nor had he reported the use of force.

SMPD's current use of force policies<sup>3</sup> requires SMPD personnel using force to write a report regarding the force they used in addition to making notification to a supervisor. However, there is no policy which also requires any SMPD personnel who witness a use of force to also write a report and notify a supervisor of what they witnessed. We recommend that SMPD adopt a policy requiring notification to supervisors when SMPD personnel witness force being used by a fellow officer. Such a policy will help ensure that all force used by SMPD officers is reported, heighten the responsibilities of witness officers, and help ensure more accountability in use of force and/or administrative investigations.

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<sup>3</sup> SMPD Policy Manual sections 300.1-300.5.