

Anaheim Police Department:

Independent Review
of Major Incident, Use of Force,
and Internal Affairs Investigations

March 2018
(Covering cases closed in 2016)



Michael Gennaco
Stephen Connolly
Cynthia Hernandez
Julie Ruhlin

323-821-0586
7142 Trask Avenue Playa del Rey, CA 90293
OIRGroup.com

Introduction

We write this report during an ongoing period of re-evaluation by the City of Anaheim and its residents. Like much of the country, Anaheim has reckoned with increased public interest in law enforcement accountability, a conversation that continues against a backdrop of both support for, and criticism of, police actions in individual cases. To its credit, the City has had some form of independent oversight since 2007. Indeed, with the creation of a two-year pilot Public Safety Board and increased responsibilities for OIR Group, Anaheim is well ahead of its sister jurisdictions in Orange County with respect to embracing the concept of civilian oversight.

As the pilot program came to an end last year, the City Council returned to the question of how best to provide meaningful civilian oversight of the Anaheim Police Department (“APD”). The City commissioned an independent study of the Public Safety Board that had been in operation since February of 2014. That report, which relied in part on feedback from the Board members themselves, produced several findings and recommendations.¹

In short, it recognized that the Board performed well in service of its original mandate. Certainly, it constituted a significant step forward in creating a vehicle for representative members of the public to raise issues in new ways. But the report also identified several ways in which the substantive activities and the public influence of the Board could become more robust.

Meanwhile, a cadre of concerned residents persisted in its desire for additional levels of independent review and civilian control over the Department.

¹ That report can be viewed at:

<https://www.anaheim.net/DocumentCenter/Home/View/14721>

The Office of the City Manager, City Council and Mayor have all remained engaged regarding the issue. Research, public workshops, and continuing discussions have helped to identify options and will culminate in further evaluation and decision-making about next steps. This is expected to occur later this year.

As this process unfolds, OIR Group has continued to play its part in the City's oversight structure. As individuals who specialize in independent monitoring of law enforcement agencies, we have worked with the City since 2007, and served as the subject-matter experts responsible for the outside review of actual APD investigations. However, much has changed in the way our work has been delivered to important stakeholders. Most importantly, as a result of concerns about specific officer-involved shootings and the Department's response in 2012, we worked with the City to move from simply producing confidential reports for the City Manager's eyes only to a public reporting protocol. In addition, we were authorized to roll out to officer-involved shootings, and are currently contacted to respond within minutes of their occurrence.

Beyond the assessments of officer-involved shootings and other critical incidents, we also continue to have full access to completed case files in order to audit the effectiveness of various APD processes. These include internal reviews of officer-involved shootings, Internal Affairs investigations into allegations of officer misconduct, and reports and analyses relating to uses of force. We have shared our findings and recommendations with the Public Safety Board at its quarterly meetings. And we have produced public Reports to summarize our impressions, provide transparency to the City's residents, and create a dialogue with APD regarding potential reforms and systemic improvements.

This Report covers our assessment of cases completed by APD in the last three quarters of 2016. They include the following:

- 6 Major Incident Review Team ("MIRT") reports on critical incidents (5 officer-involved shootings and one pursuit case in which a police car struck two of the suspects as they attempted to run from the scene)
- A sample of 10 Internal Affairs investigations into allegations of officer-misconduct
- A sample of 24 uses of force that were entered into APD's "Force Analysis System" ("FAS").

As in the past, our role is not to second-guess or to substitute our judgment for that of the Department regarding individual outcomes. Instead, we use the specific case files as a basis for evaluating the thoroughness and rigor of the Department's processes themselves. And we use the issues and concerns that we identify as the impetus for specific recommendations that we hope the Department will consider and adopt.

Our general impression continues to be that the Department takes its internal review processes seriously, and that it has a sincere commitment to continuous improvement. Its Major Incident review process, for example, has become quite sophisticated in both form and substance, particularly within the last year or two, and we have promoted it as a model that other agencies would do well to emulate. And we found positive examples of careful evidence-gathering and thoughtful analysis in the force and misconduct cases as well.

At the same time – also as in the past – we noted several places in which a different and more inclusive approach, or a more comprehensive analysis, seemed warranted. Our previous three reports produced 57 recommendations, and we add another 29 here, some of them reiterating recommendations that have yet to be accepted by the Department.

In the past, these reports have led to concrete changes in APD policy and procedure. We are gratified by this, and we appreciate the Department's ongoing willingness to engage in meaningful dialogue even on those occasions when we disagree.

We look forward to the Department's response, as well as to the results of the City's pending inquiry into its newest iteration of civilian oversight.

Major Incidents

This section of the Report covers multiple incidents, some of which date back to 2012. For various reasons – some more understandable than others – the related review processes were only completed by APD at some point in the last three quarters of 2016.

We note, in fairness to the Department, that it does not have total control over the calendar in this regard: the District Attorney’s Office runs the initial criminal investigation into officer-involved shootings, and regularly takes more than a year to finalize its assessments. Additionally, the Department often mitigates the impact of its own bureaucratic delays by addressing tactical concerns, performance issues, and policy changes as they emerge – and well prior to the final “closing of the books” in the applicable case.

Nonetheless, this “time lag” challenges our efforts to provide the most meaningful feedback. Our interest in accuracy and usefulness requires us to filter our observations – and potential criticisms – of these older cases through a prism of acknowledging relevant changes that have already occurred. The goal is to offer a transparent and detailed rendering of significant prior events, but to tailor our recommendations with an eye toward what still needs accomplishing. We have tried to achieve that balance in the case discussions below.

As our own relationship with the city and with APD has evolved, we have had more opportunities to learn about developing situations and share our questions and concerns, prior to the final resolution of the administrative process. This has helped offset some of the limitations of our “after the fact” protocol for evaluating the Department’s internal efforts. However, we also want to reiterate a

point that has come up in previous reports: Apart from its impact on our review function, the lengthy delays are detrimental to the effectiveness and impact of the reviews themselves.

Recommendation 1: *The Department should prioritize the timely completion of all aspects of its review process for major incidents, in the interest of both investigative accuracy and remedial value.*

Another byproduct of the extended time span encompassed by these cases is the window it offers into APD's evolution with recording technology. The first case involved audio-recorders only, whereas the latter ones included body-camera footage – and attendant issues of compliance with policy.

It deserves renewed acknowledgment that the Department was an early adopter of body-worn cameras in California, and has continued to grow in framing and reinforcement of its expectations regarding recording technology.² For instance, in 2012, Policy 450 provided, in pertinent part:

Members of the Department are encouraged to activate their recorders at any time that the officer reasonably believes that a recording of an on duty contact with a member of the public may be of future benefit.

Currently, the Body-Worn Camera policy, which has grown through a few different iterations over the years, reads as follows:

All enforcement and investigative contacts, as well as all contacts specifically related to a call for service by uniformed sworn personnel issued a BWC, will be recorded. Activation of the BWC should take place during a moment of safety, prior to the actual contact and at a time that ensures sufficient pre-contact coverage to record the officers' approach. In addition to enforcement, investigative and calls for service related contacts, officers shall record high risk and critical incidents, which includes Code 3 responses, in the same manner as described above. If an officer is unable to activate his or her BWC prior to initiating contact or enforcement activities, the BWC shall be activated as soon as it is practical to do so.

² Between 2012 and 2015, officers used two generations of PUMA digital audio recorders and two generations of AXON body-worn cameras. The new AXON cameras are widely considered to be more “user friendly,” which should facilitate their consistent proper use, particularly as officers grow more accustomed to wearing them.

Some of this detail is a function of “trial and error,” and the Department’s willingness to recognize and adjust to shortcomings and gaps, as revealed by specific case incidents.³ We have made specific recommendations about these issues in past reports, and APD has been responsive. We commend this higher standard and the Department’s willingness to enforce it.

Another evolution is the extent to which the MIRT process has been increasingly recognized as a logical and appropriate vehicle for assessing critical incidents in holistic ways. We have seen significant growth in this process over the last few years, with an increased willingness by the Department to thoroughly scrutinize critical incidents for areas of improvement in tactics, decision-making, and deployment of equipment, while at the same time recognizing positive aspects of an incident, not only to give the participants the credit they deserve, but also to offer useful insights for future performance. We commend this growth and hope it continues. Meanwhile, the older cases we cite here show the importance of the different, more comprehensive approach, and the newer ones show there is still room for further advancement.

Shooting Case # 1

This non-fatal officer-involved shooting incident occurred at approximately 1:30 am, as an officer was responding to a loud party call. While en route, the officer observed four bicyclists riding without lights and running a stop sign (violations of the California vehicle code). This officer knew this area was known for gang violence and thought it odd that the bicyclists were riding at such an early hour. The officer followed the bicyclists and illuminated them with the patrol car’s spotlight to get a closer look. This caused one of the bicyclists to make an immediate U-turn and then ride down another street. The officer followed the suspect, activating his emergency lights, but the suspect did not yield. The officer drove parallel to the suspect and maintained a visual of him as the suspect proceeded, now on a sidewalk. The officer attempted to advise dispatch over the radio that he had a suspect fleeing from him, but at that moment the suspect’s right

³ We also touch on this important topic in later sections of the report – it comes up in both the “Use of Force” and “Internal Affairs Cases” categories covered below.

hand went underneath his shirt. He pulled out something “dark” that the officer believed was a handgun.⁴

When the suspect transitioned from the sidewalk to the street again, the officer drove behind the suspect and, in order to stop him, bumped the patrol vehicle’s front bumper into the suspect’s rear tire. The suspect slid off the bike into a standing position. When the suspect dismounted, he had his right hand in front of his body and was standing approximately 12-15 feet away from the officer, who was still seated in the patrol vehicle. The officer then observed the suspect look over his shoulder. Fearing the suspect was gauging distance and preparing to shoot him, the officer fired one round at him through the opening between the driver’s side doorframe and the police vehicle. The round struck the suspect in the upper right shoulder. A firearm was discovered approximately 40 yards away (on the route taken) from where the suspect was taken into custody. While in the jail cell, the suspect told two other inmates that he threw his gun before the officer shot him.⁵

Approximately one month after the incident, the subject pled guilty to one felony count for carrying a loaded firearm in public while being an active gang member and one misdemeanor for street terrorism. Thirteen months later, the District Attorney’s Office completed its review of the shooting, finding it to be reasonable and legally justified. In reaching this determination, the District Attorney relied in part on the voluntary statement that the shooting officer provided to investigators four days after the incident.⁶

⁴ The first radio traffic recorded by the officer was his announcement that he had just been in a shooting. Another officer was not far behind him (also on his way to the original loud party call). The potential for coordinating with this and other units is obviously one of the advantages that was lost when the officer did not follow through on his initial intent to notify dispatch about his status. As a result of a subsequent shooting incident discussed in this report, APD, to its credit, took steps requiring officers to alert dispatch of their location prior to tactically engaging.

⁵ The conversation was captured on a video and audio recording.

⁶ We have previously expressed our concern about the delay that often occurs between the incident date and the formal investigative interview of involved personnel, and cover the topic in more detail below.

While the District Attorney review was consistent with its general timelines, the Department's administrative process trailed significantly. In fact, it took well over a year for the Department to finalize its MIRT investigation, and more than another year beyond that to close out the review. This is less than ideal, for reasons we have articulated in the past. These relate primarily to the consequences for effectiveness of the analysis and influence of any resultant interventions.

In the MIRT review, the Department was not explicitly critical of the officer's decision to use his patrol vehicle to stop the suspect but did make an "observation" that research should be conducted and curriculum created that addressed tactics and decision-making skills related to the apprehension of fleeing bicyclists. In fact, using the patrol car in this manner is akin to the use of deadly force because of the potential for injury and death to the fleeing suspect. In our view, the technique raises several tactical concerns that warrant further attention.

The Department, however, was unable to provide any follow up documented research or training curriculum specifically addressing fleeing cyclists. The Department also noted that it addressed this issue during briefings. Again, there was neither a record of what was discussed during the briefings nor memorialization of when those briefings occurred.

In discussions with the Department, it did recognize that the officer's use of his radio car to stop the suspect was not consistent with Department training. OIR Group recommends that the Department update its policy or issue a training bulletin to provide guidance to officers regarding fleeing bicyclists, and expressly discourages the use of the radio car as an impact weapon.⁷

Recommendation 2: *APD should either revise its policy or issue a training bulletin advising its officers not to use a patrol vehicle as an impact weapon against fleeing bicyclists or pedestrians, unless as a last resort use of deadly force when all other tactical options are no longer available.*

⁷ The serious potential harms of doing so are evidenced in our discussion below of a MIRT incident in which an APD officer struck two fleeing persons on foot, resulting in severe injury to one. In some ways, striking a fleeing bicyclist is even more dangerous, given the heightened speeds involved.

Another issue addressed related to the officer's failure to activate his Department-issued audio device. The Department noted that it addressed this issue by implementing "scenario-based" training that reinforces that recording devices should be activated as soon as enforcement is "planned."⁸

Shooting Case # 2

This non-fatal officer-involved shooting incident began when four specialized unit officers, including a sergeant, responded (in one unmarked police van) to a call regarding a stolen vehicle at an apartment complex. As the officers were responding, dispatch updated the call and advised that the vehicle was associated with a shooting earlier in the day (occurring in a neighboring county). Dispatch also advised that the suspect seen standing close to the vehicle was a male Hispanic with a shaved head, who was wearing black clothing and was reportedly a "gang type." Dispatch performed well in advising and updating the officers with information about the suspect, his movements/actions and observations made by the reporting parties.

When the officers located the suspect, two of them immediately recognized him as an active gang member and one officer (who subsequently fired his weapon at the suspect) advised that the suspect had recently been in possession of a firearm. When officers pulled alongside the suspect, three of the officers (one of whom was a sergeant) exited the vehicle, identified themselves as police officers and ordered the suspect not to move. The suspect failed to comply and ran. A foot pursuit ensued. The officer driving the unmarked vehicle activated the vehicle's emergency lights and drove down the street in order to "cut off" the suspect.

During the foot pursuit, the officer closest to the fleeing suspect observed him transfer a dark object—which the officer believed was a firearm—from his

⁸ The Department was unable to locate documentation of the specific patrol briefings/training. While this does not affect our substantive analysis of the Department's response – particularly given all the additional attention that recording protocols have received in recent years – it is preferable when the Department can "show its work." For one thing, it makes it easier to hold officers accountable if and when they deviate from the guidelines in the future. It is our understanding that the MIRT review process has matured so that any initiatives derived from the process are now documented as part of the MIRT after action document.

right hand to his left hand. That officer then yelled, “Gun, gun, gun!” As the suspect approached a concrete wall, the same officer observed the suspect pause then turn toward him and raise his left arm. Believing the suspect was going to shoot at him, the officer fired one round from his Department-issued rifle, missing the suspect. The suspect then scaled the wall and jumped down into a backyard of a residence, which was dark. When the officer looked over the wall, he saw the suspect hiding behind a tree. Believing he was going to be “ambushed,” the officer fired another round at the suspect. The suspect then stepped away from the tree, which prompted two more shots from the officer, including one that wounded the suspect. A firearm was never recovered. The suspect’s black cellphone, however, was found at the scene.

Approximately two months after the incident,⁹ the suspect pled guilty to multiple charges, including unlawful taking of a vehicle. The rest of the various investigative processes were slower to conclude. It took nearly two years for the District Attorney’s Office to issue its finding that the officer’s use of deadly force was reasonable and legally justified.¹⁰ From there, it was well over another year before APD completed its MIRT investigation – and the final review of the matter was not completed for more than a year after that.¹¹

The MIRT investigation identified three issues for further action. The first related to the shooting officer’s decision to utilize his Department-approved rifle rather than his handgun. Though he did have an explanation for his thought process, he also acknowledged that having the rifle slung over his body during the foot pursuit had been a hindrance, and interfered with both his movements and ability to put out radio traffic.

⁹ See footnote 5, above. The interview of the shooting officer by investigators occurred three days after the incident.

¹⁰ It should be noted that APD does not dictate the timeline for the District Attorney’s review.

¹¹ We discuss this dynamic above, and reiterate both our recognition of the factors that can slow the process and our encouragement of the Department to prioritize timely completion of all phases. In fairness, we also note that in this case some of the drawbacks are mitigated by the fact that the Department’s substantive responses (including training and the bulletin referenced above) to the identified issues were implemented before the MIRT report was finalized.

The Department concluded that the rifle is not the ideal weapon for close quarter encounters or foot pursuits, particularly when, as in this case, additional firepower was available in the form of other officers. APD accordingly addressed the issue of selection of weapons and their applicability during range training and Department-wide mandatory training. APD also issued a training bulletin,¹² which noted that the implications of “running while armed” should be a factor in the decision whether to continue pursuit or try to contain a suspect.

Another issue related to the officer’s not utilizing a flashlight when he peered over the wall and attempted to locate the suspect. While the officer expressed concern about revealing his position, the yard was also described as “extremely dark,” and the officer did not have a clear view of the suspect or his actions. This prompted APD to initiate additional training the effective tactical use of lighting. A mandatory weapons training course was implemented requiring every officer that owns or is personally issued a patrol rifle to bring their rifle and a flashlight to the qualification for this range course (in addition to their issued duty weapon). This course was a low-light range course mimicking the situation confronting the officer in this case.

The Department also addressed the involved officers’ communications. Although the officers communicated to patrol officers that they were responding to the call, they failed to communicate their plan to contact the suspect. Also, although participating officers did put out some related radio traffic, they neglected to include their location. This misstep resulted in some initial confusion, since patrol officers and medical personnel first responded to the wrong place.¹³

Though the Department’s observations were insightful, we also noted places where the MIRT review could have benefitted from a more thorough exploration of key tactical decisions. These included the four officers’ decision to respond in one vehicle, for example (thereby limited their options for containment

¹² A training bulletin entitled, “Foot Pursuit vs Containment” was issued to all Department personnel two years after the shooting. We found the training bulletin valuable, though we observe that it did not specifically advise that rifles might be a hindrance in foot pursuits.

¹³ As noted below, since this review APD has promulgated policy requiring members to communicate their location to Dispatch prior to initiating a tactical response.

and positioning) as well as the shooting officer's failure to give commands to the suspect after he located him hiding behind the tree.

In addition, the MIRT review did not fully address whether a coordinated containment effort would have been the better tactical approach after the subject climbed over the wall into the backyard and the officer momentarily lost sight of him.

Here, officers could have immediately coordinated a containment around the backyard. The other two officers in the foot pursuit were close by, as were additional Department resources. Further exploration and scrutiny of this issue, including the on-scene supervisor's role,¹⁴ may have revealed whether the officer's decision to not utilize available resources¹⁵ and set up a containment around the backyard was consistent with Department training and expectations. Fortunately, and as discussed below, the Department's current MIRT approach has a broader scope that we would hopefully expect to encompass such matters.

Shooting Case # 3

This fatal officer-involved shooting ended a standoff between APD and an armed man, who had just been involved in the robbery of an electronics store. The man had tried to drive away from the scene with his accomplice; after a collision, he then fled on foot and ended up at one edge of a large car lot. (The other suspect was taken into custody without incident near the accident scene.) He primarily took refuge inside a parked car, though he emerged briefly and periodically over the course of the next few hours as APD monitored him and verbally encouraged his surrender, without success.

Tactical Response Group ("TRG") personnel eventually responded to the scene and took over the operation. They used two specialized, armored vehicles to approach the suspect in relative safety. They also placed snipers in position on a nearby rooftop, where they were at a safe remove and had excellent sightlines into

¹⁴ The MIRT report devoted one paragraph related to the supervisor's role. APD concluded that because the incident evolved quickly, the supervisor did not have the opportunity to take control and provide the necessary direction.

¹⁵ Based on the record, air support may not have been available because of the weather conditions.

the suspect vehicle. Ultimately, as APD forced the issue by introducing pepper balls and beanbag rounds into the car, the man fired a total of three shots from inside the car he had entered. Two struck near the gun port opening of the APD armored vehicle that was parked just feet away. This prompted some of the assembled officers to return fire, which killed the suspect. A total of five officers shot 56 times; most came from two officers who fired 27 and 20 rounds, respectively. No officers were injured.

The District Attorney handled the criminal review of the deadly force.¹⁶ It issued its conclusion nine months later, and determined that, per “overwhelming evidence,” the actions of the officers had been “reasonable and justified.”

The initial MIRT process and subsequent follow-through occurred promptly, and the resultant action items focused on technical issues. For example, a “downlink” feature between the helicopter and the mobile command post did not function properly during the incident, and a fix was identified and implemented.¹⁷ These were useful adjustments that are within the appropriate purview of the process. However, it is important to note, and somewhat surprising, that the investigation and administrative response did not go beyond this. No issues of tactics or officer performance were formally pursued as part of the administrative investigation.

The incident occurred nearly three years ago, and many of the review protocols that applied then have evolved in positive ways we have covered in past reports. Our basic sense is that the range of issues that MIRT now considers “in play” is wider than in the past, and that Department management recognizes the wisdom of using MIRT to ensure that its review process is centralized, organized, complete, and well-documented. That said, this case illustrates the value of and need for such an approach.

¹⁶ All five shooting officers participated in voluntary interviews; these did not occur until 10 days after the incident – the type of delay we discuss throughout this report as significantly less than optimal.

¹⁷ The three other action items included improved video recording capabilities for the helicopter system, a new requirement and attendant training regarding portable incident boards at command posts involving the Tactical Response Group, and various components of “interoperability” training for Communications Bureau personnel (for mid-incident interaction with other responding agencies – as with the CHP in this case).

To be clear, the District Attorney’s finding as to the legality of the deadly force is understandable under the straightforward circumstances of this case. The suspect was not only clearly armed, but he fired at officers rather than surrender, thereby precipitating the barrage of shots that killed him. Extended efforts to achieve the suspect’s peaceful surrender over time were unavailing, and prior to the shooting, the officers had engaged in graduated less-lethal options that they hoped would bring about the suspect’s acquiescence.

Nonetheless, and with due respect to issues of officer safety, the fatal outcome in this case raises questions about whether and how this large tactical operation might have ended in a different result. Three major examples emerge from the basic facts. For one, given the timeline, it seems worth exploring the nature of the efforts to engage with the suspect once he was effectively barricaded inside the parked car, and whether communications ever extended beyond orders to surrender. Moreover, the final predicate for the deadly force was the suspect’s firing at an armored vehicle – one that was not invulnerable, but that was inherently designed to protect the officers in situations such as this. Finally, given our sense of the positioning of the shooting officers during the critical moments, the coordination of resources and minimizing of the threat of “cross-fire” could seemingly have been more efficient.¹⁸

Some of these questions were appropriately identified and discussed in the initial briefing for command staff that comes within a week or two of the incident. However, no action plan came out of the initial MIRT discussion, leaving these matters unresolved. There was, for example, no separate administrative interview of the involved personnel (though they did all give statements to District Attorney investigators). The importance of conducting such interviews is evident in an incident like this, where questions about the tactics, supervision, and decision-making are far more complex than the legal justification for shooting. In spite of the hours of decision-making and strategy that preceded the shooting itself, many of the statements in the criminal review are limited in scope. For example, the transcript of the interview with the “negotiations sergeant” is only five double-spaced pages, and has less than a paragraph on his own interactions with the

¹⁸ “Cross-fire” refers to any positioning of officers that raises the possibility of an officer inadvertently being struck by other officers’ gunfire. In this case, the four initial officers were tightly bunched behind the subject at different distances.

suspect in the time before the fatal confrontation. Other witnesses/involved parties are similarly situated.

While the TRG may well have conducted its own debrief of the incident, that process occurred on a separate track if at all, and was not formally documented in the materials we receive. Accordingly, we are not aware of whether or how the following topics were administratively assessed:

- Whether the armored vehicles could have been deployed in ways (either positionally on in terms of the open “ports” that created vulnerability) that left the officers less threatened by the suspect’s firing.
- Whether the multiple supervisors on scene were positioned and coordinating to maximum advantage.
- Whether all appropriate personnel were assembled on scene to maximize options and operational effectiveness.
- How and why the decision was made to switch from communication efforts to a more aggressive apprehension strategy that involved multiple levels of less-lethal force.
- What consideration was given to utilizing the K-9 units that were available on scene.
- Target acquisition issues for the shooting officers, particularly the two who fired 20 or more rounds, and at least one of whom acknowledged not having a clear vision of the suspect.
- How (if at all) any property damage in the car lot was addressed in terms of compensation for the owner.

Our recommendation has consistently been for the MIRT process to be a centralized and comprehensive forum for addressing all aspects of major events. We reiterate that now, in recognition of the progress made by APD but with a specific focus on SWAT and TRG operations – specialized processes that, while requiring a certain deference to subject matter expertise, should also be accountable for adherence to its own standards and thoughtful responses to management inquiry.

Recommendation 3: *The Department should continue moving toward holistic and comprehensive administrative reviews, including the standardization of administrative interviews to supplement the criminal investigation as needed.*

Recommendation 4: *The Department should document its (or the City's) risk management efforts in conjunction with the aftermath of a critical incident and proactively providing compensation for property damage suffered by innocent third parties.*

Recommendation 5: *The Department should make sure to incorporate a tactical "debrief" by special assignment personnel into the formal auspices of the MIRT process, if only to document the evaluations by relevant subject matter experts that regularly occurs after such operations.*

Shooting Case # 4

This fatal shooting incident began when APD officers responded to a residence after receiving information that a wanted female suspect had arrived. While still outside the residence, they confirmed the suspect had an outstanding warrant for her arrest. Officers then saw the woman get into the backseat of a car with a man who was later identified as her boyfriend. The driver of the vehicle – who turned out to be a driver for a ride hailing service – was another female.

Officers followed the vehicle and eventually activated their emergency equipment; the driver immediately pulled over. As officers began to approach, one officer observed the male passenger leave the car armed with a firearm and the officer yelled "gun." Within a few feet after the man left the car, he lifted a submachine gun to his head and fired three rounds in rapid succession, causing him to immediately fall to the ground.

After the man shot himself, three APD officers fired a total of ten rounds in the direction of the man, striking him seven times. After the shooting ended, the two other occupants of the vehicle were ordered out and an arrest team was formed to approach the male subject. The arrest team handcuffed the subject, and paramedics were allowed on-scene and pronounced the man dead.

The District Attorney reviewed the matter and determined that the use of deadly force was reasonable. APD conducted a review of this matter through its MIRT process. As we have noted before, the MIRT procedure consists of an executive team meeting where within a few weeks of the incident, a detailed briefing is provided of the incident for purposes of review and self-critique. In this case, the MIRT review identified several issues worthy of reflection and attention.

APD's Internal Review

The MIRT noted some commendable tactical decisions made by the involved officers. First, the review noted that the responding officers met upon receiving word of the suspect's location and developed an apprehension plan. In addition, after the suspect went down, it was noted that one of the involved officers retrieved his rifle and covered the suspect until he was secured.

However, in considering the officers' approach to the car, the Department recognized that, after pulling the vehicle over, officers were too close in their positioning to effectuate a felony stop consistent with principles of officer safety.¹⁹ As a result, when the man came out of the car with a firearm, officers did not have sufficient distance between them and the subject to address that threat more safely. In his interview to the District Attorney, one officer noted that he was in "no man's land" when he observed the man come out with a gun. As a result, the Department prepared a training bulletin discussing principles of officer safety, including using distance to ensure a tactical approach that is safe and sound.

Second, the review discovered some tactical issues regarding deployment of the police radio. Again, APD personnel responsible for communications training prepared a training bulletin explaining how to use the radio optimally.

Finally, the review recognized that of the four officers on scene at the time of the shooting, only one had activated his body camera prior to the shooting. As a result, responsible command staff was tasked with briefing officers on the need to activate their body cameras so that critical incidents are captured on tape.²⁰

APD deserves credit for appropriately addressing the worthwhile issues that it did identify. However, a close review of the investigative file, photographs, forensic evidence and other material upon the completion of the criminal

¹⁹ The discussion further recognized that because of the dynamics involved and that officers are often reacting to the sometimes unpredictable reaction of the person being followed, that it is rare that a traffic stop is effectuated perfectly.

²⁰ As noted above, the Department has more recently responded to activation lapses by specifically delineating its expectations in a revised policy.

investigation uncovered additional matters that also seemed to warrant further attention and response.²¹

For example, in reviewing the interviews of the involved officers, questions emerge regarding their decision to use deadly force. For example, one officer said that she fired her two rounds “down range” – a characterization that left unresolved whether she had appropriate target acquisition. Another involved officer said that he did not know that the suspect had fired his weapon and that after the subject fell, he could no longer see him; it was unclear when he had fired his rounds in relation to this sequence. A third involved officer said that he saw the subject’s gun pointed at the officers, heard “pops” and believed he needed to address the threat, at which time he fired. This contrasts with the testimony of the officer who was apparently closest to the subject, and who did not use deadly force. She said that she saw the subject’s gun pointed in the air and then at himself – but not in the direction of the officers. She believed immediately that he had shot himself.

The District Attorney’s investigation did not follow up on additional questions raised by the officers’ initial statements. Nor did the initial questions asked by the District Attorney cover tactical decision-making issues such as target acquisition, potential crossfire, and fields of fire.²² Nor did the District Attorney’s investigation attempt to explain why at least two of the bullet wounds suffered by the subject struck the soles of his feet and none struck center mass, strongly suggesting he was down at the time those shots were fired (and consistent with the idea that the officers lacked a specific target).

The weight of the evidence is that the subject exited the car, immediately drew his gun to his temple, and fired three times – at which point the three involved officers fired ten rounds at him as he was either going down or already down. The officer who was closest to the subject did not feel the need to use deadly force. When officers are confronted with an armed suspect, the resulting stress may hamper their observational abilities, perceptions, and decision-making.

²¹ The MIRT closing report indicates that seven action items were identified, yet only three were documented. There is no explanation for this discrepancy.

²² “Fields of fire” refers to the backdrop toward which an officer is shooting. In this case, the driver’s car was struck by an officer’s bullet, and an iron fence surrounding a nearby business was struck several times.

For that reason, it is incumbent upon the agency to further understand the complexities of the incident based on gaps between officer perception and what actually happened. Such analysis is needed to determine not only whether the force was “objectively reasonable,” but also whether it comported with APD training and expectations.²³

The issues in this case – which encompass broader questions than legality alone – should have been addressed by a further APD administrative interview of the involved officers. Such an interview could cover ground that is peripheral to the District Attorney’s concerns, and therefore is often skipped in the initial investigation. Moreover, this type of inquiry could have identified specific areas of additional training for the benefit of the involved officers, and potentially all of patrol. At the least, a tactical debriefing to the involved officers would have provided them better insight into what the evidence shows likely occurred, as opposed to their perceptions of what occurred.²⁴

Recommendation 6: *APD should routinely consider whether additional training for involved officers is appropriate, should document that process and its results, and should provide a documented tactical debriefing for all officers involved in deadly force incidents.*

During our review of a media account of the incident included in the investigative file, we learned for the first time that at least one of the officers involved in this incident had been in a previous shooting. While the criminal

²³ The differing perceptions of the on-scene officers and their assessment of the need to use deadly force are not uncommon; each are positioned differently and thus have different vantage points. Our request is simply that APD conduct further exploration through administrative interviews of these different perceptions to gain further insight into the officers’ perception and decision-making.

²⁴ As noted above, that is why we recommend the use of routine administrative interviews of personnel involved in shooting incidents. In this case, the additional inquiry could have also have corrected the statement that was presented at MIRT that the officers survived a “violent assault of a sub-machine gun.” The weight of the evidence is that the subject intended to take his own life – not assault the responding officers. Also inaccurate was the statement in the MIRT closing summary that each involved officer “believed that [the subject] fired his weapon at them.” Though the *potential* threat the officers faced is clear, and their perceptions of danger quite understandable, it is important on several levels for agencies to maintain objectivity in their presentation and analysis of these important events.

history of the subject is presented at the MIRT, attendees are not informed about any prior deadly force incidents by the officers, even though such background is arguably more relevant to a full assessment of the case. We recommend that investigators make any applicable information about involved officers' performance records a routine part of the MIRT presentation.

Recommendation 7: *APD should include any prior deadly force incidents involving involved officers during its MIRT reviews.*

Rescue Issues

After the subject went down and the shooting ended, officers cleared the car of the two women, and an arrest team²⁵ was formed that approached the suspect, located his weapon underneath him, and handcuffed him. A member of the arrest team checked his pulse and for signs of breathing but no first aid was performed by APD personnel. Paramedics had been called but had been ordered to stage before attending to the downed subject until the scene was secure. One paramedic told investigators that when he first arrived, he saw the subject down and handcuffed but was not cleared to attend to the subject until 13 minutes later.

The transition from apprehension to arrest is an important one, and every after-action assessment should consider the efficacy with which that transition was made. In this case, the paramedic's statement that it took significant time before his crew was allowed entry into an apparently secure scene was worthy of further examination. Body camera footage could well have been used to accurately measure the length of time between when the handcuffs were placed on the subject and when paramedics were able to enter the scene. Moreover, the arrest team's decision not to attempt first aid before rescue was cleared to come on scene was another issue that should have been identified and considered during the Department's review process.

Recommendation 8: *APD's MIRT review process should routinely evaluate how Department personnel perform immediately after a critical incident, in particular with regard to ensuring timely first aid to injured subjects, and should include remedial interventions regarding these principles as needed.*

²⁵ It is unclear from the reports whether any members of the arrest team consisted of shooter officers. Best officer-involved shooting protocols suggest that unless impractical, officers involved in deadly force incidents should not be assigned further tactical roles.

Risk Management Issues

As noted above, one of the APD officers' rounds struck the car belonging to the uninvolved driver and several others struck a metal fence. It is unclear whether the Department considered compensating the vehicle owner and the business owner for the damage to their property. Progressive risk management practices by police agencies routinely seek to identify non-involved persons who suffer loss as a result of such incidents, and compensate them appropriately. We urge APD to join this list by proactively assigning this task to its MIRT team.

Recommendation 9: *APD should work with the City's Risk Management group to devise a program that proactively identifies and compensates uninvolved persons who suffer property loss as a result of police activity.*

Coroner Issues

We have commented in earlier reports about coroner practices that are concerning. In this case, it was over ten hours before a coroner's representative even arrived at the scene. As a result, as reported in the media, the deceased subject lay handcuffed in the street for most of the day.²⁶ More concerning and as we have previously noted, at some point the coroner's representative completely unclothed the decedent in public and photographed him in that state.

We are aware of no other jurisdiction that follows this practice, and are not persuaded that the additional evidentiary value merits the indignity that necessarily occurs. While these actions are the protocols of the Coroner's Office, which is a County function, we urge APD to discuss the issue with its law enforcement partner with an idea toward reform of these procedures.²⁷

Recommendation 10: *APD should consult with the Office of the Coroner in seeking ways to facilitate a more timely completion of on-scene investigation, and in considering whether the unclothed of decedents at the scene is necessary and appropriate.*

Shooting Case # 5

²⁶ To APD's credit, at some point screens were deployed around the subject, which kept his body from view of passersby.

²⁷ Moreover, this shooting occurred in the City of Orange so that much of the scene supervision was undertaken by the Orange Police Department.

This officer-involved shooting occurred in the context of a vehicle pursuit that ended in a neighborhood, with three officers firing more than 20 rounds at a suspect whose driving was perceived as a deadly threat. There were eight police vehicles on scene by the time of the shooting, which occurred in the mid-afternoon of a weekday. The suspect, a 22-year-old man, was wounded in both arms but survived the incident. He later pled guilty of charges related to the case and was sentenced to state prison.

The incident began with a surveillance operation requested by the Probation Department. The goal was to “locate and arrest” the suspect for violation of his release conditions. When the suspect spotted the marked car that was finally assigned to pull him over, he dropped his brother off and quickly drove away, initiating a pursuit that lasted for some eight minutes and covered more than four miles. Though speeds never became excessive or extreme, he also refused to yield, even as numerous APD officers joined the pursuit.

The suspect eventually led officers into a residential neighborhood where his girlfriend lived, and they circled its blocks until an APD officer initiated a “PIT” maneuver (a controlled and intended collision to disrupt the progress of the target car and aid in apprehension). This worked to some extent, but what followed was a series of low-speed maneuvers by the suspect that resulted in multiple collisions as he moved forward and back in an attempt to get away. His path caused officers to perceive a threat on a few different occasions, prompting them to fire.

The 20-plus shots occurred in four bursts, two by the same officer. Eventually, the suspect stopped and followed orders to climb out of his damaged car. He was handcuffed and then treated for his injuries, which were not life-threatening.

There were 18 bullet holes in the suspect car, one found in a responding APD car, and several in a nearby house; however, no bystanders were struck. The investigation later revealed that an officer had actually been seated in the struck APD vehicle at the time – clearly a significant concern from a “cross-fire” and tactical perspective.

The incident was captured on several body-worn cameras that helped facilitate the review process. Investigators also took statements from 12 witness

officers on scene, as well as the three who fired and who provided voluntary testimony for the District Attorney's criminal review of the deadly force.²⁸

The District Attorney investigation and review lasted several months, as is routine. It issued its letter clearing the officers approximately one year after the shooting, having found "substantial and overwhelming evidence" that the officers' use of deadly force was "reasonable and justified."

Comprehensive MIRT Evaluation

From the time of the initial MIRT review within a couple of weeks of the shooting, APD executives recognized the complexity and potential issues that were reflected in the preliminary facts.

The MIRT evaluation divided the event into three phases, and assessed each with a critical eye toward policy, training, tactics, equipment, and individual accountability. These were the initial surveillance operation/attempted arrest, the pursuit, and then the shooting itself.

Several worthwhile action items emerged from the evaluation and subsequent follow-up phases of the process. For example, the Department strengthened its requirements for "action plan" creation and dissemination in the context of staged operations like this one – the arrest of a suspect for violation of probation. Another important change included a revision of the "shooting at cars" policy, to expressly prohibit shooting for the sole purpose of disabling or stopping a suspect vehicle.²⁹ The MIRT process also addressed policy requirements for unmarked cars joining a vehicle pursuit, directing involved officers to "terminate their involvement immediately" upon arrival of a helicopter or sufficient marked units. The process also resulted in new expectations on Air Support pilots regarding the filming of pursuits. These were all thoughtful and useful changes

²⁸ All three shooting officers participated in voluntary interviews. Two were interviewed the day after the shooting, while the third was not interviewed until 11 days later.

²⁹ Shooting at cars has become increasingly disfavored among law enforcement agencies in recent years, based on the understanding that it is often ineffective and can even increase the danger posed by a suspect. Officers are trained to get out of the way if possible, while shooting only as a last resort in defense of themselves or others. While Anaheim had already adopted a policy that set forth the basic parameters, the new language added a further restriction that we endorse.

that reflected an effective, comprehensive internal review process of the sort we have long advocated.

Officer Accountability

Additionally, the Department moved swiftly to order an Internal Affairs investigation into possible policy violations. Based on the photographs and body camera footage that had already been gathered, a variety of questions and concerns relating to policy had emerged. There were four named subjects: the three shooting officers, and a fourth officer who was on scene but allegedly not prepared with the proper weapons.

This emphasis on individual officer accountability was a significant step. It showed a willingness by supervisors to take questions about decision-making and performance to the next level of intervention. It was also consistent with a sensitive but important point: the recognition that an officer-involved shooting – while lawful – might still fall short of Department expectations in ways that warrant a formal response and perhaps even discipline.

The allegations fell into two categories: the propriety of each officer's use of deadly force, and collateral issues relating to equipment and/or driving. One of the named officers faced additional performance-based allegations because of delays in reporting that his car had been struck by a bullet during the event. Apart from and in addition to their statements to District Attorney investigators in the criminal case, the four subjects were interviewed by MIRT investigators regarding the relevant policy issues. This was itself an evolution in the Department's process, and an approach that enhanced the final product.

In many respects, the Internal Affairs investigation was impressive; it took a meticulous approach both to factual questions and the more nuanced issues of perception and "state of mind" in its administrative interview of the officers who had used deadly force. However, the investigation did not include re-interviews of the witness officers, and instead relied on their initial testimony from the criminal investigation. As detailed below, this decision proved to be a limitation, and resulted in the Chief informally meeting with one of the witness officers to hear his perspective at a late stage of the process. The better practice would have been to have all witness officers interviewed initially as part of the Internal Affairs investigation.

Recommendation 11: *When APD conducts an Internal Affairs investigation into a Major Incident, it should conduct separate administrative interviews with both involved and witness officers.*

The eventual outcomes of the investigation were mixed. The Department ultimately declined to find fault with the officer's reporting lapse about the bullet that struck his car door; it determined that, given the stress of the situation and the ultimate emergence of the information, the issue did not warrant formal discipline. For the equipment and broader performance issues, one of the officers was found to have been out of policy for sending "MDT" (in-car computer) messages while driving during the pursuit (as revealed by his own body-worn camera).

Two other officers conceded that they were not equipped with particular shotguns for lethal and less-lethal deployment that Department management expected them to have in their cars, but they argued successfully that no Department policy specifically required it, and were exonerated. This was a debatable result in our view; theoretically, the Department could have relied on its more generalized "Unsatisfactory Performance" policy in the absence of language that was directly on point. And while the investigation materials at least recommended counseling and training for the affected officers on this point, there is no evidence that it occurred. On a going forward basis, since the Department still expects that each officer carry this equipment, APD should enact policy specifically setting out this expectation to ensure future accountability.³⁰

Recommendation 12: *APD should devise policy setting out explicit expectations for deployment of specific officer equipment, in particular the Department's expectations with regard to lethal and less lethal shotgun munitions.*

Use of Deadly Force

As for the shootings, the Department found that the first officer to have fired – who stated plainly that he was shooting at the tires in order to disable the car as it drove away from him and towards his partners – to have been acting in policy. (This did, however, prompt the aforementioned revision of the "shooting at cars" policy to read "Officers should not shoot at any part of a vehicle in an

³⁰ The Department has informed us, however, of a relevant training bulletin that followed the incident and that speaks to the issue and addresses equipment availability and record-keeping.

attempt to disable the vehicle.” Accordingly, the same actions would be subject to a different analysis today.)

The deadly force by the other two shooting officers was the subject of discussion as to whether it adhered to the Department’s use of deadly force policy. One of the officers fired an initial six rounds after exiting his car – and after the suspect vehicle had collided twice with his. After a pause while the suspect was backing away and then coming forward again, the same officer fired a burst of 10 more shots. These two groupings were evaluated separately. The other officer fired two or three rounds into the passenger window of the suspect vehicle in defense of those officers who were potentially in the path.

As for the officer who shot 16 times, the critique eventually centered on the second group of 10 rounds. APD determined that, unlike with the initial grouping, these were not reasonable under the totality of the circumstances. The Department based this decision on a finding that the suspect vehicle could not have generated enough velocity to pose a serious threat to the different officer who was inside a parked car, and whom the shooting officer said was his reason for being concerned. Similarly, the asserted need to stop the suspect from getting away because of the potential threat he posed to a nearby school was also disregarded as a basis for deadly force, given all the additional resources on scene.³¹

APD used a comparable analysis in finding that the other officer was also not justified by policy in his decision to fire. Both officers were served with notice of this outcome, and of the Department’s decision to provide significant accountability to both officers as consequence.

These decisions were the product of rigorous and thoughtful analysis of a relatively complex series of factors. Much credit should go to the MIRT investigation, which was both meticulous and rigorous in its attempts to break down the different elements of the incident.

The choice by Department leadership to provide formal accountability for unreasonable force was also very significant. Apart from the legitimacy of the outcome in light of the facts, it represents a willingness to do something that is

³¹ We also note that this kind of justification, however sincere, could expand the accepted, speculative rationales for deadly force to a problematic extent. APD officers could virtually always point to nearby businesses, schools, and residences as a “need” to use deadly force to prevent the suspect from entering those locations.

important but difficult: to find fault with officer performance in this critical realm, even in the absence of malicious intent.

The use of deadly force is rare, inherently intense, and closely connected with sensitive issues of officer and public safety. While that should arguably militate in favor of the highest level of scrutiny and expectation, the reality is more complex. In fact, for various reasons there is a history of reluctance to criticize or “second guess” when it comes to force analysis. Many agencies – including APD in recent years – have improved in their willingness to assess critical incidents like shootings with a careful eye, and to recognize mistakes in tactics or decision-making. This is obviously a constructive development. Even so, the next step of accountability is responding to violations of policy with honesty, directness, and an appropriate remedial response – even while recognizing the impact on officers and the importance of constructive intervention. APD achieved that in this case – at least initially.

Once the officers received notification of the Department’s findings, they exercised their rights of appeal, which went through different stages. At the end of that process, the finding of sustained violation of the force policy was ultimately overturned by the Chief of Police, and the accountability was accordingly rescinded.

While the basis for the original outcomes was well documented, there was no initial documented analysis for the ultimate change in the disciplinary outcome. In the absence of a detailed explanation, the last minute “undoing” of all the other analysis was concerning. This is particular true in the context of such a noteworthy case, and at the end of a lengthy deliberative process that had seemingly covered all relevant ground quite thoroughly.

We brought the lack of documented analysis to the attention of the Chief who then produced a memorandum setting out his rationale. In the memorandum, the Chief indicated that he met with the two officers who were subject to discipline but did not record the meeting. The Chief then reported that he subsequently met with a witness officer who provided an account of the incident, including his own mindset. According to the memorandum, based on this

additional information, the Chief rescinded the out of policy use of force finding as to the two officers.³²

APD has a detailed policy with regard to post-disciplinary procedures when an employee desires to challenge the initial out of policy determination. The policy (340.5.2) assigns particular responsibilities to the Chief, including providing the employee an opportunity to respond orally to the initial decision. The policy indicates that if the employee elects to provide an oral presentation, that the meeting “shall be recorded by the Department.”

The policy further indicates that the employee may suggest at the meeting that “further investigation be conducted” and that “in the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results of such subsequent investigation prior to the imposition of any discipline”.

In this case, several of the procedural requirements of APD’s policy were not followed. The hearing was not tape-recorded. Instead of sending the matter back to Internal Affairs for further investigation, the Chief informally met with an employee witness to the incident, which meant that no taped record of the employee witness’s observations exist.

This kind of deviation from stipulated procedure has the potential to undermine final decisions from a “due process” perspective, and should be avoided. If, for example, the Chief had sustained the discipline under similar circumstances, the lack of a recorded witness statement could have been the basis for challenging the outcome, since the affected employee would not have had the chance to hear the statement and respond.

In addition to the concerns about procedural irregularities, we also had substantive concerns about the rationale for changing the result in this case. The witness employee’s observations were certainly relevant (as we acknowledge above), but only to a limited extent: as someone who was differently positioned from the shooters, his own perception of threat – in either direction – would not inherently confirm or negate the legitimacy of the other officers’ actions. Those actions had already been evaluated during the process through a “totality of the circumstances” prism. We respectfully question whether the additional

³² The memorandum indicates that the Chief upheld the out of policy determination with regard to the officer driving while using his computer and with his rifle out of its rack.

information was enough to tip the balance in the direction of justifying the specific deadly force at issue.

Recommendation 13: *APD policy should be followed regarding grievance proceedings with the following procedural protocols:*

- *The grievance hearing should be tape-recorded.*
- *If the Chief determines that additional investigation is necessary, he/she should request that IA conduct the additional investigation.*
- *A timely memorandum should be prepared explaining the rationale for the Chief's determination.*

Need for Continued Improvement in MIRT Review

As strong and wide-ranging as the investigation was in some respects, there were other potential issues that seemed to warrant further attention, but were not pursued toward resolution, or even further evidence-gathering. While it is possible that the Department addressed these questions informally and to its satisfaction, we continue to endorse a holistic and comprehensive MIRT package that encompasses all major issues of policy, procedure, performance, supervision, and tactics.

The most significant among the omissions here relates to the “cross-fire” situation alluded to above – which resulted in a bullet striking the car of an officer who was seated inside it. Though the consequences were far less grave than they might easily have been, it offers a stark reminder of the inherent danger associated with every individual act of deadly force. Target acquisition, situational awareness, and backdrop are key concepts that should be painstakingly explored. This is true even in the context of a large, complicated, and multi-faceted event such as this one. Here, though, the Department seemingly did not even formally determine who fired the round, never mind explore the issue with this person in investigative detail.

Another area that potentially merited more evaluation was the actions of another officer on scene, whom recordings show in a mixed role of civilian escort and weapon-brandishing participant. The officer rightly directed his attention to the distraught girlfriend of the suspect, who was watching events unfold from in front of her house. He initially focused on keeping her “out of the problem.” At the same time, though, he had his gun out in close proximity to her, and eventually broke away to join the others in the apprehension effort down the street. While the

fluidity of an evolving situation may have warranted the switch, it struck us as a question worth pursuing, considering the potential risk management concerns. Again, though, there is no record within the MIRT file of this issue being addressed.

Finally, the pursuit itself should have prompted a thorough conversation about decision-making and effective risk-management. While the attempts to detain and then apprehend the suspect were legal, they also prompt interesting questions about when to pull back, especially given that the suspect was known to them and not necessarily an active danger to the community. Once the incident devolved into collisions and a refusal of the suspect to surrender, the calculus clearly changes. But our hope is that Department management would take opportunities to proactively assess operations in an effort to maximize the learning value of them. This is the sort of endeavor to which MIRT has become well suited, and we encourage the Department to continue its positive momentum in this direction. Consistent with a central theme articulated throughout this report, the Department should take an inclusive and wide-ranging approach to the MIRT process, to ensure that all pertinent issues are identified, investigated, evaluated and remediated as necessary, even when alleged policy violations are not directly implicated.

Critical Incident: Traffic Collision with Injury

To APD's credit, its MIRT process also includes "major incidents" that are not officer-involved shootings. One case that we reviewed involved two suspects who were fleeing from APD and were struck with a police vehicle.

The incident began when two officers in a patrol car attempted to contact three suspected gang members who were sitting in a parked car. The officers decided to split up, with one on foot and one remaining in the car. The officer on foot began to pursue one of the suspects, who had run from his vehicle as the other two attempted to drive away. However, he diverted his attention when he heard a crash and saw that the suspects' car had been in a collision with another motorist. He went to provide aid to the victims of the accident. Meanwhile, his partner – after initial difficulty getting his siren to work – followed the other two suspects as they continued driving.

As the pursuit continued, the officer saw the suspects throw several items from their car, including a gun and knife. APD officers who were working a

plain-clothes assignment in unmarked vehicles heard the approaching pursuit and moved to assist. One of the officers made a slow “u-turn” in an unsuccessful attempt to block the suspect vehicle, and the pursuit continued. By that time, three patrol officers in marked units and three officers in unmarked units had also joined the pursuit, and the suspects eventually progressed onto a freeway on-ramp. The Department’s helicopter had begun to track the pursuit from the air.

At some point, one of the plain-clothes officers observed the suspect vehicle with its doors open. The officer drove onto the shoulder of the road and over some ice plants as he tried to place his vehicle ahead of the path of the suspects. The officer’s vehicle struck the retaining wall of the on-ramp, though he later claimed not to have realized that this had occurred. With both suspects now out of their vehicle, the officer’s vehicle may have made contact with one of the suspects who was observed then continuing his flight on foot over the wall. The air support observer broadcast that both suspects had leapt from their moving vehicle and had been struck and knocked down by a vehicle. Meanwhile, one of the suspects managed to continue his path and climbed over the retaining wall.

As officers converged on the scene, a responding officer eventually observed the other suspect underneath the vehicle of the plain clothes officer. The suspect was pulled from underneath the vehicle and first aid was requested. The plain clothes officer indicated that he did not believe that he had struck the first suspect and was unaware that he had struck the second suspect with his vehicle.

CHP conducted a traffic collision investigation and determined that the plain clothes officer had operated his vehicle improperly and at an unsafe speed. CHP concluded that as a result, the officer was not able to maintain control while he drove over the ice plants on the shoulder of the road. Following the CHP investigation, the officer was held accountable for his unsafe driving by APD.

APD’s MIRT review identified a number of systemic issues coming out of this incident. First, it questioned the advisability of the two person patrol team’s decision to split up prior to approaching the three suspected gang members, especially in an area known for high gang activity. The tactical discussion noted that the two officers self-initiated their approach of the three individuals without communicating that intent to APD’s Communications Center. The discussion recognized the advantage of advising dispatch and other officers in the field and the potential dangers of conducting such activity without such advisement. As a direct result of this discussion, APD amended its policy so that all officer field

activity was required to be communicated via radio to the Communications Center.

The tactical discussion also recognized the numbers disadvantage that the two officers automatically faced in dealing with three suspected gang members, and how calling for additional officer assistance at the outset of the encounter would have provided tactical superiority and flexibility. The discussion also addressed the actual and potential implications of the officers' decision-making in terms of their being outnumbered. While the officer on foot ultimately ended up focusing on the understandable exigency of the first collision, the decision of both officers to split up was inconsistent with best principles of officer safety.

Consequently, APD prepared and circulated to all its officers a Training Bulletin entitled "Two Officer Teams" which discussed the tactical advantages of two-person teams, the advisability of communicating a plan of action, and factors to consider in determining whether to request additional officers (e.g., number of subjects, surroundings, gang affiliation). The Bulletin expressly advised officers that in any incident where the number of subjects is greater than the number of officers on scene, additional officers should be requested. The Bulletin also emphasized the preference for having both officers stay together during any foot pursuit because of the inherent dangers caused by splitting up.

The MIRT review further noted that none of the multitude of officers who responded to the vehicle pursuit activated their body cameras until after the pursuit had come to an end. As a result, APD's body camera policy was amended requiring officers to activate their body cameras whenever they were responding to a situation with emergency equipment.³³

The fact that APD used its MIRT process to identify issues and develop an action plan designed to better guide its officers is evidence of a culture shift towards productive self-critique and reform. In particular, the refinement of policy that instructs officers to communicate self-initiated activity is impactful, and the Training Bulletin also provides additional important guidance on Departmental expectations.

³³ There was also discussion at the MIRT review regarding Air Support's decision not to record the pursuit. While no action plan came out of this review, subsequent concerns about the lack of an Air Support recording during critical incidents has resulted in an important shift toward activating the helicopter's recording equipment. We are heartened by this recent guidance and direction by APD Command Staff.

The MIRT program results in documented action plans and a feedback loop intended to ensure follow up for important systemic reform. Less evident is whether the insight gained from the process is effectively fed back to the involved officers. As we discuss above (see Recommendation 6), we advocate incorporating such a step into the Department's standard process.

APD's Review of the Vehicle Pursuit

While the MIRT process and the CHP accident investigation identified officer-decision making and performance issues that resulted in systemic reform and individual accountability respectively, the internal review of the vehicle pursuit was not as rigorous as it might have been, and left important issues unexplored.

Current APD policy speaks to the inherent dangerousness of vehicle pursuits:

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law...An unreasonable individual's desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement.

The policy then lists specific factors for the officer to consider in determining whether to initiate or continue a pursuit. They include:

(e) Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.

...

(i) Vehicle speeds.

...

(k) Availability of other resources such as helicopter assistance.

The policy also speaks to the number of police cars that should participate in a pursuit:

Pursuit units should be limited to three vehicles (two units and a supervisor); however, the number of units involved will vary with the circumstances.

APD's vehicle pursuit policy also highly discourages the use of roadblocks and requires supervisory approval to deploy them. Finally, APD policy states a preference that vehicle stops will be performed by marked police vehicles.

APD policy requires that after every vehicle pursuit, a supervisor conduct a written critique of the incident. Here, the supervisor determined that the pursuit was consistent with APD's vehicle pursuit policy. In arriving at that conclusion, the critique summarized several key aspects of the incident. It also noted that there were a total of eight officers involved in the pursuit: three in marked units, two in unmarked cars, one sergeant in an unmarked car, and the two occupants in the helicopter. The critique found that the unmarked cars were only involved in the pursuit for a short distance and were properly equipped with emergency driving equipment.

While the critique's factual summary was accurate as far as it went, it failed to cover several additional factors discernible from the police reports and relevant to the effectiveness of the pursuit. For example, it did not recount the fact that the suspect vehicle – which ended up on the wrong side of the road at points along the way – narrowly missed striking several additional vehicles as it was being pursued at high speed – a seemingly important element of the safety evaluation. The critique also failed to note that the driver of one of the unmarked units tried to block the path of the suspect vehicle as it was coming toward him at an early point in the pursuit.

Similarly, the critique failed to discuss significant observations of the Air Support Unit, which reported that the observer mistook for a civilian car the unmarked APD vehicle that lost control and struck both subjects.³⁴ Nor did the critique mention that, ultimately, Air Support was able to track the suspect who scaled the wall so that he could be apprehended by field units without further incident.

³⁴ The difficulty that the police helicopter observer had in identifying unmarked units in the pursuit is another important reason for favoring marked units (that have clearly marked roofs identifying them as patrol units) over unmarked units for involvement in vehicle pursuits.

As a result, the pursuit critique did not sufficiently address the following issues:

- Whether, pursuant to APD policy, the safety of the public was at too great a risk to continue the pursuit of the suspects, especially when the pursuit ran into heavy traffic;
- Whether, pursuant to APD policy, the excessive speeds driven by the suspect placed too great a risk on the public to continue to pursue;
- Whether, pursuant to APD policy, the reckless driving of the suspect in evading police, including traveling on the wrong side of the road, made it too dangerous to the public to continue to pursue;
- Whether, pursuant to APD policy, the arrival on scene of Air Support combined with other articulated factors, made it preferable to discontinue the pursuit and allow the helicopter to track the suspect vehicle from the air;
- Whether the officers involved in the pursuit timely notified communications of their involvement so that other responding officers would recognize how many were in pursuit;³⁵
- Whether any supervisor was monitoring the pursuit, and, if so, what guidance was provided during the chase;
- Whether, pursuant to APD policy, once the unmarked units realized that marked units were available to pursue, they should have dropped out of the pursuit;
- Whether it was appropriate and consistent with APD policy that at the terminus of the pursuit, six (instead of three) units were chasing the suspect vehicle;
- Whether the attempt to conduct a road block by the unmarked unit was consistent with APD policy, considering:
 - Per policy requirement, the officer did not obtain supervisor approval;
 - Not all other reasonable apprehension techniques had been exhausted;
 - The greater likelihood that an unmarked unit would not be identified as a police vehicle.

³⁵ If the unmarked units had recognized that there were other marked units in pursuit, they could have had more information to decide whether it was necessary or appropriate to join.

In sum, the Department’s careful and candid self-critique of the primary officers’ decision-making at the outset of the incident, as well as the driving at the end of the incident, was not evident in the assessment of the extended vehicle pursuit that happened in between. This gap in thoroughness reflects a difference in rigor between the MIRT process and the standard “pursuit review” protocol to which the Department deferred for that middle portion of the incident. We recognize the logistical obstacles to having MIRT supersede other review mechanisms,³⁶ but we encourage the Department to take full advantage of the admirable evolution in MIRT’s sophistication and level of insight, and to at least use it as the “clearing house” for all elements of a critical incident that fall within its purview.

Further, our experience with this pursuit critique raises questions about the overall effectiveness of that process. As the Department itself clearly recognizes, vehicle pursuits are a great potential risk for officer safety, public safety and risk management concerns.³⁷ Other jurisdictions have, for these reasons, made vehicle pursuits a distinct category for outside oversight, and Anaheim may wish to consider following suit.

Recommendation 14: *When a critical incident is considered for MIRT review, responsibility for analysis of the whole incident should be transferred to the MIRT team and process.*

Recommendation 15: *APD and the City’s Independent Police Auditor should discuss the advisability of incorporating a sample of vehicle pursuits as part of its auditing program.*

Common Issues

Investigative Concerns

As we have commented before, the District Attorney investigators do not interview involved officers the date of the incident; it usually takes several days before the interview occurs. For example, in Shooting #4, discussed above, the

³⁶ The same point pertains to the TRG “debrief” process we discuss in the context of another MIRT review, above.

³⁷ Below, we discuss an Internal Affairs case that also arose from a vehicle pursuit and ended in an accident; the incident raised several concerns about policy and the review process.

witness officers were interviewed the date of the incident, but the shooter officers were not interviewed until four to five days after the incident. In Shooting # 5, one shooter officer was not interviewed until 11 days after the incident. We have previously noted our concern about these approaches, which we consider out of step with standard investigative protocols and best practices.

APD's current inability to obtain the officers' version of events contemporaneously with the incident hinders the fact gathering process and creates skepticism among some about the reliability of the eventual statement. Investigators clearly are aware of the importance of obtaining contemporaneous statements, as evidenced by their tireless work in the hours after these incidents interviewing both officer and civilian witnesses. However, the officers who fired their weapons – those most knowledgeable and whose conduct is being reviewed – are not interviewed for days.

Through this delay, investigators forfeit the opportunity to obtain pure contemporaneous statements from the involved officers about what each did and why they did it. Instead, the investigative protocols allow the involved officers' versions to be subject to contamination and recall issues as a result of the passage of time or exposure to other accounts of the incident from media sources, legal representatives, or fellow officers. Any leads or further investigative guidance that might be derived from the involved officers' version of events are hindered and perhaps lost because of the delay.

Some police officer advocate groups have pointed to memory studies which suggest memory improves after an individual has had an opportunity to de-stress, sleep, and process the event before being called upon to provide a recollection as a reason to afford officers up to a three day period before being interviewed. Those advocates, however, undervalue the competing factors detailed above, including the potential for conscious or unconscious contamination during the wait period. Moreover, if police agencies were to accept this premise as paramount, they should likewise delay the preparation of written police reports and the collection of witness, victim, or suspect statements after any event. This clearly would not be consistent with accepted police investigative practices, which teach that subjects, victims, and witnesses should generally be interviewed as soon as they are identified.

The potential witness contamination that the delay afforded shooter officers in Orange County provides is aggravated by the protocols that also allow the

officers, upon request, to view any video recording of the incident prior to being interviewed. The exposure to this type of external evidence, compounded with the delay will result in the officer's eventual statement to be unduly influenced by any video recording. For that reason, we recommend that APD investigators obtain a "pure statement" from shooter and witness officers prior to showing any video recording of the incident. After a pure statement is obtained, officers can be shown video to determine whether the recording refreshes their recollection about what transpired and supplement their statement should that be the case.

While the DA's Office is a separate body that has investigative autonomy in these regards, it remains within APD's power to require the officers to provide a statement to its investigators on the date of the incident. Given the importance of these protocols in light of rigorous public expectations, we encourage APD to consider pursuing those options that are within its administrative control in obtaining statements on the day of the incident, and without prior review of recordings.

Recommendation 16: *APD should adopt protocols that would require involved officers to be interviewed administratively on the date of the incident.*

Recommendation 17: *APD protocols should require involved officers to be interviewed about an incident prior to reviewing any recordings of the event.*

Release of Recorded Evidence

One of the most significant issues raised by the public regarding deadly force incidents surrounds when video recordings of the incidents are to be released. For too many jurisdictions, the answer is never, short of a court order. However, more progressive jurisdictions have recognized the countervailing considerations and have developed protocols for making such materials public.³⁸

Very recently, the Orange County District Attorney's Office has issued a new policy for disclosure of officer-involved shooting video and audio evidence. The policy provides that after it has made a determination on the legality of the shooting, and provided that there are no pending criminal charges coming out of the incident, it will release any video/audio evidence at the time it issues its written findings. The policy provides for exceptions in response to "any valid concerns expressed by the involved law enforcement agency against the release of

the video and audio evidence.” The policy also indicates that the Office will give substantial deference to any protective orders emanating from civil proceedings regarding the release issue.

We applaud the Office of the District Attorney for its movement on video release. In applying the new policy to its own cases, we urge APD to recognize and affirm the stated premise that such release will “assist the public in understanding how and why these incidents occur, increase transparency, and build public trust in law enforcement.” Accordingly, APD should not raise objections to release of video/audio evidence except in the rarest of circumstances.

Recommendation 18: *APD should support the OCDA’s presumption of release of video/audio evidence at the time the District Attorney releases his findings, and not lodge objections except in the rarest of circumstances.*

Follow-Up Review

Many of the issues we identified in the various incidents reviewed here would not have been evident at the time that APD conducts its MIRT review. To its credit (and unlike many similar agencies), APD takes early administrative action and does not wait for the completion of the District Attorney review process, which can extend for a year or more. However, while we recognize the value of the initial assessment that the Department conducts, we also recommend a “second phase” that would incorporate and address additional issues as revealed by the full investigation. This type of follow-up review process would give the MIRT team (and the Independent Auditor) the opportunity to review the completed reports, identify additional issues coming out of that review, and present those issue to command staff for further reflection and potential action.

Recommendation 19: *APD should modify its MIRT protocols to conduct a follow up presentation to command staff after the DA’s investigative report is completed and reviewed.*

Use of Force

Department executives continue to engage with us in meaningful and impactful ways on issues surrounding officers' uses of force. For example, when top-level executives recently learned about a particularly troubling force incident, they contacted us, briefed us on the event, and sought our counsel about the best ways to move forward. This type of proactive engagement gives us confidence in the Department's commitment to critically reviewing force with an eye toward holding accountable those officers whose actions do not comply with Department expectations.

For this report, we reviewed 24 force incidents from the last three quarters of 2016. In our last report to the Public Safety Board – covering cases from the first quarter of 2016 – we addressed the Department's progress toward implementing the 19 recommendations relating to force investigative protocols, tracking mechanisms, and the review and analysis of force events that we originally put forward in our October 2015 report. We will not belabor the point of those prior recommendations, except where our current case review continues to show room for improvement.

With respect to the use of force, the overarching theme of our 2016 report was the need for the Department to develop and implement a stand-alone force report that we believe would address many of our critiques of the Department's force reporting, investigation, and review processes. For nearly two years, the Department has been touting the development of a new force-tracking database meant to address our concerns. In May of this year, we viewed a demonstration of the new system, which currently is being used in testing mode. The program does address many of the issues we have raised in our prior reports and conversations

with Department leaders, and will go a long way toward providing the sort of complete repository for information relating to a particular event that we have been advocating. We look forward to reviewing force incidents reported and tracked in the new database to fully evaluate the extent to which it fulfills its promise.

Nonetheless, the Department has not fully embraced an important recommendation we made in our prior report – the collection of all reports, documents, and other evidence into one distinct force package. As it is, officers report their uses of force along with all other details surrounding a suspect’s arrest in a general offense report. We have argued that a separate document dedicated to the report of force would make it easier for supervisors to review uses of force – to spot gaps in officers’ written accounts, to identify trends or problematic tactics, or to recognize needed improvements in training or equipment.

In its response to the 2016 report, the Department argued that the creation of a separate force reporting mechanism would create unnecessary redundancies. While we acknowledge the potential redundancy, in the era of computer-based reporting and the ability for officers to copy and paste portions of their written reports in multiple documents, we believe the inconvenience is outweighed by the utility of a separate and distinct force report. Therefore, we reiterate Recommendation 8 from our 2016 report here:

Recommendation 20: *The Department should adjust its force reporting requirements to promote the comprehensive gathering of all relevant evidence and documentation in a segregated and focused location.*

The force incident reports we reviewed for this report look very much like those we reviewed from the first quarter of 2016 – officers are generally effective in how they articulate their reasons for using force, and they describe the force itself in detailed, descriptive terms. At the same time, not surprisingly, incidents from the final three quarters of 2016 shared some of the same investigative shortcomings as those from the beginning of the year. Most notably:

- Interviews of individuals on whom force was used continue to be sporadic and inconsistent. We saw some cases in which supervisors documented an attempt to interview a subject, but for the most part we saw officers who had been involved in the incident attempt to question the subject. That those attempts were generally unsuccessful is not a surprise, given the

different dynamics that might make a subject reluctant to participate under the circumstances.

- Officers who used minor force in assistance of the primary officers on scene sometimes did not write reports documenting their actions. As we noted previously, even when all of the individuals involved are identified in the primary reports, best practice requires each officer to document his or her own uses of force.

Recommendations from our prior reports focused heavily on having the Department develop a review process that scrutinizes force incidents holistically, going beyond the question of whether a use of force was justified and consistent with policy. The approach we advocate would look at broader issues such as whether the force used complied with training, whether there was room for improvement in tactical decision-making, and how the incident may be used to promote broader learning initiatives. In its response to our 2016 report, the Department agreed with this recommendation and indicated it intended to explore ways to meet its objective. Some of the cases we examined for this report highlight the need for this wider-ranging assessment.

- A sergeant engaged in a foot pursuit of a bicycle-riding suspect while an officer followed the pursuit in his patrol car. The officer eventually cut off the suspect's path, exited the vehicle, and knocked the suspect off her bike and onto the ground, where the officer and sergeant restrained her.

The force documentation contains no discussion of the foot pursuit tactics, the potential hazards associated with the officer's decision to knock the suspect off the bike, or the fact that neither the sergeant nor the officer activated their body-worn cameras during this incident.³⁹ Compounding these issues is the fact that the sergeant who was involved in the incident authored the Force Analysis System report.⁴⁰

- Following an incident which left an arrestee with a facial laceration that was bleeding significantly, officers made no effort to administer any first aid during the approximate ten minute wait for the arrival of EMTs. The

³⁹ See our discussion of the body camera recording policy, above at p. 5.

⁴⁰ We have repeatedly recommended that, in situations where a sergeant is involved in a force incident, an uninvolved supervisor should be assigned to handle the force investigation and documentation.

body-worn camera footage shows officers getting bottles of water from a bystander and wipes for their hands (which had the suspect's blood on them), while the suspect complains of being left lying handcuffed on the hot asphalt pavement.

- During an incident in which the subject's behavior clearly annoyed officers, one can be heard using a derogatory term to describe the subject, who seemed to be experiencing some sort of mental health crisis. The comment was made apparently out of earshot of the subject, but was recorded on the officer's body-worn camera. There is no indication that the reviewing supervisor addressed this issue.

Crisis Communications and De-escalation

Several incidents we reviewed during this reporting period raised a concern about officers' ability to communicate with individuals in crisis, either as a result of mental health issues, symptoms of drug use, or a combination of both.

- Officers responded to a call involving a subject exhibiting paranoid behavior. He was suspected of being on methamphetamine or other central nervous system stimulant, and officers called an ambulance at the subject's request. Despite the subject's obvious impairment, officers made efforts to engage and reason with him that clearly were ineffective. At various times throughout the encounter, they laughed at him, taunted him, and threatened him in ways that seems to heighten his paranoia, all in an effort to get him to voluntarily enter the ambulance. At one point, the subject acknowledged his difficulties and indicated that he just needed to talk to someone who knew him. One officer told him to "shut your mouth."

In the end, the subject pushed a paramedic, and officers placed the individual in a carotid restraint. The incident was referred to training, but there is no indication whether this was for communication issues or tactics surrounding the application of the carotid restraint.

- Officers responded to a situation where an individual was wandering on the freeway, posing an obvious risk to himself and drivers. Officers restricted and then stopped traffic while they attempted to engage with the subject and get him to move off the roadway. By the officers' statements, it is clear they recognized the subject was exhibiting symptoms of a mental

health crisis. One officer suggested the subject could have a seat in one of the on-scene patrol cars. The subject misinterpreted this suggestion and got into the front driver's seat of one of the vehicles. Officers (particularly the one whose car the subject occupied) were understandably agitated by this move, and they spoke to the subject in a loud, angry, accusatory tone. Though officers clearly needed to separate the subject from the vehicle, he did not appear to be making efforts to drive the car, so it is fair to question the officers' sense of urgency. There was no real effort to communicate in a calm, controlled manner that might have de-escalated the situation. Instead, officers very quickly made a plan to use a Taser and physical control efforts to pull the subject from the car.

While it is impossible to know for certain, both of these incidents might have been resolved without the officers' need to use force had officers been able to talk to the involved individuals in a different way. Yet there is no documentation that the supervisors' response to either of these situations took note of the communications issues or attempted to address the dynamic in any way with the involved officers.

The recent national dialogue around police reform issues focuses a great deal of attention on "de-escalation." The idea of asking officers to slow down their response to a situation whenever possible is not particularly new or innovative. But critical incidents that received national attention over the past several years – coupled with the resultant attention from the U.S. Department of Justice – have prompted police agencies to write de-escalation concepts into policy and develop training programs around the use of de-escalation practices.

These concepts – improving communication skills, properly assessing a subject's situation, expressing patience and empathy – do not apply only to deadly force situations, but need to be a part of officers' regular approach to all manner of encounters. Of course, not every subject can be talked down from a crisis or talked into complying with officers' orders, and officers need to be prepared to use force if necessary. But a Department-wide commitment to the principles of de-escalation, coupled with effective and regular training, may reduce the frequency with which these situations result in uses of force, keeping both officers and citizens safer.

Recommendation 21: *The Department should consider ways to advance de-escalation principles through an effective training program and should reinforce those principles in its review of and response to use of force incidents.*

Carotid Restraint

In our review of cases, we have seen APD officers use the carotid control hold with increasing frequency. The technique was used or attempted in six of the 24 cases we reviewed for this report.

The carotid control hold is a type of “vascular neck restraint” that differs from the respiratory restraints or “chokeholds” that restrict a subject’s airflow and now generally are prohibited by all police agencies. To perform a carotid restraint, an officer uses his or her forearm and upper arm to create a V and put pressure on a subject’s carotid artery, limiting oxygenated blood flow to the brain and causing brief unconsciousness. When done properly, no pressure is applied to the trachea, so there is no risk of asphyxiation.

Vascular neck restraints are touted as an effective way to control violent or combative subjects, particularly those who might be more impervious to pain compliance techniques because of drug use, mental health condition, or emotional disturbance. Proponents of the use of the carotid hold assert that, when properly applied, there are no traumatic injuries to the subject, making it preferable to other types of hands-on force such as body strikes. While there is no general consensus on the safety of the technique, medical experts have opined that correct application carries little physiologic risk.

All of the sources citing the safety of a vascular neck restraint, however, start from the premise that the hold is applied correctly, something that is difficult to guarantee in a dynamic situation in the field. And what little medical research exists has been conducted has involved healthy, willing participants. We know of no studies that address the risk the technique poses to struggling individuals who may be under the influence of stimulants or other substances or who may have underlying medical conditions of which the officer cannot know. Even research conducted by coroners and pathologists who have examined the bodies of people

who died after – though not necessarily because of – application of a neck restraint tends to be inconclusive and somewhat limited.⁴¹

APD policy provides that the carotid control hold may be used to control a subject who is “violent or physically resisting” or who “has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.” Policy requires that officers have completed department-approved training in the application of the technique, and directs officers generally to avoid using it on juveniles, the elderly, and pregnant women. Officers must ensure that an individual who has had the hold applied be examined by medical personnel.

The frequency with which APD officers apply the carotid hold (25% of the cases we reviewed) gives us some concern that officers may be interpreting policy mandates too liberally. For example:

- Officers responded to a retail store to arrest a shoplifter who had been detained by store security. As officers led the handcuffed suspect out to their patrol car, he began to resist. One officer applied a carotid restraint and officers eased him into a kneeling position. The suspect quickly regained consciousness and was cooperative. The supervisor referred the incident to Training for further review and potential action, but there is no documentation as to the reasoning behind that decision or any response from Training.

Even accepting APD officers are well-trained to correctly apply the carotid hold, there are undeniable risks associated with neck restraints that should inform officers’ decision-making around this force option, as well as the Department’s policy and training initiatives.

Recommendation 22: *The Department should examine its policy and training around the use of the carotid control hold with the goal of limiting its use to those situations in which subjects are not merely resisting but are violent, assaultive, or pose a threat of serious harm to officers or others.*

⁴¹ Regardless of the formal medical research and opinions, recent deaths of subjects in New York and Las Vegas following application or attempted application of lateral neck restraints reinforce the level of risk associated with this type of control hold.

Body-Worn Cameras

Our monitoring role with the city pre-dates Anaheim's adoption of the cameras, and we've been able to track both the growing pains and successes that have accompanied the program. As mentioned above, we have been impressed with the Department's willingness and ability to respond to circumstances as they've emerged in the field, and to adjust policy and training accordingly. However, based on this group of force cases, we offer the following two additional observations:

- Situations still arise when officers do not turn on their cameras, and therefore miss recording important encounters such as uses of force. While we recognize the legitimacy of the "human factor" and the reality of "rapidly evolving circumstances" that genuinely preclude the safe or successful engagement of the camera, we also believe such episodes deserve scrutiny and a rigorous standard of review. Otherwise, the existence of a broadly-recognized exception can undermine enforcement of the rule. The increased public confidence that stems from cameras also creates expectations. Therefore, the skepticism that follows an unrecorded critical encounter is all the more intense and problematic.

Recommendation 23: *The Department should continue its ongoing efforts to clarify and reinforce policy expectations about officers' deployment of body cameras.*

- One of the limitations to the largely impressive technology stems from the decision by so many officers to wear the camera at waist level. There are undoubtedly legitimate reasons for this that relate to comfort, the officers' range of motion, etc. However, one unfortunate consequence is that the recordings, particularly at close range, are predictably limited in what they capture. In situations such as field interviews, for example, this can be frustrating for the viewer. We acknowledge that this is a problem without a perfect solution, and one which the Department has made attempts to address. In the past, we have commented on the ways in which recordings get blocked by officers' arm movements when they wear the cameras on their lapels. Efforts to deal with that issue create a different set of limitations. We encourage the Department to continue to evaluate the options that could address these problems without compromising officer performance.

Recommendation 24: *The Department should work with officers and association representatives to explore technological options for ensuring the best and most useful recordings by officers wearing body cameras.*

Internal Affairs Investigations

As with previous reports, our focus here is on the APD review process itself rather than an endorsement or refutation of individual case results. Our evaluation of completed cases serves as the “raw material” by which we are able to assess the APD process and make recommendations where appropriate.

We receive a sampling of completed files from APD in keeping with a pre-established formula. Criteria include all cases in which the subject is a supervisor,⁴² all cases involving allegations of “bias-based policing” (improper discrimination), and a random selection of remaining citizen complaints and other allegations of misconduct.

Below are some of the key observations that emerged from the assessment of the 10 cases we received for the final three quarters of 2016:⁴³

“Opinions and Conclusions”

At the end of the investigative process, the Department entrusts its Internal Affairs personnel to gather the evidence in the case file,⁴⁴ and to prepare a memo that summarizes and analyzes that evidence, culminating in recommended

⁴³ As noted above, an officer-involved shooting from this period (Shooting Case # 4) was the subject of an Internal Affairs investigation as well as the regular “MIRT” process. While it seemed more appropriate to discuss that process and its outcomes in the context of the Department’s broader response to the incident, it is technically an 11th case.

⁴⁴ We have praised the quality, thoroughness, clarity, and organization of these files in past reports. These comments bear repeating, and certainly apply to the cases we assessed here.

findings. This material then goes to the Internal Affairs lieutenant for review, and then on to the relevant chain of command for the involved officers. Appropriately, these executives reserve the right to overturn the original IA recommendations as to outcome. In fact, that happened in two of the cases we reviewed for this report.

Some agencies, on the other hand, do not solicit the conclusions of the investigators who present the case. While the material is similarly assembled, and often accompanied with a comparable summary, the executive decision-makers do a “cold read” as to the appropriate outcomes for each allegation. Obviously, they can seek clarification or other input from IA, but investigator opinions do not appear in a written memo.

In our oversight experience with different agencies, we have seen it done both ways. Each approach has advantages. As for the Anaheim model, there is clearly a benefit, both in terms of efficiency and substantive insight, from asking for an evaluation from the people most familiar with the investigation. Moreover, Internal Affairs personnel develop obvious and useful expertise regarding Department policy and the discipline process itself. The willingness to let IA state its position also reflects the integrity of the process, insofar as it provides a documented check against efforts to brush clear, proven misconduct “under the rug.”

Nonetheless, we advocate a protocol that stops short of the written determinations and reasoning that IA currently includes in APD investigative files. There are a few reasons for this. For one, a more neutral, evidence-only approach lessens the likelihood of editorializing that can influence – however unconsciously – the presentation or arrangement of evidence when summarizing occurs. For another, Department executives will ideally engage with the facts in the comprehensive way for themselves, free from the temptation or the influence that can come from “knowing how it ends” in the form of the IA investigative opinions and conclusions.

Lastly, when decision-makers do arrive at a different outcome that leads to the imposition of discipline,⁴⁵ the existence of a conflicting analysis – made by personnel without the authority to effectuate their views – has the potential to

⁴⁵ As noted above, this did happen among the cases we reviewed. We concurred with the alternative findings that executives reached – both of which overturned an initial IA opinion that exonerated officers, and replaced it with initial findings that policy violations had occurred.

complicate the “appeals” process by which subject officers can challenge the Department’s actions. This is not insurmountable. At the same time, though, it is also unnecessary.

In our view, having the investigators available for decision-makers as a resource, while refraining from documenting and presenting their opinions and conclusions, is the better approach. We encourage the Department to consider it.

Recommendation 25: *APD should consider revising its protocol to eliminate the current inclusion in the case file of a formal memo by Internal Affairs that contains analysis and recommendations as to outcomes in a misconduct investigation.*

Interview Issues

By and large, the Internal Affairs investigators are effective in their manner of gathering evidence and conducting interviews with both witnesses and subjects. The interviewing component of their work can be especially difficult to do well. One challenge is in eliciting comprehensive information while refraining from “putting a thumb on the scale” through the tone or tenor of the interview.

With citizen complainants, for example, the investigators’ ability to cover all relevant areas while projecting appropriate objectivity is a key factor in the legitimacy of the process – and a source of public skepticism and discouragement when it isn’t done well. For Internal Affairs investigators, criticism is an occupational hazard, and can come from the public or – for different reasons – from fellow officers. But the commitment to objectivity and thoroughness is an essential attribute.

Several of the cases in the group we reviewed for this report began with a civilian complaint.⁴⁶ Our impression of these interviews was that they were generally effective in terms of thoroughness and completeness, and the participants seemed comfortable and willing to share. We do, however, note two issues that seemed potentially problematic:

- A citizen complained about his detention for “suspicious” behavior when officers encountered him recording with a video camera in an alley near the

⁴⁶ As is generally the case, others were generated internally by Department management.

Department. He described himself as a First Amendment proponent who frequently records near government sites and posts video of his interactions on YouTube. The investigators did a fine job of eliciting the details of his complaint, and seemed to have a good rapport with the man.⁴⁷ But, over the course of their lengthy discussion, they also ask several unnecessary questions about the dynamics of YouTube “success,” and repeatedly offer their perspective on officer safety and the concerns that the recording behavior raises. These added contributions by the officers were seemingly well-received by the complainant, but we have found it to be a fine line when it comes to constructive sharing and dialogue versus preserving the focus of the intake process. Even good intentions and accurate information by investigators can easily be misconstrued as bias or an unwillingness to accept the validity of the complaint.

- Similarly, a man with a history of homelessness complained that he was mistreated by a sergeant in retaliation for recording police activity at a local park, where officers were responding to the rise of an informal encampment. The investigators made repeated explanatory references to the involved officers’ longstanding interactions with the man and his family, and questioned him about his own precarious circumstances. While body-worn camera footage and other evidence support their points, and while they were not confrontational or disrespectful, the interview does slip from neutral and objective intake to more of an exercise in justification or advocacy – which is not the ideal posture for a complainant interview.

Recommendation 26: *During the interview of complainants, Department investigators should remain focused on objective intake of the testimony, and refrain from commentary or explanation that – even if true – may come across as advocacy for the involved officers.*

Level of Discipline

The cases we evaluated included several which included “sustained” findings as to the allegations of misconduct against the subject officers. This leads to a second question, which is the level of discipline that is appropriate as consequence.

⁴⁷ In fact, at one point in the interview the complainant enthuses about the insight he is gaining, and says he wishes he could post their conversation on the internet.

We have long taken a flexible view regarding this issue. Except for cases in which discharge is the appropriate result, all other responses and interventions should be geared toward consistency, fairness, and effective messaging for the relevant employees. Ideally, disciplinary outcomes also reflect Department standards and establish a baseline of accountability for future reference. These goals can be accomplished in a variety of ways. We support creative alternatives to discipline for example, such as an officer taking steps to communicate an apology to a mistreated citizen in lieu of a day's suspension. And our approach is not "punishment for punishment's sake."

That said, we were struck in this grouping of cases by the "light touch" with which the Department responded to some of the proven transgressions:

- In a case involving a vehicle pursuit that resulted in a serious crash, independent laboratory testing established that an officer had been exceeding the limit set by policy for attempting a "PIT" maneuver at the time he collided intentionally with the other vehicle. In spite of the consequences (which included injury to the other driver), the Department merely issued the most lenient formal discipline available.⁴⁸
- In a case involving the adequacy of a domestic violence investigation, a peripheral issue emerged regarding a subject officer's failure to upload the relevant body-worn camera footage in a timely manner, per policy. Although the negligence did not appear to have a malicious intent, or any detrimental impact on the ultimate case, the resulting "No Further Action" failed to send a very firm message regarding the importance of the protocol.
- In a case in which a supervisor was found to have acted improperly by arresting a persistent activist for interfering with law enforcement, the discipline was only the most lenient formal sanction available. Nor did the supervisor show in his interview any of the acknowledgement or acceptance that often constitutes a basis for mitigation.

Beyond the immediate impact on the employee, the severity of discipline reflects an agency's commitment to the policy in question, and establishes a baseline for future consequences as well. These examples suggest a potential disconnect between the significance of the conduct in question and the efficacy of the Department's response. We encourage APD to evaluate its approach to

⁴⁸ A MIRT review of this incident has occurred, but has not yet been finalized.

discipline for sustained cases and ensure that consequences reflect Department standards and priorities.⁴⁹

Recommendation 27: *The Department should review its recent record of outcomes in cases where policy violations are established, and assess whether the amount of discipline matches Department goals for correcting behavior and promoting accountability.*

Timeliness of the Process

The problem of extended delays in case completion is a subject we have touched on repeatedly in prior reports (as well as earlier in this one, during our discussion of the MIRT reviews). In the cases we reviewed this time, we did see instances in which the Department moved efficiently toward resolution. Disappointingly, though, there were others in which several months passed between phases of the process, seemingly with no activity.

One example involved a relatively straightforward complaint from a pedestrian who thought that an officer was overzealous and oddly agitated in his enforcement of jaywalking laws on a busy street. The Department ultimately found that the officer had not met performance expectations in his demeanor.

While this result seemed appropriate, the case was not completed until the one-year statutory limit had nearly expired. The involved officer was not interviewed until some 11 months after the encounter. He himself cited this delay as a reason why he had difficulty recalling some of the particulars of the incident – a factor that obviously complicates the investigation.

Our understanding is that there were extraneous factors that contributed to the delay in this case. Still, the example is not so far off the norm as to be unfair as a representation of an issue. We appreciate the time that a thorough and effective investigation can require, and acknowledge that blameless obstacles can also account for an accumulated passage of weeks. But the benefits of prompt and efficient resolution merit a reiteration of this point, which we have made previously in these reports.

⁴⁹ Recently, community members in Anaheim have advocated for a disciplinary matrix to ensure that discipline is meaningful and consistent. Our review indicates the potential merit of such an approach, which we will continue to consider as our audit program continues.

Recommendation 28: *The Department should look for ways at all steps of the investigation and review process to promote timely completion and resolution of individual cases.*

Recommendations

- 1:** *The Department should prioritize the timely completion of all aspects of its review process for major incidents, in the interest of both investigative accuracy and remedial value.*
- 2:** *APD should either revise its policy or issue a training bulletin advising its officers not to use a patrol vehicle as an impact weapon against fleeing bicyclists or pedestrians, unless as a last resort use of deadly force when all other tactical options are no longer available.*
- 3:** *The Department should continue moving toward holistic and comprehensive administrative reviews, including the standardization of administrative interviews to supplement the criminal investigation as needed.*
- 4:** *The Department should document its (or the City's) risk management efforts in conjunction with the aftermath of a critical incident and proactively providing compensation for property damage suffered by innocent third parties.*
- 5:** *The Department should make sure to incorporate a tactical "debrief" by special assignment personnel into the formal auspices of the MIRT process, if only to document the evaluations by relevant subject matter experts that regularly occurs after such operations.*
- 6:** *APD should routinely consider whether additional training for involved officers is appropriate, should document that process and its results, and should provide a documented tactical debriefing for all officers involved in deadly force incidents.*

- 7:** *APD should include any prior deadly force incidents involving involved officers during its MIRT reviews.*
- 8:** *APD's MIRT review process should routinely evaluate how Department personnel perform immediately after a critical incident, in particular with regard to ensuring timely first aid to injured subjects, and should include remedial interventions regarding these principles as needed.*
- 9:** *APD should work with the City's Risk Management group to devise a program that proactively identifies and compensates uninvolved persons who suffer property loss as a result of police activity.*
- 10:** *APD should consult with the Office of the Coroner in seeking ways to facilitate a more timely completion of on-scene investigation, and in considering whether the unclothing of decedents at the scene is necessary and appropriate.*
- 11:** *When APD does an Internal Affairs investigation into a Major Incident, it should ordinarily conduct separate administrative interviews with both involved and witness officers.*
- 12:** *APD should devise policy setting out explicit expectations for deployment of specific officer equipment, in particular the Department's expectations with regard to lethal and less lethal shotgun munitions.*
- 13:** *APD policy should be followed regarding grievance proceedings with the following procedural protocols:*
- *The grievance hearing should be tape-recorded.*
 - *If the Chief determines that additional investigation is necessary, he/she should request that IA conduct the additional investigation.*
 - *A timely memorandum should be prepared explaining the rationale for the Chief's determination.*
- 14:** *When a critical incident is considered for MIRT review, responsibility for analysis of the whole incident should be transferred to the MIRT team and process.*
- 15:** *APD and the City's Independent Police Auditor should discuss the advisability of incorporating a sample of vehicle pursuits as part of its auditing program.*

- 16:** *APD should adopt protocols that would require involved officers to be interviewed administratively on the date of the incident.*
- 17:** *APD protocols should require involved officers to be interviewed about an incident prior to reviewing any recordings of the event.*
- 18:** *APD should support the OCDA's presumption of release of video/audio evidence at the time the District Attorney releases his findings, and not lodge objections except in the rarest of circumstances.*
- 19:** *APD should modify its MIRT protocols to conduct a follow up presentation to command staff after the DA's investigative report is completed and reviewed.*
- 20:** *The Department should adjust its force reporting requirements to promote the comprehensive gathering of all relevant evidence and documentation in a segregated and focused location.*
- 21:** *The Department should consider ways to advance de-escalation principles through an effective training program and should reinforce those principles in its review of and response to use of force incidents.*
- 22:** *The Department should examine its policy and training around the use of the carotid control hold with the goal of limiting its use to those situations in which subjects are not merely resisting but are violent, assaultive, or pose a threat of serious harm to officers or others.*
- 23:** *The Department should continue its ongoing efforts to clarify and reinforce policy expectations about officers' deployment of body cameras.*
- 24:** *The Department should work with officers and association representatives to explore technological options for ensuring the best and most useful recordings by officers wearing body cameras.*
- 25:** *APD should consider revising its protocol to eliminate the current inclusion in the case file of a formal memo by Internal Affairs that contains analysis and recommendations as to outcomes in a misconduct investigation.*
- 26:** *During the interview of complainants, Department investigators should remain focused on objective intake of the testimony, and refrain from commentary or explanation that – even if true – may come across as advocacy for the involved officers.*

27: *The Department should review its recent record of outcomes in cases where policy violations are established, and assess whether the amount of discipline matches Department goals for correcting behavior and promoting accountability.*

28: *The Department should look for ways at all steps of the investigation and review process to promote timely completion and resolution of individual cases.*