

Eleventh Office of Independent Review **Annual Report**

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Contents

	Foreword	5
PART ONE	Sexual Misconduct Allegations Against Deputies	9
PART TWO	Lies and Other False Statements	19
PART THREE	Video Cameras in Jail: An Effective Work in Progress	33
PART FOUR	Policy Development and Reform with Respect to Discipline	49
PART FIVE	Alcohol-Related Misconduct Update	61
PART SIX	Deputy Involved Shootings Update	71
ADDENDUM	Systemic Changes in MCJ Visiting	81
APPENDIX	Summary of Systemic Changes - Year Eleven	85

Foreword

An inmate claims that after he talked back to a jail guard, he was shoved up against the wall by the deputy, punched in the head, and kicked after he fell to the ground. The guard asserts that he was escorting the inmate when the inmate threatened him, tried to punch him and the guard responded by taking the inmate to the ground.

This scenario has played out repeatedly over almost two and a half centuries in America's jails. As the Los Angeles County jail system became the largest in the country, force between inmates and deputies has been regularly reported and the participants have often provided diametrically different versions of what transpired. Unlike incidents that occur in public, jail events are almost exclusively witnessed by the participants, jail employees and inmates. With each set of witness camps having motivation to either not be helpful to any subsequent fact finding process or to provide a version of the event that is less than objective, determinative evidence was hard to procure, particularly when the jail authorities assigned to be the fact gatherers were not trained or motivated to attempt to objectively or thoroughly collect that information.

The result was that there were few times in which claims of improper force could be sustained. Clearly, deputies did get away with using excessive force because there was no evidence to corroborate the claims of the inmate; and there were times in which inmate claims against deputies were fabricated but there was not enough evidence to prove that fabrication. As a result, a paradigm existed where force incidents in the jails occurred and too many times there was no effective way to establish with evidence what had transpired, even when the Sheriff's Department was motivated to do so.

As detailed further in the OIR's Eleventh Annual Report, in a few short months, this unsettling paradigm has undergone significant changes. Reforms we had been long advocating gained purchase as a result of increased attention placed on the jails and other outside voices joined the discussion. As set out in greater detail below, more robust policies were created, supervision

was increased, a new orientation towards force was introduced, and the way in which force was investigated and reviewed was overhauled as a result of internal reform and external recommendations. OIR worked with the other reform entities and LASD itself to bring the ideas of change to reality.

While as detailed in this report, LASD's way of doing business in the jails with regard to its attitude towards force has undergone a sea change, the most significant change agent that has been introduced into the equation is the installation of video cameras. The Department now has a video record of 90% of force incidents in its downtown jails and is no longer completely reliant on "observations" of inmates and jail deputies to try to figure out what has occurred. In scores of cases, an objective eye has captured the incident and now deputies who have used excessive force can be called to task and those who have had false allegations made against them can be exonerated by the video record. While as also detailed in this report, no system is perfect, the success of the cameras causes us to question why it took so long to heed our requests for this technology. However, rather than labor to try to understand the delay, we embrace the video cameras that help us with making credibility and accountability calls that were not possible in the years during which the LA County jails did without.

As further detailed in this report, LASD continues to face challenges, not only in the jails, but in attempting to address deputy-involved shootings, off-duty conduct, and integrity issues among its personnel, to name a few. This report is intended to provide a snapshot into each of those challenges and inform LASD's public about what the Department is doing to address them. The reader of this report will learn about the significant uptick in LASD's resolve to rid itself of personnel who have disgraced the badge, the recent decrease of alcohol-related driving offenses, and the continued challenge of critically examining its deputies' use of deadly force. We appreciate the ability to provide transparency in each of these areas so that informed dialogue can be had by all stakeholders interested in the Department's obligation to provide public safety consistent with the Constitution and expectations of its public.

Sexual Misconduct Allegations Against Deputies

As illustrated by the case examples cited below, when allegations of sexual misconduct are made, the Department has taken them seriously and conducted thorough criminal and administrative investigations. Even in cases in which the District Attorney has declined to prosecute the alleged misconduct, LASD has taken disciplinary action based on a lower standard of proof needed to sustain such action. As detailed below, when such allegations are proven, serious and often career-ending discipline is imposed.

Historically, sexual misconduct involving law enforcement can occur both on- and off-duty. In this report the vast majority of the allegations we describe are for on-duty conduct or originated from on-duty contact during a call.

Investigations of Off-Duty Misconduct

Case One: Off Duty Deputy Poses as an Undercover Vice Officer

An off-duty deputy started talking to a young female employee working in a tanning parlor. He claimed that he was an undercover police officer and displayed a badge. He told her that he was recruiting young, attractive women to pose as prostitutes for undercover operations and offered to pay her \$50 an hour. The young woman gave him her email address and cell phone number and promised to keep his offer secret. She later told her mother who, in turn, contacted the Sheriff's Department which began investigating not knowing that the suspect was a Department employee.

Detectives learned that the suspect then sent emails to the victim asking to set up a meeting at the tanning parlor and reminded her to keep the matter secret. He also called her on several occasions. When he arrived to meet her, detectives were waiting and detained him for suspicion of impersonating an officer and then learned he was a patrol deputy. (He was not involved in any prostitution or vice operations whatsoever.) He claimed he was only there because he wanted to hang out with the victim. He later told a supervisor that he had been planning on cheating on his wife and was glad that he had been caught.

When the Internal Affairs Bureau began investigating the allegations, investigators had concerns that a crime had occurred, so the matter was turned over to the Internal Criminal Investigations Bureau. At the conclusion of the ICIB investigation, the District Attorney concluded there was insufficient evidence that a crime had been committed under the law prohibiting fraudulent impersonation of a peace officer, in that the deputy was actually a peace officer, and declined to file any charges.

The Case Review panel heard the matter and found that the deputy was in violation of policies covering General Behavior and Obedience to Laws, Regulations and Orders. The deputy was discharged by the Department. OIR concurred with the disposition and discipline.

Investigations of On-Duty Conduct

Case Two: Engaging in Inappropriate Sexual Conduct with Explorers

The Sheriff's Department hosts a Law Enforcement Explorer Training Academy whereby youth from the community receive training to assist Deputy Sheriffs at facilities throughout Los Angeles County. After 100 hours of training, Explorers are permitted to perform such nonhazardous tasks as fingerprinting applicants, taking routine reports, and assisting with DUI checkpoints. A male Explorer reported he had heard rumors that a deputy had kissed or tried to kiss two 16-year-old female Explorers. LASD's Special Victims' Bureau was contacted and initiated an investigation into the allegations. The first of the two named female Explorers told investigators the deputy had touched her buttocks, commented on her breasts, and tried to kiss her. The second female Explorer revealed she was in a sexual relationship with him which included oral copulation and sending him nude photographs of herself. When questioned by investigators, the deputy admitted to receiving nude photographs from one of the Explorers, but denied having engaged in any inappropriate sexual activity.

The District Attorney's Office filed one felony count of oral copulation of a person under 18 and misdemeanor child molestation. After the criminal charges were filed, the Deputy was relieved of duty without pay and tendered his resignation from LASD three months thereafter while the criminal charges against him were still pending. He thereafter entered into a plea bargain whereby he was permitted to plead guilty to the felony count in exchange for the dismissal of the

misdemeanor count, no jail time, a three year probationary term, and 200 hours of community service.¹

Case Three: Alleged Sexual Assault of Vehicle Inspection Patron

A female patron arrived at a vehicle inspection area to have her vehicle inspected after repairing a broken headlight. The deputy assigned to conduct the vehicle inspection directed the patron to his office. The patron stated the deputy leered at her body by looking her up and down and asked her inappropriate questions such as if she was married and if she liked her body. He allegedly told her he liked her breasts.

As the patron tried to exit the office to obtain a money order for related fees, the deputy blocked her path and grabbed her breasts. The patron came back to the inspection area once she had obtained her money order. The deputy got into the passenger side of her vehicle and directed her to drive into the parking structure. As the patron started driving through the parking structure, she saw the deputy was masturbating over the top of his clothing. The patron received a phone call on her cell phone and told the deputy she had to leave to attend to a family emergency. The deputy asked the patron to promise to come back. The patron drove with the deputy out of the parking structure and asked the deputy to exit her car. As he did so, he placed his hand on top of her hand which was grasping the vehicle stick shift and stroked it up and down as if he was masturbating. He then took the patron's hand and placed it on his penis, over his clothing. The patron pulled her hand back. The deputy then asked her if she wanted to see his penis and if she wanted to kiss his parts as he appeared to be unzipping his pants. The deputy again touched the patron in her in inappropriate places and the patron told him to exit the vehicle with the promise that she would return the next day.

The deputy denied all allegations. An outside law enforcement agency conducted the criminal investigation which was submitted to the District Attorney who declined to file the case for lack of sufficient evidence. After the administrative investigation and despite the finding by the District Attorney, the deputy was found to have violated numerous Department policies, including: Professional Conduct, General Behavior; Immoral Conduct; Derogatory Statements and Failure to Make Statements During an Administrative Investigation. The deputy was discharged. OIR concurred with the findings and disposition.

Case Four: Deputy has Sex with a Wheelchair Inmate

Deputies A and B were transporting inmates to court appearances. One inmate was being transported regularly to court where she was facing manslaughter charges for killing a person

¹ Under California state law, conviction of a felony disqualifies individuals from being peace officers so he would have been discharged had he not resigned.

while driving under the influence of alcohol. She was temporarily wheelchair bound due to the injuries she sustained during the traffic collision. Inmate and Deputy A began to communicate regularly during the transportation to court appearances. The inmate wrote numerous love letters to Deputy A. One day during transportation between the court and the jail and when no other inmates were in the van, Deputy A pulled the van over on a remote street while Deputy B took a nap in the front seat. The inmate then performed oral sex on Deputy A and subsequently had intercourse with him in the back of the transportation van.

The inmate later tattooed Deputy A's name and the date they had intercourse on her finger and wrist. The inmate told investigators a few weeks after she had intercourse with Deputy A, Deputy B had pointed a gun at her after he believed she may report the incident. The incident came to light when another female inmate told a deputy that she had been told by the inmate about her sexual relationship with Deputy A. LASD's Internal Criminal Investigations Bureau then conducted a criminal investigation and submitted the case to the District Attorney who declined to file criminal charges due to lack of sufficient evidence. During the administrative investigation both deputies denied all allegations but the Case Review panel found numerous policy violations. Both Deputy A and B were found in violation of General Behavior; Fraternalization; Obedience to Laws, Regulations and Order; Performance to Standards and False Statements During an Internal Affairs Investigation. Both deputies were discharged and are currently appealing their cases through the Civil Service Commission. OIR concurred with LASD's decision to terminate the deputies.

Case Five: A Deputy Attempts to Take Inappropriate Photos of Court Patron

A court clerk watched as a deputy entered the clerk's lobby and surreptitiously used his cell phone under a female adult patron's skirt to take a picture. She reported what she witnessed to fellow employees and a Sheriff's Department supervisor was then informed. Surveillance camera footage appeared to corroborate the witness's allegations. The surveillance footage showed the deputy walking into the office area with papers and a cell phone in his hands. He then left for a few moments and returned but this time with the cell phone open and the screen glowing. The deputy is seen walking up behind the woman and then crouching down behind her with his cell phone still on and glowing in his right hand.

When initially confronted, the deputy denied ever being in the clerk's office that day and stated he had no idea what the investigators were talking about. During a subsequent interview the deputy admitted being in the clerk's office, but only to chat with employees. He claimed he saw a piece of paper on the floor near a woman and picked it up asking if it belonged to her. He alleged that the woman said it was not her paper. Investigators examined the phone but found no photographs of the alleged incident.

The deputy then volunteered to provide more information and admitted that he had intended to take a photograph under the skirt of the woman but changed his mind at the last moment. Initially his intent was to take the photo and send it to a friend with whom he had exchanged similar photos in the past. The next day he contacted the criminal investigators and made statements which were perceived to be intended to curry favor and sympathy.

Following the investigation by the Internal Criminal Investigations Bureau, the District Attorney charged the deputy with Disorderly Conduct, Unauthorized Photography Through or Under Clothing (Penal Code § 647(j)(2)). He subsequently pled nolo contendere to the charge and was placed on probation.

LASD's Case Review panel found that the deputy had violated a number of policies: Professional Conduct; General Behavior; Immoral Conduct; Performance to Standards; Conduct Towards Others; and Obedience to Laws, Regulations and Orders as it related to his actions in the clerk's office. He was also found in violation for Failure to Make Statements and/or Making False Statements During Departmental Investigations for his conduct during the investigation. For his later contact with investigators where he made statements trying to elicit sympathy he was found in violation of policies prohibiting Obstructing and Investigating / Influencing a Witness; and Failure to Cooperate During a Criminal Investigation. For all those findings, the deputy was discharged from the Department. OIR concurred with the findings and the disposition.

Case Six: Sergeant Repeatedly Harasses a Civilian Employee

While a Department manager was making rounds in of his station in the very late hours he heard voices coming from an interview room in a portion of the station not used during the night time. Upon checking he noticed that there were no lights on in the interview room and that a sergeant who had recently transferred from that unit and a female civilian employee were inside. Suspicious, the manager went to get another supervisor to act as a witness. When he returned, the lights were now on in the interview room and shortly afterwards the sergeant and the civilian employee exited. The sergeant quickly walked out of the station and drove away.

The manager asked the female employee what was going on and she responded, "Will you believe me if I told you?" She went on to describe the sergeant's behavior while he was still assigned to the station and she was a new trainee employee with the LASD. She described how the sergeant would arrange for her to meet him in a conference room on numerous occasions, where he would close the door and romantically hug her. She said that while hugging her he would touch her buttocks and attempt to kiss her. Because of the fear of losing her job, she did not report the misconduct.

The employee explained that when the sergeant transferred out of the unit she had hoped the behavior would end but she was surprised when he showed up at the station that night. She explained that he asked her to follow him and he led her to the darkened section of the station

and into the interview room where he once again inappropriately hugged her.

A criminal investigation was initiated for suspicion of sexual battery and false imprisonment; however the District Attorney declined to file any criminal charges. During the administrative investigation the sergeant claimed that he had only stopped by his former station to use the bathroom. He saw the civilian employee working and she asked to speak with him. Even though she did not say she wanted to discuss something in confidence or in a private setting, he led her to the secluded area of the station where they spoke about life issues. He claimed that he left the lights off because he was tired and described them hugging mutually. He denied hugging her closely, moving his hands down to her buttocks or trying to kiss her.

Internal Affairs investigators contacted other female civilian employees in the unit. One witness told investigators that the civilian employee had told her in the past that the sergeant had wanted to meet her in the unit's parking lot and that it made her so uncomfortable that she walked a different route to her car to leave that day. Four female employees described their experiences being alone in meeting rooms or offices with the sergeant and that he hugged them inappropriately, tried to touch their buttocks or tried to kiss them.

At the completion of the investigation, the matter was heard by the Equity Officer Panel which concluded that the sergeant had violated the Department's policies against Sexual Harassment and Inappropriate Conduct Toward Others (based on Sex). The sergeant was discharged by the Department and the parties later entered into a settlement agreement where he agreed to resign while the charges remained on his record as "founded." OIR concurred with the disposition and the settlement.

Case Seven: Inappropriate Relationship with Domestic Violence Victim

A station detective investigated a Domestic Violence case involving allegations that the alleged victim's estranged husband had violated a restraining order she had against him and threatened to kill her. After concluding his investigation, the District Attorney filed a felony criminal threats charge and two misdemeanor counts of violating a restraining order. At trial, the estranged husband alleged the detective was engaged in a sexual relationship with his wife and had presented false testimony against him. In support of these allegations, he presented evidence that the detective had added his wife as a "Friend" on his Facebook account during the pendency of the investigation and had sent her a message referring to her as "precious" and stating he missed her a lot. Both the detective and the alleged victim denied they were engaged in a sexual relationship. However, the Facebook evidence did cause the jury to question the alleged victim's and the detective's credibility. The estranged husband was acquitted and thereafter filed a personnel complaint against the detective as well as a federal civil lawsuit alleging the detective violated his civil rights. The jury found for the estranged husband and awarded a judgment of \$450,000.²

While the sexual relationship between the detective and the alleged victim could not be proven, the Department found the detective had violated the General Behavior and Performance to Standards policies by adding the alleged victim as a Friend on his Facebook page during the pendency of the investigation, by sending her an unprofessional message, and by failing to disclose the information to the prosecuting attorney prior to trial. The detective was removed from his position as a Bonus Deputy which essentially means he can no longer work as a detective and will no longer receive the increase in pay awarded to Bonus Deputies. OIR concurred with the Department's findings and discipline.

Case Eight: Deputy Accused of Rape by Girlfriend Met During a Service Call

Not all cases are obvious volitional misconduct but highlight the risks associated with deputies attempting to strike up a relationship with people that they meet on service calls.

A deputy met a family with an eighteen year old daughter during a call for service to the recreational vehicle where they lived. According to the young woman and her father, the deputy started coming around their residence on and off duty to "check up" on them and her several siblings. He would bring snacks and developed a friendship with the family. The daughter agreed to go on a ride along with the deputy because she was interested in his work. She later alleged that the way he acted around her the night of the ride along made her uncomfortable. On a later date the deputy came to their residence again and asked her father if he could take her to the movies. Her father agreed and so she went to a movie with the off duty deputy. She alleged that he made her feel uncomfortable by touching and caressing her back and kissing her on the cheek.

The very next day, the two went out again to have dinner together and the next day, he returned again and told her that he would like her to meet his parents. She went along where he introduced the young woman as "his girl" to his parents. She said they spent two nights in the house as a guest in a separate bedroom. On a later date she again spent time in his parent's house to celebrate the deputy's birthday. She alleges that the next morning the deputy came into her room and raped her. Later that day she went to a local hospital for an examination and made the rape allegation.

Another police agency criminally investigated the allegation. The deputy's parents were interviewed who said that the deputy had befriended the family and bought food and a generator for their RV. They said that it appeared to them that their son and the young woman were in a relationship together and that - other than the first night - they stayed in the same bedroom. In all, the deputy and the young woman knew each other for about six weeks when the rape allegation was made. The deputy's father also explained that they had taken the young woman to their

² The jury's verdict was subsequently vacated as part of a settlement agreement.

dentist where she had two root canals performed. The deputy agreed to be financially responsible for the expenses.

Investigators learned that a witness was claiming that the young woman's father was trying to set up a deputy. They contacted the witness who said he knew the family and that the father was "constantly scamming people." The witness said that a about month earlier the woman's father had told him that he was setting up a "stupid" deputy. The witness also recounted that he drove the woman and her father to a hospital for an alleged burn on her leg. Only later did he learn that she went to the hospital to claim that she had been raped. He said as he drove them to the hospital neither seemed upset and that they were acting "jovial."

The outside agency investigators had significant difficulties gaining the cooperation of either the female complainant or her father to submit to an interview to describe their allegations. They did, though, provide photos that had been taken surreptitiously of the deputy and the young woman throughout their contacts at the RV. There were also photos of food that the deputy brought to the family and were in a folder titled "bribes for the kids." The family suddenly left the Los Angeles area before the investigation was completed.

Ultimately, no criminal charges were filed against the deputy who appeared to have been the victim of an elaborate scam. The administrative investigation was concluded and the determination was made that the deputy had violated the policies of General Behavior and Obedience to Laws, Regulations and Orders for initiating a relationship with an eighteen year old female while on-duty and continuing that relationship in both an on-duty and off-duty capacity. OIR concurred with the disposition.

Similar Cases from Prior Years:

While the just described incident was adjudicated since OIR's last Annual Report, there have been similar instances in recent years where a deputy returned to the location of a call for service for apparently non-law enforcement reasons then led to serious policy violations. The Civil Service Commission recently upheld the discipline imposed on a deputy who returned to a residence ostensibly to check up on the welfare of a young woman who had called the Sheriff because she was in a dispute with her ex-boyfriend. The deputy went inside while his partner waited in the radio car. Within hours, the woman accused the deputy of sexually assaulting her. The deputy asserted that he was only checking on her welfare. While the evidence could not establish that the assault took place, DNA testing strongly suggested that they had kissed. The deputy claimed that his DNA that had been found around her mouth area was because he had lit a cigarette for her while she claimed he had kissed her.

In another similar incident, deputy completed a call for service regarding a family disturbance. He then returned to the residence while off duty that same day as well as the following day. He romantically pursued the adult daughter. The deputy drove her in his personal vehicle, told her he wanted to be in a relationship with her and touched her romantically. Once back at the parent's home, he sat next to her on a couch and tried to hug her several times as she pushed him away. Later he also exchanged text messages with her. The family informed the Sheriff's Department of his actions after he came back the next day. The deputy was disciplined for violating the policies of Professional Conduct and Immoral Conduct. The matter is pending with the Civil Service Commission.

Policy Does Not Prohibit Personal Relationships

While several of the incidents described above are obvious and egregious violations of policy, no particular LASD policy prohibits a deputy from striking up a romantic relationship with someone they meet on a service call. Potential policy violations center on the previously mentioned Professional Conduct and Immoral Conduct policies. While a deputy is expected to use common sense, the Department should consider a more explicit rule prohibiting deputies from returning to the location of a service call for non-official reasons. The LASD does have a very explicit policy prohibiting personal contact between inmates, felons and recent inmates.

As it appears that a number of allegations of misconduct have risen from deputies returning to residences after a call for service, OIR asked the Department to review its Manual of Policy and Procedures (MPP) and Field Operations Directives and found that it does not have policy that either directly or indirectly addresses the issue of pursuing relationships with civilians met while on duty. OIR is formulating recommendations to present to LASD regarding additional mechanisms designed to prevent deputies from finding themselves in potential career ending situations and, once formulated, will be presenting those ideas to LASD.

Lies and Other False Statements

What is a lie and what makes it actionable from a disciplinary point of view, and worrisome from an oversight point of view? The truth is, most everyone lies at some point, and deputies are no exception. Some deputies tell “big” lies involving the planting of evidence and some tell “small” lies involving taking a sick day when they are perfectly healthy. At the same time, deputies are trained that lying is sometimes appropriate during a challenging interrogation and is considered “good police work.” Suspects, for instance, are sometimes falsely told that their fingerprints were found on a gun, or that their DNA has been confirmed at a crime scene. These lies are intended to elicit a truthful admission of ownership of the gun by the suspect, or of acknowledging their connection to a person or place.

Herein lays the difficulty in ferreting out actionable lying: Lying during an interrogation is often commended as a necessary evil to get to a larger truth. However, lying on a police report can lead to criminal prosecution and/or administrative sanctions, up to and including being fired. Lies on an application for employment, and lies of omission or commission during an investigation into misconduct are also actionable and can result in getting fired.

In this section, we first discuss two recent administrative investigations involving the filing of false police reports. We then discuss a case where a deputy omitted information from his application for employment and a case involving three deputies who lied about a force incident

with an inmate. Next, we discuss how a founded administrative investigation involving allegations of dishonesty or moral turpitude on the part of a deputy can affect a criminal defendant's constitutional right to a fair trial. Finally, we note how different jurisdictions have chosen to address the constitutionally required disclosure of information relevant to a peace officer's credibility.

Administrative Investigations Involving False Statements

Filing a False Police Report

Filing a false police report regarding the commission or investigation of a crime is not simply an error in judgment; it is a crime. At the prosecution's discretion, the crime may be filed as a misdemeanor or a felony. The crime and punishment is set forth in Penal Code section 118.1 as follows:

Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years.

Filing a false police report also violates Department policies. Since the publication of OIR's last report, two false police report cases have gone through the Department's disciplinary process. In the first case, the District Attorney's Office filed felony charges against the involved deputy. In the second case, however, the prosecutor did not file any charges, so the consequences were purely administrative. As will be discussed in more detail below, the decision to file or not file a charge can affect the administrative investigation. However, because the burden of proof for an administrative investigation is a preponderance of the evidence, rather than the higher "beyond a reasonable doubt" standard required for a criminal conviction, the Department can discipline a deputy for filing a false police report even if he or she is not criminally prosecuted.

Case One: Gun in Planter

A deputy conducting a patrol check of a motel parking lot saw a male and female arguing. According to the deputy's report, he got out of his patrol vehicle to check on their welfare and as he approached them, the male spontaneously said, "come on, all I got is some meth." The deputy then asked the man if he had anything else and, according to the deputy, the man said, "I don't think so, you can check." The deputy then indicated in his report that while searching the man, he recovered a loaded firearm

concealed in his right side pants' waistband and a clear plastic baggie containing a substance resembling methamphetamine. The man was then placed under arrest. The female was asked to step away from them but repeatedly approached and was arrested for obstructing a peace officer.

When a station detective interviewed the female the next day, the female told him the motel manager was outside talking to them when the deputy approached them and that the deputy recovered a gun from a planter and not the man's person. The detective interviewed the motel manager who stated that when the patrol vehicle pulled into the parking lot, the man walked away quickly and dropped an unknown object into a planter. He then turned around and walked back toward the deputy. Surveillance cameras were present but not functional at the time. The detective thereafter called the deputy and explained what he had been told by the female and the motel manager. The deputy confessed that he had in fact recovered the gun from the planter after the man had tossed it. When asked why he would report having found the gun on the man's person, the deputy explained that he just wanted to make the arrest stick. The man had been previously convicted of four felonies which meant that simply possessing a gun was a violation of his parole/probation and when the deputy had presented the gun to him, he denied the gun was his; so the deputy decided to change the facts in his report so as to link the man more closely to the gun, which would increase the chances of returning him to prison. As a result of the investigation that was conducted by the station detective, the man and woman were both released and no charges were filed with the District Attorney.

The false police report case was then referred for investigation to the Department's Internal Criminal Investigations Bureau and later presented for filing to the District Attorney's Office. Eleven months after the case was presented, the District Attorney filed one felony count of filing a false police report and one count of perjury by declaration, in violation of Penal Code sections 118.1 and 118, subdivision (a), respectively.¹ The deputy entered into a plea bargain and pled no contest to a count of misdemeanor filing a false police report in exchange for dismissal of the felony charges and a three-year probationary sentence with credit for one day in custody. Based on the facts developed in the criminal investigation, the criminal conviction and the contents of the deputy's administrative interview, the Department found the deputy to be in violation of policies pertaining to Performance to Standards, False Statements, False Information on

¹ During the time that the case is being investigated and while the District Attorney is reviewing the case to determine whether or not to file charges, deputies being investigated for serious criminal conduct are generally relieved of duty with pay. It is not until charges are actually filed that the Department can relieve them of duty without pay.

Records², Obedience to Laws, Regulations and Orders, and General Behavior. He was discharged and OIR concurred with the outcome. The employee is currently appealing his discipline to the Civil Service Commission.

This case is a tragedy. The well-respected, hardworking and seasoned deputy threw away his career by taking a “short-cut” to make an arrest stick. He lied in order to increase the likelihood of having a “bad” guy taken off the street and locked up, arguably a lie with a laudable motive. However, the deputy failed to realize or comprehend that such lies made by peace officers erode the trust bestowed upon them by the public and violate the very laws they have taken an oath to uphold. And by lying in the report, the deputy made it impossible for the District Attorney to pursue any charges against the suspect.

Case Two: “Buying a Report”

Trainees are typically assigned to work with Field Training Officers while they are on patrol training. On some occasions, however, a Field Training Officer (FTO) is not available so a trainee is paired with a seasoned deputy. On this particular trainee’s first day of patrol training, an FTO was unavailable so she was assigned to work with Deputy A – a veteran deputy. While handling a deceased person call, they were assigned to respond to an assault with a deadly weapon call. Deputy B was assigned to assist on the call. Because the trainee and Deputy A were tied up with the deceased person call, Deputy B responded to the assault with a weapon call, interviewed witnesses, recovered a knife, and arrested a suspect. Deputy B was contacted by Deputy A, who offered to take the arrest and write the report for training purposes. Deputy B agreed and related information regarding who he had contacted, the statements that were made, and the evidence he recovered. Deputy B then turned the suspect and the evidence over to Deputy A who then told the trainee they would be “buying the report” after Deputy B left.

Deputy A told the trainee “buying a report” meant taking the call from another deputy and writing the report as though they were there and handled the call. After booking the suspect, they went into a report writing room where Deputy A dictated what the trainee should write in the report. When he dictated that they responded to the call, questioned the witnesses, recovered evidence, and arrested the suspect, the trainee questioned him about it. However, Deputy A told her that it was the way they needed to do it or they would get in trouble.

Three days later, the trainee received a subpoena to appear in court for the above incident but did not feel she could testify to what was written in the report. She called

² MPP § 3-01/100.35, False Information in Records, states, “Members shall not make false official records. They shall not knowingly or willingly enter, or cause to be entered, in any Department books, records, reports, computer or electronic data systems, any inaccurate, false or improper police information or material matter.”

Deputy B and told him how Deputy A had instructed her to write the report. Upon learning that his participation in the arrest was omitted from the report, he advised her to contact the detective who filed the case. The detective relayed the information to the District Attorney, who then dismissed the charges filed against the assault with a knife suspect. The information was then referred for investigation to the Department's Internal Criminal Investigations Bureau.

After the investigation was completed, the case was presented to the District Attorney's Office for filing consideration. The District Attorney reviewed the case for the next eight months and declined to file any charges. The District Attorney concluded the evidence was insufficient to prove the deputies either acted with the necessary criminal intent required to prove the crime of filing a false report or to prove the false statements made in the report were material. While the evidence showed Deputy A intentionally directed the trainee to write statements in the report asserting they responded to a call when they did not, and also wrote part of the report himself, the District Attorney felt the intent requirement could not be met because the deputies did not alter the facts reported to them by Deputy B; they simply misrepresented who conducted the investigation.

On the issue of materiality, the information is material if it "could probably have influenced the outcome of the proceedings." (See *People v. Rubio* (2004) 121 Cal.App.4th 927, 929.) The District Attorney opined that in order to prove materiality, they would need to prove the misrepresentation would influence the outcome of the criminal proceedings *to the detriment of the suspect*. Here, the District Attorney concluded there was no detriment to the suspect since the felony charges filed against the suspect were dismissed.

After the adjudication of the criminal matter, the involved deputies were named as subjects in an Internal Affairs investigation. During the internal investigation, Deputy A admitted to not responding to the call, to dictating the report to the trainee as if they had responded to and handled the call, and to authoring parts of the report. He said he did so because Deputy B was about to get off work and writing the report would eliminate the need for Deputy B to work overtime. Deputy A was found in violation of the Performance to Standards and False Information in Records policies. He was discharged and is currently appealing his discipline to the Civil Service Commission.

Although the trainee reported the incident to a supervisor a few days later, the Department found her in violation of the Performance to Standards policy. The trainee did not meet the Department expectations by waiting until she received a subpoena to appear in court before reporting the misconduct. The Department initially recommended discipline in the range of a 10-15 day suspension, but after discussions with OIR, agreed to reduce the discipline to a five day suspension. OIR was of the opinion that a lower level of discipline was warranted due to the fact that this all occurred her first day of patrol training and the trainee's eventual courageous decision to report the

misconduct to a supervisor, notwithstanding the fact that she waited until she received a subpoena to do so.

Lying in Employment Application

Lying in the pre-employment application for the Sheriff's Department can result in serious administrative consequences. Applicants are warned at the time they complete their application that any false statements or omissions made in the application shall be cause for removal from the eligibility list. If the false statement is discovered after an applicant is hired/appointed, then immediate discharge is warranted.

Case Three – Lying about Financial Background

The Department received a phone call from a deputy's ex-girlfriend who alleged the deputy had lied in his application for employment when asked about his financial obligations and failed to disclose a monetary judgment against him which resulted in the garnishment of his wages.

During the administrative investigation, OIR also learned the deputy had been employed as a police officer for a different agency prior to joining LASD. While employed for the other agency, the deputy violated a defendant's Fifth Amendment right by deliberately referencing a defendant's out of court statement which had been excluded by the trial judge. The appellate court found the deputy intentionally told the jury about the statement in order to prejudice the jury and reversed the defendant's felony conviction.

In the administrative case, there was sufficient evidence to prove that the deputy lied in the employment application about the extent of his financial obligations and failed to disclose that his wages had been garnished. The Department found the deputy violated the Department's False Statements in Records policy. He was discharged and is currently appealing his discipline to the Civil Service Commission. OIR concurred with the Department's findings and discipline.

Lying About a Force Incident

Making false statements during an administrative interview not only bolsters the strength of the underlying alleged offense, but can also serve as the basis for a separate false statement charge. In this case, the evidence indicated several deputies were involved in an unreported use of force on an inmate and participated in a cover-up. Once the force incident was discovered, the involved deputies were interviewed. Their statements contradicted other evidence which strongly supported a conclusion that the employees were making false statements.

Case Four – “See No Evil, Hear No Evil”

A vendor reported to deputies her belief that an inmate had stolen items. Deputies A and B removed the inmate from the dormitory and moved him to an elevator landing area that was out of the view of security cameras.³ The inmate alleged that Deputy A punched him several times in the rib cage and strip searched him in the presence of Deputy B. The video footage showed Deputy A and the inmate going out of the camera’s view into the landing area. Deputy B was shown standing in the hallway a few feet away at times and then walking out of view into the landing area before returning to the hallway. When Deputy A and the inmate reappeared on camera, the inmate was wearing one shoe. Deputy A later told investigators that the inmate tensed up during the search, so he jabbed the inmate once on the side of his stomach with his hand. When investigators interviewed Deputy B, he admitted that he was standing in the area “providing security,” but denied ever hearing or seeing an altercation take place. Investigators showed Deputy B the video surveillance footage but he claimed he was unable to identify Deputy A even though every other witness who was shown the same video recording was able to make an identification.

The inmate was then returned to his dorm where he promptly confronted the vendor about reporting on him. The vendor immediately told Deputy C the confrontation. Deputy A then entered the dorm, removed the inmate and walked him to an area next to the control booth. Deputy A placed paper over the window of the dorm door. A custody assistant ordered the other inmates to return to their bunks. At this point, Deputy C entered the hallway and stood near the control booth. The inmate reported that Deputy A pushed his face against the wall, which caused a cut on his nose and led him to bleed profusely. The inmate’s clothing was so bloody that Deputy A retrieved a fresh outfit and brought it to the inmate and sent him back into the dorm. Deputy A did not report the force, but later claimed to investigators that the inmate made a “fast movement” towards him so he pushed his face against the wall. He also said Deputy C told him he had “better handle the paperwork on that,” and “you are on your own,” after seeing the injury and blood on the inmate.

Deputy A also ordered an inmate worker to clean blood off the hallway wall. Scientific investigators later recovered evidence of blood from the wall and identified the inmate as the source of the blood. Deputy C failed to report the use of force she witnessed. During the investigation, Deputy C said she was initially standing near Deputy A “providing security” with her back turned. She then turned around and saw the inmate with blood on his face and Deputy A told her he had “shoved his head into the wall.” Deputy C said she “freaked out” and did not know what to do and did not want to be labeled as

³ At the time of the incident in 2010, the facility had a limited number of cameras.

a “snitch.” Another inmate told investigators that Deputy A ordered him to beat up the inmate after the incident, but that he refused. Other inmates corroborated his claim.

Both Deputies B and C essentially acted as lookouts while Deputy A meted out his own form of punishment to the inmate for suspected rule violations. The falsehoods were further amplified by the incredible statements by Deputies A and B. It is simply not believable that Deputy B could be standing a few feet from the elevator and then return to the landing on multiple occasions and not know what Deputy A was doing. That Deputy B was unwilling to identify Deputy A on the video surveillance when other witnesses were able to is further evidence that he was continuing to cover for Deputy A’s misconduct.

All three deputies were discharged. OIR concurred with the Department’s findings and discipline.⁴

The Constitutional Duty to Disclose Impeachment Evidence to Criminal Defendants

Instances of deputies lying in reports or during investigations do not simply affect the immediate case at hand. Instead, they may influence the outcome of every other case in which the deputy’s testimony is considered. This is due to the constitutional requirement that the prosecution disclose potentially exculpatory evidence to a criminal defendant, including evidence that relates to a witness’ credibility, and the California Supreme Court’s decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, which mandates disclosure of allegations of misconduct by peace officers.

Disclosure of Brady Evidence

In 1963, the United States Supreme Court in *Brady v. Maryland* (1963) 373 U.S. 83, held prosecutors are required to disclose evidence to criminal defendants that is either exculpatory or impeaching and material to either guilt or punishment. This means evidence relevant to the credibility of a material witness must be disclosed to the defense. False reports previously made

⁴ The incident was initially investigated by ICIB after the inmate reported the incident to a supervisor on the following shift. The case was submitted to the District Attorney for felony filing consideration in December of 2010. In March of 2011, the crime lab determined the blood evidence matched the inmate’s DNA sample. The District Attorney declined to file felony charges on October 18, 2011 and referred the case to the City Attorney for possible misdemeanor charges. The City Attorney had concerns about the District Attorney’s declination and referred the matter to the State Attorney General for review in February of 2012. The Attorney General then asked the D.A. to reconsider its declination decision and on April 16, 2012, the District Attorney again declined charges and again referred the matter to the City Attorney. On June 14, 2012, the City Attorney declined to file charges “solely” because the one year statute of limitations to file misdemeanor charges had already expired when the District Attorney declined to file charges the first time.

by a material prosecution witness have specifically been held to qualify as impeachment evidence. (*People v. Hayes* (1982) 3 Cal.App.4th 1238, 1244.) Similarly, evidence in personnel records such as founded administrative investigations for false statements qualify as impeachment evidence. (See *Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998, 1016; and *United States v. Giglio* (1972) 405 U.S. 150.) Moreover, even information that a judge has thrown out a confession or vacated a conviction due to a violation of *Miranda* or any other constitutional right can qualify as impeachment evidence under *Brady*. (*Milke, supra*, at p. 1006.)

The requirement to turn over impeachment and exculpatory evidence applies to evidence known to police investigators, whether or not the prosecution is aware of the evidence. In other words, if a law enforcement officer is privy to impeaching or exonerating information, that officer is part of the “prosecution team” and has an obligation to turn over the information to the prosecutor under *Brady*. (See *Kyles v. Whitely* (1995) 514 U.S. 419; see also *United States v. Blanco* (9th Cir. 2004) 392 F.3d 382, 393-394.) Conversely, “it is incumbent upon the prosecutor to learn of any favorable evidence ‘known to the others acting on the government’s behalf in [a] case, including the police.’” (*City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, 8.) If law enforcement does not turn over exculpatory evidence to the prosecutor and that evidence is later discovered, it can result in reversal of the conviction whether or not the prosecutor had actual knowledge of it because it is the prosecutor’s duty to learn of any such evidence. (*Ibid*; see also *Youngblood v. West* (2006) 547 U.S. 867, 869-870, and *Aguilar v. Woodford* (9th Cir. 2013) 725 F.3d 970, 982.) One such reversal occurred last year when Frank O’Connell was released from custody after serving 28 years in prison for a murder conviction. The judge reversed the conviction, finding the prosecution violated *Brady* by failing to turn over notes relevant to the eyewitness testimony and dying declaration evidence presented at trial. The notes were in the possession of LASD homicide detectives and had not been turned over to the prosecutor.

In 2002, the Los Angeles District Attorney’s Office created a *Brady* protocol. The protocol set forth procedures for handling potential *Brady* material. In addition, the protocol created a database, referred to as the *Brady* Alert System, where the *Brady* Compliance Unit stores impeachment evidence on peace officers. This database can be accessed by prosecutors and information is disclosed to defense attorneys on a case by case basis when an officer is a material witness in a case. However, the District Attorney’s Office has determined that only impeachment evidence proven by “clear and convincing evidence” should be included in this database.

The legal standard chosen by the District Attorney’s Office is lower than the beyond a reasonable doubt standard, but higher than the preponderance of evidence standard required to sustain an administrative investigation for a policy violation against a peace officer. Because of this heightened standard, evidence of prior founded administrative investigations for which a deputy has been disciplined is not automatically turned over to the prosecutor by the Sheriff’s Department. Also, no Sheriff’s Department policy specifies the circumstances where founded allegations relevant to a peace officer’s credibility (such as founded charges for false statements or other policy violations involving moral turpitude) are to be turned over to the prosecution,

absent a specific request. Prosecutors in Los Angeles County are instructed under their Brady policy that, in order to make a request from the law enforcement agency to have them inspect the personnel files of a particular peace officer, “the police report, statements provided in witness interviews, and/or written documentation or statements provided by the law enforcement agency must establish that a law enforcement employee is a material witness and that there may be evidence concerning that material witness which is favorable to the defendant to which the defense may be entitled.” (*Special Directive 10-05*, Los County District Attorney, September 20, 2010, <http://da.lacounty.gov/pdf/sd10-05.pdf>.)

However, neither members of the Sheriff’s Department who have been found to have violated policies involving moral turpitude or dishonesty nor their supervisors are instructed to turn over this information to the prosecution, and any such evidence would not appear on the face of any police report or be part of an investigation involving an unrelated arrest of a suspect being prosecuted. Hence, it is highly likely that personnel records containing founded allegations involving moral turpitude or dishonesty are not being turned over to the defense absent the formal filing of a *Brady* motion by the defense.

Disclosure of Pitchess Information

In addition to the constitutional requirements of *Brady*, the California Supreme Court in *Pitchess v. Superior Court*, *supra*, 11 Cal.3d 531, held that criminal defendants were entitled to discovery of citizen complaints alleging misconduct by peace officers. The Legislature codified this judicially created right four years later in Penal Code sections 832.7, 832.8; and Evidence Code sections 1043 through 1045. When a trial court determines such information from a peace officer’s personnel file is relevant, it can order limited disclosure of the names, addresses, and telephone numbers of individuals who have witnessed or alleged officer misconduct. Such information must remain in an officer’s personnel file and be available for disclosure, pursuant to Penal Code section 832.5, for only a period of five years.

The Interplay Between Pitchess and Brady

Because Penal Code section 832.7 states that peace officer personnel records are confidential and shall not be disclosed except by request for discovery under Evidence Code section 1043 and 1046, there has been much debate about whether a law enforcement agency can provide information contained in personnel files to prosecutors absent a formal discovery request and order. The California Supreme Court in *City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, however, noted Penal Code section 832.7 could not be used “to defeat the right of the prosecutor to obtain access to officer personnel records in order to comply with Brady before a court where a case is pending.” Some prosecutorial agencies have nonetheless been reluctant to ask law enforcement agencies to provide them with information contained in personnel files and have declined to create a database containing *Pitchess/Brady* information on officers. While the Los Angeles District Attorney’s Office created a “*Brady* List” in 2002, information on deputies with founded disciplinary actions involving acts of dishonesty, i.e. policy violations that have

been proven by a preponderance of the evidence, are not systemically solicited nor voluntarily provided for inclusion on the list. Instead, it appears that the vast majority of deputies added to the list are those who have been investigated for criminal misconduct which has come to the District Attorney's attention. Recent District Attorney Special Directives issued on June 4, 2013, in fact list findings of misconduct that reflect on a witness' truthfulness, bias or moral turpitude as examples of possible impeachment evidence, but the directives note the burden of proof at administrative hearings is "preponderance of the evidence." The directives also reiterate that its prior policy set forth in Special Directive 10-05 is still in effect and only information the Brady Compliance Unit determines has been proven by "clear and convincing evidence" will be included in its database.⁵

Brady Policies in Other Jurisdictions

At least six other counties in California (Humboldt, Lake, Santa Barbara, Santa Clara, Ventura, and Yolo), have established *Brady* policies that require inclusion of officers in their "*Brady* list" based on a lesser "substantial information" standard. Evidence based "on mere rumor, unverifiable hearsay, or a simple and irresolvable conflict in testimony about an event" does not meet this burden.⁶

In Ventura County, prosecutors do not examine law enforcement personnel files, *per se*, but their *Brady* policy specifically requests all law enforcement agencies within their jurisdiction continuously review the personnel files of their employees for any sustained finding of misconduct that reflects on the truthfulness or bias of the witness, for any criminal convictions, and for any pending criminal charges involving either a felony or moral turpitude offense. If any such information exists, the police agencies are responsible for informing the Ventura County District Attorney's Office that an officer has information in his or her personnel file that may be *Brady* material. This disclosure then triggers placing the officer on a list maintained by the Writs, Appeals, and Training Unit. When that officer is a witness on a case, the prosecutor handling the case must consult the list and determine if the officer's testimony is material. If so, the prosecutor files a motion for an *in camera*⁷ review of the officer's personnel records pursuant to *Pitchess* and/or *Brady*.

More recently, after a scandal surfaced involving a crime lab employee who was skimming drugs and who had a prior undisclosed conviction for domestic violence, the San Francisco Police

⁵ See *Special Directive 13-01* and *Special Directive 13-02*, Los Angeles County District Attorney, <http://da.lacounty.gov/topdocs.htm>.

⁶ *Final Report*, California Commission on the Fair Administration of Justice, August 4, 2008, at p. 89, <http://www.ccfaj.org/documents/CCFAJFinalReport.pdf>.

⁷ An *in camera* review is a review of personnel files conducted in the judge's chambers without the presence of the prosecutor, the defense counsel, or the defendant. The only persons present are the judge, the court reporter, and a representative from the employee's police department.

Department worked with the San Francisco District Attorney's Office to similarly establish new policies and procedures whereby the Police Department would systematically provide information to prosecutors on its employees' sustained misconduct contained in the personnel files and prior criminal convictions.

Even more expansive than the expectations of state prosecutors are those of federal prosecutors. When handling federal criminal prosecutions, the United States Attorney's Office requires law enforcement agencies to notify them of all allegations of officer misconduct, even if the allegations were not sustained, were not credible, and resulted in exoneration (*United States Attorney Manual*, Title 9, Sec. 9-5.100; see also Lasko, R., *Agency Policies Imperative to Disclose Brady v. Maryland Material to Prosecutors*, *Police Chief Magazine*, March 2011.)

Conclusion

The failure to disclose exculpatory evidence is a constitutional violation and a leading cause for reversal of California criminal convictions. Because law enforcement has a separate constitutional duty under *Brady* to disclose impeaching and exonerating evidence, even absent a request by either the defense or the prosecution, OIR has long been concerned that current LASD protocols may not ensure full disclosure of *Brady* material contained in law enforcement personnel files. OIR has recommended that the Sheriff's Department evaluate its employees who have been disciplined for policy violations involving dishonesty or moral turpitude to see if their assignments are appropriate and to determine if any corrective action should be taken. OIR has also recommended LASD consider establishing protocols for communicating the information about founded administrative investigations relevant to a deputy's credibility to the prosecution even absent a request. LASD has been receptive to these recommendations and is currently working with OIR on developing a protocol on the issue. In addition, we were recently informed that the District Attorney's Office has expanded its *Brady* unit and is looking into both revising its policies and providing police departments with more guidance on this issue. We agree that more guidance is needed and look forward to working with the Department and the District Attorney's Office to ensure the constitutional requirements in this area are fulfilled

Video Cameras in Jail: An Effective Work in Progress

In our *Tenth Annual Report* we discussed the on-going process of installing surveillance video cameras at Men's Central Jail. At the time of publication, the Twin Towers and Inmate Reception facilities in downtown Los Angeles were not yet operational. Additionally, the Department was still formulating policy on how video footage should be used after a use of force incident. Simultaneously, the Department had implemented the Custody Force Review Committee (CFRC) to review significant uses of force in jail facilities which did not rise to requiring an Internal Affairs Bureau. The CFRC process allowed OIR to observe first-hand how Custody Division managers would use video surveillance footage to effectively review use of force incidents for both determining potential policy violations and for training purposes.

The process of blanketing the jails with surveillance has not been without hiccups. As will be discussed below, the initial recording settings sometimes undermined effective force and administrative investigations.

Here we will briefly trace the history of the installing cameras in the downtown jail facilities, discuss some of the problems confronted and policy decisions made by the Department and then assess its current effectiveness as a tool for accountability.

Installation History

In our October 2011 report, *Violence in the Los Angeles County Jails: A Report on Investigations*

and Outcomes, we wrote that the use of surveillance video cameras would serve a critical role in investigating force incidents and force allegations:

Clearly, video cameras can benefit the fact finder tremendously in determining exactly what occurred during a given encounter. OIR has long held and espoused the view that the installation of video cameras will not only help prove or disprove allegations of deputy misconduct, but likely will deter improper behavior in the first place. For that reason, we are heartened by the apparent activation of a too-long delayed plan to install cameras in Men's Central Jail and the Inmate Reception Center. We have also long advocated for the installation of cameras at all of the remaining jail facilities, particularly Twin Towers because of its high percentage of inmates with mental health issues.

The first wave of camera installations at Men's Central Jail was completed in November 2011 with 69 cameras in high security areas of Men's Central Jail. The installation was completed by February 2012 and the majority of cameras were recording and storing footage by that March. Today there are a total of 705 cameras installed in the facility. Since our last annual report, the installation was also completed for both the Twin Towers and Inmate Reception (IRC) facilities and those jails started recording in November 2012 with approximately 840 cameras.

The Department kept OIR up to date as the camera installation progressed. Facilities Services Bureau provided OIR with the proposed installation diagrams so we could provide our input. For example, several allegations were contained in the ACLU declarations that unreported force incidents had taken place in the laundry rooms attached to the 2000 and 3000 modules. The laundry rooms are secluded with no windows and one doorway; OIR wanted to assure that those areas were under surveillance. OIR attorneys also visited the facilities and gave suggestions for where we believed blind spots existed where there had been prior uses of force or allegations of force. We were heartened that our suggestions were taken seriously and cameras were installed in areas for which we raised concerns. Our feedback continued as we began reviewing uses of force which had been captured on camera and we saw some instances where the nearest camera was at such a distance that its footage was of limited evidentiary value. Again, the Department addressed OIR's concerns by installing additional cameras in those locations.

On the July 4th weekend of 2012, LASD personnel discovered that they were suddenly unable to retrieve recorded surveillance footage. Further inquiries revealed that the storage servers had suffered a wholesale failure. Video data for all the cameras in the downtown jail facilities (MCJ, Twin Towers and IRC) had been set up to route the information by high speed networking to a common storage room. Due to the urgency of the installation, the selected storage room did not have adequate cooling and ventilation for the racks of heat generating servers. To provide cooling, portable air conditioners were placed in the storage room. The room, though, did not have adequate ventilation and, as a result, the constant cooling caused condensation to form on the ceiling of the storage room. Over an extended period of time, the condensation caused the ceiling panels to

collapse and inundate the servers with water which caused the failure. As a result, footage stored between March and early July was lost and the system was off line until approximately July 27, 2012 for repairs and renovation of the storage room so that the same failure could not occur again. The shutdown did not affect the investigations of reported uses of force between March and the server failure as relevant surveillance footage of a force incident is normally downloaded and burned to DVD discs shortly after a force incident. Between July and August, though, force incidents were not being recorded by the surveillance cameras.

Policy Issues

In our *Tenth Annual Report*, we noted that “as more and more force incidents in Custody are captured on video, the Department has had to address numerous questions about how video evidence will be used in the investigations.” We observed that OIR had initial issues in finding common ground with the LASD over the proposed policies “governing the viewing of video by deputies who are involved in or witness an event.”¹ However, as a result of constructive dialogue between OIR and LASD, the difference in viewpoints was resolved which resulted in an effective policy that ensures that the involved deputies’ recollection of the event will be obtained free from the videotapes’ influence.

In July 2010, LASD issued a directive that when there is video of an incident under investigation, the investigator will inform the employee that there is a video before the interview and that it will be shown to the employee after the initial interview takes place. This directive was followed in many types of investigations, including those conducted by the Homicide Bureau. A similar procedure was also followed by the Internal Affairs Bureau. With the mass installation of cameras in jail facilities, concerns were raised by certain stakeholders that a uniform policy of not allowing deputies to see use of force videos prior to writing their reports would lead to unfair punishment when deputy recollection was inconsistent with what was shown on video.

OIR fruitfully engaged with executives and managers at LASD as well as other stakeholders and outside experts to find the proper path in determining whether it was more beneficial for a user of force or a witness to first write a report before viewing video evidence or seeing the video and then writing the report. We strongly advocated that obtaining a pure recollection of events from LASD personnel was the most important quality to capture in use of force investigations and thus initial force reports by involved deputies should be written before they see any video footage. We were mindful that due to lighting, distance, angle and other technical factors that what is depicted on video is not necessarily consistent with what actually occurred. The deputy union (ALADS) representatives were appropriately concerned that deputies would get in trouble for making false statements for honestly describing a force incident differently than what is depicted because of the impact that stress has on individuals’ ability to accurately discern events.

¹ *Tenth Annual Report*, September 2012, Office of Independent Review, at p. 27.

OIR conducted its own research to learn more about video policies in other jurisdictions and found that many police agencies have not systemically addressed the issue of what occurs first: writing the initial report or seeing video evidence.

In a public report written in the aftermath of the BART Police Department shooting of a train passenger Oscar Grant in the Fruitvale BART Station on New Year's Day of 2009, the authors stated:

Officers should not view video of an incident prior to being interviewed. Allowing involved officers to view video prior to an interview allows them to either subconsciously fill in the blanks where there are no memories of the incident or preplan for alibis for substandard conduct. Either way, allowing officers to view video of the event prior to the interview erodes the public's faith in the process and unnecessarily impacts the investigation.²

The same concern was raised in nearby Fullerton following the beating and death of Kelly Thomas. Fullerton Police Department's acting chief acknowledged that the decision to allow the involved officers to view the video first compromised, or at least damaged, the public's trust and confidence in the process. Despite OIR's position that first writing what occurred based on the user of force's memory was critical, we were mindful of ALADS and other stakeholders' concerns that deputies would be subject to discipline for any discrepancy between their report and what was shown on video. We acknowledge that the memory of a user of force will not be perfect. "Officers may honestly say they cannot recall some aspect of the incident or report information that conflicts with other evidence."³ That is the very reason, though, why seeing video footage of an incident from its different perspective could have an undue impact on a deputy's recollection of the events. In our review of the available research, we found ample evidence that seeing additional information than what was experienced (such as seeing the action from a different angle) can alter the memory of an event in the way that the BART Police Department report described. The research we reviewed stressed the importance of "minimizing post-event misinformation."⁴ While what is shown on a video is not necessarily "misinformation," it can certainly be different information than that recalled.

The Department undertook a very sober and thoughtful process to determine the best course of action. This included the establishment of a working group bringing Department executives, union leaders, OIR and outside expertise. As a result of the productive process, the Sheriff ultimately decided to formally adopt a policy which requires that deputies "prepare all necessary written

² *Public Report: Review of BART PD Policies, Practices and Procedures: New Year's Day 2009*, submitted to BART by Meyers, Nave Professional Law Corporation, at p. 5. http://www.bart.gov/docs/Meyers_Nave_Public_Report.pdf

³ "Police Responses to Officer-Involved Shootings," *NIJ Journal*, No. 253, Jan. 2006, <http://nij.gov/journals/253/responses.html>

⁴ "Brief Exposure to Misinformation Can Lead to Long-Term False Memories," *Applied Cognitive Psychology*, 26: 301-307 (2012).

reports related to a force incident prior to reviewing a video recording of the incident.” Once a supervisor has reviewed the first reports and the video, a deputy can view the video and provide a separate supplemental report stating that they observed the video and “that it either refreshed their memory, adding any corrective language, or that the original written statements were accurate.” The policy (MPP § 3-10/115.00 Video Review and Admonishment) also addressed the legitimate concerns that discrepancies between what a deputy writes in a report and what is shown on video would be held against the deputy:

Because Department personnel are required to provide a written report of their actions prior to viewing video recordings, the Department will not assume an adverse inference when personnel amend or supplement their reports if a video review prompts further recollection of incident details. Whether an adverse inference should be drawn from an amendment or supplement will depend upon the facts and circumstances in each case. Finally, the policy also contains an admonishment that shall be read to Department members before reviewing any video. The admonishment is a reminder that what is shown on video may depict events that the viewer did not see or hear or recall.

Allegations of Force

When anyone, including an inmate, alleges that a Department member used force, the person to whom the allegation is made has a duty to report it to their immediate supervisor who is obligated to immediately conduct an inquiry into the allegation.⁵ OIR examined alleged uses of force at Men’s Central Jail that were made by inmates or third parties in 2012. Based on records requested

⁵ The LASD’s Use of Force Reporting Procedures policy, MPP § 3-10/100.00, states in part:

“Allegations of force, whether made by the person upon whom the alleged force was used or by a third party, shall be investigated in a timely manner similar to a force investigation (e.g., interview the complainant and witnesses, collect evidence, gather documents, respond to the scene, take photographs, etc.). The Department member to whom the force allegation was reported shall report the allegation to their immediate supervisor (with a minimum rank of Sergeant). That supervisor shall immediately conduct an inquiry in order to determine the validity of the allegation (i.e., whether it is corroborated by statements and/or evidence). However, if that supervisor was alleged to have been involved in, or a witness to, the incident, the inquiry shall be assigned to another supervisor.

The supervisor conducting the inquiry shall adhere to the following guidelines:

- follow up on information provided by the individual making the allegation (i.e., interview person(s) whom the individual said were present and/or witnessed the incident, look for and collect evidence that the individual mentions);
- collect evidence and take statements;
- take photographs of the location, if appropriate;
- review any medical records (in cases of an inmate, review the inmate injury report). If an inmate injury report was not prepared for an inmate, ensure that one is prepared and the inmate is medically treated;
- photograph all visible injuries (if applicable); and, thoroughly document/describe all statements taken and evidence collected; and
- *determine if the force incident was recorded and secure any such recordings of the incident.”*

from and provided by MCJ Operations, OIR identified 36 force allegations which were asserted to have taken place in 2012.

Of those 36 alleged uses of force that OIR examined, in almost half supervisors were able to retrieve and view surveillance footage to assist in their inquiry:

Allegations of Force at MCJ in 2012		
Footage retrieved and viewed	16	
Not retrieved and viewed	19	
	Reason not retrieved	
	System not yet operational	10
	Inmate retracted allegation when interviewed	1
	Footage lost or off-line due to water damage	4
	Dormitory location	4
Unknown		1
Total		36

Once the CCTV system became fully operational in Men’s Central Jail by March 2012, most allegations of force could be resolved by reviewing surveillance footage. Exceptions at the time were misconduct claims which allegedly took place in the hospital module as well as the 5000 dormitory modules. The hospital modules are now equipped with cameras. The Department did not initially install cameras within the 5000 dorm living module, though such cameras are now part of the future installation plan. There are, however, cameras affixed in hallways just outside the dorms.

Case One

In one of the dorm complaints, an inmate complained that he was kicked while laying face down on his bunk during a search. When interviewed, the inmate changed his initial allegation and claimed that he was accidentally kicked by the deputy and refused to identify the involved deputy. Despite what appeared to be evasive answers by the inmate, the inquiry developed no further information and without video footage the only information to resolve the inquiry was the inmate and deputy statements.

Case Two

In another complaint, an inmate alleged that “pruno” (an alcoholic drink made in jails from fermented food) was found under his bunk during a search and that when he sat up a deputy roughly pushed him back down hurting his neck and back. The allegation was thoroughly investigated and the deputy said that he only verbally ordered the inmate to lie back down after he ignored several prior instructions to do so. Again, without any video footage, no determination could be made regarding whose version of the event was more accurate.

Of the 16 allegations in 2012 where video footage was available, the benefit of such evidence was clearly evident. In none of these 16 allegations did video footage corroborate that an unreported use of force or other form of physical misconduct occurred. Some of these allegations were quite vivid, but could not be borne out in any way by what was captured on camera.

Case Three

An inmate alleged that a deputy injured his wrists by violently pulling his handcuffed arms upwards, causing a shoulder injury. The video showed that a sergeant was present during the contact between the inmate and the accused deputy. The deputy is shown in contact with the inmate and there is no struggle between them or any force applied to the inmate. Based on the video evidence, the allegations were found to have no merit.

Case Four

An inmate claimed that an employee used his forearms to strike the inmate between his shoulders. He also alleged that the employee sexually assaulted him and slammed his head against metal bars. The camera system had only been recording for a few days at the time of the alleged incident. The footage showed the employee contacting the inmate but there was no struggle or force used, let alone a sexual assault.

Case Five

An inmate claimed that he was handcuffed when a deputy pushed him down an escalator. While he did have injuries, the medical staff opined the injuries were not consistent with a person being handcuffed. More vividly, though, the surveillance footage showed the inmate by himself and not handcuffed at the top of escalator. The inmate then bent down at the knees and completed a somersault down the escalator, injuring himself.

Case Six

An inmate claimed that deputies pushed him down an escalator. The particular inmate submitted made the allegation with the Department – and refused medical treatment

- and later made complaints directly to OIR and apparently also to the Ombudsman. Supervisors retrieved the surveillance video for the day of the alleged incident and found the relevant footage. The inmate was shown walking down the escalator with other inmates. No Sheriff's personnel were near him and there was no video evidence that he either fell or was pushed down the escalator.

Case Seven

An inmate claimed that a deputy threw him against cell bars which caused bruising to his shoulder and forehead. Supervisors located the relevant footage which did involve a reported use of force involving a nearby inmate. The video showed that during the incident, the complaining inmate was seen laying on the ground and pushed his feet against the wall and slid along the floor. This apparently caused the bruising. LASD jail supervisors making the inquiry interviewed the inmate twice. The inmate eventually admitted that he lied during the first interview because he was angry at deputies so he made up the allegation to cause trouble for them.

There were several examples of allegations where the Department located video footage but the angle or point of view of the camera could not reveal what actually took place.

Case Eight

An inmate alleged that a deputy entered his cell, twisted his arm and slammed his head in a wall twice during a cell search. The supervisor conducting the inquiry located video taken from the row where the inmate was housed. He also interviewed personnel involved in the search. A sergeant was present during the search and he said he was the only LASD employee who entered the cell. A lieutenant also was present. Video footage showed several Department personnel standing in front of a set of cells but due to the angle of the camera, no one could be seen entering the cell.

Case Nine

In this particular allegation, the inmate alleged that he had missed lunch service because of an attorney room visit. He asked the deputy for a lunch. The inmate said that the deputy became angry at him for making the request and slammed him twice against the bars of a gate leading onto a row. The deputy denied committing the alleged misconduct. The surveillance footage that was obtained did not show the sally port gates which control access onto the row. There are, however, cameras which have a view of the hallway which runs perpendicular to the gates. That footage showed the deputy escorting the inmate to the module and there is little interaction between the two. The deputy is then seen leaving the inmate momentarily and saying something to an inmate worker. (The Department relies on inmate workers to serve the meals to inmates

in their cells.) The worker goes off camera and then is seen returning to the hall carrying a lunch. At this point the complaining inmate and the deputy were off camera after last being seen into the sally port area leading to the housing row. When the inmate worker approaches the entrance to the sally port with the lunch, he suddenly stops. He pauses and appears to be watching something and then turns around and walks away while still carrying the lunch. The inmate worker was apparently not identified. Other inmates in nearby cells were interviewed, though, and neither they nor other Department personnel recalled seeing anything. Because there was no corroboration to the allegations and no injuries, the matter was closed as “unfounded” and no formal investigation was opened. It appears to OIR, though, that more effort should have been exerted to identify and locate the inmate worker who may have witnessed something take place just off camera.

Several months later, another inmate alleged that the same deputy treated him roughly after he returned from attending to business outside his cell. Video footage was instrumental in showing what occurred. Discipline in that incident is pending.

Case Ten

An inmate submitted a complaint form alleging that he had been handcuffed and left in the recreation area for more than three hours, then was violently grabbed and slammed into the door as he was being led to the disciplinary module (“the hole”). While he was being led away, he alleged the deputy violently handled him, causing pain to his shoulder, and cursed and insulted him while insisting that the inmate apologize to the deputy for wasting his time.

The sergeant who received the inmate’s complaint reviewed the CCTV for the relevant time and location. He discovered that much of the inmate’s complaint was substantiated by the video evidence. While there were some inconsistencies between the inmate’s statement and the video – most notably that the inmate did not appear to be slammed into a door or wall – he did accurately describe rough handling by the deputy, including the painful way his cuffed hands were lifted behind him as he was escorted to the elevator. The video also showed the deputy entering the rec area, grabbing the inmate off a chair and dropping him to the ground.

The deputy had not reported his use of force. The custody facility initiated an administrative investigation, and, despite the deputy’s claim that his actions did not constitute reportable force, the Department issued a significant suspension. OIR concurred in the outcome.

It is clear that video cameras at MCJ have become an invaluable tool to resolve allegations of forcible misconduct even though they are still limitations. For the most part, the allegations of

force investigations we examined for this report were appropriately conducted. As this discussion demonstrates, video surveillance footage – or the absence of it – does not substitute for a vigorous and timely effort to locate and interview all potential witnesses.

Frequency of Reported Use of Force on Camera

As is apparent with looking at the 2012 allegations of force, the use of video footage was curtailed by (1) not being online at MCJ until March and then off-line during the repairs in July and (2) that Twin Towers and IRC footage was not available until November. Therefore, OIR examined reported uses of force which occurred in the Custody Division in the first nine months of 2013 to determine whether the cameras were effective in capturing uses of force.

In addition, in early 2013, OIR learned that Custody Support Services (CSS) was preparing daily force synopsis which described the location, time and circumstances of uses of force that took place in Custody facilities during the prior day. At our request, CSS began to provide OIR with the force synopsis every business morning. While historically OIR reviewed significant uses of force which were investigated by the Internal Affairs Bureau, having access to the new daily synopsis allows OIR to be aware of and ask follow up questions about uses of force which do not rise to the level of an IAB investigation within 24 hours of the incident rather than weeks later when the force investigation package is completed. The daily force synopsis charts also note whether there is video of the incident to alert OIR when footage is available should we want to follow-up on any particular incident about which we have concerns.

The data from the charts is the basis for our analysis of the quantitative effectiveness of the surveillance cameras. As noted in our recent October 2013 report, *Allegations of Abuse in the Los Angeles County Jails*, we believe that installation of security cameras was “a critical development” for reform. Cameras are only effective, though, if footage is available when needed. As we show below, the vast majority of uses of force are being captured on surveillance cameras in facilities with extensive camera networks.

Facility	Uses of Force	No video	Yes video	On video %
CRDF	28	15	13	46.4%
IRC	53	5	48	90.6%
MCJ	73	9	64	87.7%
NCCF	37	12	25	67.6%
PDC East	12	0	12	100.0%
PDC North	4	1	3	75.0%
PDC South	9	7	2	22.2%
TTCF	187	13	174	93.0%
Total	403	62	341	84.6%

The Pitchess Detention Center (PDC) and North County Correctional Facility do not yet have the modern digital systems, but there is finally a plan in place to install them. The women's facility, CRDF still only has cameras in the reception and booking area but plans are underway to install significantly more cameras in that jail. The presence of the cameras in the downtown jails and the documented ability of them to capture force events should make the completion of installation of cameras in the remaining jails a priority project.

Use of video footage for reviewing uses of force both at the Executive Force Review Committee and the Custody Force Review Committee levels has been very fruitful to leading to possessing more information to render decisions, determining whether a policy violation occurred, assessing appropriate discipline and providing guidance to Department staff where training and procedures can be improved.

Case Eleven

Deputies removed two inmates from a module after an altercation and were escorting them handcuffed through a hallway at least twenty feet apart. The inmate in front tried to pull away from the deputies which resulted in deputies using a take down technique and holds to regain control. When the struggle began, deputies left the second inmate and ran towards it while the inmate kept walking slowly in the same direction. A deputy arrived in the hallway to assist and seeing the second inmate walking unescorted began walking rapidly towards him. As he quickly closed the distance, the deputy issued a command to the inmate to stop and the inmate stopped walking. The deputy later said that the inmate did not stop and because he could not see the inmate's hands he thought the inmate could be arming himself. The deputy pushed the inmate backwards and then grabbed him in an attempt to take him to the floor. Instead of going down, the handcuffed inmate was swung around, struck a wall with his back and then went to the floor.

The video showed the entire incident. It appears that at the end of the use of force, the deputy tried to handcuff the inmate and only then realized he was already handcuffed. The incident was investigated and presented to the Case Review Committee which found that the deputy had violated the unreasonable force policy and imposed significant discipline for the deputy's failure to reasonably ascertain that the inmate was handcuffed and did not pose a threat. OIR concurred with the panel's conclusions. The video surveillance footage proved to be a valuable tool in determining what actually occurred by showing that the inmate's behavior was not threatening and that he came to a stop when told to do so by the deputy.

Along with the use of fixed surveillance cameras, the Sheriff's Department has also encouraged the use of handheld video cameras to record high risk interactions. This includes the escorting of high

security inmates who require a sergeant escort as well encounters where force is likely to occur.

Case Twelve

This incident involved an inmate who was moved and secured to a metal bench after a fight between inmates. The inmate refused to cooperate with deputies until personal property he thought had been taken by other inmates was recovered. Despite a sergeant's best efforts to find the allegedly missing property and to reason with the inmate, he refused to move from the bench he was secured to with handcuffs and a chain. He taunted deputies that they would have to use force. All these interactions were recorded on a video camera as was the plan the sergeant devised to get control of the inmate. The intent was to move him to a safety chair and to secure him with straps. A safety chair is a device used by the Department which secures an inmate for movement who presents a high security risk. The inmate struggled the entire time and a carotid neck restraint was used at the sergeant's direction. Ultimately, all the force used, including control holds, was reported and investigated. LASD found that the force used was in policy. The video footage, though, provided valuable insight into how to prepare for similar situations, raised valuable questions about the use of the carotid neck restraint and highlighted OIR's concerns that trying to get an inmate into a safety chair is often leading to more use of force than was initially intended as the inmate resists being strapped into the device. This particular incident is being used by the Department as an example where better training methods can be explored to decrease the potential for injuries to staff and inmates during a pre-planned use of force.

Recording Rate Improvements are Necessary

The Department decided to record at a rate of 5 frames per second (f.p.s.) when the digital camera system was first installed. The lower the frame rate, the thinking went, the longer that recorded footage could be saved on what is finite server space. At the time the installation was taking place, the allegations made by the ACLU were still very fresh. A number of the declarations were of allegations of unreported force which purportedly had taken place years in the past. As such, the belief was that having footage saved for as long a period as possible was more valuable than the quality of the video footage. This conclusion was based on the belief that the particular recording frame rate would not have a significant impact on the ability to determine what occurred during an incident, let alone whether an unreported use of force occurred. At the time, OIR raised concerns that a recording rate of 5 f.p.s. was far too low and that the ability to determine what took place during a use of force or an inmate assault could be compromised.

Once the new surveillance footage started becoming a regular part of use of force investigations, reviewers – such as the CFRC panel – quickly became cognizant that, at times, the frame rate did not provide a clear and coherent visual accounting of what had taken place. One case in particular

exemplifies that the rate of recording can be so compromised that fact finders are not able to make definitive conclusions about the force event:

Case Thirteen

An inmate was refusing to cooperate as he was being prepared to transfer from one jail facility to another and became disruptive. A Department employee handcuffed the inmate, separated him from other inmates and had him face a wall. The inmate began to bang his head against the wall. A deputy said that he saw the inmate's behavior and that it appeared to him that he was about to head butt a custody assistant who standing directly next to and somewhat behind the inmate. The deputy said he was behind the inmate and struck him in the upper shoulder with his forearm. He then took the inmate to the floor where he was secured. The video footage appeared to show the inmate against the wall with his head moving. The footage further showed that the deputy walked up behind up and seemed to deliver a forearm strike to the inmate's neck or shoulders with such force that it appeared the inmate bounced off the wall in front of him and then went to the floor as the deputy was also taking him down. From the video it did not appear that the inmate had been appearing to deliver a head-butt before the force occurred. Criminal and administrative investigations were started. The District Attorney declined to file charges. The administrative matter was presented to the Case Review panel. During the investigation, the inmate provided little material information but never admitted that he was planning on assaulting the custody assistant. Other employees were interviewed and they all provided accounts that were consistent with the deputy. Several employees said that they saw that the inmate was about to assault the custody assistant.

Ultimately, the panel concluded there was insufficient evidence that the force used was unreasonable. This was mainly because the video quality was so poor that the panel could not discern what the inmate's actions were. Investigators asked for an analysis of the video from experts. The conclusion reached was that "the quality of the video is poor, recording at most, five frames per second and in some parts of the video only one frame per second." The Department discovered that as the system stores the visual information, memory overloads occur when there is a large amount of motion during a short period of time – in other words, when action is taking place, like a use of force incident. In fact, during the most critical moment of this incident – as the deputy approached and delivered the forearm strike - the system was storing at one frame per second.

While the Department found that the allegation the deputy used unreasonable force was unfounded, the deputy was found in violation of the force prevention policy for not using reasonable efforts to de-escalate the incident.

This is not the only instance where the actions of deputies and an inmate were recorded at a lower frame rate. OIR is aware of another case where an inmate purportedly struck a deputy when he was upset that his cell was searched. This led to a significant use of force. As in the case just described, the recording rate slowed to such a degree that one can only see the inmate moving towards the deputy and then the next frame shows the deputy reacting to being struck. The blow itself is not visible.

As a result of these concerns that OIR raised several times to Custody Division, the Department increased the recording rate to 10 frames per second. Footage is retained for one year which allows for the recovery of video footage for claims against the County in all but the tardiest allegations of inappropriate force. The increase of the recording rate to 10 f.p.s. may still be insufficient as experts recommend anywhere from a minimum of 20 to 30 f.p.s. for video digital systems.⁶ We urge the Department to continue to consult with experts to determine the most effective combination of storage space, resolution and bandwidth so that the Department and important stake holders are able to obtain the greatest benefit from the installation of the video cameras.

Conclusion

We have found that the recent installation of high resolution video cameras in the jail setting has been an invaluable tool in resolving force allegations as well as policy compliance before, during and after a reported use of force. Furthermore, concerns that explainable discrepancies between video footage and what Department employees report would lead the Department to bring more administrative cases against employees has not occurred. While there is room for technical improvement, the installation of the cameras may be the most effective and important reform that has taken place since the controversy over jail violence entered the public eye. We urge the Department to proceed as quickly as practicable with the installation of cameras throughout the jail system and as review of the video evidence proceeds, to continue to evaluate the recording rate issue.

⁶ See *Video Surveillance Trade-offs*, 2012, Motorola Solutions, Inc., http://www.motorolasolutions.com/web/Business/_Documents/static%20files/VideoSurveillance_WP_3_keywords.pdf and *Is a High Frame-rate Always a Must for Effective Video Surveillance?*, 2010, Mistral Solutions Pvt. Ltd., <http://www.mistralsolutions.com/hs-downloads/tech-briefs/dec11-article2.html>.

Policy Development and Reform with Respect to Discipline

Policy development and reform is a vehicle for the Sheriff to communicate his expectations to all Department members as well as the public. New policies are implemented as needed and existing policies are regularly reviewed and refined to clarify the Sheriff's expectations and address changes in the law or situations which were unforeseen at the time the policy was drafted. All members are required to be familiar with published policies and failure to comply with them can result in discipline. In an effort to increase consistency and ensure a timely, thorough and reasoned review of all administrative investigations involving the potential for significant discipline, the Sheriff adopted reforms which will be discussed here.

When an employee faces significant discipline, such as discharge, he or she can be relieved of duty and ordered to stay at home. The LASD reformed protocols which are leading to relieving employees in a more consistent manner and the completion of investigations in a more timely fashion. The Department also changed the manner in which cases with serious allegations were reviewed by creating a Case Review Board. In addition, while the Sheriff has been an advocate of transparency and has verbally instructed all unit commanders and executives to consult with and provide OIR with any information requested, including all investigations of deputy involved shootings, significant force incidents, and internal affairs investigations – some unit commanders and executives have been inconsistent about consulting OIR, particularly at the grievance or settlement stage. Hence, at OIR's request, the Sheriff implemented a formal written policy this

year which requires Department members to consult with OIR at all stages of the administrative investigation process.

Relieved of Duty Meetings Chaired by Sheriff

When there is evidence that Department members may have committed a serious violation of law or policy, LASD considers whether those members should be “relieved of duty.”¹ When sworn members are relieved of duty, their gun and badge are taken and they are ordered to remain at home rather than report to duty.² Unless the member has been criminally charged, LASD is obliged to continue to pay the salary of the employee even after he or she has been relieved of duty. Until recently, the decision about whether to relieve an employee of duty has been largely ad hoc, with little guidance provided to unit commander on this important decision. More recently, at OIR’s recommendation, written guidance has been promulgated to LASD executives regarding criteria to consider in determining whether to relieve an employee of duty. In OIR’s view, if there is a likelihood that the allegations will result in a decision to discharge the employee, the employee should be relieved of duty.

Because every case has important permutations, even now not every case is best suited for a concurrent internal affairs investigation. Sometimes, there is a legitimate basis for the criminal case to gain some traction (or even be completed) before an administrative investigation begins. On the other hand, cases should not languish because they can and if LASD can move forward administratively with little likelihood of prejudice to the criminal case, it should. A quicker turnaround administratively results in faster closure for the Department and the employee by allowing a decision to be made sooner rather than later on whether the employee should be discharged. If the evidence is not there to prove a policy violation, the employee can more quickly be brought back to work. If the evidence supports a discharge, the employee can be terminated and no longer paid.

Over the past few months, the Sheriff himself has paid specific attention to these relieved of duty cases. At least every month, he meets with his internal investigative team and receives progress reports on each case. We have seen direction given by the Sheriff to start administrative investigations, and perhaps more importantly, the need to provide updates causing these priority investigations to be completed more quickly. Moreover, the meetings have resulted in protocols designed to prevent completed investigations from languishing at the units during the review

¹ Manual of Policy and Procedure § 3-04/020.10 states, “At any stage of a personnel investigation, commensurate with the seriousness of the action or conduct involved in the case, the concerned employee may be relieved of duty by the unit commander, his designated representative at the direction of the unit commander or higher rank, or by personnel from the Internal Affairs Bureau when acting as the agent of a division chief or higher.”

² Per Department policy, relieved of duty personnel who are assigned to home, “shall remain at home during normal business hours,” which is 8:30 a.m. to 5:00 p.m.

process. All in all, in addition to providing a mechanism for the Sheriff to be more aware and engaged in the major misconduct cases, his attention to such cases has caused a faster turnaround at both the investigation and review phases.

The Internal Investigative Process

If a supervisor receives information which causes him or her to believe an employee has violated policy, the supervisor relays the information to his or her unit commander. The unit commander must then decide whether the policy violation rises to the level of formal discipline or can be handled through additional training or counseling. If the unit commander believes the alleged misconduct rises to the level of a policy violation for which formal discipline is warranted, he or she initiates an administrative investigation on the employee and must decide whether or not the investigation can or should be handled by an investigator at the employee's unit of assignment or by the Internal Affairs Bureau. Typically, the Internal Affairs Bureau will handle the investigation if the discipline could result in discharge, if the investigation involves employees from different units, or if the investigation involves a supervisor.

The Public Safety Officers Procedural Bill of Rights requires administrative investigations to be completed and a letter of intent to discipline served on the employee within one year of the Department's knowledge of the misconduct.³ Hence, whether the case is investigated by the unit or by Internal Affairs, the investigation must be completed in time to have the unit commander review the investigation, evaluate whether the evidence is sufficient to substantiate any policy violations, and determine a recommended level of discipline, if appropriate. If the level of discipline recommended ranges from a written reprimand to a 15-day suspension, the captain sends the recommendation up the chain of command to the concerned Area Commander and Division Chief for final review and approval. However, if the recommendation is a 16 to 30-day suspension, a demotion, or a discharge, the investigation must be presented to the Case Review Board – as will be discussed in more detail below. Once a disciplinary decision is made, the employee must be served with a letter of intent to impose the discipline within the one year statute date. The letter of intent lists the policy violations which have been violated and the level of discipline.

After an employee is served with a letter of intent to impose a specific amount of discipline, the employee then has a right to grieve the discipline prior to the discipline being imposed. If the grievance is denied and the discipline is imposed, the employee can then appeal the disciplinary decision to the Civil Service Commission or the Employee Relations Commission.

³ The statute's time limits can be tolled under limited circumstances such as when there is a pending criminal investigation. (See California Government Code § 3304.)

Case Review

As mentioned above, when allegations of policy violations have been deemed founded and the discipline recommended by the employee's Chief is a 16-30 day suspension, demotion, or discharge, the case is presented to the Case Review Board. In the past, the Case Review panel consisted of the Undersheriff and the two Assistant Sheriffs. A factual presentation of the administrative investigation was made before the panel and the Chief presented his or her recommendation and thoughts regarding the level of discipline. A representative from the Department's Advocacy Unit was present to consult on the issue of whether the level of discipline could be sustained at Civil Service, and a representative from OIR was present and was offered an opportunity to express any concerns about the investigation, the findings, or the level of recommended discipline. Under this system, the Undersheriff in particular yielded a significant amount of authority over the final decision. However, during the appeals stage of the discipline process, a Chief would occasionally reduce the discipline imposed at Case Review without first conferring with the Undersheriff or OIR prior to changing the findings or reducing the discipline. This lack of consultation produced what OIR believes were inconsistent results sometimes based on emotional sympathy for the employee, erroneous information or a misunderstanding of the facts.

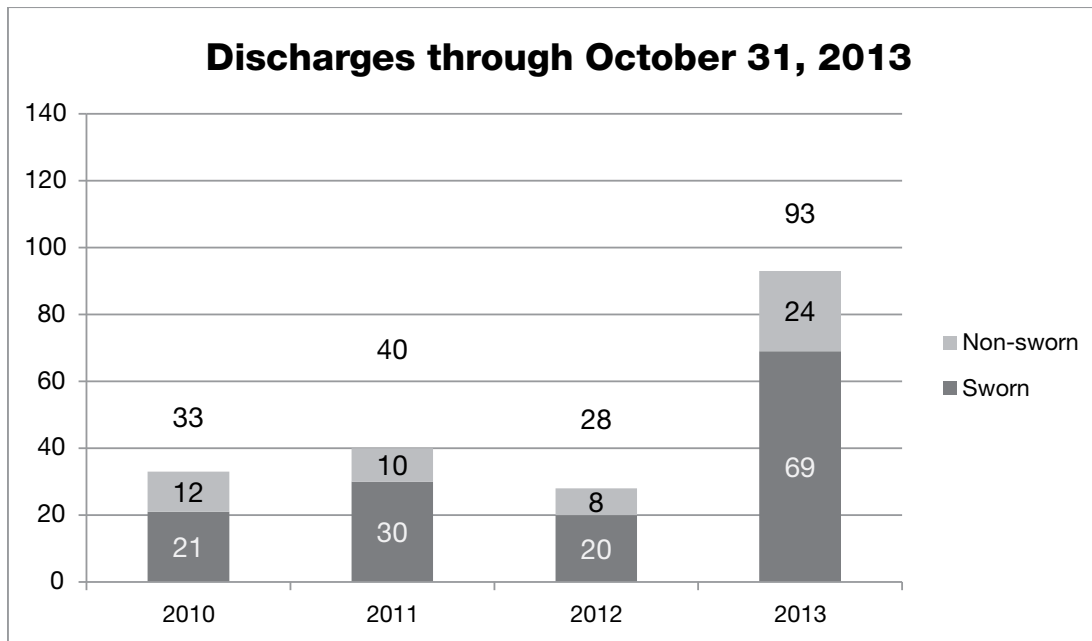
In order to increase consistency and transparency in discipline, several safeguards were instituted last year. On February 17, 2012, for instance, the Sheriff created a Case Review Board wherein three Commanders preside and act as his direct representatives. In addition to hearing the presentation of the investigation from an investigator and considering input from the OIR representative assigned to monitor the case, the board members are responsible for reading the complete investigative file in order to become thoroughly familiar with all of the evidence and must recuse themselves if they have a personal relationship with the subject employee. The Case Review Board's role is to review disciplinary recommendation made by Division Chiefs. With the concurrence of the Case Review Board, Chiefs may impose a suspension of 16 to 30 days, demote, or discharge an employee. If the board members do not unanimously concur with the Chief's recommendation, the case is presented by the Internal Investigations Division (IID) Chief to the Sheriff for final disposition. If the Case Review Board recommends a different level of discipline than the Division Chief, he or she shall consult with the IID Chief to facilitate a resolution. If a resolution is not reached, the IID Chief and the Chief will present the matter to the Sheriff for final disposition.

Under this new process, if the Chief hearing a appeal is contemplating a change in the findings or reduction in discipline, the Chief or Division Director must consult with OIR and the IID Chief. If after these consultations the Chief or Division Director is still of the opinion that the findings or discipline should be reduced, the IID Chief shall decide whether to present to a re-convened Case Review Board the reasons why a change in the findings or discipline is being contemplated or present the matter to the Sheriff for a final disposition. This system better ensures the discipline is consistent and that all individuals with knowledge of the case are present prior to any change in discipline. Moreover, it has greatly increased the integrity of the process and the consistency in discipline.

Since the Case Review Board was formed in February of 2012, it has only reconvened to listen to arguments to reduce discipline in two cases. In the first case, the Case Review Board had concurred with the Chief's recommended discipline of a 20-day suspension for Performance of Duty/Performance to Standards, False Statements, and Use of Force Reporting/Obedience to Laws violations. At the appeal hearing, the employee convinced his Chief that his actions did not amount to force and that his performance issues could be adequately addressed through training. After additional information from Training Bureau experts was presented at the rehearing, the Case Review Board concurred with the Chief's desire to find the Performance of Duty/Performance to Standards allegations were "unresolved," and the remaining allegations were "unfounded." As such, the deputy received no discipline and was instead ordered to participate in additional training. OIR did not concur with the decision to change the findings and discipline, but chose not to pursue the matter with the Sheriff given the additional evidence.

In the second case, the deputy had been discharged for an off-duty incident involving alcohol, vandalism, and belligerent conduct toward members of the public. At the rehearing, the Case Review Board was presented with additional information regarding the deputy's good character and remorsefulness for his conduct. OIR opposed the request for reduction due to the lack of any new information related to the misconduct and reminded the Board members of the deputy's failure to exhibit any remorse or take any responsibility for his conduct during his administrative interview. The Case Review Board thereafter affirmed its prior decision to discharge the deputy and the Chief accepted the decision and did not pursue the matter with the Sheriff.

In the first ten months of this year, a total of 93 employees have been discharged by the Department through the Case Review Board or ERRC process.⁴ This number reflects a major increase in discipline seen over the past five years.



OIR's Role in Administrative Investigations

OIR is tasked with monitoring all administrative investigations from “cradle to grave.” This means that as soon as an administrative investigation is initiated, OIR is typically informed and sometimes even consulted before the initiation of an internal affairs investigation. During the investigative process, OIR consults with the unit commander and/or the investigator to get updates on the progress of the investigation. Then, once the investigation is completed, a copy of the completed investigation including all written reports, transcriptions, photographs, diagrams, audio, video, and any other relevant evidence is provided to OIR for review. OIR reviews the investigation for thoroughness and objectivity. If OIR believes additional investigation is warranted, it will so recommend and discuss with the investigator and/or unit commander. OIR also discusses the

⁴ At the Sheriff's direction, the Executive Risk Review Committee (ERRC) which is comprised of three commanders has also recently been tasked to hear cases with the potential for significant discipline. In the past, the ERRC heard Sexual Harassment, Discrimination, and other select risk/liability incidents and issues. The ERRC now also hears off-duty misconduct cases as well as other cases selected to be heard by the IID Chief. The investigations are presented to the ERRC commanders in essentially the same manner as the investigations are presented to the Case Review Board. However, unlike when a case is presented to the Case Review Board, ERRC renders the decision as to whether the case is founded, unfounded, or unresolved. If the case is deemed founded, the ERRC commanders in conjunction with the employee's unit commander and Chief or Division Director determine the appropriate level of discipline. If there is a lack of consensus regarding the findings or discipline, the matter is handled in the same manner as when there is a lack of consensus in a case presented to the Case Review Board.

potential policy violations revealed by the investigation, whether there is sufficient evidence to sustain any policy violations and, if so, what the appropriate level of discipline should be. These discussions are usually had with the employee's unit commander. However, if there is disagreement with the unit commander regarding either the sufficiency of the investigation, the findings on the charges, or the discipline, and OIR believes the discipline recommended by the unit commander is unreasonable or inconsistent with the discipline imposed in other similar cases, OIR will discuss the case with the unit commander's chain of command.⁵ While OIR's recommendations and suggestions are advisory only, OIR has always had the option of making its position known to the employee's chain of command in an attempt to gain concurrence with its position.

Unfortunately, this process has not always worked seamlessly. Either intentionally or inadvertently, some unit commanders have imposed discipline on employees for policy violations without consulting OIR or have changed the findings or reduced the discipline OIR has agreed with at the grievance or appellate stage without consulting OIR. Once the discipline is imposed, it is too late for OIR to present information or arguments up the employee's chain of command which might persuade the Department to reach a different conclusion. While in many cases OIR is concerned that an employee is not receiving sufficient discipline, in some cases OIR is concerned that an employee is receiving too much discipline, is accused of violating a policy which was too vague and ambiguous, or has committed misconduct which is better addressed through counseling or training rather than through formal discipline.

The new policy, published on January 25, 2013, clearly sets forth OIR's role in the Administrative Investigations process by requiring consultation with OIR prior to making a final determination on any policy violations, *prior* to determining the level of discipline, and prior to changing the disposition and/or discipline at the grievance or settlement stage of a formal appeal. If OIR does not concur with the findings or discipline in any case, no disposition shall be made until after OIR has had the opportunity to address the case through the Department's chain of command. (See MPP 3-04/020.06 set out in full at pages 57 to 58.)

Conclusion

At the time our 10th Annual Report was published last year, the Case Review Board was just getting started so the jury was still out on whether it would be an improvement over the prior case review process. OIR was concerned that because the members of the Case Review Board were Commanders, they would simply rubber stamp the Chief's recommendation. After more than a year and a half of working with the Case Review Board, it is clear that the Case Review Board has

⁵ The typical chain of command has traditionally been from employee (sworn or non-sworn) to unit commander (Captain or Director), to Commander, to Chief, to Assistant Sheriff, to Undersheriff to Sheriff. Recently, however, the Sheriff has eliminated the Undersheriff position and has appointed two additional Assistant Sheriffs for a total of four Assistant Sheriffs.

successfully increased the integrity of the decision making process, the discipline has been more consistent, and more time, thought and deliberation has gone into each decision. The Commanders who preside on the Board take their job as direct representatives of the Sheriff very seriously and are not hesitant to ask questions or express their disagreement with a Chief's recommendation if they do not feel it is consistent with what the Sheriff would decide if he were present.

It has been OIR's experience that since the initiation of the Case Review Board, the facts of cases and proposed discipline have been more thoroughly deliberated and considered. The panel members all take a considerable amount of time to read through each investigation, listen to the audiotaped interviews, and view any evidence available. This has resulted in an admirable grasp of the facts, pointed questions to the investigators, and well-reasoned, thoughtful, and consistent decisions. Moreover, because a change in the discipline recommended by the Case Review Board cannot be unilaterally changed by the employee's Chief at an appeal hearing without consulting OIR and the IID Chief for possible re-presentation of the case to the Case Review Board, changes to discipline after an appeal hearing are based on a proper understanding of all relevant facts.

With respect to the OIR policy, it has helped ensure that OIR is consulted on a more consistent basis. However, it has not completely eliminated the occasional reduction in discipline without consultation. OIR brought this issue to the Sheriff's attention recently at an Executive Planning Council meeting with the Assistant Sheriffs and Chiefs in attendance. A hard copy of the policy was distributed to all in attendance and the Sheriff instructed the IID Chief to come up with a mechanism that would increase compliance. A form was created which will now need to be attached to each administrative investigation. The form must indicate whether OIR was consulted, whether OIR concurred with the findings and discipline, if not, why not, and whether additional investigation was requested by OIR. We are hopeful that this will eliminate the number of cases wherein OIR is not consulted and obviate the need for OIR to request that administrative investigations be opened up on unit commanders and executives who fail to comply with the OIR policy. (See Administrative Contact Sheet at page 59.)

3-04/020.06 ADMINISTRATIVE INVESTIGATIONS – OFFICE OF INDEPENDENT REVIEW

Although the ultimate and final decision rests with the Sheriff and Department managers with respect to which Unit will conduct an investigation, whether there are founded policy violation(s), and the appropriate level of discipline, Department managers shall consult with the Office of Independent Review (OIR) as they formulate and/or revise such decisions.

Representatives from OIR shall be afforded the opportunity to review investigative, disciplinary, and other documents generated or received by this Department.

OIR shall be consulted by a Unit Commander or designee prior to engaging in any of the following:

- determining if an investigation shall be conducted by the concerned Unit, the Internal Affairs Bureau, or the Internal Criminal Investigations Bureau;
- making a determination on any policy violation(s);
making a final determination to inactivate a case;
- committing to a Pre-Disposition Settlement Agreement;
determining the level of discipline; and/or,
- changing the disposition and/or discipline at the grievance or settlement phase.

OIR shall be afforded access to any internal or external investigation, communication, and/or memorandum including, but not limited to, personnel investigations (whether conducted by an individual Bureau, Station, Unit, Detail, the Internal Affairs Bureau, or the Internal Criminal Investigations Bureau); Homicide Bureau investigations into any deputy-involved shooting or inmate death; any use of force investigation or investigation into a non-hit deputy-involved shooting; any non-privileged civil claim or lawsuit information; any Watch Commander Service Comment Report and attendant documentation; and/or any other similar document as requested.

NOTE: Absent the most compelling of circumstances, these documents shall be provided to representatives of OIR upon request. Exceptions to this policy shall be resolved only after consultation with the concerned Unit Commander's chain of command.

When an administrative investigation is completed by the concerned Unit, a copy of the completed file shall be forwarded to OIR. The Unit Commander shall review the case and determine an appropriate course of action only after consultation with OIR.

If OIR determines a case requires additional investigation, the concerned Unit Commander shall discuss the case with OIR to determine the level of additional investigation proposed. Any dispute regarding the need for and/or scope of additional

investigation shall be addressed by OIR through the concerned Unit Commander's chain of command.

The case shall then be forwarded to the concerned Area Commander and Division Chief, irrespective of the disposition, for review. If OIR did not concur with the findings and/or discipline, no disposition shall be made until after OIR has had the opportunity to address the case through the Department's chain of command. No proposed disposition shall be communicated to the involved employee(s) until after OIR has been provided the opportunity to address the case through the concerned Unit Commander's chain of command.

When an administrative investigation is completed by the Internal Affairs Bureau, the completed case file shall be forwarded to the Unit Commander of the Unit where the incident occurred. A copy of the completed case file shall be forwarded to OIR. The Unit Commander shall review the case and determine an appropriate course of action only after consultation with OIR.

If OIR determines a case requires additional investigation, the concerned Unit Commander shall discuss the case with OIR to determine the level of additional investigation proposed. Any dispute regarding the need for and/or scope of additional investigation shall be addressed by OIR through the concerned Unit Commander's chain of command.

The case shall then be forwarded to the concerned Area Commander and Division Chief, irrespective of the disposition, for review. If OIR did not concur with the findings and/or discipline, no disposition shall be made until after OIR has had the opportunity to address the case through the Department's chain of command. No proposed disposition shall be communicated to the involved employee(s) until after OIR has been provided the opportunity to address the case through the concerned Unit Commander's chain of command.

If the employee grieves or appeals the discipline, the concerned Division Chief shall consult OIR prior to approving any settlement agreement.

Revised 01/27/13

ADMINISTRATIVE INVESTIGATION CONTACT SHEET

IV # _____ Unit/Station: _____

Date of Incident: _____ 1 Year Statute Date: _____

Subject Name(s): _____ Employee #: _____

Subject Name(s): _____ Employee #: _____

Office of Independent Review (OIR)			
Attorney contacted:		Date:	
	Yes	No	Date
OIR Concur with Findings:			
OIR Concur with Discipline:			
OIR Request Additional Investigations:			
Comments:			
Internal Affairs Bureau (IAB)			
IAB Staff Contacted:		Date:	
Comments:			
Advocacy Bureau			
Advocacy Staff Contacted:		Date:	
Comments:			
Training Bureau or Other Entity			
Person Contacted:		Date:	
Comments:			
	Yes	No	
Attached all emails between the Unit/Station and the above entities			

Additional Comments should be continued on a separate page if necessary

Alcohol-Related Misconduct Update

We have praised the Department's efforts in the past to address the problem of alcohol-related misconduct by enhancing its disciplinary guidelines, by educating its employees regarding the cost of driving under the influence and by increasing unit commander responsibilities to include responding to an arrested employee's location and ordering the employee to submit to a blood alcohol test when there is evidence that alcohol was a factor in the arrest. Despite the Department's efforts, it is disappointing to report that there was an uptick in the number of personnel arrested for driving under the influence (DUI) in 2012. After a five-year low of 28¹ DUIs in 2011, the number of personnel arrested for DUIs in 2012 was up to 38. On a positive note, however, there have only been 13 arrests for DUIs in the first ten months of 2013. At the same time last year, there were 34. It is believed that the Department's increase in discipline for deputies with a prior DUI, deputies who are belligerent toward arresting officers, and deputies whose blood alcohol content is more than twice the legal limit has greatly contributed to the decrease in numbers.

¹ At the time the OIR's Tenth Annual Report was published last year, the number of personnel known to have been arrested for a DUI in 2011 was 28. Since that time, however, an additional arrest made in 2011 was brought to our attention. The arrest information was not provided contemporaneously to either OIR or the Risk Management Bureau of the Sheriff's Department which is responsible for keeping track of all alcohol-related incidents involving personnel. The individual is an unsworn employee who was involved in a traffic collision. He was taken to the hospital where his blood alcohol content was determined to be .19%. He was not arrested at that time, but later learned his license had been suspended and charges had been filed against him. An administrative investigation into the incident was initiated and he received a 20-day suspension for the off-duty misconduct.

The first chart below reflects the number of sworn and unsworn personnel arrested for DUI in the past five years. The second chart reflects the number of sworn and unsworn personnel arrested for any alcohol related offense in the past five years. When one looks at all alcohol-related incidents rather than simply DUIs, 2012 numbers have remained relatively low compared to earlier years:

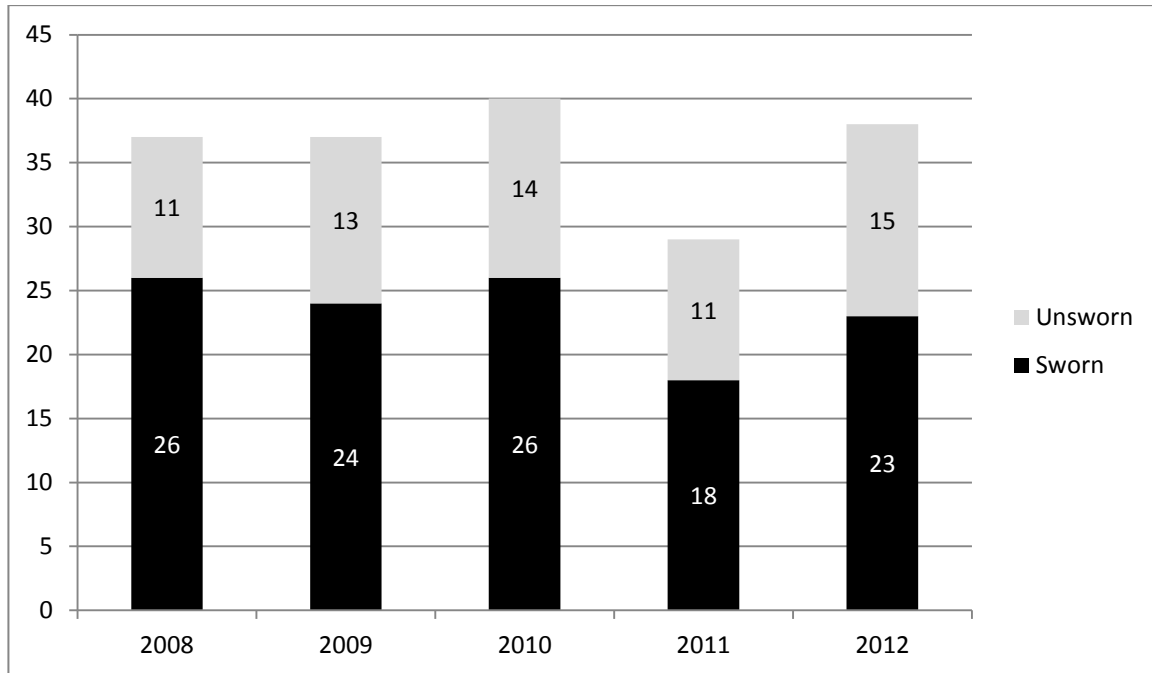


Figure 1: LASD Personnel Arrested for DUI

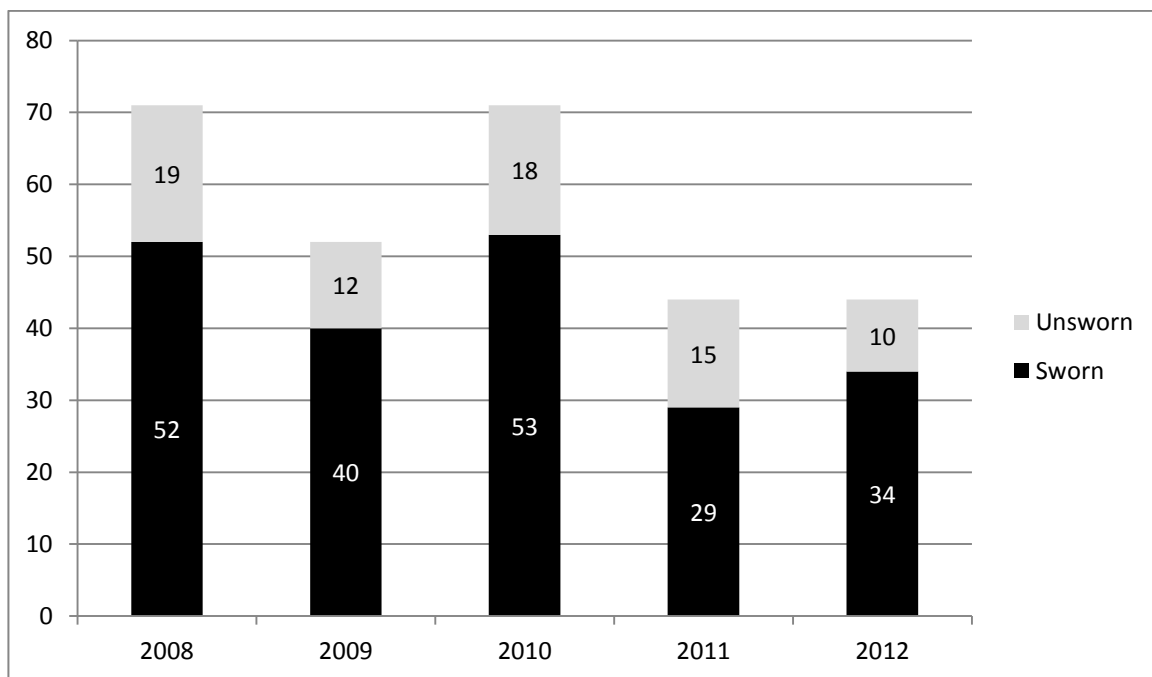


Figure 2: LASD Personnel Arrested for off-duty alcohol-related incidents

The Department has grown less tolerant of off-duty alcohol-related misconduct, particularly when it involves personnel being uncooperative with law enforcement or when the employee has engaged in prior alcohol-related misconduct. It is too early to tell whether the recent decrease in arrests of personnel for DUI is due to the Department's decision to discharge more individuals for alcohol-related misconduct, its continued messaging to Department members about the potential career ending consequences of alcohol-related misconduct or both but we are hopeful that the decrease in alcohol-related misconduct observed so far in 2013 will hold through the end of the year. OIR was also pleased to learn that ALADS, the union for sworn personnel, has joined the Department's efforts to reduce off-duty alcohol related misconduct by sending a stern warning to its members that those who are involved in off-duty alcohol-related incidents and behave belligerently toward on-duty police officers are looking at a serious setback in their career. The following are some case examples of serious alcohol-related cases resulting in discharge since our last report.

Case One

A sergeant consumed an unknown amount of alcohol at an after-work holiday dinner with a team of deputies under his supervision. He thereafter drove his unmarked county vehicle westbound into the opposite lanes of traffic with no headlights. He then merged back into the eastbound traffic lanes and struck a center median. Officers from an outside agency initiated a traffic stop and detained the sergeant on suspicion of driving under the influence. After failing several of the field sobriety tests administered, he was arrested. During his transport to the police station and during the booking process, the sergeant was belligerent. He cursed at the officers, urinated on the station jail floor, and was confrontational and verbally abusive. In addition, the sergeant had a loaded two-inch revolver in the center console of the vehicle and both an unloaded shotgun and a loaded semi-automatic hand gun in the trunk of his vehicle. The Department's policy on Safety of Firearms prohibits the carrying of firearms while under the influence of intoxicating substances. The policy presumes an individual is unable to exercise reasonable care of a firearm if he has a .08% or higher blood alcohol level. It was later determined the sergeant's blood alcohol level was .25%.

The sergeant was charged with misdemeanor driving under the influence of alcohol. He pled guilty and was sentenced to a probationary term. Despite his subsequent apologies to the outside law enforcement agency, the Department found the sergeant had violated the Department's Safety of Firearms, General Behavior, Disorderly Conduct, Obedience to Laws – DUI, and Care of County Property policies and he was thereafter discharged. OIR concurred with the findings and discipline.

Case Two

A professional staff employee consumed at least four margaritas at a restaurant where video footage showed the employee stumbling while walking down a hallway. On her way home in her county vehicle, she passed out in the middle of a freeway. A concerned citizen reported that she found her slumped over the steering with her foot on the brake and the vehicle's gear selector in the drive position. The citizen banged on the driver's window until she woke up and unlocked the doors. Officers from an outside law enforcement agency were called and responded. After smelling a strong odor of alcohol emitting from her breath and performing poorly during field sobriety tests, she was arrested. A breath sample provided at the station registered a blood alcohol level of .20%. At the time of the arrest, the employee was on probation for a DUI conviction which occurred about two years earlier, also in a county vehicle.

The District Attorney's Office filed a misdemeanor charge of DUI, to which she pled no contest and received a probationary sentence. The Department found the employee had violated the Department's Professional Conduct, General Behavior, Disorderly Conduct, Obedience to Laws – DUI, and Use of Alcohol policies. The employee was served with a letter of intent to discharge, but retired prior to imposition of the discharge.

Case Three

A deputy was involved in two alcohol related incidents within a couple of months. During the first incident, the deputy was at a nightclub and when he was leaving, the on-site security guard noticed he had leaned against a wall and appeared very intoxicated. The deputy had thrown up on himself. The security guard assisted the deputy to his vehicle and tried to place him in the backseat of the car. The deputy became angry and spit on the security guard. The security guard had also noticed the keys were in the ignition and the Deputy's duty weapon was laying in the gutter. Identification showing the Deputy was an LASD deputy was found inside the vehicle. The security guard decided to take the duty weapon for safekeeping while the deputy slept in the backseat of the car. About an hour later the security guard went back to check on the deputy, but he and the vehicle were gone. The next morning, the deputy reported his gun missing and filed a police report alleging it was stolen from his glove box. The investigation in this matter revealed the deputy had lied about how his firearm went missing as well as about driving home while under the influence of alcohol.

In the second incident, the deputy was charged with driving under the influence of alcohol when he was found non-responsive, slumped over the steering wheel of his vehicle while stopped at an intersection. When fire and medical responded, they tapped on his window. The deputy woke and his vehicle coasted forward and hit the medical response vehicle in front of him. The deputy took a breath test at the station and his

blood alcohol content registered at .07/.06%. He was charged criminally with driving under the influence and pled no contest to the lesser charge of misdemeanor reckless driving with consumption of alcohol. The Department found him in violation of policies on General Behavior, Disorderly Conduct, Safety of Firearms, Conduct Toward Others, Care of County Property, Making False Statements, and Obedience to Laws and set the level of discipline at discharge. OIR concurred with the findings and discipline.

Case Four

A deputy was involved in two driving under the influence cases. In the first case, the deputy was involved in a hit and run incident. He eventually also crashed into a tree. Responding officers found numerous liquor bottles, brass knuckles and a prescription bottle of Vicodin in the backseat of the vehicle. During his arrest, the deputy argued with arresting officers and tried to get out of being arrested due to his position as a law enforcement officer. The deputy's blood alcohol content was .25/.26%. He was charged with and convicted of misdemeanor driving under the influence with an elevated blood alcohol content.

In the second incident, and while on probation from the first incident, the deputy tried to evade police. The deputy reportedly sped away from the patrol car that followed him with its lights and sirens activated. The deputy eventually made it to his home where he attempted to quickly pull into his garage. When the patrol vehicle followed behind, the deputy closed the garage door on the patrol vehicle's hood. This prevented the garage door from closing completely. When the officers made contact with the deputy, he presented signs of aggression and again suggested he should receive preferential treatment because he was a law enforcement officer. The arresting officers had to resort to using a TASER to get the deputy to submit to their commands and place him under arrest. The deputy's blood alcohol was measured at .29%. He was arrested for driving under the influence and resisting arrest. The Department found the deputy had violated the Department's General Behavior and Obedience to Laws – DUI policies in each case. The discipline on the two cases was combined and the deputy was discharged. OIR concurred with the findings and discipline.

Case Five

While a deputy was relieved of duty with pay pending an unrelated internal criminal investigation, she was observed speeding in a school zone by an LASD patrol deputy. Numerous pedestrians including children were in the area. The patrol deputy attempted to initiate a traffic stop using her overhead lights. When the speeding vehicle neglected to yield, the patrol deputy sounded the patrol vehicle's air horn and siren. The vehicle slowed, but instead of yielding to the right, the driver made a left turn without signaling and then came to a stop in front of a house. Upon contacting the driver, the patrol

deputy observed the deputy's speech was slurred, her answers to questions were delayed, and her eyes were constricted. The patrol deputy asked for her driver's license and she fumbled getting it out of her purse. The patrol deputy returned to her vehicle to call for a supervisor. When she returned, the deputy was outside of her car on the phone. She told the patrol deputy she was speaking to her lawyer, invoking her rights and was going to go into her house. The patrol deputy told her she was being detained, was not free to leave, and instructed her to get back into her vehicle. The deputy repeatedly refused to comply with the patrol deputy's orders and instead walked toward her house. The patrol deputy ended up having to use Oleoresin Capsicum spray to get her to comply. Backup units arrived and she was arrested. Numerous prescription pills as well as a clear baggie containing cocaine and a razor blade were recovered from her purse.

The District Attorney filed one felony count of possession of cocaine and two misdemeanor counts of driving under the influence and resisting arrest. Upon the filing of the felony charge, the deputy was relieved of duty without pay. Approximately ten months after her arrest, she entered into a plea bargain wherein she pled guilty to felony possession of cocaine and misdemeanor disturbing the peace. The entry of judgment on the felony charge was deferred² and the driving under the influence and resisting arrest charges were dismissed as part of the plea bargain. The Department found her in violation of General Behavior, Obedience to Laws, and Performance to Standards policies. The deputy was served with a letter of intent to discharge but resigned prior to the discipline being imposed. OIR concurred with the findings and discipline.

Case Six

While off-duty, Deputies A, B, and C drove together to two separate restaurants where they each consumed alcoholic beverages. After the second restaurant closed, they all got into Deputy C's vehicle and drove to a location where Deputy B asked to be dropped off. On route, however, they engaged in a verbal altercation. When they arrived at the location where Deputy B asked to be dropped off, they all exited the vehicle and a physical altercation ensued between Deputy A and Deputy B. According to Deputy A, Deputy B punched her multiple times, breaking her nose. She was able to get away after Deputy C came to her aid. Deputy A then retrieved her firearm from the vehicle and claimed because she feared for her life as well as Deputy C's life; she shot a round at Deputy B as Deputy B advanced on her. Deputy B then ran away and Deputy A fired a second round at her not knowing if she was going to circle back.

² Pursuant to Penal Code sections 1000 et seq., a qualifying individual may enter a guilty plea and defer entry of judgment on a charge of possession of cocaine while he or she completes an 18 month substance abuse program. Successful completion of the program will entitle the individual to dismissal of the charge. However, if the individual is unable to successfully complete the program, he or she will be sentenced and will thereafter be considered convicted of a felony for all purposes.

Deputy B, on the other hand, said she punched Deputy A only after Deputy A took a swing at her. She then straddled Deputy A in an attempt to hold her down. Deputy A then bit her cheek and Deputy C came over and struck her in the head for no reason. In response, Deputy B said she grabbed Deputy C by the hair and pulled her down to the ground. Deputy A left to retrieve her firearm while Deputy B straddled over Deputy C. When Deputy B saw Deputy A extend her arm in her direction, she immediately dismounted Deputy C and started running away. As she turned to run away, she heard a shot whiz by her right ear. She continued to run and heard a second shot a few seconds later but was not hit. All of the deputies denied driving the vehicle.

Patrol deputies on duty responded to a call of shots fired and located the deputies at or near the scene of the shooting. They were all ordered to submit to test for their blood alcohol content hours after their last drink. Deputy A's blood alcohol content measured .15%, Deputy B's blood alcohol content measured .11%, and Deputy C's blood alcohol content measured .09%. The case was investigated by the Internal Criminal Investigations Bureau and presented to the District Attorney for a filing decision more than a year and a half ago. Rather than wait for a determination, however, the Department decided to proceed with the administrative investigation and found them all in violation of the Department's General Behavior and Disorderly Conduct policies. Deputies A and B were additionally found in violation of the Obedience to Laws policy and Deputy B was found in violation of the Safety of Firearms policy. Deputies A and B were discharged and Deputy C received a significant suspension. OIR concurred with the findings and discipline.

Case Seven

Based on two alcohol-related incidents occurring in 2009 and 2010 (one DUI and one drunk in public incident), Custody Assistant was discharged. During the appellate process, the employee did not present any new facts which would justify a reduction in the discipline. Nonetheless, a Chief agreed to reduce the discharge to a 30-day suspension. This was done without OIR's concurrence. The Department reinstated the custody assistant and entered into a settlement agreement wherein he agreed to resign if he engaged in another-alcohol related incident within five years. In 2012, a year and a half after signing the settlement agreement, the custody assistant was again arrested for a DUI after being observed weaving by officers of an outside law enforcement agency. His blood alcohol level was .18%. Pursuant to the terms of the settlement agreement, he resigned two days after his arrest.

Case Eight

An officer from an outside law enforcement agency found an off-duty custody assistant asleep at the wheel in the driver's seat of his vehicle which was stopped at

an intersection facing a green light. His foot was on the brake, the car was running and in “drive.” After waking him up and conducting field sobriety tests, a breath test was taken and registered his blood alcohol content at 15%. The District Attorney filed a misdemeanor charge of DUI. About five months later, while his criminal case was still pending, the employee was again arrested for a DUI after an officer from another outside law enforcement agency responded to a non-injury traffic collision in which the custody assistant was found at fault because he had driven through a red light. His blood alcohol content was .16%. A second DUI case was filed by the District Attorney. On both occasions, he did not immediately report the incident to a supervisor as required by policy and waited up to six hours after he was released from custody to report the arrests. The custody assistant pled no contest to driving under the influence of alcohol in both criminal cases and was placed on probation. The Department found him in violation of Obedience to Laws, General Behavior and Off-Duty Incidents policies and discharged him. OIR concurred with the findings and discipline.

On the issue of discipline, the Department has continued to impose lengthy suspensions for employees engaged in alcohol-related misconduct. With respect to DUIs in particular, the discipline has continued to range from 15 days to discharge.³ The 15-day suspensions are usually reserved for employees who are first-time offenders, do not have an elevated blood alcohol level, and were cooperative with arresting officers. Of the DUI 2010 arrests noted above, all of the cases have been through the investigative and disciplinary process. All but one of the 2011 DUI cases and about 80% of the 2012 DUI cases have likewise been through the investigative process and reached a disposition.

In our Ninth Annual Report published in 2011, OIR reported the Department’s protocol instructing supervisors how to handle all off-duty alcohol-related incidents, including non-driving incidents. The protocol was issued on August 16, 2010, and requires unit commanders to respond to an arrested sworn employee’s location and order the sworn employee to submit to a blood alcohol test to be used for administrative purposes. While this protocol has been followed the vast majority of the time, OIR has documented more than a handful of instances where unit commanders or their designees have responded to make an on-scene assessment of the employee’s behavior and have not ordered a blood alcohol test. In some instances, the responding supervisor was unaware of the protocol and the unit was advised of the protocol by OIR and encouraged to train its personnel on the protocol. In other instances, however, unit commanders aware of the protocol have chosen not to order a blood alcohol test for a number of different

³ The only exception to this rule is when the employee is not required to possess a driver’s license as a requirement of employment. All sworn personnel, custody assistants, and law enforcement technicians are required to possess a driver’s license as a requirement of employment. Their off-duty driving misconduct therefore has a clear nexus with their employment. However, there have been some instances with student workers or certain clerks where the Department has been advised by their Advocacy Department that they are unable to discipline them for their off-duty driving misconduct due to a lack of nexus to their employment.

reasons. A couple of supervisors have told OIR that by the time they arrived, the employee did not appear intoxicated. Another supervisor told OIR that the arresting officers had determined the employee was not intoxicated so he did not feel it was necessary to order a blood alcohol test. And, other supervisors have said they are reluctant to order their employees to submit to a blood alcohol test if the employee consumed the alcohol at home, rather than in public. In each of these instances, however, the employees should have been required to submit to blood alcohol tests. Nothing in the protocol requires the employee to be intoxicated prior to being ordered to submit to a blood alcohol test. All that is required is that alcohol be a factor in the incident.

No one, especially a Department member, would dispute the fact that consuming alcohol can impair one's judgment and ability to accurately recollect an event. Whether a person is legally "intoxicated" or not, the level of alcohol in his or her blood may be relevant to the employee's judgment and version of events. Hence, when there is any evidence of alcohol consumption by an employee who is subsequently detained or arrested, alcohol can potentially have been a factor regardless of when, how much or where the alcohol was consumed. For instances not specifically covered under the policy, such as when the employee is not being detained or has been the victim of an offense, a blood alcohol test should be offered and can in some instances help exonerate an employee. The Department's protocol requiring supervisors to order sworn employees to submit to a blood alcohol test any time they are detained and alcohol is a factor in the incident is effective – but only if consistently followed. Failing to follow the protocol raises questions regarding the integrity of an investigation into the misconduct and opens up the supervisor to allegations of favoritism or failing to perform to standards. An additional issue recently surfaced due to an off-duty incident wherein the employees were ordered to take a blood test, but it was not until four or five hours after the incident. We are working with the Department on a protocol which will help reduce this delay. OIR will continue to monitor compliance with the protocol for handling off-duty alcohol related incidents to ensure the Department's internal investigations are as trustworthy, accurate and as thorough as possible.

Deputy Involved Shootings Update

Case Summaries and Outcomes

There is likely no greater potential for police-related controversy than the officer-involved shooting. The law uniquely provides our police the authority to use deadly force to protect their lives or those of third parties and policies actually oblige officers to assert that authority when necessary. Over the years, deputies have been shot at and sometimes struck by suspect gunfire, necessitating a deadly force response.

Unfortunately, in this country many people carry guns on the street and it is often difficult to ascertain who is armed and who is not. Deputies are trained that when they observe actions that indicate a suspect is about to draw a weapon on them that if they wait for the suspect to fire or aim a firearm, it may be too late for them to stop the threat. This paradigm makes it unfortunately not surprising that a deputy may misperceive the movement of a suspect as attempting to arm himself, causing the deputy to use deadly force on a suspect who is later found to be unarmed.

Because the decision to use deadly force is almost always a split second decision based on a perceived or real sudden action by the suspect, it can be difficult to prove fault for the immediate use of deadly force decision, even when it turns out that the suspect was not carrying a gun. However, that does not mean that a law enforcement agency is unable to develop exacting regimens of accountability designed to address the issue. Critical analyses of officer-involved shootings have demonstrated that the large majority of those shootings are preceded by a litany

of tactical decisions by those officers. Critical decisions, such as how to approach the suspect, whether to go in foot pursuit, the use of cover, the importance of communication with fellow officers, when and whether to draw the firearm, and considerations for cross-fire and backdrop all influence whether the encounter will end in gun play. Tactics that are designed to keep officers safe necessarily reduce uses of deadly force because an officer who has performed consistent with principles of officer safety will often find himself less vulnerable to real or perceived acts of aggression by a suspect. For example, the officer that leaves cover or his partner, fails to radio, goes into a long foot pursuit, loses sight of the suspect and then follows him over a fence into a dark alley will more likely feel the need to use deadly force when he jumps the fence and perceives any movement by the suspect as an act of aggression. Compare that to the officer who practices optimal officer safety tactics, calls for backup, cautiously follows and maintains visual contact with the suspect, and uses fellow officers, air support, and K-9 to safely bring the suspect into custody. Analyses of these cases demonstrate that practice of the important principles of officer safety concomitantly reduces officers' perceived need to use deadly force.

The resolve of the LASD to hold deputies accountable for tactical decisions that may have been the precursor to deadly force has waxed and waned over the years. This is largely a function of the panelists who make up the Executive Force Review Committee (three commanders who make determinations regarding whether deadly force and tactical decisions are within policy). Recent members of the Committee have brought an exacting eye to bear on those decisions. These panel members have not been shy about holding involved deputies accountable for tactical decisions which are inconsistent with the expectations of the Department. Because the disciplinary findings can and usually are converted to training opportunities, the Department is able to express its concern about those tactical decisions, track those who have not performed consistent with expectations, and provide a remedial plan designed to ensure that field deputies will perform in the future consistent with those expectations.

In addition, certain individuals may be more susceptible to perceived threats than others. If certain officers react to stressful events with more heightened fear than the norm, they may feel the need to shoot when other deputies would not. While scant research has been done on this topic, it would stand to figure that not all officers will have the same response to a perceived threat. Accepting this premise, law enforcement agencies should be tracking officer performance and especially examining officers who have repeated instances of using deadly force. While LASD has had the tools to track deputies' use of deadly force for years, it is only recently that the Department has appeared to make a concerted effort to identify multiple shooters and move those individuals to other assignments where the deputies are less likely to encounter suspects with guns. These non-punitive transfers reduce the risk of deputy-involved shootings in a way that has not been systemically embraced before by LASD. OIR will continue to assess the utility of this practice and continue to urge the Department to consider this approach in similar scenarios. Recent events strongly suggest, though, that consistent vigilance is necessary to assure that a

deputy who is moved out of an assignment where a shooting is more likely is not able to get back onto the streets by other means such as working overtime at a different station.

A refrain oft repeated by the deputies' union is that OIR's opinion regarding tactical decisions should be disregarded by LASD because the OIR attorneys have never been in a deputy-involved shooting before. The rationale seems to be that only officers who have used deadly force can adjudge others who use deadly force. While there is little logic to this pronouncement, the union spokespeople also misperceive how OIR comes to its conclusion about whether a deputy-involved shooting is tactically sound. OIR's analysis does not compare deputy behavior to what we think the deputy should have done; rather it relies entirely on whether the deputy performed consistent with LASD's expectations. Thus, we compare the performance of the deputy with how that deputy has been trained by the Department. If the deputy's performance is consistent with that training, we do not find that performance out of policy; if it is not, than we ask whether the performance is so below Department expectations that a finding of a violation of policy governing tactics is in order. It is that analysis and our group experience of reviewing over five hundred shootings since our inception that forms the basis for our conclusions. There is probably no other reviewing body in the country that has collectively reviewed as many shootings as the OIR.

Case One: Failing to Exercise Patience

Four deputies responded to a mental health clinic where a mentally ill female patient was sitting in the patient lobby holding a hammer. When the deputies arrived at the location, before making contact with the woman, they gathered to discuss a tactical plan. Deputy A was assigned the TASER. Deputy B (a field training officer) and Deputy C were assigned to use deadly force, if necessary. Deputy D (a trainee) was assigned to assist as needed. As the deputies were discussing their assignments, they suddenly heard the security guard yell, "Oh, shi*!" The deputies rushed into the lobby and found the four feet nine inch tall, ninety pound woman standing near the back wall with a ball peen hammer over her head. Deputies A and B took the lead positions and entered the lobby first. There were no other patients in the lobby but clinic staff was positioned behind the back wall. There were also several staff members hiding behind the lobby counter which was adjacent to where the woman was standing. The deputies ordered the screaming woman to drop the hammer and when she failed to do so Deputy A deployed his TASER. The darts struck her and the TASER cycled for approximately five seconds but the woman did not fall to ground or drop the hammer as the deputies had expected. Instead, she took a small step back, closed her eyes and maintained her grip on the hammer. When the TASER completed its cycle, the woman regained her composure. The deputies then saw her take a step forward toward Deputy A with the hammer raised over her head. Believing his TASER had malfunctioned, Deputy A was transitioning to his duty weapon. Observing the woman's actions and fearing for the safety of his partner, Deputy B fired two rounds fatally striking the woman. This was Deputy B's first shooting in his approximately sixteen year career.

The EFRC panel found (and OIR agreed) that both Deputies A and B, as the lead deputies, rushed their actions and failed to employ sound tactical principles before engaging the woman who was experiencing a mental health crisis. For instance, the deputies failed to gather sufficient information from the informant(s) about who remained in the building and where they were located. Before confronting the woman, the staff that had remained in the building should have been evacuated. The panel also found that the tactical plan was deficient and that requesting additional resources, such as the Department's Mental Evaluation Team, assisting units, special less lethal weapons and equipment (shields) and a field supervisor would have been advisable. For failing to meet Department standards the deputies were issued discipline.

With regard to the use of less lethal force, the panel found Deputy A's use of the TASER reasonable and within Department policy. OIR concurred. OIR found, however, that Deputy B's use of deadly force was questionable. Troubled by Deputy B's actions, the EFRC panel deemed his use of deadly force as "unresolved" — a finding uncommon for the Department when determining use of force.¹ The panel's main concern was the conflict between Deputy B's perceived need to protect the life of others from serious physical injury or death and the reverence for human life. Although not disciplined for his use of deadly force, to its credit, the panel recommended that he be immediately removed from the field. He was, and to date, Deputy B has not been assigned field duties. Additionally, Deputy B was removed from his field training officer position and placed on formal Departmental Performance Review for a period of two years. Also, recognizing the need for training that addresses how to deal with the mentally ill community, soon after the EFRC panel hearing, the station captain arranged for his line personnel, including Deputy B, to be trained by mental health experts from the Department's Mental Health Evaluation Team (M.E.T). The station captain has also established relationships with Mental Illness and Law Enforcement Systems and a local chapter of the National Alliance of Mental Illness (NAMI) to seek additional mental health awareness training.

In contemplation of the Deputy's potential future return to patrol duties, the Department is in the process of developing a training plan the deputy must complete before a return to the field. Although still concerned about Deputy B's return to the field, the Department has agreed to seek OIR's input regarding the individualized plan. OIR has strongly recommended that the plan include additional training that addresses how to deal with the mentally ill population.

Case Two: Failure to Follow Foot Pursuit Policy

Two deputies on patrol at nighttime saw a man riding a bicycle on a sidewalk with no operating light. They conducted a traffic stop and noticed that when the man climbed off his bicycle that he had his right hand underneath his shirt. The deputies ordered the man to show his hands but he

¹ "Unresolved" is defined in MPP § 3-04/020.25 "When the investigation fails to resolve the conflict between the complainant's allegation and the Department member's version of the incident; when there is no preponderance of evidence to support either version of the incident."

instead shouted profanities, dropped his bike and ran away from the deputies towards an alley. One deputy gave chase on foot while the other returned to the patrol car and followed his partner into the alley. Neither deputy broadcast their location or the foot pursuit.

The deputy on foot later described seeing the suspect running and hiding behind parked cars in the dark alley. He said that the suspect kept clutching his hand near his waistband. He reported that as the suspect moved in a crouching position along a wall of a building, he suddenly turned towards the deputy with his right hand still hidden. Fearing that he was about to get shot, the deputy fired multiple times. After he stopped shooting and the suspect went down to the ground, the deputy finally initiated a radio broadcast reporting the deputy involved shooting.

In the meantime, his partner had entered the alley in his patrol car. The deputy lost sight of both the suspect and his fellow deputy. As he came to a stop he heard gunfire and feared that his partner had been shot and killed. He quickly parked, exited and ran around to the other side of the patrol car. He still could not see his partner but saw the suspect either crouching down or slowly walking in a crouched position along a wall. The deputy said he shouted at the suspect to show his hands. He said the suspect suddenly jerked his right shoulder toward the deputy who believed that the suspect was holding a gun under his shirt. The deputy fired two rounds and he said the suspect went down. It turned out the suspect was unarmed as no gun was recovered at the scene.

The suspect was struck by four bullets and died at the scene. During the autopsy three bullets were recovered. Two of them were potentially fatal shots fired by the first deputy and one was a potentially fatal shot found to have come from the second deputy's gun.

It is difficult to reconcile the two versions of events described by the deputies. The first deputy fired 11 shots and said he never fired after he put out the radio broadcast announcing the deputy involved shooting and that was not until the suspect went down. During the broadcast, though, one can hear two shots being fired. Those were in all likelihood the second deputy firing his handgun. The second deputy, though, maintained that the suspect was on his feet and presented a threat which is why he fired.

OIR was concerned both with the question of whether deputies' tactics were within the Department's training and whether the use of deadly force was objectively reasonable under the totality of the circumstances. The EFRC panel reviewed the case and found that both had violated the LASD's performance to standards and foot pursuit policies for not broadcasting their actions, failing to request assisting units, failing to contain the area before attempting to capture the suspect, and failing to reasonably maintain or use cover and concealment when they believed the suspect was armed in a dark confined area. On the issue of whether the deputies used unreasonable force, the EFRC panel - as in Case One - concluded that question was left "unresolved." In addition to discipline, the panel recommended the deputies receive additional training. OIR concurred with the decision.

Case Three: Failing to Broadcast Foot Pursuit and Announce Shooting

Two deputies were on patrol at nighttime and saw a male (Suspect One) crossing a street with a car battery in his hand. Believing he had stolen the battery the deputies decided to make contact with the suspect who put the battery on the ground and jogged down a driveway. Deputies exited their vehicle and went in foot pursuit of the suspect down the driveway but could not locate the suspect as he had climbed over a wall. The deputies re-entered their patrol vehicle to look for the suspect. They located suspect One with another male (Suspect Two) shortly thereafter. The deputies ordered both suspects to stop. Deputy B saw Suspect Two climb over a wall with a handgun in his hand. Both deputies saw Suspect One crouch down in front of a parked vehicle in a driveway. Deputy A saw a handgun in the suspect's waistband. Deputy A gave several commands for the suspect to stand up with his hands raised, however, the suspect did not comply. The suspect then stood up and began to climb a fence while at the same time reaching into his waistband to retrieve a gun. Deputy A fired two rounds as the suspect climbed over the wall as he yelled "take it, take it" presumably in reference to giving the gun to the second suspect who deputies believed had already climbed over the wall. Deputy A then climbed over the wall and saw Suspect One laying on the ground, face up with his arms flailing around and heard the suspect yell that he was going to kill him. Deputy A fired two more rounds. Suspect One was hit and injured. No handgun was recovered and investigators surmised that it may have been given to Suspect Two who fled and was never apprehended.

The EFRC panel found Deputy A had violated the Department's Performance to Standards and Obedience to Laws, Regulations, and Orders policies, specifically pertaining to Tactical Incidents and Foot Pursuits for failing to broadcast the foot pursuit in addition to failing to take a position of cover and concealment once observing an armed suspect attempting to flee. Additionally, Deputy A was disciplined for failing to immediately announce he had been involved in a shooting after the initial rounds of firing at the suspect and for climbing the wall in pursuit of the suspect and re-engaging the suspect in a second shooting instead of taking a position of cover. Deputy A was placed on the Department's Performance Mentoring program in addition to completing 36 hours of training on various tactical and decision-making classes. Deputy B was disciplined for failing to communicate to his partner when he observed that an outstanding suspect was armed with a handgun, failing to announce that he was in a foot pursuit and failing to notify LASD's communication center and assisting units that there was an outstanding suspect armed with a handgun. Deputy B was required to complete 20 hours of training.

Case Four: Another Failure to Announce a Foot Pursuit

A Sheriff's station received several calls regarding a video production of a local rapper (the video was to be partly shot in the middle of a street). It was anticipated the event would produce a large crowd, including some local gang members. Additionally, at the location where the video production was to take place, deputies had recovered a handgun earlier in the day. With knowledge of this information, two deputies decided to patrol the area.

Upon arrival, they noticed several people standing around a home and in the street. They zeroed in on a man leaning into a car, talking to the occupants. One of the occupants of the car exited and ran from the deputies. The deputies chased the suspect several houses down the street, when the suspect produced a handgun and proceeded to run up a driveway into a wooden structure (it appeared to be a partially built garage).

One deputy became tangled up in his radio cord and was a few steps behind the other deputy. As the other deputy pursued the suspect up the driveway and near the wooden structure, the suspect allegedly pointed his weapon at the deputy and the deputy fired his weapon at the suspect, missing him.

After the shooting, the suspect jumped over a brick wall and continued running through backyards and eventually ended up running down a main street. The deputies jumped the brick wall and followed him. Once on the main street, one of the deputies finally broadcast the proper radio communications, informing the LASD that he had been involved in a shooting and was chasing a suspect.

After reviewing the case, OIR expressed several concerns about the tactics the deputies chose to deploy that night. First, LASD's foot pursuit policy is very clear in requiring deputies to broadcast their foot pursuits within a reasonable time period (usually seconds after its initiation). Additionally, it was concerning that the deputies chose to run up a dark driveway, jump a block wall, continue running through backyards and finally onto a main street before they communicated anything over the radio. Given that they were unsure of their exact location, if something would have happened to incapacitate either deputy, responding units would have been delayed in locating them.

The EFRC panel determined there were policy violations due to the lack of radio communication and the decision to chase an armed suspect through a location that was not described or identified to other law enforcement personnel. Discipline was given for the policy violations and OIR concurred. Additionally, both deputies were required to attend additional training.

Case Five: Contacting Gang Member While Seated in Patrol Car

As two deputies were patrolling in a radio car, they drove up alongside a man walking who they reportedly recognized. The man was known to them as a local gang member. The passenger deputy said to the man, "Hey, what's up dude?" from a sitting position in the radio car, as it was moving. The suspect said he was walking to his girlfriend's house but then suddenly began running. He then produced a handgun and ran through a yard, tossing the weapon into a neighboring yard. The suspect then jumped over a gate. From approximately two car lengths distance away and with cover of a parked vehicle, one of the deputies believed he saw the suspect reach for a second weapon. The deputy ran up to the fence, reached with his gun over the

top of the fence and blindly fired down towards the suspect's location. The suspect was not hit and continued running. He was eventually arrested and the gun which he threw was recovered.

After review of the case, OIR was concerned with the tactics used by the deputy who fired his weapon. First, the decision to speak to a local gang member while seated in a car and driving parallel to the gang member was questionable because the deputy was placed at a huge tactical disadvantage had the suspect chosen to assault or fire upon the radio car or deputy. In fact, LASD trains deputies that sitting inside a car is a very dangerous spot to be in when confronting a potential suspect. Second, OIR was concerned about the deputies' failure to broadcast the foot pursuit over the radio or advise anyone that they were confronting a man with a gun. Finally, given the amount of cover and distance the deputy had when the suspect had discarded his weapon and jumped the gate, the EFRC panel serious questions as to why the deputy chose to run up to the gate, jump and hang half-way upon it while blindly firing downward at the suspect. At EFRC, the panel found the deputy who fired his weapon in violation of the Performance to Standards policy for not using proper cover and advancing on an armed subject and issued discipline accordingly. OIR concurred with the panel's decision.

Systemic Changes in MCJ Visiting

OIR became aware of a number of incidents occurring between 2010 and June 2011 which involved a newly promoted sergeant and deputies assigned to the visiting area of Men's Central Jail. All of these incidents either became the subject of criminal, administrative and/or force investigations. Very recently, as this report went to print, the federal government brought criminal civil rights charges against several of the deputies who were working at Visiting during this timeframe. Because of the pending criminal civil rights charges, we will refrain from discussing the facts of those incidents at this time or the administrative action taken, but focus on the systemic reforms related to the Visiting area that were spearheaded by the newly assigned Captain of Men's Central Jail and OIR.

Arrests for Cellphone Possession

In the fall of 2011, OIR became aware of a number of arrests at the Visiting area of Men's Central Jail for visitors possessing cell phones. Likewise, OIR researched the statute being used as a basis for the arrest and became concerned that the statute was intended to apply to possession of cell phones inside the secured area of the jail and not intended to apply to visitors who were outside the security checkpoint of the jail.

As a result of that concern, on October 26, 2011, OIR drafted a memo to Department executives, raising questions about the legal grounds for arresting visitors possessing cellphones. OIR also shared these concerns with the new captain at MCJ. The captain took OIR's concerns seriously

and since that meeting, there have been no arrests of visitors for possessing a cell phone at Men's Central Jail.

In addition, as a direct result of OIR's memo, Custody Support Services issued an Informational Bulletin in January of 2012. It advised employees that the statute prohibiting cell phone possession was only intended to apply to persons inside the secured part of the jail and not to persons in the visiting area. (See Informational Bulletin, "Wireless Devices and Visiting," at page 83.)

Cameras Installed and Break Room No Longer Used for Booking

In the summer of 2011, the captain oversaw the installment of 24 video cameras in the Visiting area lobby and the break room. The installation was completed in July. These cameras were installed long before the wholesale installation of the jail cameras we report on elsewhere in this volume. In addition, a metal bench was installed in the break room so arrestees could be safely secured. The fingerprint equipment was removed as the small space was not conducive to secure booking. OIR conducted site visits to confirm the presence and operation of the cameras as well as the removal of the booking equipment.

Additional Training Regarding Consulate Visits

In the summer of 2011, the jail's leadership sought and received assistance from the Department's International Liaison Unit to provide training on the laws relating to diplomatic visitors as well as the Department's Policy on Consular Visitors.

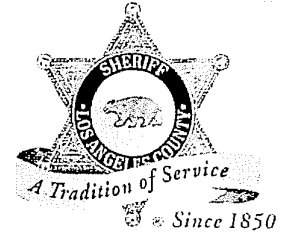
Results of Systemic Changes

As a result of the changes described above, as well as assigning more mature deputies and supervisors to Visiting, there has been a marked change in use of force incidents in that area:

Year	Uses of Force
2011	6
2012	2
2013	0 ¹

¹ Information provided by Custody Division as of December 13, 2013.

Los Angeles County Sheriff's Department
INFORMATIONAL BULLETIN
Correctional Services Division ~ Custody Operations Division
Custody Support Services



Bulletin #2012- 01

WIRELESS DEVICES AND VISITING

In October of 2007, several California Penal Codes were passed to help combat the growing number of wireless communication devices, specifically cell phones, inside the custodial environment.

California Penal Code section 4575(a) states that "Any person in a local correctional facility who possesses a wireless communication device...who is not authorized to possess...is guilty of a misdemeanor." These include cell phones, pagers and wireless internet devices.

The Custody Division Manual Section 3-01/090.05 Wireless Communication Devices identifies that proper authorization to possess these items behind security must come from the Undersheriff. If a staff member, vendor, volunteer, or "non-inmate" person is found in possession of one of these items without proper approval, the watch commander shall be immediately notified.

If an inmate is found in possession of a wireless device, appropriate reports and evidentiary procedures shall be followed

Persons who possess a wireless device with the intent to deliver, or complete an actual delivery of a wireless device to an inmate can be arrested for a misdemeanor under California Penal Code section 4576 (a).

California Penal Code section 4576 (b)(1) specifically addresses visitors found with a wireless device; however, due to developing case law it is the intent of the Sheriff to only criminally enforce this section on those visitors who are found in possession of a device beyond a security or screening checkpoint (e.g. PDC property). If a visitor is found with a device outside of security at MCJ, TTCF, IRC and CRDF, you may have the person secure the item, or leave the premises. The device shall not be confiscated or searched for mere possession unless further probable cause exists.

All facilities that allow inmate visiting beyond a checkpoint or screening area shall post appropriate signage stating visitors can be arrested for violations of 4575(a) P.C. and 4576(a) P.C. All facilities shall also review any relevant unit orders for compliance to this bulletin.

If you have any questions concerning this bulletin, please contact Custody Support Services at [REDACTED].

Summary Of Systemic Changes

Year Eleven

OIR Identification of Systemic Issue	OIR Recommendation	LASD Response	Implementation of Recommendation
Employees with <i>Brady</i> issues are in sensitive positions	Evaluate assignments of employees with prior violations involving dishonesty	Formed working group to discuss	In progress, see page 30
Lack of protocol for advising prosecutorial agencies when employee is disciplined for dishonesty/moral turpitude	Develop protocols for communicating findings relevant to credibility to prosecutorial agencies even absent a request	Formed working group to discuss	In progress, see page 30
Credibility of investigations impacted by allowing custody deputies to view video of force incidents before writing report	Develop policy that requires a deputy to provide a written report of the force incident prior to viewing video footage	Policy implemented requiring that a report is written first and then, if necessary, prepare a supplemental report after viewing the video.	Yes, see pages 35-37
Video recording frame rate is too low to adequately capture incidents	Increase the recording frame rate from 5 frames per second	Increased recording frame rate to 10 frames per second	Yes, see pages 45-46, however that rate may still be too low
Unit commanders or other executive imposing discipline without consulting with OIR	Implement written policy clearly describing the duty of decision makers to consult with OIR	Policy implemented requiring consultation with OIR prior to determining discipline or changing the disposition or discipline	Yes, see pages 54-55

Visitors to LASD jail facilities were subject to arrest for possessing cell phones	Clarify protocols and/or policies in compliance with the California Penal Code	Custody Support Services issued a directive that the cell phone prohibition applies to individuals beyond security checkpoints.	Yes, see pages 82
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