

*The Los Angeles County*

# **Sheriff's Department**

## **24th Semiannual Report**

by Special Counsel Merrick J. Bobb and Staff  
and Police Assessment Resource Center (PARC)

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# **S p e c i a l   C o u n s e l   a n d   S t a f f**

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# **Twenty-Fourth Semiannual Report**

## *Introduction*

This Report concludes our year-long look at the LASD's internal investigations. In the **23rd Semiannual Report**, we examined the procedures for the receipt, investigation, and resolution of complaints at the station level, where the overwhelming number of public complaints (also called citizen's complaints) are resolved. We also looked at formal unit level investigations, in which most moderately serious cases are resolved. This Report considers the most serious cases where it is the Internal Affairs Bureau (IAB) that conducts an administrative review or formal investigation.

This study is our first systemic look at self policing in the LASD since the **Kolts Report** in 1992. This study, covering two semiannual reports, breaks ground as a large-scale study of self-regulation within a major urban law enforcement agency. The topic could not be timelier.

At least 137 cities and counties across the country have opted for one form or another of civilian oversight. The overwhelming percentage of these civilian oversight agencies came into being in the last 15 years. In many jurisdictions, the power of the police to investigate and discipline themselves has diminished in favor of civilian investigators and citizens review boards. In New York, Washington DC, and San Francisco, for example, the Internal Affairs investigatory function for non-criminal matters has been transferred in significant part to outside independent civilian commissions and boards. In the city of Los Angeles, the police commission, not the Chief of Police, has the final say whether a police shooting is in or out of policy.

We have long argued that the ability of the police to investigate themselves is a privilege and not a right. The privilege comes with obligations to demonstrate whenever asked that the results reached by self-investigation are fair, reasonable, and based on a thorough, dispassionate, and transparent investigation. If that burden cannot be met, then the privilege is no longer merited, and should be taken away; or, at least, the power to investigate should be shared with civilian investigators. Accordingly, it behooves a law enforcement agency to take all reasonable steps to produce objective, thorough, unbiased, and transparent investigations. In most cases, but by no means always, the LASD produces thorough and credible investigations. In our last report, we gave high marks for the quality of supervisory inquiries and unit level investigations.

In Chapter One of this Report, we discuss our review of 49 completed cases from 2004 and 2005 where IAB conducted the investigation or administrative review. Using computer software to generate cases at random, we reviewed 16 hit shootings, 9 non-hit shootings, one warning shot, and 23 force cases.

**Our key findings are:**

- Approximately half of IAB force reviews are thorough; the other half could have been better. There are some excellent reviews as well as some that fell short, including one case where the investigation was seriously flawed.
- The reviews of shootings and other serious force cases by the Executive Force Review Committee (EFRC) are conducted substantively and procedurally in a manner that is a credit to the LASD. The questions committee members ask are serious, probing, and successful in making the facts clearer.

Tactics are analyzed intelligently and objectively. Dispositions are tailored to the problems that are identified. We offer recommendations to strengthen the deliberative phase of the process.

- OIR's presence and influence has been a significant factor in bringing about the overall excellence of IAB reviews and EFRC proceedings.

While we have made a number of recommendations for improvement, we commend the Department for the serious and credible way that it reviews the use of deadly and other significant force. Other law enforcement departments around the country would benefit from adopting the LASD model of force review.

In Chapter Two, we present a status report on recommendations made in our last report, the **23rd Semiannual Report**.



## *I. Introduction*

The LASD's Internal Affairs Bureau—IAB—is a national leader in the adoption of best practices for reviews of officer-involved shootings and significant force incidents. Its procedures have been widely emulated across the country by other leading law enforcement agencies, and it was a pioneer in the use of special rollout teams for such events. IAB has had strong leadership from the early 1990s under Dennis Burns through Karyn Mannis, the current Captain. Until recently, the Bureau was under the guidance of Chief William McSweeney, an adept leader and an expert on the proper role of internal affairs in policing. There is great variance across the nation in internal affairs practices, and the LASD has constructed a particularly well built model. Our suggestions and recommendations in this Chapter do not take anything away from IAB's national stature.

The LASD fundamentally changed its approach to officer-involved shootings and other uses of force in the wake of the **Kolts Report** (July 1992) and agreements reached shortly thereafter by Judge Kolts and the LASD. First, IAB in 1993 started rolling out to the crime scene to conduct a review of shootings and significant force incidents in their immediate aftermath. The scope of these reviews was expanded to include an examination of strategy, tactics, training, equipment, and risk management questions in addition to gathering facts about whether the shooting was justified.

Second, a panel of Commanders, now known as the Executive Force Review Committee (EFRC), was created in 1993 to determine whether the use of force was in policy and whether the incident raised issues of possible



discipline or corrective action, including tactical, strategic, and training issues.

Third, in 2001, the Board of Supervisors, at the suggestion of the Sheriff, created a committee, in which Special Counsel participated, to create the Office of Independent Review (OIR) and to recommend a person to head that office. The Board of Supervisors and Sheriff accepted the committee's recommendation of Michael Gennaco for the job. OIR's mandate is to assure the integrity of LASD's internal investigations, and it is fulfilling that mandate and more.

Having not written about the force review process at any length since the **14th Semiannual Report** (October 2001), at the time when OIR was just coming to life, Special Counsel in this report takes stock of the current state of IAB and force review, pointing out what is working well and what could use improvement.

*Our key findings are:*

- Approximately half of IAB force reviews are thorough; the other half could have been better. There are some excellent reviews, as well as some that fell short. One in particular was incompletely investigated in several key respects.
- EFRC proceedings are conducted substantively and procedurally in a manner that is a credit to the LASD. The questions committee members ask are serious, probing, and successful in making the facts clearer. Tactics are analyzed intelligently and objectively. Dispositions are tailored to the problems that are identified. We offer recommendations to strengthen the deliberative phase of the process.
- OIR's presence and influence has been a significant factor in bringing about improvement of IAB reviews and the overall excellence of EFRC proceedings.

## *II. Methodology*

Our examination of force review began with a detailed analysis of 25 percent of the incidents triggering an IAB rollout in 2004 and 2005. We also attended two of the semimonthly meetings of EFRC after having read the files on the nine force reviews presented at those meetings. Finally, we interviewed the then-Chief of the Leadership and Training Division, three of the four Commanders regularly assigned as members of EFRC,<sup>1</sup> the Captain of IAB, an IAB investigator, the past and present EFRC coordinators, and three of the six members of OIR, including its Chief Attorney and one of its deputy Chief Attorneys. The Captain of IAB and the sergeants who coordinate EFRC also provided us with a variety of statistics and other data. All personnel we met with were refreshingly straightforward, unfailingly helpful, and justifiably proud of their respective roles in making the LASD force review process a model for law enforcement agencies across the country. Special thanks are due IAB Captain Karyn Mannis, who played the principal role in providing us with the files and information we needed.

We chose to review files from 2004 and 2005 because most of those cases would already have been heard by EFRC. For those two years, there were 65 deputy-involved shootings where the suspect was wounded or killed (“hit shootings”), 40 shootings where one or more deputies fired at the suspect, but all the bullets missed (“non-hit shootings,”) three cases where a deputy fired a warning shot, and 91 serious use of force cases, which include three in-custody deaths (collectively analyzed in the process as “force” cases.)

We determined that selecting one quarter of each of the four categories would provide a robust sample of approximately 50 cases, more than sufficient to make judgments about the quality of the administrative reviews and the dispositions reached by EFRC. We used a statistical software program to

<sup>1</sup> The fourth member of the EFRC was on leave when we attended the sessions of the panel and interviewed its members.

randomly select one quarter of each of the four categories. The software identified 51 cases: 17 hit shootings, 10 non-hit shootings, one warning shot, and 23 force cases. Because one hit and one non-hit shooting were still active cases and thus had not reached EFRC, we ended up reviewing 49 files. The reasons given by the deputies involved in those cases as to why they fired their weapons are set forth in the accompanying box.

### **Deputies' Basis for Firing Their Weapons**

Suspect fired gun	9*
Suspect pointed gun**	7*
Suspect displayed gun	3
Suspect reaching for deputy's gun	2
Vehicle coming at deputy	2
While fleeing, suspect turned toward deputy	1
Suspect physically attacking civilians	1
Deputy thought suspect was going to break the deputy's leg	1
Warning shot	1
<b>Total</b>	<b>27</b>

\* In one case a suspect fired a gun at one point and then later pointed a gun at a deputy. Each action caused separate rounds to be fired by a deputy. That case is counted as both "suspect fired gun" and "suspect pointed gun."

\*\* Two of these suspects disputed that they possessed a gun at the time or just before they were shot

### *III. The Role of the Internal Affairs Bureau*

IAB is the unit responsible for conducting administrative reviews of force-related cases in the LASD. Using the reviews prepared by the IAB, EFRC determines whether departmental policy has been violated and whether other administrative matters such as tactics and training are at issue. The Homicide Bureau, on the other hand, has the responsibility to investigate crimes. In the context of a deputy-involved shooting, Homicide gathers evidence relating to both possible criminal behavior by the suspect and the legality of the use of deadly force by the deputy and presents that evidence to the District Attorney. Because Homicide investigations are restricted to criminal issues, IAB is the best choice to pursue administrative, training, and tactical issues.

LASD's rollout team, the Force/Shooting Response Team, consists of an IAB lieutenant, IAB sergeants, and representatives from the Training Bureau, and Civil Litigation and Crime Scene units. IAB has four Force/Shooting Response Teams, each of which is on call once every four weeks for 24 hours a day, seven days a week. An IAB lieutenant and at least two IAB sergeants, as well as other members of the Force/Shooting Response Teams, respond, or "roll out," to the scene of the following types of incidents (Manual of Policy and Procedures [MPP] 5-09/434.05):<sup>2</sup>

- "All shootings in which a shot is intentionally fired at a person by a Department member,
- Force resulting in admittance to a hospital,
- Any death following an altercation with any Department member,
- All head strikes with impact weapons,
- Skeletal fractures, with the exception of minor fractures of the nose, fingers or toes, caused or allegedly caused by any Department member,

<sup>2</sup> All citations to the LASD Manual of Policy and Procedure (MPP) reflect the Manual provisions in effect as of January 31, 2007.

- All large party situations where force is used,
- Inmate deaths from other than obvious natural causes. This includes murders, suicides, overdoses, etc.”

The IAB lieutenant also has discretion to have the team roll out to shootings and serious force incidents not covered by the above policy, but discretionary rollouts seldom occur.

When the incident involves a hit shooting (MPP 5-09/431.00) or an in-custody death, the Homicide Bureau must conduct a criminal investigation. IAB also rolls and has access to the scene, assists Homicide in the initial investigatory steps, including canvassing for witnesses and gathering evidence, sits in on the interviews of all witnesses except the shooter, and has the authority at the end of witness interviews to request that the Homicide investigator ask such additional questions as seem appropriate.<sup>3</sup> While not permitted to sit in on the interviews of shooters, IAB receives a tape of the interview of a shooter within a short time after the interview. If the incident involves a non-hit shooting or a use of force for which an IAB response is mandated, the investigation is conducted from the beginning by IAB.

It is important to note that the investigation conducted by IAB on shooting and force incidents is a review of the incident, not a disciplinary investigation of the personnel involved in the incident.<sup>4</sup> MPP 5-09/431.00, 5-09/432.20, 5-09/434.05, and 5-09/434.15 characterize IAB’s activities as a “review,” “administrative review,” “report,” and “analysis report,” distinguishing it from “an administrative investigation” or “a formal administrative investigation ... if it appears that the conduct may involve violations of

<sup>3</sup> We are told that IAB investigators in general reserve administrative questions until the force review process.

<sup>4</sup> The LASD draws a bright line distinction between these administrative force reviews and formal administrative investigations that may lead to discipline against the officer. Accordingly, we use the term “force reviews” for the nondisciplinary analysis following an IAB rollout and “administrative investigation” for a further analysis whether discipline should be imposed.

Department policy.” IAB on its own lacks authority to initiate an administrative investigation, although it may recommend that one be commenced. The authority rather rests with the applicable Division Chief. Once the EFRC hears a case, it also has the authority to direct that an administrative investigation be conducted.

MPP 5-09/434.00 characterizes the review performed by IAB as follows:

“To enhance the Department’s quality assurance and control, and ensure Department-wide consistency in our review process, Force/ Shooting Response Teams shall respond to and investigate certain force and high-risk incidents and prepare reports that include, but not be [sic] limited to, the following: multi-perspective reviews of the incident; reviews of adherence to policy and performance standards; reviews of adherence to Department training; recommendations for changes in policy and training; assessments of the civil liability the Department is exposed to by our operations and procedures; and reviews of other pertinent issues.”

If Homicide is conducting a criminal investigation, IAB generally engages in little or no activity on the case pending receipt of Homicide’s complete file (known as “the Homicide book.”) Some IAB investigators read the Homicide file shortly after receiving it. Most investigators, however, wait until the District Attorney’s office has assessed the case and filed a letter declining prosecution. Thus, the IAB force review generally does not commence in earnest until after the District Attorney declines to prosecute.<sup>5</sup> The DA’s decision usually takes many months, and sometimes more than a year, thereby prejudicing any subsequent force review because the facts are now cold and witnesses’ memories may have dimmed.

<sup>5</sup> The last (and possibly only) LASD deputy-involved shooting that led to a prosecution occurred in 1982. In light of the rarity of criminal prosecutions stemming from such events, we refer throughout to declinations as the result of the District Attorney office’s review.

Unfortunately, when Homicide has done an investigation, many IAB investigators do little more than piggyback on Homicide's investigation. IAB procedure requires that its investigators listen to the tapes of the interviews of the shooters conducted by Homicide. As is discussed more thoroughly below, we found five cases where the IAB investigator did not listen to the tapes of the interviews and did not conduct new interviews of those shooters, but rather relied simply on the Homicide file's summaries of those interviews. We hasten to note that more than a year ago, Captain Mannis required that all shooters be interviewed by IAB. Since then, it appears that all shooters have been so interviewed.

IAB Management Directive #38 (May 31, 2005) requires that the review be completed within 90 days of the incident, unless it follows a Homicide investigation, when the 90-day period commences upon the issuance of the of the District Attorney's letter.<sup>6</sup>

When the IAB investigator has completed the review, the investigator's lieutenant reads it and requests corrections or changes. Once the review has been approved, it is sent to the sergeant who serves as the EFRC coordinator to be placed on the EFRC calendar.

#### *IV. The Executive Force Review Committee*

For many years after the committee was established, the Commanders serving on it at a particular session were assigned on a rotational basis. For the last several years, the EFRC has had three, or currently four, Commanders who regularly constitute its membership: Johnny G. Jurado, the Chairperson, Leadership and Training Division; Kenneth J. Brazile, Field Operations Division, Region II; Cecil W. Rhambo, Field Operations Division,

<sup>6</sup> MPP 5-09/434.05 ambiguously refers to the deadline for a review as being 30 business days. Apparently, this policy section refers to a now-disused report from Training to IAB on rollout cases and does not refer to the review IAB generates for the EFRC.

Region I; and Eric Smith, Leadership and Training Division. Commanders Brazile, Rhambo, and Smith all previously served with distinction in IAB. The EFRC typically sits three times a month—biweekly to hear the shooting and force reviews and one of the alternate weeks to hear canine bite reviews.

Before the EFRC hearing, copies of the entire force review files (which, when there is one, also includes the Homicide Bureau file) are circulated to members of the Committee and others who regularly attend, such as OIR and representatives of the Training Bureau. The unit commander of the employees involved in the shooting or use of force also attends and participates in the meeting. Based upon what we were told and what we observed, the EFRC members and other participants do read the files in advance of the meetings. Generally four to six reviews are scheduled per afternoon session. The day before the hearing, OIR e-mails EFRC members a list of the OIR attorneys' questions and concerns concerning the scheduled cases.

The IAB sergeant who conducted the review orally presents the case to EFRC. Some of the presentations (often those that began as Homicide investigations) include PowerPoint or video presentations with views of the scene and other relevant photographs. Others include still photographs or crime scene diagrams. The investigator describes the incident, tells the committee a little about the suspects and the involved deputies, and details the force that was used, the involved deputies' states of mind, any injuries, and conflicting evidence. EFRC members ask some questions of the investigator during the presentation and many questions at its conclusion. The questions zero in on tactical concerns and possible policy violations. Whatever the members of the EFRC did not know about the incident after reading the review, they have inquired about by the end of their questioning of the investigator.

As part of the discussion, the unit commander is asked for views of the incident and about the involved deputies' overall performance, prior shootings



and uses of force, and disciplinary and training history. The Training Bureau representative is asked about tactics and whether they conformed to the Department's training. OIR is also called on to voice their questions, concerns, and analyses. Following a full discussion that often focuses on questions of tactics or training and that may last anywhere between five and 30 minutes, the chairperson asks the other members for their views on the appropriate resolution of the matter—including whether the force or shooting was in or out of policy, whether the tactics were in or out of policy, and whether the deputies need training or a briefing.

If the EFRC members believe there were policy violations, they order an administrative investigation and consider the case again when the administrative investigation by IAB has been completed. If the review file was complete, the administrative investigation may in fact rely fully on the review file with a new cover memo dealing with the policy violation issue. The EFRC can also order further development of the facts on the force review, if that seems desirable, without ordering an administrative investigation. In those circumstances also, the case will be presented again to EFRC on a future date. On one 2004 incident (which was part of the sample of cases we reviewed), EFRC ordered and attended a reconstruction of the incident at the original scene. As one committee member told us, EFRC has wide discretion to take whatever action the committee deems appropriate. While additional training and briefings are common remedial action, reassignment has been used on occasion.

When conduct is found to be out of policy, EFRC recommends discipline to the involved employee's chain of command. In those instances, under a written agreement between LASD and OIR,<sup>7</sup> the Division Chief—or when the discipline is more severe than a suspension of 15 days, the Undersheriff

7 The agreement, the "OIR/LASD Cooperative Paradigm," is reproduced in OIR's Second Annual Report (October 2003), p. 61.

and Assistant Sheriffs—should consult with OIR before agreeing to any reduction in the degree of discipline recommended by EFRC. With respect to EFRC disciplinary recommendations, OIR’s position in general, with which we concur, is that those recommendations, coming out of a detailed and formal process, are entitled to a presumption of appropriateness and that EFRC’s recommendations should be accorded more weight than a unit commander’s in the standard disciplinary situation.

Meeting on 26 different occasions in 2006, the EFRC heard 155 cases: 64 shootings (hit and non-hit), 47 significant force cases, and 44 canine bite cases. Included in those 155 cases were 18 administrative investigations involving 44 employees. The actions of 17 of those employees were found to be in policy and the possible violation unfounded. The evidence as to a possible policy violation by two employees was unclear, and those cases were disposed of as unresolved. Twenty-five employees were found to have acted in violation of policy. Eight received written reprimands, 17 received suspensions, and none was discharged.

By comparison, EFRC met on 29 occasions in 2005 and heard a total of 167 cases: 42 hit shootings, 24 non-hit shootings, 47 significant force cases, and 54 canine bite cases.<sup>8</sup> Recommendations about tactics or training were made in 57 of those cases. Included among the total 167 cases were 23 administrative investigations involving 79 employees. One was discharged, one was suspended for more than 15 days, and 44 were suspended for 15 days or less.

## *V. Assessment of the Force Review Process and EFRC Proceedings*

EFRC proceedings are conducted substantively and procedurally in a manner that is a credit to the LASD. The questions committee members ask

<sup>8</sup> The data we received for 2005 and 2006 did not track all the same categories.

are serious, probing, and successful in making the facts clearer. Tactics are analyzed intelligently and objectively. Dispositions are tailored to the problems that are identified.

One strength the current EFRC has that was not present in the past stems from its stable membership. While no one advocated that members should not rotate off after a period of time, the consensus was that the current members' ability to hear many cases over an extended period of time provides a knowledge and perspective that has enhanced a committee member's ability to discern where problems lie and how to try to address them. The Department's decision to assign Commanders to sit on the committee for a significant period of time was a good one. We recommend that over time, the membership be slowly rotated in such a way that the EFRC always has a majority of members with significant experience on the committee.

Many in the Department and others give OIR significant credit for helping EFRC to get to its current high functioning level. That OIR regularly reviews IAB's output has been helpful in making the review files better. OIR's list of questions and issues circulated to committee members in advance of the meetings makes it likely that one or another EFRC member will raise, explore, and try to resolve the issues raised by OIR. To the extent that OIR's concerns have not been addressed before OIR is called on at the meeting, the assigned OIR representative voices them at that time, and the committee discusses them, at least briefly. From talking to Department members, we conclude that OIR is seen as thorough, objective, and analytical. They thus are paid attention to—if not always agreed with—and are seen as bringing greater objectivity and credibility to the force review process.

The quality and quantity of questions raised during the presentations and the discussion that follows are excellent. It is clear in observing EFRC sessions that the culture of the committee encourages asking questions and trying the best that one can to nail down the facts. The deliberations portion of the meeting can be improved, however.

The questions that members need to resolve in their deliberations are not always clearly defined, separated from other questions, or clearly answered. We noticed subtle tendencies to reach a collective conclusion without necessarily fully hearing each member's views or while appearing to give more weight to some members' conclusions than others. In contrast to the culture of the committee that encourages members to ask questions, the culture in the deliberative part of the committee's functioning seems to discourage full statements of members' bottom lines.<sup>9</sup> We were informed, however, that dissents—usually as to the appropriateness of tactics—are relatively common.

We recommend that the deliberations or conclusions part of EFRC become more structured. In part, the questions being considered should be clearly identified and dealt with one at a time. Second, the chairperson should ensure that each member (including acting members who sit in when a regular member is unavailable) is both given a full opportunity to voice conclusions and also encouraged to spell those out if they are not volunteered. Third, when members have raised tactical concerns not rising to the level of policy violations, the concerns should be briefly spelled out in the findings and recommendations memo that is prepared by the EFRC coordinator and signed by the chairperson on each case that is heard. In sum, the deliberative part of the process would benefit from greater structure, given the significant commitment of resources that the Department devotes to the process and the quality of the EFRC members' questions and discussion.<sup>10</sup>

Along with participants and other observers, we note with approval the increased willingness of EFRC to impose consequences for tactics that violate

9 We note that two different members chaired the two EFRC meetings we attended. While some of the specifics varied with the different chairpersons, the net result was similar. That fact supports our hypothesis that the issue relates to the collective culture of EFRC, rather than to a particular person presiding over the meeting.

10 In making EFRC's deliberations more structured, the committee can use as a model the process it used when it reviewed the 2005 Compton shooting, where 120 rounds were fired at a suspect in an SUV, endangering numerous people who lived in the neighborhood. Following that incident, the EFRC considered the individual adherence to policy, tactics, and decision making of 12 deputies and two supervisors in a structured, highly analytical fashion.

the Department's policy on performance to standards (MPP 3-01/050.10). In years past, one observer stated, EFRC was more likely to orally criticize the poor tactics and to ask the unit commander to verbally counsel the deputies involved, but to refrain from formally finding a policy violation. In the 49 files we reviewed, it was rare for the force itself to be found out of policy. It was much more frequent for tactics leading up to the use of force to be found out of policy. This makes sense: Poor tactics often put deputies in a position where the use of significant or deadly force is justified; had better, more prudent tactics been employed, lesser or even no force might have accomplished the mission. Where a deputy is acting in good faith, it is nearly always the case that the deputy had a reasonably objective belief that deadly force was justified under the circumstances. It was also pointed out by observers that discipline imposed for violating the use of force policies are far harder to sustain on appeal than discipline for unacceptable tactics.

We reviewed one case where EFRC found a non-hit shooting in policy under circumstances where the reasonableness of the deputy's conduct was debatable. A deputy had improperly left his Department-issued gun overnight in the unlocked console of his car parked in the driveway outside his house. In the middle of the night, the deputy heard his car being broken into. Coming out to his driveway armed with another gun he owned, the deputy confronted the two thieves who fled toward their car parked nearby on the street. When one of the men turned around just before he reached his car to look in the deputy's direction, the deputy fired three shots at him, all of which missed. The two thieves then made a successful getaway. The thieves were later found to have stolen the gun from the deputy's car. The gun was found on the lawn near the deputy's car.

In response to the IAB investigator's excellent questioning, the deputy admitted that he never saw either man in possession of a weapon, including when the fleeing man turned in his direction, but he thought that one of

them might have been in possession of the gun he had left in his car. He said that the basis for firing the three rounds was that the man had turned around and he interpreted that as meaning he wanted a confrontation. “So in my mind, he had a gun,” he stated. “That’s the reason he turned around, and that’s the reason I fired.” The case turns on whether the deputy was reasonable in his belief that the suspect had a gun, given that the deputy had not observed one and did not yet know the gun had been taken from his car. It’s a debatable proposition.

We wonder whether the shooting would have been held out of policy if the suspect had died rather than fleeing without injury. We similarly wonder if the result would have come out the other way had the gun not been taken from the deputy’s car. The EFRC, after hearing the shooting review, ordered an administrative investigation solely relating to a possible failure to take proper care of County property, by leaving the weapon in the car. The committee found the deputy’s care of County property to be out of policy and recommended a written reprimand.

On several occasions, EFRC identified recurring issues and laudably caused them to be further analyzed outside the EFRC process. The EFRC heard a number of cases involving the use by deputies of radio cars as weapons; as a result, a committee was established to examine that scenario. The EFRC similarly heard several cases that involved a deputy shooting through their windshields at suspects. Examination of that issue led to new training initiatives. In a third instance, at the instigation of EFRC, Training is looking at the issue of shooting at cars when suspects are using the cars to try to elude capture. These systemic reviews of recurring issues are commendable steps to address issues not only on an individual case-by-case basis but also in a broader, analytical fashion.

Nonetheless, LASD is not making full use of the facts and findings from the force review process. The EFRC coordinator for a number of years has

entered facts into a database relating to each case heard by EFRC, but virtually no one ever looks at that database to try to determine whether there are lessons that can be learned from the cases in the aggregate. The database, which was hard to query, has recently been updated to facilitate drawing reports from the myriad case factors. The Leadership and Training Division is considering how to better analyze the wealth of data the Department has gathered in hundreds of force review cases. LASD should take the opportunity to use its enhanced database to take the lessons learned in individual force reviews to a more informed and more influential macro level.

## *VI. IA Interviews on Hit Shootings; Transcripts*

Our analysis of hit shootings reviews disclosed that half—eight of 16—were completed without Internal Affairs having interviewed the shooter.<sup>11</sup> During the course of our file review in late 2006, the IAB Captain verbally directed her investigators to interview all shooters in hit shooting cases. That new policy was codified in Management Directive #59 (October 22, 2007) which requires that IAB “interview shooters in hit shootings to ensure that the IAB shooting investigation is thorough.” Exceptions require the approval of both the investigator’s lieutenant and the IAB Captain. The directive also helpfully lists two dozen subjects that should be addressed to the extent they are pertinent in both hit and non-hit shooting interviews. Investigators are required to listen to the tapes of Homicide’s interviews and to include a summary of the IAB interview in the force review investigative summary. OIR has informed us that going forward it will also ensure that all shooters are interviewed by IAB in the force review process.

At the time the force reviews we surveyed were prepared, IAB policy

<sup>11</sup> In one of those cases, after it heard the case initially, EFRC directed that further investigation, including an interview of the shooter, be conducted. In a second case, EFRC ordered an administrative investigation of possible policy violations during which the shooter was interviewed. In three other hit shooting cases, the IAB investigators completed their reviews without interviewing the shooters but were then directed by their supervising lieutenants to do so.

required investigators to interview witnesses, including shooters, previously interviewed by Homicide only when they determined that there was a need to do so because some topics relevant to force review had not been covered in the Homicide interview. IAB has now changed that policy as to shooters, but not as to other significant witnesses. While the new policy requiring an IAB interview except in unusual circumstances is an important step in the right direction, it should be broadened to include all potentially significant witnesses, including all LASD employees, who have information relevant to the force review.

Likewise, at the time the force reviews we examined were prepared, IAB policy did not require including the transcripts of any Homicide or IAB interviews. Now the transcripts of the interviews of shooters—both by Homicide and IAB—must be included in the force review file. We recommend that IAB's revised policy relating to transcripts be extended to include the Homicide and IAB interviews of all witnesses whose information is material to the issues raised by that force review.

In five of the hit shooting cases where the force review was conducted without an IAB interview of the shooter, there were no transcripts of the Homicide interviews, and the investigator apparently failed (in violation of then and current IAB procedure) to listen to the tapes of the interviews. Rather, the IAB investigators merely relied on the interview summaries prepared by the Homicide detectives, often copying those summaries almost word for word into the force review narratives. Often in cases where the Internal Affairs investigator did in fact conduct an interview of the shooter, no transcript of it was included in the file considered by the EFRC.

While issues of tactics, training, and equipment are generally irrelevant to a determination whether a deputy committed criminal misconduct, those issues should be addressed in force review. The task of force review is thus substantially different and broader than the issues Homicide needs to address.



Even in the most straightforward case of appropriate use of deadly force, there may be questions relating to tactics and strategy that a force review investigator should ask that a Homicide investigator need not.

The issue as to whether IAB should interview the shooter and other significant witnesses arises in most instances in hit shooting and in-custody death cases where there have been prior Homicide interviews. But it also arises in cases where the need for a Force/Shooting Response Team roll-out is not immediately identified—for example, when a suspect suffers a bone fracture as a result of force employed in the arrest, but the fracture is only diagnosed a day or two after the incident. In such circumstances, the arresting deputy's command has already performed its own review of the incident, including interviewing the involved deputy and any other pertinent witnesses.

Since, as discussed, the purpose of force reviews is substantially different than the purpose of Homicide investigations, and since the Department has commendably seen the value of having Internal Affairs conduct force reviews, we recommend to the Department that it mandate that all potentially significant witnesses who have information relevant to the issues be interviewed by IAB regardless of whether those witnesses were previously interviewed by another command. We do not mean to include within the ambit of this proposal routine interviews of the general public to establish that they did not witness the event. We do mean to include all sworn members and other employees of the LASD whether or not they had previously denied having witnessed the event. Such a bright-line rule will eliminate uncertainty and increase the likelihood that the issues of special concern to force review are not overlooked.

Our recommendation will not have sweeping implications. It only applies to the percentage of hit shootings where the IAB investigators have not interviewed relevant witnesses or cases where it had not been thought necessary

to have IAB roll out. For all the non-hit and warning shot cases, for the overwhelming portion of the force cases, and for the percentage of hit shooting cases where the IAB investigators have already been interviewing all the relevant witnesses, the recommended procedure will not result in any changes. The recommended procedure will require a uniform comprehensive approach to force reviews and will eliminate the possible short cut that some investigators, with the acquiescence of their supervisors, have chosen to take.

In the cases that start with a Homicide investigation, based upon our sample, transcripts of the interviews conducted by Homicide are in the force review files a substantial majority of the time. In those cases, the transcripts of the subsequent interviews conducted by Internal Affairs are in the files about 60 percent of the time. And in the force reviews that involve solely an Internal Affairs investigation, interview transcripts are found in the force review files less than half the time. Whether transcripts are made seems to be left to the discretion of the investigator with no guidance from the Bureau.

Transcripts of statements always provide details and nuances that cannot be captured in even the best of summaries of those statements. Statement summaries, on the other hand, are valuable in conveying a big picture of the witness's statement, allowing the investigator to highlight what is important and ignore or downplay parts of the statement that are not helpful to understanding what happened. In virtually all the cases where transcripts were present, we found the summaries of the transcribed statements to fairly represent the witnesses' statements. In rare instances, however, that was not the case.

Transcripts minimize disputes concerning what witnesses stated in their interviews and allow readers to obtain direct evidence of what has been said, unfiltered by another person's summary or interpretation. Transcripts also communicate how things were said, provide clues as to the credibility of witnesses, and reveal whether the interview was conducted fairly and compe-

tently. Since transcripts provide the best way of knowing what a witness said, the statements by all material witnesses in force reviews should be transcribed and included in the file that is considered by EFRC. Including transcripts is also a way for EFRC and the management of IAB to exercise quality control over the interviews being conducted for force reviews. Management Directive #59 has resolved the problem of missing transcripts insofar as they involve shooters. Force reviews are now required to include the transcripts of both the Homicide and the IAB interviews of all shooters.

The absence of transcripts and the inadequacy of the IAB summary of Homicide interviews were particularly evident in a case which turned on whether the juvenile suspect, who admitted vandalizing a house, was in possession of a gun. The suspect was fleeing the vandalized house when a deputy fired three shots at him, hitting him once. The IAB summary of the Homicide interviews failed to mention that six civilian witnesses at the scene did not see the suspect with a gun. The EFRC held the shooting to be in policy. As explained in detail in the appendix commencing on page 39, flaws in the Homicide investigation and force review may have presented an incomplete picture of the incident to EFRC, thereby leading to a result that EFRC might not have reached had the full story been told. We have asked the Department to reinvestigate this matter in an effort to resolve our concerns. The Department has staunchly defended its investigation and has declined to reopen the investigation. Our concern about this case remains high.

## *VII. The Quality of Fact Gathering by Internal Affairs*

In our sample of 49 force review files, we found some excellent ones and others that could have been better. An example of excellent work was a serious force case where IAB investigated the basis for the traffic stop that led to vehicle and foot pursuits and injury to the suspect. The arresting deputy had said in reports that he stopped the car because he had determined that it

was stolen after seeing it had bald tires that were secured by only two lugs and was missing the gear shifter. Observing a videotape made at the scene by a field supervisor, the investigators noticed that, contrary to the deputy's report, all four of the tires were held on by four lug nuts.

The investigators then located the damaged car in an auto auction yard and determined that the gear shifter knob was present and that the tires were not bald and were secured by the required four lugs. The investigators thus proved that the ostensible bases for the car stop were false. The investigators' excellent work led to EFRC's recommending discharge for the arresting deputy and a 30-day suspension for his partner. After a settlement and a grievance, the discipline was reduced to 30 days for the arresting deputy (with 12 held in abeyance) and ten days for his partner (with four held in abeyance).

Another exemplary investigation involved the first use by LASD of a pepperball gun in the field (as opposed to in a jail). The assigned investigator skillfully wove into the written report still pictures extracted from the videotape of a dynamic series of brawls at Universal City, involving a couple dozen people and many more bystanders, bringing clarity and credibility to the report. The investigator could have just relied on showing the tape to EFRC, but extracting the pertinent frames and putting them into the written report made the swirling action of multiple brawls much clearer than one viewing of the tape would have been. The unnecessary force contentions of the suspect whose rib was fractured by a pepperball round were conclusively refuted. He claimed that he had been shot a pointblank range while complying with the deputies' commands. In fact, he was shown to have been an aggressor in the fight who kept punching the man he attacked despite the deputies' commands to desist, thereby making the use of the pepperball gun a reasonable use of force.

In a third exemplary review of a serious use of force, the investigator distinguished himself by his multiple documented efforts to contact two civilian witnesses and the suspect, who, after being involved in a bar fight with other civilians, was severely beaten in the process of being subdued by off-duty deputies who had been drinking in the bar. While the investigator's efforts were not successful, his well-documented attempts over a four-month period to contact the witnesses by phone, mail, and in person demonstrated commendable diligence. And despite the absence of statements from those crucial witnesses, the investigator wrote a fair and balanced report that presented the appropriate issues for EFRC consideration.

In contrast, we also found substandard investigations. The case in the Appendix on page 39 is one. Here is another: In a hit shooting case, where the IAB investigator conducted no interviews for the force review, the EFRC directed that an administrative investigation be conducted. The suspect, his girlfriend, and two of her relatives alleged excessive force by the deputies, including pistol whipping the suspect—a contention denied by the two involved deputies. The Homicide investigation had located one additional civilian witness who was not related to the suspect or his girlfriend. She told Homicide that just before he shot the suspect the “second deputy began hitting” the suspect, though she did not specify that the deputy used his pistol when he hit the suspect. The IAB investigator did not re-interview that sole independent witness in the case, but made the following misrepresentation of her prior statement: “The only witness that was not related to Suspect M...’s girlfriend said she did not see any deputy hit Suspect M... .” In fact, she had said just the opposite, although she did not specify that the deputy had pistol whipped the suspect. The interviews that the IA investigators did conduct in this case were poorly done.

In several cases IAB investigators were inappropriately buddy-buddy or flip with deputies they were interviewing, sending messages that “we are on

your side” and that this review is nothing for the involved deputy to be concerned about. Investigators also asked leading questions calculated to support the conclusion that the deputy had appropriately used deadly force:

*Q* You said that you were a [sic], you were in fear when... [the suspect] points the gun at you, three times. Go into that a little bit. What is going through your mind exactly?

*A* I thought he was going to fire the weapon at me. I thought he was going to shoot us.

*Q* Were you scared?

*A* Yes.

*Q* Do you have a family?

*A* Yes. Two kids.

*Q* Did that cross your mind?

In another case, when the District Attorney’s office reviewed the Homicide investigation, it pointed out in its closing letter that there was an apparent discrepancy in that investigation because the deceased suspect suffered six entry wounds, but the investigation stated that the deputies had fired only five shots. In fact, the deputies had fired six shots, four from one deputy and two from another. Despite the DA’s letter highlighting the discrepancy in the Homicide file, the IAB force review did not resolve the discrepancy and repeated the error Homicide had made as to the number of shots fired.

In another case, contrary to good practice, the IAB investigators conducted an untaped, undocumented pre-interview of a shooting officer in a hit shooting case.<sup>12</sup> The IAB investigators also did not point out or express concern about multiple failures by the patrol station to sequester the two shooters in the same case from each other after the shooting. Both shooters told Homicide

<sup>12</sup> In this instance, the IAB investigator claimed that the shooting officer spontaneously began to talk before the investigator had an opportunity to turn on the tape recorder. We note with approval that the investigator noted on tape that there had been some discussion prior to turning on the tape machine.

that they were kept together after supervisors arrived at the scene of the shooting. One described in detail the account his partner had provided to a sergeant on the scene.

We join OIR in finding that the quality of investigative work performed by IAB could be improved. OIR quarterly publishes an “OIR Report on Oversight of Administrative Discipline Cases,” which tracks the progress of cases that OIR monitors—which include force reviews and administrative investigations. For the latter, but not the former, OIR rates the quality of the investigations completed by Internal Affairs. We examined five OIR reports—for the four quarters of 2006 and the first quarter of 2007—for all closed administrative investigations arising out of 2004 and 2005 incidents, the same period covered by our sample of force review files. Of the 164 administrative investigations that met our criteria, 50 percent were rated “thorough” and 48 percent were rated “adequate.”<sup>13</sup> OIR noted that several “thorough” and one “adequate” case achieved the rating only with assistance from OIR.

That approximately half of the administrative investigations considered by OIR did not measure up to a standard of thoroughness is consistent with our findings on the force reviews. This is a matter of concern that needs to be addressed by the LASD. One current member of the EFRC whom we interviewed stated that the committee “deserve[s] better quality investigations.”

As appropriately stated in IAB Management Directive #37 (September 26, 2005) from the IAB Captain to the Bureau’s personnel, “it is important that ... [force reviews] are comprehensive and leave no questions unanswered for the executives and for those outside agencies in the review

<sup>13</sup> The remaining two percent were unrated. One of the “thorough” cases was rated “extremely thorough.” By coincidence, that administrative investigation arose out of a force review that was part of PARC’s sample. We agree that the investigators’ work on that case was superb.

The sample of OIR ratings we discuss above shows substantial improvement from a three-month sample OIR reported on in its *Second Annual Report* (October 2003), where it rated only 29 percent of the investigations “thorough.” Of 68 investigations in that sample, 20 were found to be “thorough,” 39 “adequate,” six “adequate, with improvement needed,” and three “inadequate.”

process.” While many of the files we reviewed met that standard, a substantial minority of them did not measure up. Since the concerns we have expressed relating to the quality of the investigative work and the presentation of the facts should have been apparent to any careful reader of the force reviews, it appears that the supervision of force reviews has been inconsistent. The IAB lieutenants who supervise and approve the reviews need to ensure that the force reviews meet the standard set by IAB Management Directive #37. Consistency in applying that standard will assist the investigators to regularly put together thorough and fairly presented force reviews. We know that Captain Mannis has addressed these issues with the IAB lieutenants and we are confident that she will continue to follow up.

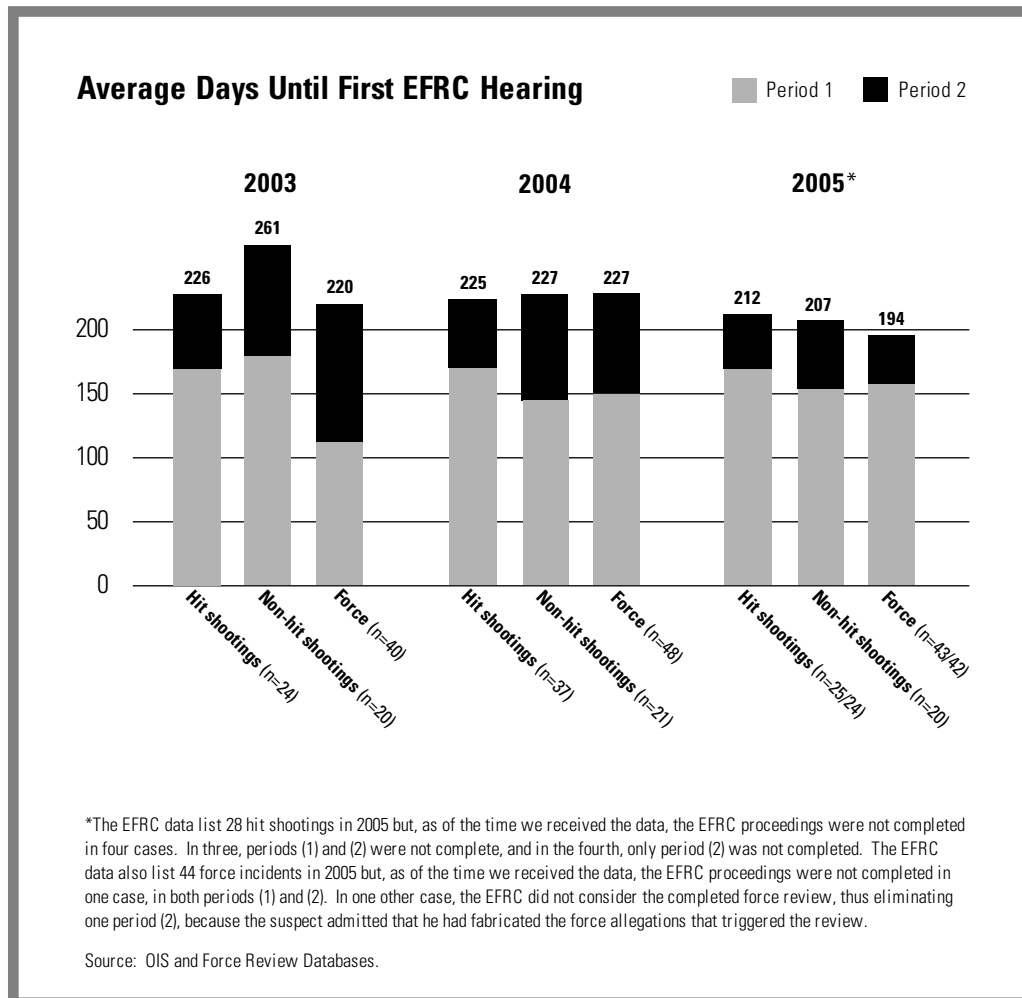
### *VIII. Timeliness of the Process*

IAB Management Directive #38 requires that investigators complete the force reviews within 90 days of the incident or, for hit shootings,<sup>14</sup> within 90 days of the issuance of the District Attorney’s letter on the case. Extensions must be approved by the appropriate lieutenant. The Department’s expectation, once a force review has been completed, is that it will be reviewed by the EFRC within one or two months. Our review of EFRC data shows that the force review process, with limited exceptions, is not meeting either deadline and is particularly far from complying with the investigators’ deadline for completing force reviews in 90 days.

The following graphs track the average and median times for the following periods for incidents that occurred in 2003, 2004, and 2005: period (1) tracks from the date of the District Attorney’s letter declining prosecution for hit shootings and three in-custody death cases to the date the completed force

<sup>14</sup> While the directive does not specifically include in-custody deaths in the category that awaits the DA’s letter, they are included in practice since the District Attorney’s office reviews all such cases.

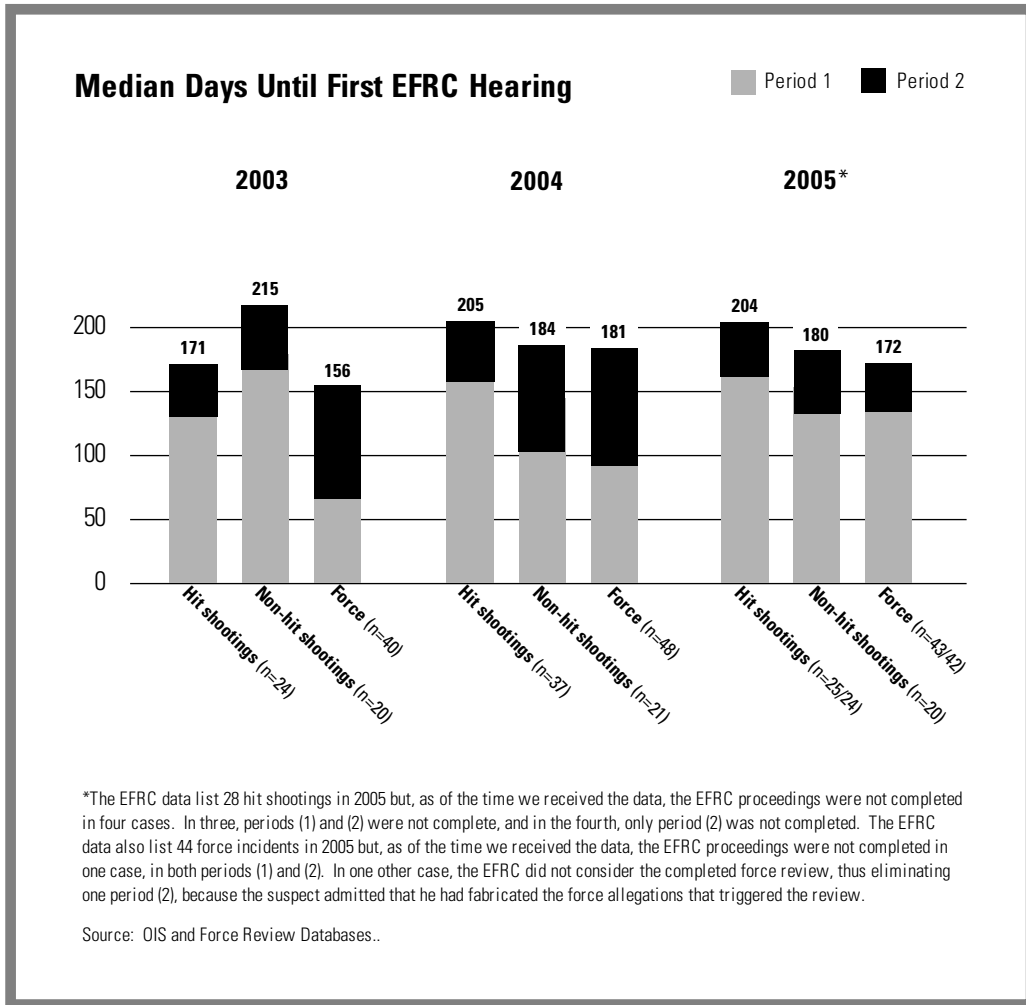




review went to the EFRC sergeant, or from the date of the incident, in cases not going to the DA, to presentation to the sergeant; period (2) tracks from the date the completed force review went to the EFRC sergeant<sup>15</sup> to the first date the EFRC heard the case;<sup>16</sup> and (3) the sum of periods (1) and (2).

15 In six 2003 hit shooting cases, the force review was completed before the District Attorney's letter was issued. In those cases the start date used for period (1) is the date the Homicide file was received by Internal Affairs. In the 2005 Compton shooting case, the force review was completed months before the Homicide investigation was completed; in that case the start date used for period (1) is the date of the incident.

16 In approximately 15 cases, the EFRC heard a case two or three times. Period (2) and the totals only include the elapsed time until the first EFRC hearing in those cases.



The graphs clearly show that force reviews are taking far longer to be heard than provided for by the Department’s procedures. The median elapsed time is generally shorter than the average elapsed time because some cases took extraordinary lengths of time—in four instances, more than one year—to be heard, thus skewing the average times upward. The median times to complete a case from the beginning of the IAB review until resolution by EFRC are centered at five to seven months. For hit shootings and in-custody deaths, waiting for the Homicide investigation and the District

Attorney's consideration of the case customarily adds another six to nine months to the process, meaning that such cases are almost always heard by the EFRC a year or more following the incident.

The data in the graphs do not suggest any clear trends in the median times over the three years of incidents or by type of case being investigated. The data, however, do show an accelerating improvement in the average times from 2003 as compared to the previous two years, demonstrating that over time fewer cases were subject to extraordinarily lengthy delays. The data, particularly regarding 2004 incidents, suggest that when the IAB investigation is completed more quickly, the wait to be heard by the EFRC is longer. To the extent that that is true, it suggests that at least some of the calendaring for the EFRC hearings was heavily influenced by the relative "age" of the case, rather than being calendared when the investigation was completed. Based upon what we were told about current EFRC calendaring practices, those apparent calendaring delays for "young" cases no longer occur. At the end of 2006, the wait to be heard by the EFRC was generally one to two months after IAB's completion of the force review.

Based upon IAB's and the EFRC's procedures, non-hit shootings and force cases should generally be heard within four to five months of the shooting or force incident. Hit shootings and in-custody deaths should generally be heard about four to five months after the District Attorney declines prosecution. As demonstrated above, median elapsed time to the EFRC hearings was running 5.2 to 7.2 months and the average was running 6.5 to 8.7 months. We recommend that the Department and the Internal Affairs Bureau take the necessary steps to enforce their procedures, thus ensuring that the EFRC will hear force review cases in a more timely fashion.

In addition to solving the logistical problems that delay the prompt hearing of force reviews by the EFRC, LASD should also address the structural delays that result from waiting to review hit shooting and in-custody

death cases until after the District Attorney has declined to prosecute the case. We have long advocated that the LASD proceed with administrative investigations in appropriate circumstances while waiting for the DA to act. Most recently, in the **20th Semiannual Report** (August 2005), in discussing the Compton shooting from earlier that year, in which the LASD conducted the EFRC hearing within a month of the incident (which was 15 months before the DA's declination), we called upon the Department to cease its customary wait for DA action before it starts the investigative portion of shooting reviews. Interestingly, LASD did review six of the 24 hit shooting incidents from 2003 without waiting for the DA to act. We are unaware of any problems resulting from that practice and we strongly encourage IAB and the EFRC to resume it.

Under the present system of waiting for the District Attorney to act, the IAB team rolls out to a hit shooting or an in-custody death, views the scene, and monitors the initial portion of Homicide's investigation. For an intensive 12 to 18 hours, the investigators and their lieutenant are intimately involved in the initial investigatory steps. Then, except for occasional contacts or obtaining of information from the ongoing Homicide investigation (and these contacts are more the exception than the rule), the IAB investigators do nothing on the shooting review at least until they receive the file on the completed Homicide investigation, or, more typically, until they receive the District Attorney's letter declining prosecution. So, after the invaluable involvement in the first day of the investigation, IAB ceases all or most investigative activity for at least a few months and often more than a year. It is a fundamental principle of investigating that information gathering should take place as promptly as possible. Witnesses become unavailable, change their accounts, or forget crucial details, and physical evidence becomes unavailable or degraded or gets lost. So there can be little argument that waiting six months or a year or more for IAB to start its fact-gathering process is detrimental.

The long delays also have serious negative consequences for the Department and the community. If there are tactical, training, equipment, or other lessons to be learned from a particular shooting or in-custody death, they are being learned a year later than they would have if IAB and the EFRC proceeded without waiting for the conclusion of the Homicide investigation and the DA's assessment of the case. If those lessons are serious enough, the delay could lead to the deaths or injuries of other deputies or members of the public. And, if the involved deputies' conduct was out of policy, there are no steps to discipline those deputies for lengthy periods of time. In our review and in attending two EFRC hearings, we encountered two deputies who each had been involved in four shootings in a several-year period. While so many shootings in such a short period may not be typical, it is not entirely aberrational either. We express no opinion regarding the eight shootings in which the two deputies were involved. Nonetheless, for the Department not to review shootings until after a deputy has been involved in one or more additional shootings violates good risk management practices and may unnecessarily endanger that deputy and the public.

A further reason for LASD to proceed with its hit shooting and in-custody death reviews without waiting for Homicide and the District Attorney to complete their parallel inquiries is that such lengthy structural delays undermine public confidence in the Department. Sheriff Baca astutely recognized this very real problem when he ordered that the 2005 Compton shooting be reviewed within 30 days. Lengthy delays in reviewing deadly force incidents understandably lead the public and the media to wonder whether the agency is hiding facts, waiting for the public to lose interest, or is trying to protect the involved officers.

The purported impediment to contemporaneous investigations is a 1991 settlement agreement, known as the *Gates and Johnson* agreement between LASD and the Association for Los Angeles Deputies Sheriffs (ALADS), one

of the unions representing LASD deputies. That agreement provides that when a deputy is subject to concurrent criminal and administrative investigations arising out of the same occurrence, LASD will not compel an interview in the administrative investigation until either “LASD determines that criminal charges will not be sought ...”, the DA declines to prosecute, or criminal charges have been filed.

It is time for *Gates and Johnson* to be put to rest, as we have been advocating for several years. By its own terms, the settlement agreement, which did not arise out of a deputy-involved shooting incident, applies only to concurrent criminal and “administrative investigation[s].” Force reviews are not administrative investigations. As noted earlier, the LASD clearly distinguishes between a force review of an incident and a formal administrative investigation. We note in this connection that one quarter of the 2003 hit shooting reviews were conducted before the District Attorney declined prosecution, with no controversy (or allegations from ALADS) of which we are aware.<sup>17</sup> LASD, with the help of County Counsel, should limit the applicability of *Gates and Johnson* to its specific facts. In sum, LASD should decide to conduct prompt reviews of hit shooting and in-custody death cases and should take the necessary steps to implement that decision.

## *IX. “Force Review Briefing”*

In the latter part of 2006, Sgt. Michael A. Heider, who was then the EFRC coordinator, initiated the “Force Review Briefing” (originally called the “Hot Topics Bulletin”) which in a concise two-page format summarizes the facts of a case that has recently been considered by the EFRC and then presents an analytical paragraph or two on the various tactical issues raised by the facts of the incident. The bulletin is directed at supervisors from the level of sergeant

<sup>17</sup> We did not request data for years prior to 2003 that would show whether the Department in prior years customarily conducted hit shooting reviews before the DA declined prosecution.

to Commander and is meant to be used as the subject matter for briefings with deputies, to serve as a training tool for force tactics issues, and to provide greater understanding of the force review process. We particularly commend Sergeant Heider for this great idea and Sergeants Heider and Michael O. Thomas, the present EFRC coordinator, for the excellence of the product they have produced.

According to Sgt. Heider, he selected incidents that raised issues that were complex, and would be both instructive and worthy of discussion. The five bulletins that have been disseminated to date have been very successful in identifying multiple tactical issues, often of a fair degree of complexity, but presented in a straightforward, objective, and succinct fashion. The briefings are excellent training tools and an effective window into the force review process for sworn personnel who are not directly involved in an incident under review.

## *X. Flashlights as Impact Weapons*

Of the 23 significant force cases in the sample we reviewed, ten (43 percent) involved the confirmed use of flashlights as impact weapons—most typically, strikes to the head—and another case involved allegations by the suspect (but denied by the deputy) of head strikes with a flashlight. In addition, one of the shootings we reviewed also involved use of a flashlight as an impact weapon, and in a second shooting, the suspect alleged a flashlight strike to the head, which the deputy denied.

In the **16th Semiannual Report** (February 2003), we discussed the research going back two decades that found that flashlights are much more likely than batons to cause unnecessary and preventable injuries, particularly skull fractures, and that they are less likely to provide effective protection for an officer in a violent encounter because they have a shorter reach and less maneuverability than batons. Eighteen months later, in its Third Annual Report (October 2004), OIR voiced its concern that deputies were using

flashlights and sometimes even guns as impact weapons in part because they were not carrying batons, despite being required to by policy (MPP 3-03/140.25).

By and large, our concerns about the disproportionate and inappropriate use of flashlights as impact weapons seem to have fallen on deaf ears at LASD.<sup>18</sup> The Department continues to train its personnel to use flashlights as an impact weapon. At the LAPD, it is a different story. Following the beating with a heavy flashlight of a car theft suspect, the LAPD adopted a policy discouraging the use of flashlights as impact weapons except in emergencies when it is not feasible to use a baton. Officers must avoid striking the head, neck, groin, spine, and kidneys. Permissible targets are limited to shins, knees, elbows and hands. In March 2007, the LAPD introduced a new smaller, lighter flashlight that cannot be used as an impact weapon.

## *XI. Conclusion*

LASD's force review system affects how frequently Department personnel use force and it affects how much and what type of force they employ when they use force. One member of the Department asked rhetorically: "Does force review have a chilling effect on the type and level of force used?" "Yes," he answered himself. "And that's good."

We agree that the process is effective and that it makes a difference. While we have made a number of recommendations for improvement, we commend the Department for the serious and credible way that it reviews the use of deadly and other significant force. Other law enforcement departments around the country would benefit from adopting the LASD model of force review.

<sup>18</sup> The one gleam of indirect encouragement was a Field Operations newsletter earlier this year that reminded uniformed personnel in the field that they were required to carry a baton on their persons (and that having the baton accessible in the radio car did not suffice).





## Appendix

In March 2004, two deputies were observing a house that had been vandalized earlier in the evening that they suspected might be vandalized again. They saw a Mitsubishi Mirage pull up to the location, and the suspect and his brother got out of the car. The suspect walked up to the house and the officers heard glass being shattered. Both officers then claimed they next heard a gunshot. They moved their patrol car up to the house. They saw the suspect leaving the yard. Both deputies state that they saw the suspect holding a handgun. Both deputies state that the suspect was ordered to put the gun down. They further state that the suspect pointed the gun at them as he was fleeing down the street. One of the deputies shot and wounded the suspect, who turned out to be a juvenile. A small black handgun with a magazine lying underneath it was later found by a deputy not present at the shooting in a bush near to where the suspect fell wounded. While the suspect and his brother, who was on the scene and witnessed the events, conceded that the suspect had vandalized the house, both denied that he had had a gun, much less pointed it in the deputies' direction, as the deputies had alleged.

There were six civilian witnesses who observed at least a portion of the incident. Three of them were in the house at the time it was being vandalized. None of them stated that the suspect had a gun. Two of them said the suspect had a golf club, which the suspect admitted he had. Three other witnesses were in or across the street. One was the suspect's brother, and the two others were two women waiting for their cousin. One of these two witnesses, who was across the street from where the suspect was shot,

affirmatively stated that she never saw the suspect with a gun. The other never stated that the suspect had a gun.

The juvenile suspect was sent to the California Youth Authority for seven years for assault with a deadly weapon on a peace officer following a juvenile court trial in December 2004 at which the deputy and the juvenile both testified. We have not reviewed the transcript of the trial. It appears to be the case that the judge believed the deputy and disbelieved the juvenile. In June 2006, EFRC held that the shooting was in policy.

We listened to all the taped interviews conducted by Homicide and IAB in the case. For reasons stated below, it is our belief that there are enough unresolved contradictions and holes in the record to justify a fresh look at the matter, including reinvestigation. To be explicit, we do not contend that the juvenile was innocent or that the deputies lied. We do not challenge the good faith and diligent work of EFRC or of any other person or entity that reviewed the file. Nonetheless, a fresh look at the case, coupled with additional investigation, is called for.

The two reports written by IAB—the first based solely upon the Homicide investigation and the second after IAB had interviewed the shooter and his partner following the first EFRC presentation—do not fairly reflect the interviews, omitting descriptions of the testimony of independent witnesses that challenged the deputies' versions of what happened.<sup>1</sup> According to OIR, the IAB investigator did try to locate the two independent witnesses who cast the greatest doubt on the deputies' accounts. The IAB file, however, has no notations reflecting those efforts to locate the two witnesses.

The following facts were not presented thoroughly in the IAB force review and the addendum written after IAB interviewed the shooting

<sup>1</sup> In addition, the IAB investigator demonstrated pro-deputy bias in his questioning of the two deputies. At one point, he said in a declarative question that did not reflect the deputy's prior testimony, "So you knew exactly where the gun was." On three occasions he approvingly commented "very good" or "perfect" after receiving answers that he seemed to think strengthened the deputies' contentions.

deputy and his partner: None of the three persons inside the house who saw the suspect vandalizing it stated that they saw the suspect in possession of a gun (although two of them said they saw him in possession of a golf club—a fact admitted by the suspect). Two young women who were across the street from where the suspect was shot, and who apparently had a good vantage point, did not mention seeing the suspect with a gun. One of the women stated that she never saw a gun and the only guns involved in the incident were possessed by the deputies, while the other woman was never asked if she saw a gun, but never mentioned in the course of a full narrative that the suspect had a gun.<sup>2</sup>

In his interview by Homicide on the night of the incident in March 2004, when asked “Do you know what happened to that gun?” the shooting deputy stated, “... I did not see what had happened to the gun.” He also told a deputy right after the incident that the suspect “fell to the ground as he threw the gun from his right hand.” There is no mention in either his taped statement or the responding deputy’s report of the shooter saying where the gun went or that it went into a bush. In June 2006, after the EFRC had ordered further investigation of the case, the deputy stated: “... he was able to throw it [the gun] back across his body and into the bushes ....” Later in his IAB interview, he said, “I saw him throw it in the area of the bush.”

Notwithstanding his asserted knowledge in June 2006 as to the location of the gun, the shooter in 2004 did not remember directing any of the deputies who responded to the scene to locate the gun.

When the shooting deputy’s partner was asked by Homicide on the night of the incident, “Where was the gun?” after the suspect had been shot and detained, he responded, “At that time I didn’t see the gun.” He also told a

<sup>2</sup> The Homicide file stated that both young women affirmatively stated that they did not see the suspect with a gun. The fact that the Homicide investigator did not ask one of the young women whether she had seen a gun—known to be the crucial issue in the case when the interviews occurred—does not suggest the issue was pursued with diligence.

deputy who responded to the incident that the suspect “fell to the ground as he threw the gun.” There is no mention in either his taped statement or the responding deputy’s report of the partner saying where the gun went or that it went into a bush. Two years later when interviewed by IAB, the partner stated: “... the gun goes flying out of his right hand as he is falling onto the ground. There was a bush type of plant approximately ... five to eight feet away from the suspect. I saw the gun flying toward that direction ....”<sup>3</sup>

After interviewing the partner pursuant to the direction of EFRC, the IAB addendum to the force review stated: “[The partner] said he located the handgun in the Ficus bush shortly after the shooting.” In fact, in what is a significant difference given the circumstances, the partner had stated on tape that he was searching near the bush when another deputy, who arrived after the shooting, found the gun.

Despite allegations by the deputies that commands were given to the suspect to drop the gun before the deputy fired at the suspect, the two young women, the suspect, and his brother were consistent in denying that any commands had been given. All four of them say that the deputy fired his three rounds out the window of the moving patrol car. In March 2004, contrary to what the shooter said, the partner stated that the shooter was in the car when he fired the three rounds.

The shooter stated that he got a particularly clear view of the suspect coming out of the yard “because my headlights on my car illuminated him.” The partner also said the headlights were on. The two young women, the suspect, and his brother, all said the patrol car was blacked out, leading one of the two women to think initially that they were witnessing a drive-by shooting by gangbangers. When Homicide took control of the scene, they documented that the patrol car’s headlights were off.

<sup>3</sup> The deputy who responded to the scene also reported that the partner said that after the shooting the shooter “exited the vehicle [patrol car] and ran towards ... [the subject] and detained him at gunpoint.” In both his 2004 and his 2006 statements, the shooter says that he did not participate in detaining the suspect, but rather detained the suspect’s brother.

A gunshot residue (“GSR”) test on the suspect’s hands yielded a “negative” result, but the Homicide Bureau never included the test report in its file. IAB first learned of the GSR test result while looking into the concerns we expressed about this case in a draft of this report.<sup>4</sup> IAB then determined that approximately eight hours had elapsed before the suspect was tested for gunshot residue, which could account for the negative test result.

The documentation of the scene of the shooting left many questions unanswered. The crime scene diagram did not show where the suspect fell to the ground or how close he was to the bush. The only diagrams that attempted to show the suspect’s location were crude handwritten sketches used during the interviews of the two young women that are too rudimentary to help resolve the issues raised by the file.<sup>5</sup> No analysis was performed of the trajectories of the two bullets that missed the suspect but struck the house next door to determine whether the physical evidence supported or cast doubt on the deputies’ accounts. OIR maintains that the trajectory and scene issues were resolved when IAB and OIR visited the location two years after the incident, but there is no documentation in the file of what analysis was done or what conclusions were reached during that 2006 visit.

IAB did not investigate or mention the allegation by one of the young women across the street that the deputies “roughed up” the suspect as they took him into custody. Despite that allegation and the suspect’s taped complaint of pain and an abrasion (which it appears from the tape that an IAB representative photographed during the Homicide interview), the possibility that inappropriate post-arrest force was employed was not investigated even cursorily.

<sup>4</sup> Before IAB discovered the existence of the “negative” GSR results, we had been informed that it was the policy of the crime laboratory run by LASD not to perform a GSR test when any reliable witness says that he saw a gun in a suspect’s hand. The LASD questions the probative value of the test. Notwithstanding that, the facts of this case demonstrate precisely why such a policy is imprudent. We recommend that the policy be changed to require a GSR test in all cases where there is a disputed allegation or evidence that the suspect fired a weapon. In this case, however, the crime lab’s policy was not an impediment because the GSR test was performed by the Coroner’s office.

<sup>5</sup> The two handwritten diagrams made during the young women’s interviews were not included in the file presented to the EFRC.

Observing the suspect running in the yard of the vandalized house, before the alleged pointing of the gun, the shooter said that he was able to tell from seeing the suspect's gun in his hand that it was .22 to .25 caliber.

The deputies said that the suspect jumped the fence when leaving the yard, while three civilian witnesses—some of whom could not have compared notes with the others before they were questioned—said, in response to specific questioning about the suspect jumping the fence, that the suspect walked out of the yard.

Our **23rd Semiannual Report** looked at the classification, investigation, and adjudication of citizen's complaints, or Watch Commander Service Comment Reports (SCRs), at six LASD patrol stations.<sup>1</sup> As a result of our review, we recommended procedural and policy changes to bring greater accountability, integrity, and consistency to the process. We are pleased to report that the LASD has already taken steps, discussed below, to implement many of these recommendations.

### *I. Tracking by Investigating Unit*

When we reviewed SCR statistics, we found inconsistency and inaccuracy because the LASD unit which receives a citizen's complaint is not necessarily the unit that investigates the complaint. As a result, the statistics for each unit were inaccurate, further complicating the task of tracking down outstanding investigations.

The Department has implemented our recommendation to note the investigating unit as well as the receiving unit. We suggested that this field be added directly to the SCR form as an independent database field, which will be done when a run of new forms is printed. In the meantime, the investigating unit will be written in on the form, and a note describing the transfer will be attached. The LASD has also created three new reports to enhance the ability of managers to track pending complaints—"Outstanding

<sup>1</sup> SCRs may also be used to make a commendation about exemplary performance by an employee. Although our review did not focus on commendations, some of our recommendations will also improve the management and assignment of positive public feedback.



(in the sense of not completed investigations) Service Comment Reports by Unit,” “Outstanding Service Comment Reports by Region (Detailed),” and “Outstanding Service Comment Reports by Region (Summary).” The Discovery Unit is currently reviewing all outstanding SCRs from 2005 through 2007 and reassigning the investigating unit where necessary. The LASD has implemented our recommendation.

## *II. Quality Control*

We found that approximately 42 percent of the “service” complaints that we reviewed should have been classified as a “personnel” complaint. Service complaints, unlike personnel complaints, are complaints about department policies or performance, or local laws, rather than about the conduct of a particular employee or employees. As such, they may not require as thorough an investigation and will not be associated with the name of an LASD employee in the PPI. The LASD has responded to our concerns on these issues in Region III, the region where we found the greatest number of such misclassifications. Chief Neal Tyler commendably visited each station in the region to clarify any misapprehensions about LASD policy on the issue. We recommend that the LASD regularly and specifically audit complaints to ensure a proper designation of a complaint as “service” or “personnel” or both.

We also found many SCRs in which the selected classification of a complaint—ranging from “discourtesy” to “criminal conduct”—did not accurately reflect the complainant’s allegations. Other files had missing fields, inaccuracies, or conflicting information that should have been caught and corrected earlier in the review process. We recommended that reviewers at every level carefully check for these issues and request revisions where necessary.

The Discovery Unit currently constitutes the final review point for each SCR, and it is their responsibility to accurately enter each complaint into the PPI. Although this unit does not have the ability to make substantive decisions about classification, investigation quality, or findings of fault, its staff members can, through a careful reading of the complaint and investigative file, identify inconsistencies and discrepancies that may require revision. While the decision-making authority continues to rest with the commander of the unit where the complaint was investigated, Lieutenant Gerhardt at Discovery has worked to expand her review to check for consistency and accuracy in classification, complaint type selection, adjudication, and other documentation issues.

As recommended in our report, she also looks to make sure that the basic investigative protocols have been followed—that, at the very least, for example, the involved employee and party are interviewed as part of the process. Any discrepancies are documented in an email and sent to the unit for review. The captain or unit commander then decides whether to make any changes to the file and responds by email. While the Discovery Unit’s role is very important in ensuring accuracy, however, we do not expect it to catch substantive errors or all erroneous classifications. A careful evaluation of substantive findings and classification should be the dual responsibility and obligation of the chain of command and Internal Affairs.

### *III. Dual Complaints – Personnel and Service*

There may be some SCRs that encompass both a service and personnel complaint, in that the reporting party is complaining about a department procedure as well as an individual employee’s conduct. At the time of our report, it was not clear what procedure should be followed in such a case. In some cases, both boxes were checked; in others, the investigator would default to one type or the other.

Although the LASD has decided that, in these cases, both boxes will be checked on one SCR, the PPI will not currently allow both classifications to be input. The PPI unit is working to fix this glitch; in the meantime, dual complaints will be classified as a personnel complaint to ensure that employee SCRs are properly tracked in the database. The LASD has implemented our recommendation.

#### *IV. Tracking of Revisions*

A good quality control and revision process should have a consistent process for tracking changes to the file that makes it clear who was responsible for each modification and the reason behind it, as well as the order in which changes were made. Instead, we found many files that included corrections made with white-out, words blacked out, and selections crossed out or circled, usually with no explanation as to why the changes were made. Many corrections were initialed, but the initials generally provided little clarity as to who made them. This system made it difficult to hold supervisors accountable for mistakes in judgment or documentation, and to understand why substantive decisions were made.

We recommended that the Department attach a change log to each file to provide a record of each modification made and, where necessary, the reason for it. The LASD thought this process was too cumbersome—instead, requests for review or changes originating from the Discovery Unit and supervisors, as well as the response from the unit, will be documented in an email and attached to the file. This new procedure has already been implemented and should provide a record of communication throughout the process; our next review will evaluate whether doing so successfully resolves our concerns. Subject to that later review, the LASD has implemented our recommendation.

## *V. Conflict Resolution*

We have long advocated for a meaningful mediation process to resolve low-level disputes between an employee and a member of the public before a neutral mediator. We believe that such a process would help to improve understanding between the community and the Department while encouraging resolution of complaints that would otherwise be difficult to adjudicate, particularly in “he said, she said” cases. The LASD has implemented a type of mediation—called conflict resolution—in which the complainant and the officer can be invited to discuss and resolve the dispute in front of a supervisor. At the time of our report, such a complaint would result in a disposition of “conflict resolution.” However, we found very few—only five—SCR files with such a disposition, and no indication that a conflict resolution was offered to either party in the rest of the cases.

To increase the use of conflict resolution, the SCR disposition sheet—the “Result of Service Comment Review”—has been modified to require investigators to check a box noting whether or not conflict resolution techniques were utilized. Watch Commanders have been directed, in cases where it appears that the complaint could be resolved through such a technique (such as in cases of discourtesy or other misunderstanding), to ask first the employee and then the complainant if they would like to participate in such a meeting. If they both agree, the conflict resolution is conducted by the Watch Commander, after which complainants will be asked whether they felt the complaint was resolved. If so, the investigation will be closed with a finding of “Resolved —Conflict Resolution.” If not, the investigation will continue and will result in a normal SCR adjudication.<sup>2</sup> The investigator may also choose to conduct an investigation of facts that come up in the conflict

<sup>2</sup> The form has also been changed to read that the “employee’s conduct appears reasonable,” rather than that the “employee’s conduct was reasonable.”

resolution which indicate more serious misconduct, even when the complainant considers the issue resolved. The LASD has implemented our recommendations.

Requiring investigators to note whether a conflict resolution was used is a good step in formalizing the mediation process; they should also make a note in the file when either party refuses the offer. Nonetheless, we continue to be concerned that the current process contains a built-in disincentive to participate. In cases where nothing can be proven, deputies may prefer to avoid mediation and take their chances that the investigator will be “unable to make a determination” about what happened.

As for complainants, our research in the **20th Semiannual Report**, albeit with a very small sample due to the rarity of conflict resolution, demonstrated that when the conflict resolution is conducted by a member of the Department rather than a neutral facilitator, complainants felt intimidated and that the process was not neutral. Despite our concerns, however, we are pleased to see the LASD making more of an investment in the mediation process, and we hope that these changes will result in an increase in the use of mediation to resolve complaints.

We reiterate our recommendations that conflict resolution sessions be heard by neutral facilitators. The Los Angeles County Bar Association provided such mediators pro bono for use in Pasadena’s mediation program. Surely, the LASD could do the same. The counterargument is that the lieutenant or captain can learn a great deal about the attitude, demeanor, and personality of employees by watching them during conflict resolution. While acknowledging that benefit, we conclude such a benefit is outweighed by the values gained from neutral mediation. The LASD has not implemented our recommendation from the **20th Semiannual Report**.