LOS ANGELES COUNTY SHERIFF'S DEPARTMENT: REVIEW AND ANALYSIS OF MISCONDUCT INVESTIGATIONS AND DISCIPLINARY PROCESS

FEBRUARY 2021

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INTRODUCTION

Twenty members of the Los Angeles County Sheriff's Department, including the Sheriff, the Undersheriff, the Captain of the Department's Internal Criminal Investigations Bureau and five department supervisors, have been convicted and sentenced to federal prison for assaulting prisoners, wrongly arresting and searching visitors at the jail and their efforts to obstruct the investigation by the United States Department of Justice into that conduct. The events which promulgated these convictions gave rise to the Citizen's Commission on Jail Violence.

Some of the conduct for which these persons were convicted was investigated internally by the Department but resulted in no state criminal prosecutions or Department discipline.

The Board of Supervisors created the Citizen's Commission on Jail Violence on October 11, 2011, to review "the nature, depth and cause" of inappropriate deputy use of force in the jails and to recommend corrective action. The Commission was comprised of three retired federal judges, a retired California Supreme Court Justice, the future Sheriff Jim McDonnell, then the Chief of Police of Long Beach, Cecil Murray a retired minister and the holder of the Tansey Chair of Christian Ethics at the University of Southern California and a former prosecutor who had worked in the Civil Rights Division of the United States Department of Justice.[1]

The Commission's focus was on the use of excessive force in the jails. In the course of the Commission's review systemic failures were identified within the internal investigations systems and processes of the Department which contributed to the institutionalization of this misconduct within the Department. The Commission found:

- Well documented lapses in reporting, investigating and disciplining misconduct.
- Multiple deficiencies in the investigatory process itself.
- The investigative process takes too long to complete.
- The effectiveness of the disciplinary system was undermined by a cumbersome and time-consuming discipline and appeals process.
- The Department does not adequately pursue or impose discipline for false statements.

[1] Citizen's Commission on Jail Violence member biographies may be viewed at https://ccjv.lacounty.gov/commission-member/.

- The guidelines for discipline for use of force and dishonesty were overly lenient and frequently ignored.
- The efficacy of the disciplinary process was undermined by the leadership in the Department, including the Undersheriff.
- Department management knows about, tolerates and has failed to adequately address deputy cliques.
- There is a code of silence, tolerated by the Department, which impedes the Department's ability to prevent, detect and discipline misconduct.

These findings were not new. In December 1991, the Board of Supervisors of Los Angeles County appointed James G. Kolts as special counsel to the Board to review the policies, procedures and practices of the Sheriff's Department management practices "as they relate[d] to allegations of excessive force, the community sensitivity of deputies and the Department's citizen complaint procedure. In 1992 a report by Special Counsel Kolts and staff (hereinafter the Kolts Report) reported "deeply disturbing evidence" of a department "lax in its discipline of [deputies] found to have lied to investigators about force they used or witnessed" and which disciplined deputies lightly for even the most egregious beatings.[2]

In the twenty years between the Kolts Report and the Citizen's Commission on Jail Violence report, Special Counsel Merrick Bobb and the Office of Independent Review each publicly warned about a department that was too lax in its discipline of misconduct and of leadership who undermined the disciplinary processes. In December of 2005, Special Counsel Merrick Bobb publicly reported that the Department was not adequately uncovering or investigating allegations of misconduct made against deputies.[3] In December 2007, Special Counsel warned that only half of the internal investigations reviewed by the Office of Independent Review were considered thorough.[4] In 2007, the Office of Independent Review publicly warned department leadership of the harms caused by department

[2] The full report, The Los Angeles County Sheriff's Department, A report by Special Counsel James G. Kolts & Staff, July 1992, is accessible through the Office of Inspector General's web-site at https://oig.lacounty.gov/Reports.

[3] The full report, The Los Angeles County Sheriff's Department, 20th Semiannual Report by Special Counsel Merrick J. Bobb and Staff and Police Assessment Resource Center (PARC), August 2006, is accessible through the Office of Inspector General's web-site at https://oig.lacounty.gov/Reports/parcr.

[4] The full report, The Los Angeles County Sheriff's Department, 24th Semiannual Report, is accessible through the Office of Inspector General's web-site at https://oig.lacounty.gov/Reports/parcr.

leadership disparaging the internal investigations process and oversight of the Department.[5]

The Office of Inspector General has completed our review of the disciplinary process of the Los Angeles County Sheriff's Department. Our review has found that subsequent to the Citizen's Commission on Jail Violence report the Department took some significant steps toward improving the disciplinary system.

- The guidelines to discipline were revised to provide for greater penalties for failing to report witnessed uses of force, the use of excessive force, dishonesty and false statements.
- The undermining of the disciplinary process was addressed by at least two reforms:
  - The position of Constitutional Policing Advisor[6] was created to (among other duties) monitor selected administrative investigations and ensure that the factual findings were consistent with the evidence and the discipline imposed was consistent with the Department's Core Values and disciplinary guidelines and that the guidelines were uniformly applied in all commands.
  - A policy was established and enforced which addressed the issue of department leadership who were not privy to the evidence or investigation interfering with the imposition of discipline once management had imposed it.
- To address the lack of timeliness of the disciplinary investigations, the Department requested and received authorization from the Board of Supervisors for additional investigators and support staff in the internal investigation bureaus.

However, we also have found that many of the structural and cultural issues cited by the Citizen's Commission on Jail Violence, which had persisted since the Kolts Report, remained through 2020 and that the current Sheriff's administration has been dismissive of the reforms and reinstated many of the policies and reinforced many of the procedures and practices cited by the CCJV as the root cause of the jail violence.

Structurally, the disciplinary system and the investigative processes which support it have remained essentially unchanged for the last three decades.

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[5] The full report, Office of Independent Review Sixth Annual Report, December 2007, is accessible through the Office of Inspector General's web-site at https://oig.lacounty.gov/Reports/oirr.

[6] See Appendix A for information on the job functions of the Constitutional Policing Advisors.

We found that:

- there was inconsistency in selecting which cases (and which employees) were investigated;
- often the ensuing investigations were untimely and too often hurried and not complete;
- the adjudication process yielded widely disparate findings for the same or similar conduct;
- even after the Department has decided to impose discipline, whether the employee is ultimately disciplined remains uncertain.

Through 2018 we encountered few department members who were not forthcoming with us about the challenges they face, and their beliefs in what is required to implement constitutional policing.

Notwithstanding the current Sheriff's assertions,[7] we were not provided by the Sheriff, and in our review we did not observe or find, any evidence of falsification of evidence or reports which resulted in the wrongful discipline of a department employee. We observed no discipline which appeared to be driven by personal animus. To the contrary, we found multiple failures to initiate or adjudicate discipline and in some cases opposition based solely upon personal affinity of the command staff with the subject.

However, there remained in all three administrations in office during the period of this review, and continues to remain, strong cultural resistance on the part of department managers and executives to changes in the disciplinary system. Opposition to those changes meant to address the palpable culture of silence within the Department, which instructs the conduct of employees and informs the procedures and practices of the Department which condone and effectuate it has been especially strident.

We have found that this resistance is not without reason. We were explicitly told by individual rank-and-file department members and by the leadership of both of the unions which represent sworn personnel that there is among the rank and file a perception that the outcomes of administrative investigations are preordained – that the only reason an administrative investigation by the Internal Affairs Bureau is initiated is to discipline the subject employee and that only evidence which leads to that outcome is collected while all other evidence is ignored. It was also expressed to us by union leaders that the membership believed the "zero tolerance"

[7] Sheriff Alex Villanueva's comments at meetings of the Los Angeles County Board of Supervisors, January 29, 2019, and March 12, 2019.

policy toward dishonesty was used selectively by the Department to terminate disfavored employees.

We observed many in the department leadership who by their conduct and advocacy in executive case reviews appeared to share these same perceptions.

Many in the communities served by the Department have expressed to us a lack of confidence that the disciplinary outcomes are evidence based. Unlike the rank and file and some department leaders, however, the community members with whom we spoke expressed the belief that, even in the presence of overwhelming evidence of misconduct, department members are not appropriately disciplined.

Based upon our review of Internal Affairs Bureau investigations it cannot be said that the evidence is inconsistent with any of these perceptions.

This report reviews the structural and cultural issues that influence the Department's disciplinary system and its outcomes. At the conclusion we make recommendations designed to create long-term durable reforms which address the structural and cultural issues that have damaged the confidence of both department personnel and the public in the Department's ability to fairly discipline its employees, particularly deputies.

SCOPE OF REVIEW

The Office of Inspector General based these analyses on the review of the following cases:

- Administrative investigations of sworn personnel which were subject to Executive Case Review between May of 2016 and December 2019 (cases in which the discipline recommended was a suspension in excess of fifteen-days, a demotion or discharge)
- Administrative investigations which resulted in a department decision to discharge and in which the disposition of the case became final in 2015, 2016, 2017, 2018 or 2019
- Significant uses of force to which the Internal Affairs Bureau's Shooting/Force Review Team responded and which were subject to review by the Executive Force Review Committee
- Those administrative cases which became final in 2016, 2017, 2018 and 2019 which, regardless of the date of these reviews, had been the subject of an Executive Case Review or an Executive Force Review
- Criminal investigations of department personnel which were active at any time during the years 2016, 2017, 2018, and 2019

- Some unit level investigations[8] and criminal investigations which were associated with the above cases.

The Office of Inspector General also reviewed:

- The relevant policies contained within the Manual of Policy and Procedures and the Custody Division Manual
- The procedures and protocols described in:
  - the Deputy Involved Shootings Policies & Procedures Reference Handbook
  - the Administrative Investigations Handbook
  - the Service Comment Report Handbook
  - the Inmate Complaint Investigation Handbook
  - the Advocacy Disposition Handbook
- Department issued internal training bulletins, management directives, office correspondence, and Justice Data Interface Controller (JDIC) messages containing instructions issued or in effect during any period subsequent to 2001 through November of 2018 (in response to our request for this material issued by the current Sheriff we were provided only with segments of the Manual of Policy and Procedures)[9]

A complete list of the cases reviewed for each segment of this report is identified in the segment wherein cited and are provided in the appendices.

Our review has been limited in some aspects.

First, the Office of Inspector General does not have independent access to primary sources. Our review is limited to information which is provided by the Department or obtainable from other sources. The internal investigations reviewed in the preparation of this report were either provided by the Department or obtained through the Department's Personnel Recording and Monitoring System (PRMS). Access to PRMS does not assure that we have the complete file.

We found evidence in some cases that disciplinary decisions and agreements had been made that were deliberately not committed to writing so as to not create a record in PRMS. We have also been denied in PRMS, by both the current and the previous Sheriff, the ability to access PRMS records which are designated within PRMS as "IAB Private."

[8] A unit level investigation is an investigation conducted by an investigator, generally a lieutenant, at the subject employee's unit of assignment.

[9] See Appendix B, for a copy of our request and the Department's response.

None of the cases we reviewed contained documentation or correspondence by and between unit commanders, command staff or other persons regarding the underlying deliberative processes involved in making the decisions which were made. Many of the investigative files we reviewed were incomplete in that the investigator's log, Administrative Investigations Time Frames forms, and/or transmittal letters were not attached. None of the case files to which we were given access contained documentation of the deliberative process involved in adjudicating the cases.

Many of the cases we reviewed and some of the cases cited as examples within this report are no longer confidential pursuant to Penal Code section 832.7 as amended by Senate Bill 1421. We encourage the Department to release the completed investigations in their entirety. We believe that other cases reviewed can be redacted in such a manner that the identity of the department members involved would not be compromised but which would give the public sufficient information by which to judge.

We cite specific cases throughout this report. These cases are not outliers, nor are they the only cases in which the problems for which they are cited were found. We selected these cases to demonstrate how the policies, procedures and practices of the Department affect outcomes in the administration of discipline. Although the cases cited are necessarily aged because we generally cited only cases in which administrative appeals are final, the practices for which the cases are cited remained in practice throughout the period covered.

Prior to the instructions, which we were informed were issued by the Sheriff's Department's chief of staff in February of 2019, the Office of Inspector General met with the Chief, captains and lieutenants within the Professional Standards (and Training) Division and discussed, as this review was in progress, the issues presented in each of the cases we reviewed, including those cited as examples. Similar discussions have not taken place since February of 2019. We have been informed that "[a]t no time should a Department Executive (Captain or above) be contacted to assist [the OIG]." While the conduct of department executives with few exceptions has been consistent with this since February of 2019, the Department has not provided us with a copy of the actual instructions which have been issued.[10]

Similarly, through November of 2018, the Professional Standards and Training Division kept the Office of Inspector General informed of both actual and proposed

[10] See the Office of Inspector report Los Angeles County Sheriff's Department Compliance with Transparency Laws, issued August 2019.

revisions to policies, procedures and practices within the Department. That practice ceased in December of 2018.[11]

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT DISCIPLINARY PROCESS

The general rules governing the conduct of Los Angeles County Sheriff's Department employees are contained within the Department's Manual of Policy and Procedures (MPP). Those rules are enforced through the Department's disciplinary process.

All criminal conduct is considered to be a violation of department policy and as such is subject to the Department's disciplinary process in addition to the criminal justice system.

The Department's disciplinary process is divided into four phases: 1) the initiation of an administrative investigation, 2) the conduct of the investigation, 3) the adjudication of the facts, and 4) the imposition of discipline. These steps are presented below in the order in which they must be taken:

Initiation

Administrative investigations into reports or allegations of misconduct are initiated by the subject employee's unit command. The report of misconduct is referred to the unit commander (in most cases the employee's captain) who is responsible for conducting an initial inquiry and determining whether to open an administrative investigation. If an administrative investigation is opened, the unit's chain of command determines whether the investigation will be conducted by the unit or referred to the Internal Affairs Bureau.

Investigation An Internal Affairs Bureau investigation is conducted by one or more sergeants assigned to the Internal Affairs Bureau. (A unit level investigation is most commonly conducted by the operations lieutenant, although in the jails the investigators are commonly sergeants). Investigators gather evidence, interview witnesses and prepare an investigative summary. Once an Internal Affairs Bureau investigation is completed and signed off by a supervisor, the Captain of the Internal Affairs Bureau sends by transmittal letter the investigative file to the subject's unit commander (or in the case of force review investigations, the

[11] The Custody Division has continued to consult and advise the Office of Inspector General on custody-related policy development.

Executive Force Review Committee panel members). Completed unit level investigations are transmitted to the subject employee's unit commander.

Adjudication At this step the subject employee's unit commander reviews the investigation, makes findings of fact, determines the applicable policy violations, if any, and assesses discipline for the founded violations based upon the Department's disciplinary guidelines. (In force review investigations this is done by the Executive Force Review Committee). Dismissals, demotions or suspensions from service which exceed fifteen days are reviewed by a division chief or division director and reviewed by the Case Review Committee. The adjudication phase ends when the employee is notified of the findings and the intent, if any, of the Department to impose discipline.

Imposition Before the discipline described in the letter of intent is actually imposed, the employee may file a grievance objecting to the findings, the proposed discipline, or both. The grievance is heard by the employees' unit command. Who in the chain of command hears the grievance depends upon the severity of the discipline proposed.

As a result of the grievance hearing, the Department may or may not change the findings or modify the discipline or both. If the Department decides to discipline the employee a letter of imposition is issued notifying the employee that the discipline is being imposed. The imposition of discipline is usually immediate.

Department employees have the right to appeal the Department's discipline to either the Civil Service Commission (if the discipline assessed is suspension from service for more than six days) or the Employee Relations Commission (if discipline is suspension from service for five or fewer days or lesser discipline) in the manner provided by the employee's collective bargaining unit and the Los Angeles County Code.[12]

Our review of internal investigations did not include any cases which were heard by the Employee Relations Commission.

[12] The bargaining unit for deputies is the Association for Los Angeles Deputy Sheriffs, and for custody assistants and some sworn supervisors (i.e. sergeants, lieutenants) the Professional Peace Officers Association. Other covered civilian employees have their own bargaining units. See Appendix 1 to Title 5 of the Los Angeles County Code.

PART I: INITIATION OF INTERNAL INVESTIGATIONS

The Internal Affairs Bureau does not have the authority to initiate an internal investigation. The exclusive authority to initiate an internal administrative investigation rests with the employee's unit commander (or higher ranking executive).[13] An internal investigation by the Internal Affairs Bureau or an internal criminal investigation may only be initiated in response to the submission of a *Request for IAB Investigation and/or Criminal Monitor*[14] by a division chief or division director upon the recommendation of a unit commander (or higher ranking executive).

The Department tasks each unit commander with evaluating each personnel complaint and determining the appropriate course of action: 1) conduct a unit level administrative investigation, 2) initiate a service review, 3) recommend (through division chief or division director) that the Internal Affairs Bureau conduct an administrative investigation, or 4) recommend (through division chief or division director) that the Internal Criminal Investigations Bureau conduct a criminal investigation.[15]

Our review found department procedures and practices which allowed misconduct by some employees to be neither investigated nor disciplined while other similarly situated employees who engaged in the same or similar misconduct were investigated and disciplined. These procedures and practices contribute to a disciplinary system that is perceived as unfair and ineffective by many within the Department[16] and have resulted in serious misconduct going unaddressed, thus undermining public confidence in the Department's integrity.[17]

A. Complaints Alleging Misconduct by Department Personnel

The Department categorizes complaints which allege employee violations of law or policy into two categories: external and internal.

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[13] MPP 3-04/020.05 Initiation of Administrative Investigations.
[14] See sample "Request for IAB Investigation and/or Criminal Monitor in Appendix C.
[15] MPP 3-04/010.25 Personnel Complaints.
[16] See, for example, *Dispatcher*, Association for Los Angeles Deputy Sheriffs, March 2017, issue; Sheriff Alex Villanueva, Meeting of the Board of Supervisors, January 29, 2019; Sheriff Alex Villanueva, Meeting of the Sheriff's Civilian Oversight Commission, January 22, 2019; *Star&Shield*, Professional Peace Officers Association, July 2016July2016.
[17] See public comments, Sheriff's Department, Civilian Oversight Commission, multiple meetings since Commission's inception, and Board of Supervisors, multiple meetings for decades.

1. External Complaints

External complaints include complaints submitted by the public, news media, and other governmental agencies, documented on either a Watch Commander Service Comment Report[18] or, in the cases of persons incarcerated in the jails or station lockups, Inmate Grievance forms.[19]

Before the unit commander decides whether to initiate an administrative investigation into external complaints there is a preliminary inquiry and possibly a service review. In the Custody Division, this inquiry is generally conducted by a sergeant at the direction of a watch commander.[20] Elsewhere in the Department this inquiry is usually conducted by a lieutenant. The unit commander's decision whether to initiate an administrative investigation is dependent on the outcome of this inquiry.[21]

2. Internal Complaints

Internal complaints are those complaints about which the watch commander becomes aware through observation or through referral from other department members.[22]

a. No Affirmative Duty to Report Misconduct

Department policy does not impose an affirmative duty[23] on department members to report employee misconduct to the employee's unit commander, with the following limited exceptions:

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[18] See Administrative Investigations Handbook, page 7 and sample Watch Commander Service Comment Report in Appendix D.
[19] See Custody Division Manual, volume 8, generally, Inmate Grievance form, page 8, and Referred Inmate Complaint Form, page 22, Appendix E, Inmate Complaint Investigation Handbook.
[20] Service Comment Report Handbook, page 22; Custody Division Manual, Volume 8 Inmate Grievance Manual and Inmate Complaint Investigation Handbook generally.
[21] MPP 3-04/010.05 - Procedures for Department Service Reviews; Administrative Investigations Handbook, pp. 10-12; Service Comment Report Handbook, p. 33.
[22] See Administrative Investigations Handbook, page 7.
[23] But see section (d) of MPP 3-01/030.10 Obedience to Laws, Regulations, and Orders, which reads "When assigned to duty with another member of the Department, an employee shall be subject to disciplinary action for any violation by the other member of any provision of this chapter unless the employee was unaware of the violation or unless the employee, if

- If the employee is arrested or served with a restraining order the employee is required to notify their unit commander through the employee's chain of command.[24]
- If the Internal Affairs Bureau Force/Shooting Response Team detects employee misconduct in the course of its force review, the employee's unit commander is to be advised (see also the section on *IAB Force/Shooting Response Team Reviews* in section 5(b) following and Part II(C)).[25]

b. Evidence of Additional Misconduct

It is the Department's accepted practice that the Internal Affairs Bureau restrict the administrative investigation to the identified misconduct by the identified employees alleged within the *Request* and forward the completed investigation to the subject employee's unit commander for adjudication (see Part III, *Department Adjudication and Review*).

Evidence of misconduct other than that described within the four corners of the *Request* or by persons not identified in the *Request* which is uncovered by the Internal Affairs Bureau in the course of an administrative investigation is not required to be referred to the appropriate unit commanders. Instead, the unit commanders are charged with detecting such misconduct on their own during their adjudication review of the internal investigation and with initiating an internal investigation when warranted, following the policies, procedures and practices described herein. The Department presumes that unit commanders properly perform this function. No system of follow-up is in place to ensure that the unit commanders detect or initiate separate investigations into additional misconduct discovered in the course of the Internal Affairs Bureau investigation.[26]

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the situation permits safe and prudent action, attempts in good faith to prevent the violation and, at the earliest reasonable time, reports the violation to his supervisor. . . ."

[24] See section (e) of MPP 3-01/030.10 Obedience to Laws, Regulations and Orders; MPP 3-01/030.17 Employee Notification of Family Violence and Temporary Restraining Orders. The only misconduct for which the Department explicitly imposes on all employees an affirmative duty to report is misconduct animated by gender, race, color, ancestry, religion, national origin, ethnicity, age (forty and over), disability, sexual orientation, marital status, or medical condition.

[25] MPP 3-10/130.00 Activation of the IAB Force/Shooting Response Team: see section below on Internal Affairs Bureau Force Reviews.

[26] MPP 3-04/020.05 INITIATION OF ADMINISTRATIVE INVESTIGATIONS. Reference also multiple meetings with department command staff and executives, collectively and individually.

This has been the Department's accepted procedure and practice for decades.[27]

B. No Affirmative Duty to Initiate an Internal Investigation

Department policy and procedure do not impose an affirmative duty on unit commanders to initiate an administrative investigation when non-criminal misconduct is reported, but does require that if the unit commander becomes aware of conduct which creates a reasonable suspicion that a crime has been committed, the unit commander refer the matter to the unit commander's division chief or division director. By policy, only a division chief (or division director) can request a criminal investigation by the Internal Criminal Investigations Bureau.[28]

The unit commander (or the higher ranking executive) who decides to not open an administrative investigation is not required by department policy, procedure or practice to document their reasoning as to why an administrative investigation is not initiated. [29] Department policy does not require the unit commander or higher ranking executive to inform department executives of allegations of misconduct or of their decision whether or not to initiate an internal investigation.

C. Initiation of Internal Investigations

As stated above, it is the unit commander who decides whether to conduct an administrative investigation or to recommend that the investigation be conducted by the Internal Affairs Bureau. The Internal Affairs Bureau does not by policy or procedure have the authority to initiate an administrative investigation.[30] If the unit commander recommends the investigation not be conducted at the unit level (or if there is potential criminal misconduct) the unit commander is required by policy to notify their division chief or division director.[31] If a unit level internal investigation is initiated, the unit commander notifies the Internal Affairs Bureau and obtains a file number for the investigation.[32]

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[27] The Los Angeles County Sheriff's Department Eleventh Semiannual Report of Special Counsel Merrick J. Bobb & Staff, October 1999, p. 10; see also *Ass'n for L.A. Deputy Sheriffs v. Baca* (2013) 2013 Cal. App. Unpub. LEXIS 8162, pp. 2-3.
[28] MPP 3-04/020.05 Initiation of Administrative Investigations.
[29] Service Comment Report Handbook, pp. 38-42.
[30] MPP 3-04/020.05 Initiation of Administrative Investigations; Administrative Investigations Handbook, page 8.
[31] Administrative Investigations Handbook, pp. 10, 12.
[32] Service Comment Report Handbook, p. 20.

If the unit commander recommends that the Internal Affairs Bureau conduct the administrative investigation or that the Internal Criminal Investigations Bureau conduct an internal criminal investigation the unit commander must submit a *Request for IAB Investigation and/or Criminal Monitor* SH-AD32A[33] form to their division chief or division director.[34] These requests contain the name(s) of the subject(s) of the investigation and the specific misconduct alleged to have been committed.[35] Only the division chief or director is authorized to request that either the Internal Affairs Bureau or Internal Criminal Investigations Bureau conduct an internal investigation.[36]

The Office of Inspector General reviewed the Department's internal administrative investigations[37] of sworn personnel and found multiple cases in which the investigation yielded sufficient evidence to establish the corpus of misconduct by persons who were not the subject of the original *Request* or misconduct which was not alleged in the original *Request*, but in which no internal investigation was initiated and the misconduct was not investigated or addressed. Yet, in these cases it appears that unit commanders, Internal Affairs Bureau investigators and higher ranking executives fully complied with department policies and procedures and acted within the accepted practices of the Department.

1. Pressure

We observed significant pressure on unit commanders to not initiate internal investigations of employee misconduct.

Initiating an internal investigation into allegations of misconduct by an employee is referred to within the Department as "putting a case on" the employee. Office of Inspector General staff were explicitly told by some department members that they believed that some unit commanders were "putting a case on" some individuals because the individuals were opposed to the Sheriff's policies.

It was reported by multiple persons to the Office of Inspector General that in a pre-inaugural briefing in 2018 at the Los Angeles County Sheriff's Century Station the

[33] See sample in Appendix D, Request for IAB Investigation and/or Criminal Monitor.
[34] MPP 3-04/020.05 Initiation of Administrative Investigations.
[35] Service Comment Report Handbook.
[36] MPP 3-04/020.05 Initiation of Administrative Investigations.
[37] A list of the cases reviewed by the OIG between 2016 and November 5, 2020, including the unit level and IAB administrative investigations reviewed, was provided to the Department along with prior drafts of this report. The full list is attached as Appendix F [REDACTED].

current Sheriff explicitly stated that there would be no career path in his administration for unit commanders who "put cases on" department employees. Unit commanders have frequently been subjected to very public criticism for their decisions to initiate internal investigations of department personnel.[38]

2. Cultural Issues

During the period covered by this report there have been as many as fifteen divisions, each with their own division chief or director, and as many as seventy or more units with sworn personnel, each with its own unit commander or director. Under these circumstances, it is perhaps inevitable that there may be some inconsistency in the application of disciplinary standards. However, we also observed widespread and vocal disagreement amongst and between unit commanders, division commanders, division chiefs and division directors regarding what behavior constituted misconduct and the appropriate remedies for those behaviors which were proved up in the investigation. We observed multiple cases in which strong opposition was expressed by unit commanders and higher ranking authorities to pursuing disciplinary action because they did not agree that 1) the proved behavior constituted misconduct or 2) the mandatory discipline for the proved misconduct was appropriate, or both.

This disagreement was widespread across a broad spectrum of misconduct, from false statements to failures to report uses of force. For example, Sheriff McDonnell, as well as some unit commanders and higher-ranking executives were of the view that statements which were untrue constituted false statements within the meaning of the Manual of Policy and Procedures.

Many unit commanders and higher ranking executives expressed the view that untrue statements made by deputies in any forum were not violations of the Manual of Policy and Procedures if those untrue statements were not in themselves determinative of the guilt or innocence of a criminal suspect or were made in defense of another deputy accused of misconduct. We reviewed cases in which the evidence clearly and convincingly established that statements made by deputies were untrue but in which there were unit commanders and higher ranking executives within the Department who vocally opposed investigating the misconduct as violations of the false statement provisions of the Manual of Policy and Procedures. The most common reason for this opposition we heard expressed

[38] See, for example, "Dishing dirt on sheriff's captains" by Robert Faturechi, Los Angeles Times, June 4, 2011; online archived articles of the Association for Los Angeles Deputy Sheriffs Dispatcher and of the Professional Peace Officers Association Star and Shield.

was because of the severity of discipline mandated by the Sheriff - termination of the employee.

In 2013, and again in 2017, the Department's 2012 Guidelines to Discipline were revised to increase the penalties for deputies who made false statements. When elected Sheriff in 2014, Jim McDonnell, echoing the Citizen's Commission on Jail Violence (on which he served), announced that there was no room in the Department for deputies who provided false statements in reports or to investigators, and that this guideline would be strictly adhered to.

The view that adopting the dictionary definition of false statements was an expansion of the definition of false statements was embraced by Sheriff Alex Villanueva, who succeeded Sheriff McDonnell.[39] Sheriff Villanueva immediately took action(s) in some cases to set aside discipline imposed for dishonesty which had been assessed during Sheriff McDonnell's administration.[40]

However, we also found in multiple internal investigations which had been initiated, investigated and the deputies disciplined before Sheriff Villanueva's election in which statements which were demonstrably untrue and about which the employee's unit commanders were aware were neither investigated nor addressed in the internal investigation.[41] Some examples are presented here.

In the Deputy [CHI] case, Deputy [CHI] falsely told internal investigators that he used no force and witnessed no use of force in the arrest of an off-duty Los Angeles County deputy sheriff at an event at the [Venue]. The [City] Police Department crime reports and witnesses describe Deputy [CHI] as tackling the arrested deputy and using force in order to handcuff him as he struggled to break free. Although the deputy was criminally prosecuted for resisting the arrest by Deputy [CHI] and a member of the [City] Police Department, [CHI]'s unit commander initiated a

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[39] See Sheriff Villanueva's comments to the Los Angeles County Board of Supervisors, March 19, 2019.

[40] See also Office of Inspector General reports *Report-Back on LASD Internal Administrative Investigations and Dispositions of Disciplinary Actions*, April 2019; *Initial Implementation of the Truth and Reconciliation Process by the Los Angeles County Sheriff's Department*, July 2019; *Report-Back on LASD Internal Administrative Investigations and Dispositions of Disciplinary Actions*, March, April, May 2019.

[41] See Appendix F, Cases Reviewed [REDACTED]; see also MPP 3-01/040.69 Honesty Policy; 3-01/040.70 - Dishonesty/False Statements; 3-01/040.75 - Dishonesty/Failure to Make Statements And/Or Making False Statements During Departmental Internal Investigations; 3-01/040.76 - Obstructing An Investigation/Influencing a Witness; 3-01/040.80 - Internal Investigations by Other Law Enforcement Agencies; 3-01/040.85 - Cooperation During Criminal Investigation.

Request for IAB Investigation and/or Criminal Monitor only for a potential violation of the Department's force reporting procedures. [CHI]'s unit commander did not initiate nor did the Internal Affairs Bureau conduct an investigation for making the false statements.[42]

In the case of Deputy [ALPHA] (further addressed in Part III *Department Adjudication and Review*), [ALPHA] was recorded by the Orange Police Department's dashboard cameras both interfering with and lying to the officers who were conducting the driving under the influence investigation and arrest of his partner, Deputy [A.] [BETA]. [ALPHA] subsequently made untrue statements to Los Angeles County Sheriff's Department Internal Affairs Bureau investigators conducting the administrative investigation into [BETA]'s arrest. Notwithstanding the evidence of [ALPHA]'s false statements, his unit commander declined to initiate an administrative investigation into [ALPHA]'s conduct as a violation of the Department's honesty policy, only as a violation of the Performance to Standards policy.[43]

In the case of Deputy [GAMMA], [GAMMA] was being investigated for his role in shooting another deputy sheriff while both were off duty. [GAMMA] admitted to Internal Affairs Bureau investigators he had provided false statements to the criminal investigator who had investigated the shooting. This Internal Affairs Bureau investigation was subsequently provided to [GAMMA]'s unit commander. No *Request for IAB Investigation and/or Criminal Monitor* was submitted by the unit commander and no internal investigation was initiated as to [GAMMA]'s false statements.[44]

3. Employee's Unit Commander May Have Been Unaware

Based upon our review of the procedures and practices followed by the Internal Affairs Bureau, it is possible that misconduct not alleged in the original *Request* may go uninvestigated because the appropriate unit commander is not ever made aware of the misconduct. As stated, Internal Affairs Bureau does not refer misconduct to unit commanders but relies on unit commanders to detect additional misconduct while reviewing the investigation. However, Internal Affairs Bureau provides only the subject's unit commander the investigation. If additional misconduct by another employee is revealed, that employee's unit commander could only be aware of it if the reviewing unit commander referred the matter to them. As previously described, there is no affirmative duty to refer misconduct and

[42] IV2422300.
[43] IV2430379 (underlying case IV2390151).
[44] IV2389014.

no requirement to explain whether misconduct was detected and there is no requirement, if misconduct is detected, to explain why investigations are not commenced.

The below examples demonstrate how serious misconduct can go uninvestigated because the employee's unit commander may have not seen the investigation in which evidence of the employee's misconduct was uncovered.

In the case of Deputy [DELTA], [DELTA] was interviewed by Internal Affairs Bureau as part of an investigation of domestic violence by an off-duty Sheriff's deputy. [DELTA] was a responding deputy and admitted to Internal Affairs Bureau investigators that he purposely wrote in the crime report that he had taken photos of a domestic violence victim with his camera when it was in fact his partner who had taken the photos with the partner's camera. He also admitted that he had previously told Internal Affairs Bureau investigators his partner had stayed outside with the suspect while [DELTA] went inside the home and interviewed the victim, which is not true. The reason by [DELTA] given to Internal Affairs Bureau investigators was that he wanted to keep his partner out of the investigation because his partner had a relationship with the suspect. There was no *Request for IAB Investigation and/or Criminal Monitor* and no internal investigation was initiated regarding [DELTA], although such conduct on its face is both criminal and a violation of department policy.[45] Because [DELTA] was not the subject of the administrative investigation it is possible [DELTA]'s unit commander was not aware of these false statements.

In the investigation of Deputy [EPSILON], he was identified to the Department by an outside law enforcement agency as a person in contact with major 'players' in a narcotics trafficking operation and was referred by that agency to the Department.[46] In reviewing the evidence provided by the outside law enforcement agency, the Internal Affairs Bureau noted [EPSILON] had in aggregate 1,097 telephone contacts with two of the 'players' in the narcotics trafficking ring. However, the same evidence which contained the records of those phone calls also showed phone contacts between four other identified Los Angeles County Sheriff's Department deputies and an identified "player" in the trafficking ring: Deputy #1 at 18,690 contacts, Deputy #2 at 11,283 contacts and Deputy #3 at 1,959, all had significantly more contacts than did Deputy [EPSILON]. Deputy #4 had 708 contacts. No investigation was initiated into these deputies' contacts with an identified major player in a narcotics trafficking ring. There is no evidence that their

[45] IV2422303.
[46] IV2379813.

unit commanders were even provided any information or were aware of the investigation or their deputies' connection to it.[47]

4. Policy not Followed

On those occasions when the Internal Affairs Bureau Force/Shooting Response Team determines an administrative investigation may be appropriate the IAB Force/Shooting Response Team is required by policy to brief the concerned unit commander who, with the concurrence of the concerned division chief or division director, may direct the Internal Affairs Bureau investigators to commence an investigation.[48] Any reliance by unit commanders on the Internal Affairs Bureau following this policy may be misplaced.

It does not appear that in practice this policy is followed. We reviewed 234 of the force reviews which occurred between 2015 and 2019 which have been to the Executive Force Review Committee.[49] We found multiple cases in which evidence of misconduct was developed in the course of the review but the unit commanders did not appear to have been briefed on the misconduct.

In one case, a deputy broke the arm of a woman while handcuffing her. He reported to the IAB Force/Shooting Response Team that he had instructed the woman to place her hands behind her back and she refused to comply. The employee's supervisor, who was present during the handcuffing, also stated the deputy had instructed the woman to comply. The audio/video recording of the incident revealed that no such warning was given. The detainee's hands were forced behind her back without warning and with sufficient force to cause her arm to break.[50]

The IAB Force/Shooting Response Team review commenced on July 12, 2017. The completed review was submitted on Friday, June 22, 2018. The adjudication by the Executive Force Review Committee occurred on Thursday, June 28, 2018, thirteen days before the statute of limitations expired. No administrative investigation was initiated and no action was taken regarding these untrue statements.

In a deputy involved shooting force review the suspect at whom the deputy shot (but missed) was interviewed immediately after the shooting while still in-custody.

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[47] IV2379813.
[48] MPP-3-10/130.00 Activation of the IAB Force/Shooting Response Team; see section below on Internal Affairs Bureau Force Reviews.
[49] List of these cases is contained in Appendix G, Force Review Cases [REDACTED].
[50] FO2431329.

During the recorded interview the suspect told the detective on multiple occasions that he didn't want to talk to the detective without an attorney. It is well established law that police must stop all questioning when a suspect in custody requests an attorney. However, the detective continued to question the suspect. This misconduct was not referred to the detective's unit commander by the Internal Affairs Bureau investigator and, although it was brought to the attention of the Executive Force Review Committee panel, no action was taken.[51]

This suspect was charged in a criminal case. The Office of Inspector General obtained the discovery packet[52] provided by the District Attorney to the suspect's defense attorney. The crime reports did not mention that the suspect was interviewed nor was there a transcript of or reference to this interview in the material provided by the District Attorney to the suspect's attorney.[53]

The IAB Force/Shooting Response Team review commenced on July 22, 2017. The completed review was submitted on Friday, June 22, 2018. The adjudication by the Executive Force Review Committee occurred on Thursday, June 28, 2018, twenty-three days before the statute of limitations expired.

The case file is silent in each of these cases as to whether the unit commanders were briefed by the IAB Force/Shooting Response Team lieutenant or detected this misconduct or were aware of it and decided against pursuing it. Notwithstanding the lack of a record, even if the unit commanders had detected the misconduct, there lacked sufficient time to complete a meaningful investigation.

In such cases, it is not unreasonable for unit commanders who rely on IAB Force/Shooting Response Team lieutenants to brief them about misconduct to presume that either no misconduct was detected in the course of the review or that any misconduct that was detected by the lieutenant was such that it did not warrant an internal investigation.

5. Time/Delays Made Detection Impossible or Pursuit Futile

Since internal investigators are seeking only evidence of specific misconduct committed by specifically identified individuals in the *Request*, evidence of actual or potential misconduct by others may be overlooked or disregarded.

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[51] SH2431912, Executive Force Review Committee meeting June 28, 2018.
[52] The "discovery packet" consists of the reports and evidence turned over to a defendant's attorney when the defendant is arraigned on criminal charges.
[53] *People of the State of California v. Roberta Benito Bernal*, 7CS03267, prosecuted by the Los Angeles County District Attorney's Office.

What may be perhaps the most significant single contributing factor is time (or lack of it). As discussed in Part III(B) *Adjudication*, unit commanders are afforded very little time to adjudicate the cases. During that adjudication process they are expected to also detect and initiate administrative investigations into misconduct which was not alleged in the original *Request*.

However, our review of administrative investigations revealed that unit commanders are also left little time do adjudicate, let alone detect and initiate internal investigations into additional misconduct.

a. Administrative Investigations

As discussed more fully below in Part III(B)(4)(a) *Timeliness of Administrative Investigation Adjudications*, our analysis of the time allotted to unit commanders to review these administrative investigations found that in fifty-seven percent of the IAB administrative investigations reviewed (105 of 183) the unit commander was provided less than thirty days to review and analyze the case. In seven percent of the IAB administrative investigations reviewed the unit commander was told to complete the analysis "ASAP" or not told at all when the analysis was due. Of those, six had fewer than thirty days remaining before the statute of limitations would prevent any discipline of the named employee for the identified misconduct. In only seventeen percent (32 of 183) of these IAB administrative investigations was the unit commander provided thirty or more days within which to adjudicate the case.

These are not brief or simple cases which can be analyzed quickly. As noted in Part III(B)(4)(a) *Timeliness of Administrative Investigation Adjudications* below, one investigative file containing 1,149 pages had a due date within seven days of the unit commander being given the case.[54] Another case with a due date within nine days consisted of 826 pages.[55] We observed, and have been informed, that in practice unit commanders, because of the time constraints and the size of the investigative file in some cases delegate the analysis to their operations lieutenants or rely on the investigative summary prepared by the Internal Affairs investigators.

b. Force Reviews

Likewise, in the cases of force reviews, the Executive Force Review Committee panel members were afforded little time in which to analyze a case. As discussed more fully below in Part III(B)(4)(b) *Time as a Factor in Adjudicating Force*

[54] IV2393635.
[55] IV2336434.

Reviews, in seventy-eight percent of the force reviews we reviewed, there remained less than ten days between the date the panel was provided with the force review file and the due date of the decision.

c. Reliance on Summaries

Due to the limited amount of time within which department managers must review an investigation before adjudication they have reported to Office of Inspector General staff that they rely on summaries for much of the information and often times read (or listen to) the interviews of only the subjects and perhaps some key witnesses.

Our review of Internal Affairs Bureau investigative summaries found that reliance on the investigative summaries is misplaced – we found that the facts are not always accurately or completely depicted and the involvement of others is not always mentioned. Often times the Internal Affairs Bureau investigative summaries consist of nothing more than a description of the evidence provided to investigators and paraphrased summaries of the interviews conducted.

The following summaries and the examples found in Part III *Department Adjudication and Review* demonstrate how unreliable the investigator's summary is as a means of detecting misconduct not alleged in the *Request*.

In the case of [GAMMA], cited above in section C(2) *Cultural Issues*, [GAMMA] and the person he shot were interviewed by a Kern County Sheriff's deputy shortly after the shooting. They were interviewed by Internal Affairs Bureau investigators over three months later. The statements given to Internal Affairs Bureau investigators regarding their drinking and who was present during the shooting were significantly and materially different than the statements they provided to the Kern County Sheriff's deputy. No mention of the discrepancy between their statements was made in the Internal Affairs Bureau investigative summary.

In the case of [ZETA], [ZETA] was investigated by the Internal Criminal Investigations Bureau and then the Internal Affairs Bureau for driving under the influence and being involved in a hit and run collision while driving his department issued vehicle. [ZETA] and seven other deputies also were investigated for attempting to conceal the incident. The Internal Affairs Bureau investigative file consisted of six volumes. Sixteen witnesses were interviewed. Relevant incidents occurred at five locations. Notwithstanding the complexity of this investigation, the Internal Affairs Bureau investigator's investigative summary consisted merely of summaries of witness interviews and the evidence reviewed. The description of the

Internal Affairs Bureau investigation consisted of one paragraph on the last page of the investigative summary.[56]

The Internal Affairs Bureau investigation in this case was finalized on May 23, 2018. The unit commander was given until June 9, 2018, to adjudicate the case. Case review was on June 26, 2018. The statute of limitations expired August 23, 2018.

PART II: INTERNAL AFFAIRS BUREAU INVESTIGATIONS

The Citizen's Commission on Jail Violence reported in 2012 that the Department's disciplinary system gave rise to poorly performed investigations and long delays between the incidents of misconduct and the ultimate discipline determination. This remains true today.

Both department managers and representatives of the labor organizations that represent sworn department personnel agree that the Department's credibility and the effectiveness of its disciplinary system depend upon timely evidence-based decisions derived from thorough, objective and unbiased investigations.

Investigations conducted by the Internal Affairs Bureau produce the evidentiary basis upon which department managers and executives rely to make disciplinary decisions. These investigations must withstand the scrutiny of not only department managers and executives but of the Civil Service Commission and its hearing officers and of the California Superior Court. As observed by Special Counsel Merrick Bobb twenty-four years ago, Internal Affairs Bureau investigations "must be accurate and unbiased reflections of the incident as they occurred."[57]

While we found many investigations that were thorough and unbiased, we found many internal investigations which were incomplete, not timely and included irrelevant or unreliable information such as self-serving statements without any investigation by Internal Affairs Bureau to determine whether those statements were supported by evidence.

A. Quality of Investigations

In 1992, the Kolts Commission asserted that many of the Department's internal investigations were poorly performed, citing instances in which identified witnesses

[56] IV2365542.

[57] The Los Angeles County Sheriff's Department Third Semiannual Report of Special Counsel Merrick J. Bobb & Staff, December 1994, p. 63.

were not interviewed, no attempt to identify witnesses was made, questioning was not adequate, misconduct by others was not pursued, key questions were not asked, additional deputies were not named as subjects, and the presentation of evidence was biased and incomplete.[58]

We found many internal investigations were thorough and objective. However, despite the findings of the Kolts Commission and the subsequent repeated observations of Special Counsel Merrick Bobb and the Office of Independent Review, we found these same troubling issues in many current administrative investigations and force review investigations. These latter cases are noteworthy because the quality of investigation appeared to neither raise concerns or cautions with many of the Department executives

1. Investigation Limited to the Four Corners of the Referral

As touched on above in Part I *Initiating Internal Investigations*, we found multiple cases in which there was substantial evidence which on its face appeared to establish that persons other than the subject of the investigation had engaged in the same or other misconduct, sometimes as serious, if not more so, than the misconduct being investigated. Yet these persons were neither investigated nor disciplined.

As described in Part I, some of this misconduct was serious, potentially criminal and, if proved true, warranted discharge, including offering false testimony in court, falsifying police reports, concealing and tampering with evidence and making false statements to department investigators.

This inadequacy persists despite Special Counsel Merrick Bobb's observations over twenty years ago that Internal Affairs Bureau investigators "did not expand pending investigations beyond the specific misconduct by the specific individual alleged in the four corners of the initial complaint, even when they uncovered additional misconduct . . ."[59] Notwithstanding the consequences, this is still true.

The practice of investigating only that conduct described within the *Request* and engaged in only by the employees named in the *Request*, in conjunction with the policies, procedures and practices which defer the decision to initiate an investigation to the employee's unit commander, appears to lead to inconsistent outcomes for the same or equally serious misconduct.

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[58] Kolts Commission Report, p. 111 et seq.

[59] The Los Angeles County Sheriff's Department Eleventh Semiannual Report of Special Counsel Merrick J. Bobb & Staff, October 1999, p. 10.

2. Incomplete Investigations

We found multiple instances in which investigations were incomplete in that highly relevant, possibly dispositive, evidence was not collected or reported by Internal Affairs Bureau investigators. Of particular note was that in some cases in which the body of already-collected evidence would suggest that the outstanding evidence was exculpatory, such evidence was collected, but if the body of evidence suggested that the evidence was inculpatory, it was not. Below are a few examples.

In the case of [ETA], an officer from another law enforcement agency reported that [ETA] had directed that officer to falsify a search warrant affidavit by attributing to himself observations he had not made or reported. [ETA] had previously been disciplined by the Department for admitting to making false statements in multiple prior search warrant affidavits. It was suggested in [ETA]'s defense he had seen the events and believed that the reporting officer had been in a position to see the same activity, making [ETA]'s instruction that the officer testify to those observations nothing more than a mistaken belief that the officer had seen what [ETA] had seen.[60]

The administrative investigation showed that [ETA] was assigned to observe the front of the residence while the reporting officer was in a position to observe the rear of the residence. Investigators conducted no investigation prior to adjudication to determine whether the activity at the front of the residence as described by [ETA] would have been observable from the location where the officer was located. A simple inquiry, however, would have revealed that the front of the residence could not have possibly been seen by the officer from his position at the rear of the residence and no reasonable person could have believed it could have been. Such an inquiry did not take place until after the adjudication and after the insistence of the Inspector General, who was present during the Executive Case Review of this matter.

In the case of [THETA], two deputies who were identified by the subject's attorney as having been present at the event at which the [THETA] was arrested were interviewed by Internal Affairs Bureau investigators. There is no evidence in the administrative investigation that the Department had been aware prior to this that these persons were present. A transcript of each deputy's Internal Affairs Bureau interview suggests that the deputies took to their interviews hard copies of written notifications they had purportedly made to their captain regarding the incident.

[60] IV2398074.

Neither of those notifications were read into the interview or included in the investigative file for the decision-makers to review.[61]

In the matter of [IOTA], a deputy district attorney reported that [IOTA] may have written a false police report, committed perjury at a preliminary hearing in a criminal case, and lied on numerous occasions to the District Attorney's Office about facts of the underlying arrest. A transcript of the reporting deputy district attorney's Internal Criminal Investigations Bureau interview indicates the deputy district attorney submitted to the Internal Criminal Investigations Bureau investigators numerous emails between the District Attorney's Office and the subject deputy. Although the emails, as described by the deputy district attorney and his supervisor in their respective interviews, were highly probative evidence, none of them were included in the Internal Affairs Bureau investigative file submitted to the unit commander for adjudication.[62]

In the case of [KAPPA], law enforcement officers from another jurisdiction arrested him for brandishing a firearm during an off-road vehicle event. Witnesses complained that [KAPPA] was armed with a firearm, intoxicated, directed racial epithets and used profanity at vendors and attendees at the event. One person reported that [KAPPA] had brandished his firearm and threatened to kill him.

Witnesses to [KAPPA]'s arrest stated the deputy's offensive behavior continued during his arrest and that he was derisive toward the arresting deputies. The arresting officers recorded the encounter. These recordings would be extremely probative of the deputy's conduct. Internal Affairs Bureau investigators did not obtain and include these recordings in the case file.[63]

In some cases, the subjects of the investigation had been convicted in court of criminal conduct and the fact of the conviction alone was used by the Department to impose discipline. This was done most commonly in driving under the influence and domestic violence cases. In domestic violence cases, the convictions prohibit the employee from possessing a firearm, which precludes employment by the Department as a deputy.

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[61] IV2384228.

[62] IV2336434. [IOTA] was initially discharged by the Department. The District Attorney did not prosecute Deputy [IOTA]. It is not known whether emails provided by the deputy district attorney in the ICIB interview were included in the case file submitted for filing consideration.

[63] IV2394918.

There is a risk in the Department not conducting investigations in these matters. It is possible that the legal requirements of the criminal justice system may result in a conviction being set aside for reasons not connected to the underlying facts in the case. This risk was demonstrated clearly in the case of [LAMBDA], discussed more fully in Part IV(E) *Outcomes*.[64] [LAMBDA] was arrested and charged with domestic violence. According to the police report when his girlfriend refused to have sexual intercourse he reached under her dress and forcibly removed her underwear, scratching her leg. When she rolled over onto her stomach he struck her on the back. Police observed bruising and redness on the victim's back. [LAMBDA] was criminally prosecuted and pled no contest to a domestic violence charge, Penal Code section 243(e). According to the reporter's transcript of the proceeding, he was convicted by the court based upon his plea but not sentenced.[65] Subsequently [LAMBDA] returned to court before sentencing and had his case dismissed. He was then reinstated by the Department.[66]

3. Witnesses not Located or Interviewed

There were multiple instances among the cases we reviewed in which no efforts were made to identify percipient witnesses or to interview identified witnesses known to possess relevant evidence. In some of these cases, witnesses had become unavailable due to the lapse of time between the underlying event and the administrative investigation. We found a disturbing pattern that exculpatory information is obtained and included, while evidence which would suggest culpability is ignored. The following are some examples that demonstrate this deficiency.

In the case of [XI], a suspect was arrested at a domestic-dispute call. When the day watch commander arrived at the station at which the suspect was detained, he observed that the suspect appeared to be injured. The suspect told the watch commander the deputies had beaten him up. None of the deputies involved in arresting the suspect had reported using or witnessing force.[67]

The suspect was taken to a local hospital in a patrol car and from there transferred to a second hospital where he was treated for a superficial abrasion on his left

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[64] IV2363498.
[65] Los Angeles County Superior Court case 4LG02705, reporter's transcript of proceedings, October 27, 2014.
[66] The reinstatement was based upon a false minute order submitted to the Department by persons unknown. See discussion below in Part IV Imposition of Discipline.
[67] IV2408882.

cheek, a rib fracture, pain and swelling to his left temple area, possible bleeding on the brain, and bruising to his upper left arm.

Internal Affairs Bureau investigators interviewed the deputies, the arrestee's domestic partner, and the suspect. None of these witnesses reported seeing any injuries to the suspect before his arrest. The suspect told Internal Affairs Bureau investigators he suffered the injuries at the hands of the arresting deputies. However, included in the Internal Affairs Bureau investigative summary is a quote from a document identified as the discharge summary from the second hospital: "Patient is a 49 y/o male who went to a bar yesterday and was involved in an altercation with a fellow patron. He returned home and got involved with [sic] another altercation with his wife. His wife called 9-1-1 and when the police arrived at the house, they noticed some bleeding from his left cheek."

Although the doctor who authored this entry is clearly identifiable in the discharge summary, the investigative file contains no indication that any effort was made by Internal Affairs Bureau investigators to locate and interview this person or any other person to determine the source of that information. Also omitted from the investigative summary was a conflicting entry from the arrestee's medical records that the arrestee sustained the injuries during an altercation with law enforcement.[68]

In the investigation of [EPSILON] for fraternization with narcotics traffickers it was found that he had deposited millions of dollars into and withdrawn millions of dollars from his personal bank accounts. Many of the individual deposits were in cash in amounts structured such as to avoid triggering federal and state reporting requirements. Many of the deposit slips had notations that the cash was a rental payment. Of these, many indicated the deposits were for units not owned by the deputy. The Internal Criminal Investigations Bureau conducted the criminal investigation and concluded that the individual cash deposits were consistent with rental payments from tenants and the criminal case was closed without referral to prosecutors.

The Internal Affairs Bureau administrative investigation commenced thereafter. Neither the Internal Criminal Investigations Bureau nor the Internal Affairs Bureau investigators identified or interviewed the purported tenants of any of the properties to determine whether they existed, whether the rent they were charged was consistent with the cash deposits, whether they paid their rent in cash, or whether the deposit slips corresponded with their rent payments. The investigative file also fails to contain any evidence that an effort was made to identify or

[68] IV2408882.

interview the owner of the units not owned by the deputy to determine whether the subject deputy had collected rents on behalf of the owner. The decision-maker was therefore unable to determine whether the deputy engaged in any misconduct relating to the millions of dollars that flowed through his personal bank accounts.[69]

In the case of [NU], while poolside at a hotel, he stepped in front of an approaching hotel employee and picked up a wallet dropped moments earlier by another hotel guest. The wallet contained several hundred dollars in cash. [NU] took the wallet to his hotel room. Hours later, when confronted by security in the hotel's restaurant, [NU] denied having taken the wallet. The taking of the wallet was captured on video. The wallet and its contents were recovered by law enforcement hours later from the deputy's hotel room. The employee was arrested and prosecuted in the local courts and ultimately convicted for his failure to return the found property.

Among the factual issues to be determined by Internal Affairs Bureau investigators was whether [NU] intended to return the wallet and its contents, as two deputies who were with him told Internal Affairs Bureau investigators he had told them, or whether he had forgotten that he found it when he spoke to hotel security, as he claimed in his Internal Affairs Bureau interview.

Video recordings from the hotel's security cameras reveal there were multiple hotel employees who could have been identified and interviewed to provide information that would have been highly relevant to the issue of the deputy's intent. An interview of the pool attendant, for example, could have provided valuable information to Internal Affairs Bureau investigators about what, if anything, was said by the deputy as he grabbed the wallet in front of her. However, Internal Affairs Bureau investigators neither identified nor interviewed the pool attendant. Likewise, interviews of hotel staff who were visible in the video recording of the pool area as [NU] and his companions examined the wallet would have been helpful in establishing whether he had opportunities to turn in the wallet but chose not to do so.

The hotel guest who lost the wallet told Internal Affairs Bureau investigators that hotel security advised him that [after [NU] was apprehended] someone had tried to return the wallet, but with no money in it, and that hotel security declined to accept it. Even though all of the security staff at the hotel were identified by Internal Affairs Bureau investigators, not all were interviewed. Internal Affairs Bureau did not document any efforts to determine whether what the guest had been told was true. The Department determined the theft allegation to be unresolved.[70]

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[69] IV2379813.

[70] IV2377060.

B. Cultural Issues Affecting Quality of Investigations

1. Culture of Silence

The role of the "code of silence" in the Department's culture has been cited from the 1992 Kolts Commission report to the Citizen's Commission on Jail Violence's 2012 report as playing a significant role in the inadequate internal investigations of alleged misconduct by department employees.[71]

While the code of silence is not unique to the Department, it appears to pervade the internal investigations into the conduct of deputies, whether the investigation is conducted by the Internal Affairs Bureau, the Internal Criminal Investigations Bureau or the Homicide Bureau.

The current Sheriff is purported to have told his managers that there is no career path for those who "put a case" on employees, and he has done nothing to clarify or qualify that statement. Department employees, of varying ranks and positions, have expressed to us the concern about being perceived, rightly or wrongly, as having "put a case" on a deputy.

These concerns about putting a case on a Los Angeles County Sheriff's deputy are shared by members of local, county and state law enforcement agencies beyond the Department. In the case of [THETA], discussed above, one of the police officers who was required to use force to subdue an intoxicated off-duty deputy told Internal Affairs Bureau investigators, "the deputy [k]ind of blamed me [for] being an officer who arrests other officers type of deal. . . what we're dealing with . . . is that reputation for arresting cops."[72]

These concerns were also demonstrated by the actions of deputies from an adjoining county's sheriff's department who arrested [KAPPA] after he was accused of brandishing a firearm in a campground when those deputies allegedly refused to provide Internal Affairs Bureau investigators with video/audio recordings made by them of the deputy's conduct immediately before and during his arrest.[73] And,

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[71] Kolts Commission report p. 120; Citizen's Commission on Jail Violence report at pp. 103-105.

[72] IV2384228.

[73] IV2394918: The external law enforcement agency represented to the OIG that that agency had given the Department's IAB investigators everything they had asked for. We referred that representation to the Department. According to the Department, that law

these concerns were stated by a California Highway Patrol (CHP) captain who advised Internal Affairs Bureau investigators investigating the misconduct in the case of [ETA] that CHP does not require cooperation in other agencies' internal investigations.[74]

The culture of silence may stem from the desire to not be perceived as contributing to or putting a case on a fellow law enforcement officer. These concerns manifest themselves not only in the reluctance by internal investigators and command staff to pursue peripheral misconduct uncovered in the course of internal investigations but also in the manner in which deputies who are subjects of or witnesses in internal investigations answer questions during their questioning by internal investigators, and in the policies, procedures and practices of the Department involving internal investigations.

a. Code of Silence Practiced by Department Employees

The devastating effect that a "code of silence" can have in law enforcement cannot be underestimated. All organizations suffer from the difficulty of convincing employees to report improper conduct of coworkers due to bonds of friendship and obligation. In law enforcement, a profession that often feels under siege and in which the members must rely upon each other for potentially lifesaving support, the pressure against reporting on or testifying against others is much stronger. To overcome this natural tendency, a law enforcement agency requires a discipline system that is strong and fair enough that its employees will trust it to reach fair results and know that failure to participate is not optional. As addressed elsewhere, the Department's discipline system does not meet that standard. Unfortunately, this shortcoming does not result simply in isolated instances of deputies refusing to participate or conveniently failing to remember key facts. The problem has existed so long that the "code of silence" has become institutionalized, both informally by deputies and through established department procedure and practice.

For decades Los Angeles County Sheriff's Department deputies have participated in secret societies that perpetuate the "code of silence." These groups have taken many forms over the years, some nefarious and some less so, but they have two key elements: a tattoo making membership permanent, often sinister and/or numbered and secrecy regarding who the members are. When the former undersheriff at the Sheriff's Department, who oversaw significant reductions in the capacity for internal investigation was convicted of obstruction of justice, his

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enforcement agency acknowledged to the IAB captain that the recordings by the agency's employees had not been turned over.

[74] IV2398074.

Vikings tattoo was evidence in the trial. In 2016, a deputy was asked in a civil deposition about his membership in such a group.[75] His answers regarding his tattoo were inaccurate, misleading and incomplete, and he identified only two members of the group. In 2018 a deputy was deposed regarding a similar tattoo, and although he was able to estimate how many deputies had the tattoo, he claimed not to be able to remember the names of any.[76] Despite repeated lawsuits and opportunities to investigate this type of conduct in a meaningful way the Department for decades under successive sheriffs has failed to initiate systemic action to identify the nature of these secret societies, their membership or their involvement in significant uses of force.

The Department has enabled the "code of silence" by permitting it to continue. Deputies are required by written policy to cooperate with investigations; however, it is the Sheriff's Department's practice to allow deputies to decline to provide information in investigations of their fellow deputies. Our office brought this problem to the attention of the Sheriff's Department's management in the prior administration which purported to change the practice. However, as described below in the subsection entitled *Practices of Internal Criminal Investigations Encourage Policy Violations*, it remains the current practice.

In the example of the deputy who gave inaccurate information about his tattoo, the Sheriff's Department opened a criminal investigation and submitted the case to the District Attorney. During the investigation, the two identified members of the secret society were approached and declined to give statements. One was a current deputy and who the Sheriff's Department did not require to give a statement. Although the nature of the group was of critical importance to the materiality or lack thereof of the deputy's inaccurate statements and additional members were easily identifiable, none were approached. We brought the importance of a thorough investigation to the attention of the Sheriff's Department management and were told "best practices" would be followed. We were not told of any additional interviews conducted or evidence gathered after that representation.[77]

While the height and depth to which the "code of silence" reaches are best demonstrated by the Sheriff's Department's secret societies and the failure to investigate them after decades of disruption, it is not the only demonstration. In many of the cases we reviewed, deputies whose primary duty is to observe, recall and relate facts, fail to demonstrate any capacity to do so when the events they are

[75] ICIB URN 917-00021-2003-441, IV2425414.
[76] URN016-10848-2811-013, SH2410691.
[77] IV2425414, civil case BC526786.

called upon to observe, recall and relate involve the potential misconduct of fellow deputies. Such failures to remember were often not challenged by internal investigators even when apparent from the circumstances surrounding the event that the stated failure to observe or remember is not credible. We have observed no case in which a deputy who successfully defended against a false statement allegation by claiming an inability on the deputy's part to observe or accurately recall and report an event, a core requirement of their position, has been subjected to a fitness for duty examination.

1) Failures to Observe

Failures to observe were widespread in the investigations we reviewed. Some claims by deputies that they did not observe events defy credulity. A few such instances are discussed briefly here.

In the case of [MU], Deputy [ONE] was captured on video using unreasonable force to guide a defiant prisoner toward a cell. At one point, the prisoner was standing facing a wall with his hands cuffed behind his back. Deputy [ONE] can be seen on video grabbing the prisoner's head and pushing it rapidly toward the wall. The prisoner's head can then be seen recoiling away from the wall. Whether the prisoner's head struck the wall is disputed by Deputy [ONE]. Regardless, the pushing of the head constitutes a reportable use of force. However, [MU], who witnessed the force did not report it, as required by policy.[78]

The use of force occurred within inches of [MU], who can be seen on video standing inches away facing Deputy [ONE] and the prisoner. The video depicts [MU] looking right at the prisoner as Deputy [ONE]'s hand pushes the prisoner's head toward the wall. In his interview with Internal Affairs Bureau investigators, however, [MU] said he did not see the prisoner's head being pushed toward the wall by Deputy [ONE] and did not see the prisoner rapidly recoiling. While [MU] was made a subject of an administrative investigation into the conflicts between the video and his purported failure to see the force, he was ultimately held accountable only for the failure to report witnessed force but not for false statements during the administrative investigation.[79]

In the case of [CHI], also described above in Part I(C) *Initiation of Internal Investigations*, he brought an off-duty deputy to the ground and held him while officers from another law enforcement agency struggled to gain control of the deputy in order to handcuff him. During [CHI]'s administrative

[78] IV2375943, unit level.

[79] The letter of imposition was issued pursuant to a settlement agreement March 21, 2018.

interview as a witness to the incident he stated he did not see any resistance or witness any force being used in the arrest of the off-duty deputy. These statements were contradicted by both the off-duty deputy and the other agency's officers who arrested him. Although an administrative investigation was subsequently initiated on [CHI], it was not for false statements but for failing to report his use of force and failing to notify his supervisor that he assisted in the arrest of an off-duty deputy; [CHI] was not held accountable for denying that he participated in or observed the force used.[80]

In this same case, the arrested off-duty deputy had been involved in a verbal and physical altercation with a spectator and a security guard at the event. The off-duty deputy attended the event with four other off-duty deputies. All of the other deputies were seated in seats adjacent to the off-duty deputy at the time of the incident. Three of those four other deputies whom Internal Affairs Bureau investigators interviewed denied observing the interaction between the subject deputy and the security staff. They said they were not paying much attention and therefore did not witness an assault. The fourth witness deputy stated he did not remember seeing an assault.[81]

In the case of [NU], described above in subsection A(3) *Witnesses not Located or Interviewed*, [NU] can be seen on video picking up a wallet at a hotel pool in the presence of a second off-duty deputy and both can be seen peering in the direction of the wallet as [NU] held it in his hands. Later, [NU] and a second off-duty deputy can be seen on video kicking the wallet around on the floor in the presence of the third deputy.

Both off-duty deputies told Internal Affairs Bureau investigators they had all been drinking and did not see the subject deputy find the wallet. They both said they only knew about the wallet because the subject deputy had told them about it ([NU] claimed he had forgotten that he found the wallet). Neither deputy was made a subject of the investigation for providing statements to Internal Affairs Bureau investigators that were clearly contradicted by the video evidence.[82]

In all of the above cases the events these deputies reported they did not see took place within feet, sometimes inches, of them or the deputies were actual participants. Failures to observe were not isolated to these incidents. Similar claims were common in many of the investigative files reviewed.

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[80] IV2422300.
[81] IV2384228.
[82] IV2377060.

2) Failure of Memory

We found that failures of recollection by department employees regarding evidence that potentially incriminates a fellow Sheriff's Department member are also common. Because of the delays involved in conducting internal investigations (see Part II(C)(5) *Delays in Completing Administrative Investigations*), it is not always possible to discern with confidence whether the failure of recollections is genuine.

As example, also in the case of Deputy [THETA], described above in subsection A(2) *Incomplete Investigations*, a witness deputy who was present at the event with [THETA] was interviewed by Internal Affairs Bureau investigators. During this deputy's sixteen minute interview he had more than twenty failures of recollection, including whether [THETA] was intoxicated, whether [THETA] sat next to him, whether he saw any contact between [THETA] and security, whether he saw [THETA] being escorted by security, whether he saw [THETA] running from security or whether he saw [THETA] being arrested. However, this witness deputy could remember going to the event, who the performers were, how he got there, who was in the car with him, what time they arrived at the venue, where they parked, the walk from the parking lot to the venue, how many persons he walked with from the parking lot to the venue, that the group had to take steps up to their seats, arriving at his seat, seeing security at the venue, that the security staff were wearing jackets with the name of the security company on the back, the name of the security company was CSC or SCS and that he did not have his firearm with him.

This witness also recalled that he became 'separated' from the group but doesn't remember how long he had been at his seat before he became separated, why he became separated or for how long.

Another of the deputies who admitted he was present could not remember what occurred at all during the event.[83]

In a case involving an off-duty deputy whose spouse called 9-1-1 and stated the deputy was being assaultive, one of the deputies responding, [Martius], who was responding to the call recognized the location to be the home address of a fellow deputy with whom [Martius] had worked. [Martius] conducted much of the on-site questioning of the reported victim. However, during the administrative investigation [Martius] "failed to recollect" much of what occurred. During his witness interview with Internal Affairs Bureau investigators, [Martius] indicated he failed to recollect on approximately forty-one different occasions. Similarly, the subject deputy

[83] IV2384228.

indicated he failed to recollect in excess of fifty times during his interview with Internal Affairs Bureau investigators.[84]

In the case of [GAMMA], discussed above in Part I(C)(2) *Cultural Issues* and (C)(5) *Reliance on Summaries*, Deputy [PI] drove home from the site of the shooting with [GAMMA]'s gun concealed inside a compartment in his trailer. [PI] later retrieved the gun from the compartment inside his trailer and turned it over to a third deputy who turned it over to investigators. [PI] told Internal Affairs Bureau investigators he could not remember securing the gun in his trailer or who gave him the gun. He could, however, remember that the reason he took the gun to his home was for safekeeping and the position of the slide on the gun when it was given to him.[85]

In the case of [RHO] and [SIGMA], a prisoner was severely beaten and lay seriously injured in his cell for days afterward. When finally found and taken out of the unit in which he was beaten, he alleged that a deputy had arranged for another prisoner to beat him and that his multiple requests for medical attention were denied by deputies. Although the evidence proved beyond all doubt that the prisoner had suffered his injuries at the hands of another prisoner while housed in that particular unit during the period he alleged, seven of the nine deputies identified by the Internal Affairs Bureau investigators as being present at the time of the beating or having worked in that unit in the days following the beating could not remember what had happened during their assigned shifts.[86]

Failures of recollection such as those above were common throughout the internal investigations reviewed by the Office of Inspector General. However, failures of recollection appeared to be particularly acute when witness deputies were asked to identify other deputies who were witnesses to or participants in the conduct that was the subject of investigation.

In the case of [IOTA], five other deputies had a part in the surveillance and the subsequent detention and arrest of a suspect for transportation and/or sale of a controlled substance. [IOTA] authored the police report but did not identify any other law enforcement officers as having participated. When [IOTA] testified at the suspect's preliminary hearing, he was asked specifically by the defense attorney if he was alone and the deputy made no mention of the fact that five other deputies participated in the operation. When confronted by the prosecutor with evidence that at least one other named deputy was present, [IOTA] carefully crafted a

[84] IV2422303.
[85] IV2389014.
[86] IV2337502.

supplemental report that indicated the only deputy he could "remember" assisting was the deputy who the prosecutor had named as being present.[87]

In the internal investigation of an arrest ([BETA], described above in Part I(C) *Initiation of Internal Investigations*, Deputy [ALPHA] was questioned by Internal Affairs Bureau investigators. [ALPHA] stated he had just left a restaurant/bar at which a party was taking place attended by approximately twelve to thirty Sheriff's deputies from the station at which he worked. [ALPHA] had told the law enforcement officers making the arrest that he and [BETA], the arrested deputy, had just come from a party celebrating the promotion of a deputy. In the administrative investigation the following exchange took place between investigators and [ALPHA]:

Investigator: Okay. Other than yourself and Deputy [redacted] at the [name of restaurant/bar] was there anybody else from your station at the [name of restaurant/bar] when you were there?
Deputy: No.
Investigator: Nobody else?
Deputy: Nobody else was there.[88]

b. Investigator Questioning Tactics Accommodate and Tacitly Encourage Code of Silence

Internal Affairs Bureau investigators seldom pressed witness deputies who claim to not have observed events that took place in their presence to determine whether the witness did not see the events because they were looking and the events did not happen or whether their attention was drawn elsewhere during the event they did not see. When these witnesses are interviewed or appear at hearings that occur later, oftentimes years later, this failure leaves room for these subsequent statements or recollections to be tainted by exposure to information they have received or heard about in the interim.

In the case of [THETA], three witness deputies claimed to have been at the event denied seeing the assault or [THETA] resisting arrest. Internal Affairs Bureau investigators did not ask any follow up questions of these deputies to elicit whether they were watching the interaction between McMurrow and others and did not see an assault or arrest take place or whether they did not see the assault or arrest because their attention was directed elsewhere.[89]

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[87] IV2336434.
[88] IV2430379.
[89] IV2384228.

In the case of [NU], Internal Affairs Bureau investigators did not confront either of the deputies who were with [NU] with the security video in which they are each depicted as being involved in some extent with the wallet or to explain their involvement.[90]

1) Failures of Recollection Condoned and Unchallenged

Likewise, Internal Affairs Bureau investigators rarely challenge failures of recollection experienced by department employees in the course of those employees' interviews by either criminal or administrative investigators. To the contrary, we have reviewed multiple internal investigations conducted by all bureaus in which investigators reassure witness employees (but not civilian witnesses) that failures of recollection are to be expected and are not an issue.

For instance, in the case of [IOTA], an investigator reassured [IOTA]'s partner, who seemed to have trouble recalling whether she worked with [IOTA] the day he made the arrest of the suspected narcotics dealer, "It's fine. I mean it's six years ago." (It had not, in fact, been six years ago).[91]

An investigator in that same case asked a witness deputy over twenty times a variation of "Do you remember?" or "Do you recall?" Early in that interview, the internal criminal investigator asked, "Do you remember that at all?" When the employee witness answered that he remembered only a little bit and that the facts recited to him by the investigator vaguely refreshed [his memory], the investigator consoled that witness by saying, "It was a couple years ago." That same investigator, however, asked the primary witness, a deputy district attorney, "Do you remember?" or "Do you recall?" zero times. And those investigators gave the deputy district attorney no similar reassurances for his only two failures of recollection, which were: 1) whether he reported the misconduct by e-mail or by speaking to someone, and 2) the name of the deputy who had accompanied [IOTA] during one of the deputy district attorney's interactions with [IOTA].

In the case involving [DELTA], investigators asked [Martius] some variation of "Do you remember?" or "Do you recall?" over twenty times. [Martius] experienced forty-one failures of recollection during his interview. Investigators asked the deputy who was the subject of [DELTA]'s and [Martius]'s criminal investigation some variation of "Do you remember?" or "Do you recall?" over thirty-five times.[92]

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[90] IV2377060.
[91] IV2336434.
[92] IV2422303.

This manner in which questions are framed by investigators is extremely important because when a question is prefaced with, "do you remember" rather than "did you see . . ." or "what happened next . . .," the witness can later say they did not remember what happened on the day he was questioned but now remembers exactly what happened. As cited below in Part IV(D) *Due Process and External Appeals of Imposed Discipline*, these recovered memories are have reportedly been presented in civil service hearings.

Asking questions prefaced with the words "do you recall" also makes it virtually impossible to later evaluate the credibility of a witness. For instance, if the investigator asks, "Do you recall punching the bartender?" and the witness says, "No," if the witness later admits to punching the bartender after being shown video of their actions, they can say they now recall punching the bartender and cannot be held accountable and such a statement would not be irreconcilable with the prior statement.

2) Code of Silence and Secret Society Investigations

The code of silence as practiced by witness employees and the accommodation of it by investigators is well illustrated in the cases of the Department's internal administrative investigations into allegations that deputies were involved in secret societies.

In the Jump Out Boys case, seven deputies with matching and numbered tattoos were investigated for alleged misconduct when they were tied to a written creed that espoused policing practices that violated the Department's core values. The Jump Out Boys were a secret society affiliated with the gang suppression unit in Compton. These seven deputies were relieved of duty pending the administrative investigation into the allegations. During the course of the investigation, thirty-three sworn members of the Department, including twenty-two witness deputies were interviewed.

The eleven supervisors who were questioned, ranging in rank from sergeant to lieutenant, were asked the following question in some form, "Are you aware of any deputies who organized or are a part of the Jump Out Boys or any clique now?" However, this same question was not asked of all of the witness deputies. Instead, most witness deputies were asked by internal investigators the following question in some form, "Do you know the alleged members of the Jump Out Boys?"

There is a subtle but important difference between these two questions. The first question is very broad and asks if the interviewee is aware of **ANY DEPUTY** who

either organized or is part of the Jump Out Boys or any deputy who organized or is a part of any deputy clique.

The second question is much narrower and could be, and with the aid of the union representatives in the interviews was, interpreted as meaning "Do you know who are the deputies who are alleged in this investigation to be Jump Out Boys?" Perhaps predictably, the deputies who answered this question answered with some variation of the following: "No. I can only assume just the deputies who were relieved." This was not followed up with a question such as "Do you know any deputies who are not relieved who . . . ?"

In one of the few interviews in which the Internal Affairs Bureau investigator asked if the witness deputy knew who the members of the Jump Out Boys were, instead of whether they knew any of the deputies being investigated to be Jump Out Boys, the union attorney present in the witness's interview intervened and essentially narrowed the question to only those individuals who were relieved of duty. The investigator did not follow-up with the witness to ascertain if the witness knew the identity of any other deputies who were associated with the Jump Out Boys but who had not been relieved of duty as part of the investigation.

In this same investigation, investigators failed to do more than make pro forma efforts to identify deputies who had the Jump Out Boys tattoo on their bodies. Although most of the deputies relieved of duty had the tattoo on one of their ankles, one of the subjects had the tattoo on his arm and another subject told Internal Affairs Bureau investigators that the tattoo could be located anywhere on the body. Although investigators were in possession of evidence that the tattoo could be anywhere on a deputy's body, most witness employees were not asked if they had a tattoo associated with the Jump Out Boys anywhere on their body. Instead, most were asked specifically if they had the tattoo on their ankles and one witness employee was more specifically asked only if he had the tattoo on his *left* ankle.[93]

There have been numerous shootings in which the shooting deputies have subsequently been identified as a member of one of these secret societies. It has been reported that in numerous civil cases membership by the shooting deputy in a secret society was a factual issue.[94] It has also been reported that the secret society tattoos of shooting deputies are altered or supplemented to commemorate

[93] IV2311422.

[94] See Appendix H, Lawsuits Involving Secret Society Members [REDACTED]; also, for example, Jump Out Boys creed, Appendix Z.

the deputy's shooting.[95] We have reviewed no Homicide Bureau investigation, IAB Force/Shooting Response Team review or Internal Affairs Bureau investigation in which a shooting deputy (or any deputy) has been asked about their affiliation in a secret society and whether their affiliation was a factor in the shooting or their conduct afterward.

2. Department Policies, Procedures and Practices Condone and Effectuate the Code of Silence

a. Department Practice Regarding Compelled Statements Violates Policy Requiring Cooperation in Criminal Investigations

Department procedures and practices tolerate and encourage interference with and obstruction of criminal investigations of department employees.

Department policy clearly and unequivocally mandates that employees cooperate in criminal investigations:

> Members have a duty to cooperate with investigators of the Department, or from other law enforcement agencies, who are conducting a criminal investigation. All statements made by members shall be full, complete and truthful statements. Members shall provide statements as part of criminal investigations except when such statements would violate the member's right against self-incrimination. Failure to cooperate may subject the member to administrative discipline. (Manual of Policy and Procedures 3-01/040.85 COOPERATION DURING CRIMINAL INVESTIGATIONS)

This policy is not implemented by procedure or in practice. The Office of Inspector General's review of internal investigations reveals that the Department accommodates, sometimes encourages, and does not address even outright refusals by department employees to cooperate in criminal investigations, whether those criminal investigations are being conducted by the Department or by other law enforcement agencies.

[95] See Appendix V, [REDACTED] Los Angeles County Superior Court case BC635915 (SH2382214) and Appendix X [REDACTED] Los Angeles County Superior Court case BS159343 ((SH2308453/IV2339106).

1) Practices of the Internal Criminal Investigations Bureau Encourage Policy Violations

Our review of Internal Criminal Investigations Bureau cases revealed that despite the policy in the Manual of Policy and Procedures, it has not, in fact, been the practice of the Department to require or even encourage cooperation by employees with criminal investigators.

Internal Criminal Investigations Bureau investigators routinely advise witness deputies, in direct contravention of department policy, that they have no duty to cooperate in the criminal investigation. The following advisements by an Internal Criminal Investigations Bureau investigator is the same or similar to the advisements we routinely found to be given by Internal Criminal Investigations Bureau investigators to witness deputies in internal criminal investigations.

> We're not from Internal Affairs. Internal Affairs you're compelled to speak, you have to talk to Internal Affairs, you don't have a choice. With us, you do not have to talk to us. We're here on behalf of the Department, we're all deputy sheriffs. I mean we're all we're all deputies. We're not from some outside agency. However, we never do and never will compel someone to talk. We don't force you to talk to us. Because that's just not what we do.[96]

> On this Department you do have an obligation to participate in internal investigations, okay. However, when it comes to criminal investigations, you're not obligated to participate. You cannot be sanctioned for not participating.[97]

This practice is in conformance with department procedure as described in an internal department memorandum dated April 8, 2014,[98] in which the captain of the Internal Criminal Investigations Bureau directed investigators to ensure that witness deputies be told in recorded interviews that:

(1) ICIB investigations are criminal investigations, not administrative investigations.
(2) ICIB desires to obtain voluntary statements.
(3) Department policies require cooperation in internal investigations, or administrative sanctions apply.
(4) No administrative sanctions will arise for not making a statement to ICIB.

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[96] ICIB 913-00079-2003-441 p. 129, IV2336434.
[97] ICIB 913-00079-2003-441 p. 330, IV2336434.
[98] See Appendix I, Interviews of Employees and Relevant Admonitions, April 8, 2014.

Before this April 8, 2014, memorandum, and for some time thereafter, Internal Criminal Investigations Bureau investigators had been informing deputy-witnesses that Internal Criminal Investigations Bureau "cannot compel you to provide a statement," which was neither an accurate statement of law nor an accurate statement of the Department's policy. The 2014 memorandum, while an improvement, nonetheless enables a practice which may have the logical effect of discouraging witness employees from talking to Internal Criminal Investigations Bureau investigators and is not in conformance with department policy requiring department employees to cooperate with a criminal investigation.

2) Unsuccessful Efforts to Resolve Disconnect between Policy and Practice

Our office raised this issue in 2015 with the then-Chief of the Professional Standards and Training Division and engaged in subsequent discussions with the Department about changing this practice to conform to department policy. These discussions ended in May 2016 with no changes to policy or practices.

Without notice to the Office of Inspector General, the Department revisited this issue, and on October 17, 2017, issued a revision to its Cooperation During Criminal Investigation policy which still did not address the issue.[99] The revision clarified the exception to the policy, i.e. when answering questions would violate the department member's constitutional right against self-incrimination, but did not change the policy to conform to the Department's procedures and practices.[100]

On March 27, 2018, we learned that a unit order had possibly been issued on this topic earlier that same month. Upon our request, a copy of a unit order, dated March 9, 2018, was provided.[101] This unit order stated that witness deputies would

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[99] MPP 3-01/040.85 Cooperation During Criminal Investigation (2015 et seq.).

[100] The revision to MPP 3-01/040.85 Cooperation During Criminal Investigation replaced the following sentence:

> "They shall make full, complete, and truthful statements except when such statements would violate the member's right against self-incrimination, or when such statements might compromise another criminal investigation about which the member has knowledge."

with the following:

> "All statements made by members shall be full, complete, and truthful statements. Members shall provide statements as part of criminal investigations except when such statements would violate the member's right against self-incrimination."

[101] Appendix Y: Internal Criminal Investigations Bureau Unit Order 2-24, March 9, 2018, Compelled Employee Witness Interview Protocol.

no longer be advised that there would be no administrative sanction for not making statements to Internal Criminal Investigations Bureau investigators. However, although the unit order is entitled Compelled Employee Witness Interview Protocol the unit order does not mandate that employees be compelled to provide contemporaneous statements.

Notwithstanding this unit order, a review of witness interviews conducted by Internal Criminal Investigations Bureau investigators subsequent to March 9, 2018, revealed that Internal Criminal Investigations Bureau investigators continued to advise witness deputies that there would be no administrative action taken for the employee's failure to cooperate.

The following is an excerpt from one of those interviews:

> [Investigator]: Before we went on tape, is it fair to say that I introduced myself, told you what I -- that I worked with the Internal Criminal Investigations Bureau –
> [Deputy]: Yes.
> [Investigator]: -- and kind of told you what we're here to talk to you about?
> [Deputy]: That's correct.
> [Investigator]: We're gonna do that again on tape. I'm a sergeant with the Internal Criminal Investigations Bureau. We conduct criminal investigations involving criminal allegations against employees, okay? With that said, I ask for a voluntary statement. In other words, if at any point you feel uncomfortable, you're willing -- you're able to get up and walk out with no administrative sanctions. Do you understand that?[102]

After this review, we requested that the Department provide the instructions currently in effect for Internal Criminal Investigations Bureau investigators regarding witness interviews. The Department advised us that there were discussions regarding changing the "compelled statement" policy, but did not make clear whether the discussions were about changing the Manual of Policy and Procedures, the direction given in the March 9, 2018, Unit Order, or the practice followed by Internal Criminal Investigations Bureau investigators both before and after the March 9, 2018, Unit Order.

[102] Internal Criminal Investigations Bureau, URN 918-00018-2003-441 (IV2464298), interview of Deputy [B.] [TAU], June 6, 2018, p. 1.

3) Current Department Policy and Practice

Since December of 2018, the Department has declined to discuss policy, procedure and practice revisions, and has declined to provide the Office of Inspector General with any directives issued by the Department in any form other than policy manual revisions posted to its public website. A review of the Department's practices as of 2018 shows that the Department's procedure has not changed but it is now the practice of the Department to make the admonition in apparently off-the-record discussions with witnesses by criminal investigators before the on-the-record interview begins. The discussion is then memorialized within the interview itself.

> [Investigator]: Like I informed you ma'am previous to our conversation also you received an email indicating that I'm from Internal Criminal Investigations Bureau does criminal investigations. All statements must be made voluntarily and I want to talk to you. You're only a witness and the incident I want to talk to you about is the off training party that occurred on September 28th, 2018 at Kennedy Hall. You want to talk to me regarding the incident?
> [Deputy]: No, sir. I'll decline that interview.
> [Investigator]: Thank you very much. I appreciate it.[103]

Employee witnesses are still not required to cooperate in criminal investigations. As of this writing, the policy requiring department employees to cooperate in criminal investigations remains on the books but disregarded in practice. The most recent instruction provided to our office by the Department remains the March 9, 2018, unit order, which we found has not yet been implemented.

b. Participation by Subjects' Attorneys in Scheduling, Sequencing and Conducting Interviews

It is the Department's procedure and practice in all internal administrative and criminal investigations to permit extensive involvement by employee representatives in the investigative process.

Union representatives in all internal investigations are granted wide latitude by the Department to:

- schedule when and where employee witness interviews will take place;
- sequence employee witness and subject interviews;
- direct employees how to answer questions[104];
- ask questions of investigator; ,

[103] ICIB URN 918-00055-2003-441.

[104] See [GAMMA], IV2389014, and Jump Out Boys, IV2311422, for example.

- characterize the investigators' representation of the state of the evidence;
- answer the investigators' questions themselves;
- recess the interview to discuss employees' answers;
- reframe the questions asked by investigators;
- provide information to the witness employee before the witness employee responds to the question;
- object to the questions in a manner that advises the employee how the attorney would like the question answered;
- direct the employee to not respond to the question at all.

The delegation of this power over and involvement in the investigative process has wide ranging effects on the quality and the integrity of administrative investigations.

Of particular concern is the Department's allowing the attorneys, or attorneys from the law firms, which represent the subject employees to be present and participate in the interviews of and represent witness employees. The Department also permits the attorneys for subject employees to refuse on behalf of witnesses to cooperate in criminal investigations without requiring the subject employee to personally refuse.

1) Subject's Rights

The Department often affords to witness employees what the Department refers to as "subject's rights." Subject rights is a legal term of art that refers to specific protections provided by the California Public Safety Officers Procedural Bill of Rights to those law enforcement officers who are the ***subjects*** of investigations by their own department.

The most significant of subject rights is the right to have an attorney or other representative present during questioning. The Department's Administrative Investigations Handbook specifically provides that department witnesses "may request a representative for the interview." Investigators are further instructed that they "should err on the side of caution, permitting an employee to have representation upon request, even if [the] employee is being interviewed as a witness."[105]

In the cases we reviewed, we found that not all department witness employees took advantage of subject rights. We also found no evidence that witness employees who elected not to be treated as a subject were not treated more favorably by the Department's investigators or subjected to any pressure or

[105] Administrative Investigations Handbook at pp. 16, 19.

retribution by any others as a result of their decision. However, many employees do, in fact, choose to be represented. The invocation by witness employees of subject rights has significant effects on the conduct of the investigation and the integrity of the evidence it produces.

While the Department can, and does, admonish witness employees to not share information regarding the investigation with other employees, no such admonition is given to the subject's attorneys who act as representatives for the witness employee. Nor could such an admonition be effective.

In almost every circumstance, the subject's attorney has a legal and ethical duty to utilize any evidence which is advantageous to the subject of the investigation for the subject's benefit. In many cases, this use may include sharing that evidence with others, including those who are witnesses but who have not yet been interviewed by investigators. But even where evidence is not explicitly shared, whether deliberate or inadvertent, the sharing of information may also be accomplished through questions, objections and comments, as representatives are permitted by the Department to do during an interrogation.

Such sharing, as observed by the California Supreme Court, diminishes the integrity of investigations: "Disclosure before interrogation might color the recollection of the person to be questioned or lead that person to conform his or her version of an event to that given by witnesses already questioned." The same court observed that sharing evidence before interrogation could frustrate the effectiveness of any investigation, whether criminal or administrative, and "is contrary to sound investigative practices" because it "impair[s] the reliability of the investigation."[106]

The role ceded to the unions by the Department in scheduling the time and location of witness interviews has also resulted in lengthy delays. We found numerous administrative and force-review investigations in which months elapsed between the Department's request for a witness-employee or subject interview and the actual interview.[107] In one case, for instance, the request for a subject interview was made on August 4 and the interview did not take place until May 9 the following year, 272 days later.[108]

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[106] *Pasadena Police Officers Assn.* v. *City of Pasadena* (1990) 51 Cal. 3d 564, 578-579.
[107] See Appendix J, Investigative Timelines.
[108] IV2380831.

2) Obstruction of Criminal Investigations

In criminal investigations, unlike administrative and force-review investigations, representatives are by policy and practice given the ability to obstruct the criminal investigations by depriving the Department of evidence.

Unit order 2-12,[109] in effect since 2003, precludes the Department from initiating contact for a "reasonable time" with employees who have notified the Department they want a representative. This includes employees who are witnesses to, nor participants in criminal conduct. A reasonable time is not defined. Nor does this unit order require that the employee personally advise the Department.

This same unit order implemented a policy that completely prohibits internal criminal investigators from initiating contact with employees whose attorney (s) have sent a letter to the Department stating that the attorney represents the employee. This is problematic in that in most internal criminal investigations, the suspect's attorney is also the attorney for witness employees.

From our review of investigators' logs, it does not appear that the Department in practice requires a written letter from the attorney. It appears that in practice, if the Department is verbally notified by an attorney that a witness employee is represented by counsel, the Department will not contact that witness employee. Further, it appears that once the Department is notified by an attorney that an employee witness will not submit to an interview by internal criminal investigators, the Department will not seek an interview on that subject, even through the witness's attorney.

Because the Department does not require that the employee personally advise the Department that he or she does not wish to be interrogated, and department policy, procedure, and practice prohibits the Department from contacting the employee to determine whether the refusal is the employee's or by proxy by the attorney who has communicated with the Department, the Department has effectively precluded the Department from compelling a witness employee to cooperate in a criminal investigation. This practice also precludes the Department from disciplining an employee who has been ordered to cooperate but through the suspect's (or any other) attorney declines to do so.

For example:

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[109] See Appendix K, Unit Order 2-12, January 3, 2003, Representative Rights of Sworn Employees.

> Investigator: We seek voluntary statements (INAUDIBLE) our interviews. Would you like to speak to us?
> Witness Deputy: At this time, I just, I request a rep.
> Investigator: All right. Then what I'm gonna do is I'm gonna give you the card to the lead investigator, okay, so when you, you can contact your rep, and then if your rep feels like, you know, you, you want to give a statement or advises you to give a statement, then you can contact the representative, okay?.[110]

In those cases, in which the subject of the investigation is represented by the law firm or by the attorney who is asserting that the witness employee will not submit to an interview, there may be a conflict of interest. More importantly, however, this process can obstruct the Department's ability to conduct a thorough criminal investigation.

This unit order, in conjunction with other Department procedures and practices, in effect prevents the Department in criminal cases from interviewing sworn employee witnesses who have requested representation without the consent of the witness employee's representative. In those cases, in which the subject employee's attorney is also the representative of the witness employee, this precludes the witness employee from being interviewed without the consent of the subject's attorney. Even if such an interview does takes place, this unit order ensures that the subject employee's attorney may be present and actively participate.

Perhaps the best known public example of how these obstructive procedures and practices subvert the criminal justice system is the case of Joey Aguiar (Aguiar) and Mariano Ramirez (Ramirez).[111] Aguiar and Ramirez were convicted by a jury in the United States District Court on February 2, 2016, for falsifying reports with the intent to obstruct justice related to their beating of a prisoner who was waist-chained. This case was investigated by the United States Department of Justice and prosecuted by the United States Attorney. Thirteen deputies and the Internal Criminal Investigations Bureau investigator testified as witnesses at the Federal trial.

The same underlying misconduct had been investigated by the Sheriff's Department's Internal Criminal Investigations Bureau. According to the documents in the case file, Sheriff's Department investigators attempted to interview only four of the thirteen deputies who testified at the federal trial. Two were interviewed. One deputy, after being given the admonitions described in Part II(B)(3)(a) *Obstruction*

[110] ICIB URN 918-00055-2003-441 Banditos.
[111] *United States of America v. Joey Aguiar and Mariano Ramirez* CR14-0069.

of Criminal Investigations above, refused to be interviewed. The fourth was not interviewed after the attorney representing Aguiar and Ramirez telephoned investigators and told them that the witness employee would not submit to an interview.

With respect to the additional nine deputies who testified, the Internal Criminal Investigations Bureau case file failed to document why they did not provide statements to Internal Criminal Investigations Bureau investigators or whether there was even an attempt made to interview them.

Regardless of the reason for neglecting to interview or attempt to interview these deputies, the case was submitted to the District Attorney's Office for a filing determination. The District Attorney declined to file the case and did not request additional investigation.[112]

Aguiar was also the subject of an Internal Affairs Bureau administrative investigation completed in August of 2016 (the underlying events took place in 2010 – see subsection (C) *Structural Issues Affecting Quality of Investigations* for why this delay occurred),[113] in a case in which a prisoner alleged that Aguiar was one of a group of deputies who had beaten him during three occasions while he was in the Los Angeles County jail system. The Internal Criminal Investigation Bureau investigation identified four deputy-subjects and were able to identify with certainty the date and location of one of the three incidents.[114].

According to the records submitted with the report to the District Attorney by the Internal Criminal Investigation Bureau, there were no fewer than fifty-six department personnel on duty at this location on that date, including thirty-seven deputies, twelve custody assistants and two sergeants.[115] Although the report reflects that Internal Criminal Investigations Bureau investigators identified and interviewed five prisoners, the report does not include the interviews of any department witnesses or any indication whether any were identified and declined to be interviewed, either personally or through an attorney.

Notwithstanding the absence of statements from these persons, some of whom had to have been present when the alleged misconduct took place, the criminal investigation was concluded and submitted to the District Attorney. The District

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[112] ICIB URN912-00039-2003-441, IV2329675.
[113] IV2322711.
[114] ICIB URN911-00068-2003-441.
[115] ICIB URN911-00068-2003-441 Central Jail Assignment Sheet Saturday PM Shift and Central Jail Assignment Sheet Day Shift, October 2, 2010.

Attorney did not request additional investigation but declined to file the case based on the insufficiency of the evidence.

A third example is case IV2337502 ([RHO] and [SIGMA], previously cited).[116]

While housed in one of the Department's jail facilities, a prisoner was severely beaten. He remained in his cell severely injured, bleeding and bruised, without medical treatment for four days. Upon discovery by an uninvolved deputy the injured prisoner was transported to a hospital and treated for abrasions, contusions and a fractured orbital. The prisoner alleged he had been beaten by another prisoner at the direction of and in the presence of Sheriff's Deputies.

An Internal Criminal Investigations Bureau investigation was initiated after a preliminary inquiry by the unit. None of the deputies or custody assistants present in the facility at the time of the incident or during the ensuing four days were interviewed by investigators. Nor was the medical staff who treated the prisoner. No reason for the lack of these interrogations is contained in the investigative file.

Notwithstanding the absence of statements from these persons the criminal investigation was concluded and submitted to the District Attorney. The District Attorney did not request additional investigation but declined to file the case based on the insufficiency of the evidence.

During the subsequent Internal Affairs Bureau investigation nine witness employees were identified by Internal Affairs investigators who had not been interviewed, identified as witnesses or even referenced in the Internal Criminal Investigations Bureau case file.[117] (See section *C(4) Consequences of Bifurcation* below for the outcomes of these interviews).

In a very recent case three Sheriff's deputies alleged that while at a large gathering of department employees they were attacked, beaten and threatened by deputies who were members of the Banditos, an identified secret society of deputy sheriff's in the East Los Angeles area. Amid a great deal of media attention,[118] the case was investigated by the Internal Criminal Investigations Bureau

[116] IV2337502, [RHO] and [SIGMA].
[117] IV2337502, Addendum I Investigative Summary.
[118] ICIB 918-00055-2003-441; FBI investigating tattooed deputy gangs in Los Angeles County Sheriff's Department, Los Angeles Times, July 11, 2019; Deputy gangs have survived decades of lawsuits and probes. Can FBI stop them?, Los Angeles Times, July 19, 2020.

In the course of the criminal investigation, twenty-one deputies who were identified as potential witnesses refused, in violation of policy but in conformance with the Department's procedure and practice, to cooperate in the criminal investigation. Notwithstanding this lack of evidence, the Internal Criminal Investigations Bureau submitted the case to the District Attorney for consideration of filing criminal charges. The District Attorney declined to file criminal charges, citing "there is insufficient evidence to prove beyond a reasonable doubt that any of the suspects committed any crimes."

Although the District Attorney's Office has a Bureau of Investigation, a full law enforcement agency with the legal authority to conduct criminal investigations, the District Attorney relied entirely on the reports prepared by the Internal Criminal Investigations Bureau, which lacked the testimony of twenty-one potential witnesses.[119]

C. Structural Issues Affecting Quality of Investigation

1. Bifurcation

When the conduct alleged to have been engaged in by a department employee is criminal, by policy, procedure and practice, a separate criminal investigation is conducted by the law enforcement agency with jurisdiction over the misconduct. As discussed elsewhere, if the alleged criminal misconduct occurred within the Department's jurisdiction the investigation will in most cases be conducted by the Department's Internal Criminal Investigations Bureau. The administrative investigation, in practice, is not commenced by the Internal Affairs Bureau until the criminal case is resolved.

2. Consecutive Investigations

By policy, procedure and practice the Internal Affairs Bureau monitors, but does not participate in the criminal investigation of department employees. The Internal Affairs Bureau assigns an administrative investigation case number (IV#) to the matter but does not start an administrative investigation until the criminal case is resolved. As discussed more fully below, because the use of deadly force, absent a legal justification, is *per se* a criminal act, deputy involved shootings are investigated criminally.

[119] District Attorney J.S.I.D. File #19-0275R, LASD file URN 918-00055-2003-441.

The result of this system of conducting separate and sequential investigations is the corruption and loss of evidence, as these criminal investigations often take years to complete.

The practice of conducting separate and consecutive investigations is a long-established and generally accepted practice in law enforcement which has been followed by the Department since before 1987. The genesis of this practice is the exclusionary rule fashioned by the United States Supreme Court to prevent evidence obtained in violation of a person's constitutional rights from being used in criminal prosecutions of that person.[120] The practice was implemented by the Department in part to ensure that the involuntary statements [compelled by the Department] of subject employees would not be provided to prosecutors for use in determining whether criminal charges would be filed.[121]

This practice is no longer followed by many law enforcement agencies, as it deprives law enforcement of crucial and timely information which might be lost with the passage of time. Notable among those agencies is the Los Angeles County District Attorney's Office, which in response to the *Rampart* scandal, initiated a system of 'clean' teams and 'dirty' teams which simultaneously investigated administrative and criminal misconduct by Los Angeles Police Department officers. Only the 'dirty' team had access to compelled statements and derivative evidence.

This practice was adopted by the Los Angeles Police Department as part of a federal consent decree in the wake of the *Rampart* scandal.[122] This system implemented procedural safeguards which were satisfactory to the police agency, the prosecutor and the courts to guard against the use in the criminal case of involuntary statements and the evidence derived from those statements made in administrative investigations. This also allowed the District Attorney and the Los Angeles Police Department to conduct consolidated concurrent (and timely) criminal and administrative investigations.

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[120] See *Weeks* v*. United States* (1914) 232 U.S. 383; *Mapp* v*. Ohio* (1961) 367 U.S. 643; *Miranda* v*. Arizona* (1966) 384 U.S. 436; *Malloy* v*. Hogan* (1964) 378 U.S. 1.

[121] See *Ass'n for L.A. Deputy Sheriffs v. Baca* (2013) 2013 Cal. App. Unpub. LEXIS 8162, p. 4. This opinion is referred to by the Department as *Gates-Johnson*, although the term Gates-Johnson is actually a mnemonic for the 1991 agreement which was the subject of the litigation.

[122] See consent decree in *United States v. City of Los Angeles* CV11769, dated June 15, 2001 (in Appendix K). See also *United States v. City of Los Angeles* (2002) 288 F.3d 391 and *United States v. City of Los Angeles* (2001) 2001 U.S. Dist. LEXIS 1747.

The Department has opposed conducting either concurrent or consolidated investigations. The reason expressed to the Office of Inspector General for this opposition has consistently been that which the Undersheriff wrote on August 23, 2019: "The 1991 Gates-Johnson Settlement agreement between the Department and the Association of Los Angeles Deputy Sheriffs (ALADS), indicates the Department would not require a deputy to be subject to concurrent criminal and administrative investigations arising out of the same incident." This statement is simply wrong. The *Gates-Johnson* settlement agreement simply stated "the Department would not require a deputy subject to concurrent criminal and administrative investigations arising out of the same incident to submit to an administrative interrogation until it was determined criminal charges would not be filed," the deputy was arraigned on or requested a continuance on the criminal charge.

The Undersheriff's misstatement of the *Gates-Johnson* Agreement demonstrates how the Department has misunderstood and misapplied that agreement and the subsequent unpublished appellate court opinion mandating the Department's compliance with it. The *Gates-Johnson* agreement was reached in 1991 between the Department and the union representing Los Angeles County Sheriff's Deputies, the Association for Los Angeles Deputy Sheriffs.

The appellate court wrote in 2013, "[n]othing in the provisions of the 1991 settlement agreement prevents the Department from conducting an administrative investigation into alleged criminal misconduct by a deputy, including interviewing witnesses and obtaining a voluntary statement from the officer involved. The agreement restricts only the timing of a compelled administrative interrogation of a deputy concurrently subject to a criminal investigation."[123]

Notwithstanding the court's explicit language to the contrary, the Department continues to cite the *Gates-Johnson* agreement as the reason for conducting consecutive investigations although nothing in the agreement or the court's decision prevents concurrent investigations.

Also, the court allowed that if "the circumstances animating Association for Los Angeles County Deputy Sheriffs original civil rights claim on behalf of individual deputies changed—if, for example, the manner in which administrative investigations are conducted was significantly altered, as talkies replaced silent movies—then the mutual obligations created by the 1991 settlement agreement would terminate."

[123] *Ass'n for L.A. Deputy Sheriffs v. Baca, p. 4*

The attorney for Association for Los Angeles County Deputy Sheriffs anticipated one such circumstance which would render the agreement terminated, when he testified "the parties intended the procedures set forth in the settlement agreement to be followed until there was some change in how sworn deputies were investigated—for example, if a civilian oversight committee were to be tasked with the administrative investigation of deputies."[124]

The court also opined that "no strong public policy would be violated by the enforcement of the 1991 settlement agreement according to its terms for as long as the circumstances that led to its adoption persist. We are not dealing with a public works contract, and no expenditure of public funds is involved . . ."

This opinion was accepted by the Department without appeal and no effort has been mounted to change the practices of the Department since. However, as anticipated by the court and the attorney for the Association for Los Angeles County Deputy Sheriffs, there have been significant changes in circumstances since that unpublished opinion was issued in November 2013:

- The County established the Office of Inspector General to oversee the Department's operations;
- The County established a Sheriff's Civilian Oversight Commission and delegated to that Commission the power to subpoena persons and records;
- The County has expended millions of dollars of public funds in lawsuits by survivors of deputy involved shootings[125];
- The voters of the County passed Measure R granting the Sheriff's Civilian Oversight Commission subpoena power in order to conduct investigations;
- The state has amended Penal Code section 832.7 to strip records of investigations of deputy involved shootings of their confidential status;
- National events have heightened public interest in and concern about the shooting of civilians by law enforcement personnel.

And, notwithstanding the underlying reasons cited by the Association for Los Angeles County Deputy Sheriffs, in deputy-involved-shooting cases deputies routinely provide voluntary statements in interrogations conducted by Homicide Bureau detectives while Internal Affairs Bureau investigators are merely permitted to be present. Such statements and the evidence derived from them can be used in a criminal proceeding, while statements provided to Internal Affairs Bureau investigators in a compelled interrogation could not.

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[124] *Ass'n for L.A. Deputy Sheriffs v. Baca*, p. 7.

[125] See Appendix L, County Shooting Judgments [REDACTED].

3. Internal Criminal Investigations

Criminal investigations are substantively more limited than administrative investigations in that the criminal investigator's objective is to determine whether there is sufficient evidence to establish probable cause that a department employee has committed a crime. While evidence of policy or procedure violations or improper practices may, on occasion, be relevant in determining whether such probable cause exists, the focus in a criminal investigation is on that evidence which establishes the commission of the crime itself.

a. Investigations of Employee Criminal Misconduct

By policy, procedure and practice criminal misconduct by department employees which occurs within the policing jurisdiction of the Department is generally investigated by the Internal Criminal Investigations Bureau, unless, as in the case of deputy-involved-shootings, another unit within the Department has special expertise. [126] Criminal misconduct by non-sworn members of the Department and minor or misdemeanor misconduct by sworn members committed within the Department's policing jurisdiction may be investigated, at the Internal Criminal Investigations Bureau's discretion, by the reporting Sheriff's Department unit. Criminal misconduct not within the policing jurisdiction of the Department is generally investigated by the policing authority within which the misconduct is alleged to have occurred.

1) Monitoring Criminal Investigations

Regardless of what agency investigates and prosecutes criminal misconduct by department employees, the Internal Affairs Bureau monitors the progress of the criminal case. All criminal conduct by a department employee is a violation of policy. Therefore, an administrative investigation is generally commenced, or if previously initiated but suspended due to the criminal investigation, resumed, when the criminal case is resolved. Whether the ensuing administrative investigation is conducted by the subject employee's unit or the Internal Affairs Bureau is determined by the employee's unit command, as described above in Part I Initiation of Internal Investigations.

As discussed above in II((B) *Cultural Issues Affecting Quality of Investigation*, the Department, contrary to its own policy, by procedure and practice, does not require, or compel, witness employees to provide cooperate during criminal

[126] MPP 2-04/010.16 - Internal Criminal Investigations Bureau.

investigations. The Office of Inspector General has reviewed multiple cases in which this has resulted in the interference with or obstruction of criminal prosecutions. In multiple cases, percipient employee witnesses are not even asked by investigators to be interviewed at all during the criminal investigation. Consequently, these witness employees are not interviewed, if ever, until forced to testify in legal proceedings, as happened in the federal prosecutions which gave rise to the Citizen's Commission on Jail Violence, or by Internal Affairs Bureau investigators in administrative investigations.

2) Delays Commencing Administrative Investigations

An administrative investigation does not commence or resume until the criminal matter is resolved. The criminal matter is considered resolved only when one of the following occurs:

1. The Department determines there is insufficient evidence to establish probable cause that a department employee engaged in criminal conduct.
2. The prosecuting agency (usually the District Attorney) declines to file criminal charges against the department employee.
3. In a criminal case in which a department member is a defendant (a filed case), the court has issued a final judgment.

Although the Internal Affairs Bureau monitors the investigation, Internal Affairs Bureau investigators do not participate in any way in the criminal investigations of department employees.

The Office of Inspector General has found that this practice results in extremely lengthy delays in administrative investigations. These delays seriously compromise the integrity of the administrative investigation process.

These delays are particularly prejudicial to the administrative investigations of employees who may have been participants in an event but whose conduct was not criminal. This might occur, for instance, in those cases in which an employee witnesses the use of unreasonable force or an assault by another employee but fails to report it or makes a false statement to investigators about it. Since the administrative investigation is not conducted until the end of the criminal case on the underlying assault or force, these employees may go un-cleared or un-disciplined for years, perhaps resulting in an unresolved case in their case history. As discussed elsewhere, the Department has not, in practice, even attempted to compel department employees to provide statements during the pendency of a criminal investigation of another employee, even when those employees are only witnesses and not the subjects of the investigation. Frequently these department

employees are the sole, or among the most crucial, witnesses to criminal conduct. This practice, in conjunction with the delays due to bifurcated consecutive investigations, causes the loss of irreplaceable recall and the evidence adduced as a result of the lack of recall.

The Office of Inspector General reviewed all Internal Criminal Investigation Bureau investigations which were active at some point during the calendar year 2017 and through June 1, 2018 to determine the extent of these delays caused by the criminal investigations.

Age of Cases Pending a Filing Decision by Prosecutors

As of June 1, 2018, of the criminal cases being monitored by the IAB which were still pending a filing decision by the District Attorney (or the prosecuting agency to which presented), the average age of the cases was approximately two years (734 days). Over half of the cases were 568 days old or older, with oldest case over four and one-half years old.

CASES UNDER REVIEW AT JSID	Days elapsed between:		
	Opening and Presentation To JSID	Presentation to JSID and June 1, 2018	Opening June 1, 2018
Average	**299**	**436**	**734**
Median	**266**	**394**	**568**
Longest	**882**	**1099**	**1703**
Shortest	**12**	**155**	**412**

Age of Criminal Monitors Pending on June 1, 2018

Age of Cases Prosecutors Declined to Prosecute

Of the cases declined by the District Attorney (or prosecuting agency) at the time the agency declined to file the case, the average age of the cases was 468 days. Over half of the cases were 357 days old or older when declined.

CASES DECLINED BY JSID	Days elapsed between:		
	Opening and Presentation To JSID	Presentation to JSID and Declination	Opening and Declination
Average	**214**	**253**	**468**
Median	**225**	**159**	**357**
Longest	**587**	**710**	**1079**
Shortest	**11**	**0**	**11**

Age of Criminal Monitors in which Prosecution was Declined

Age of Cases at Time Prosecutors Filed Criminal Case

Of the cases in which criminal charges were filed by the District Attorney (or prosecuting agency) at the time the agency filed the case, the average age of the cases was 298 days. Over half of the cases were 232 days old or older when charges were filed, and one case was not filed until two and one-half years after the case opening.

CASES FILED BY JSID	Days elapsed between:		
	Opening and Presentation To JSID	Presentation to JSID and Filing	Opening and Filing
Average	**199**	**101**	**298**
Median	**164**	**91**	**232**
Longest	**560**	**917**	**917**
Shortest	**0**	**0**	**146**

Age of Case at Time of Criminal Filing

Age of Active Court Cases with Department Employees as Defendants

The criminal monitor does not end when a case is filed. It continues until there is a judgment in the case. Since the Department does not compel department witnesses to cooperate in its own investigations these cases are filed often times without the benefit to the prosecution or the defense of having witness statements available. If these cases go to trial, often times it is when the witness takes the stand in court proceedings that the opposing party hears for the first time what the witness has to say.

Of the active criminal monitors on June 1, 2018, in which criminal charges had been filed by the District Attorney (or prosecuting agency) the average age of the cases was just over two years and eight months (990 days). Over half of the cases were two years and one month old (764 days). The oldest case still active in the court had been opened over six and one-half years earlier.

ACTIVE COURT CASES FILED BY JSID	Days elapsed between:			
	Opening and Presentation To JSID	Presentation to JSID and Filing	Opening and Filing	Filing and June 1, 2018
Average	**199**	**101**	**298**	**990**
Median	**164**	**91**	**232**	**764**
Longest	**560**	**917**	**917**	**2374**
Shortest	**0**	**0**	**146**	**274**

Criminal Monitors which are Active Criminal Court Cases

Of the criminal monitors which were active at some point during the calendar year 2017 and the calendar year 2018, and in which criminal cases had been filed, the age at the time of the completion of the criminal case is presented in the chart below.

Age of Criminal Court Cases on Date of Resolution

CLOSED COURT CASES FILED BY JSID	Days elapsed between:				
	Opening and Presentation To JSID	Presentation to JSID and Filing	Opening and Filing	Filing and Closing	Opening and Conclusion of Criminal Case
Average	**199**	**101**	**298**	**990**	**1288**
Median	**164**	**91**	**232**	**764**	**996**
Longest	**560**	**917**	**917**	**2374**	**2281**
Shortest	**0**	**0**	**146**	**274**	**420**

b. Investigations of Deputy Involved Shootings/Uses of Force

The Department also conducts separate but consecutive criminal and administrative reviews of all uses of deadly force by department members in which a person is

injured by gunfire or is seriously injured.[127] All of the deadly force incidents we reviewed were deputy involved shootings.[128]

Under California law there are three critical factual and legal issues in every deputy-involved-shooting: 1) given the totality of the circumstances including the pre-shooting conduct of the deputies, was the shooting reasonable, 2) was the shooting justified (criminal), and 3) were department tactical policies followed (administrative)?. (See the California Supreme Court cases of *Grudt v. L.A.* (1970) 2 Cal.3d 575 and *Hayes v. San Diego* (2015) 57 Cal.4th 622).

The Homicide Bureau's narrow focus on criminality and the Internal Affairs Bureau Force/Shooting Response Team's narrow focus on specific department policy and tactical issues result in the loss of critical evidence relating to other issues which are of concern to the public and implicate public policy issues. This limits recommendations for changes in policy and an assessment of the Department's exposure to civil liability as a result of its operations and procedures.

Because neither the Homicide Bureau investigation nor the IAB Force/Shooting Team review focus on public policy issues or the constitutionality of the underlying tactics which are not related to the force itself, the evidence which may inform public policy and risk management decisions is not collected. This leaves the only avenue by which evidence relevant to these questions is collected through the filing of a lawsuit. In those shootings in which a lawsuit is not filed, significant factual issues which could inform department policies, procedures and practices designed to prevent re-occurrences and build trust with the public may be forever lost.

The Department provides the Office of Inspector General with the completed report of each Homicide Bureau investigation and the report of each IAB Force/Shooting Response Team review for every deputy-involved-shooting. We found that neither the reports of the Homicide Bureau investigations nor the reports of the IAB Force/Shooting Response Team reviews contained evidence or analysis of the incident except to the extent that evidence and analysis was relevant to the decision by each shooting deputy to pull the trigger. Although risk management and training bureau are, by policy, components of the IAB Force/Shooting Response

[127] When a deputy shoots at a person but misses, the case is not investigated by Homicide Bureau investigators and is not presented to the District Attorney for a determination of whether the deputy's use of force was lawful or not. The investigation is conducted under the direction of the IAB Force/Shooting Response Team but the actual investigators may be detectives from other units. The investigation is submitted to the IAB Force/Shooting Response Team for inclusion in the review.

[128] See Appendix M, Shooting Details through Nov20.

Team, we observed no analysis by either bureau in the reports of force reviews which were provided by the Department. The reports contain only evidence related to criminality or tactics surrounding the decision to shoot.[129]

While there are some exceptions,[130] evidence relevant exclusively to the totality of the circumstances, including the pre-shooting conduct of the deputies, is generally developed only during the discovery process by the parties' counsel in those cases in which a claim is filed against the County, not in the course of the criminal investigation or force review.[131]

Sequentially, the first review to take place is the criminal investigation conducted by the Homicide Bureau in all cases in which a person is struck by a deputy's gun fire.[132] The second "investigation" to take place is the force review conducted by the Internal Affairs Bureau's Force/Shooting Response Team. This team is activated by an Internal Affairs Bureau lieutenant and the investigative review is conducted by a team which includes two or more sergeants.[133]

1) The Homicide Investigation

By policy, procedure and practice the Homicide Bureau investigates only whether there was criminal conduct by either the deputy or the person at whom the deputy shot.[134] In the cases we reviewed the homicide investigation generally stopped at the point at which homicide investigators determined there was sufficient evidence to establish that the decision by the deputy to shoot was lawful. Although most of the investigations we reviewed contained evidence that a District Attorney

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[129] The Office of Inspector General learned in 2018 that the component of these reviews presented by the Training Bureau are oral, generally not referenced in the force review prepared by the Internal Affairs Bureau and not presented at Executive Force Review Committee meetings; see Appendix N, Training Reviews. IAB Force Teams.

[130] See LASD URN016-00885-2310-055, February 24, 2016; LASD URN018-02881-1348-055, February 4, 2018 shooting.

[131] See list of shootings civilly litigated in Appendix L, County Shooting Settlements [REDACTED].

[132] MPP 3-10/440.00 Homicide Bureau's Responsibilities.

[133] Deputy Involved Shootings: LASD Policies & Procedures Reference Handbook, Internal Affairs Bureau Field Operations Support Services, Professional Standards and Training Division, Homicide Bureau, Detective Division, January 5, 2018. See also MPP 3-10/120.00, IAB Force/Shooting Response Teams, MPP 3-10/130.00, Activation of the IAB Force/Shooting Response Teams.

[134] Office Correspondence, November 29, 2001, Investigative Responsibilities for Deputy Involved Shootings, Hit and Non-Hit, currently found in LASD Policies & Procedures Reference Handbook.

investigator was present at the scene, none of the cases we reviewed contained any evidence that the District Attorney's Office conducted any investigation of the shooting.[135]

In relationship to the deputy's actions, the Homicide Bureau investigator is seeking evidence relating to the lawfulness of the shooting. Such evidence includes the conduct of the shooting deputy in the context of the circumstances of the shooting, the conduct of the person at whom the deputy shot, and, in some limited cases, the status (i.e. escaped felon) of the person at whom the deputy shot.

Most deputy-involved-shootings are lawful if, *at the moment of the shooting*, the shooting deputy reasonably believes that the person being shot at poses a threat of serious physical harm to the deputy or to others[136] or when a deputy lawfully discharges a firearm and a person is accidentally struck.[137] Deputies may also lawfully use deadly force under limited circumstances in order to make an arrest of a dangerous fleeing felon, keep the peace or when acting as a law enforcement officer in the discharge of the deputy's legal duties, although these circumstances rarely occur.[138]

In determining criminal culpability the facts and circumstances which precede the deputy's decision to shoot are relevant only to the extent those circumstances contributed to the deputy's perception at the time the deputy decides to pull the trigger. The perception-of-threat in the mind of the shooter can be inferred from the statements of witnesses and the circumstances surrounding the shooting or directly from the statements of the shooter. Most, if not all, of the witnesses to the actual shooting are usually the shooters and other deputies.

In the cases reviewed by the Office of Inspector General, Homicide Bureau investigators generally confined their questioning of deputies to those factors relevant to the shooting deputy's decision to pull the trigger with one notable exception.

In the cases we reviewed it was not uncommon for survivors of deputy-involved-shootings to be questioned about their background. Sometimes this information may be relevant, such as active participation in a criminal street gang or evidence

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[135] See Appendix O, Correspondence to District Attorney_07_17_20.pdf.
[136] See *Tennessee v. Garner* (1985) 471 U.S. 1, *People v. Ceballos* (1974) 12 Cal.3d 470, California Penal Code section 197.
[137] See California Penal Code section 195(1).
[138] See California Penal Code sections 196 and 197(4); CALJIC 5.25 and 5.26; CALCRIM 507, 508, 509.

that the person against whom force was used has a history of violence or the threat of violence, especially toward the police. Sometimes the relevance is more tenuous, especially if not known to the deputy at the time the force was used, such as prior arrests, misdemeanor convictions for arrests for non-violent or victimless crimes, or calls for service for non-violent reasons to locations at which the person resides, was present or was shot.

In contrast, in the cases we reviewed, the investigative file submitted by the Homicide Bureau to the District Attorney did not include information about allegations of or investigations of the deputies' prior uses of force, including prior shootings. We reviewed deputy involved shooting cases in which survivors filed claims and in which the membership by the shooting deputies in a secret society, or 'clique', and associated tattoos were factual issues. In none of these cases reviewed was a deputy questioned by Homicide Bureau investigators or was evidence included in the investigation file regarding the shooting deputy's association with one of the secret societies, or 'cliques', or of the presence of a tattoo linked to the secret society or a shooting.[139]

Generally, in the cases reviewed by the Office of Inspector General, at the point in the investigation at which investigators determined there was insufficient evidence to establish probable cause that the shooting was unlawful the Homicide Bureau's investigation stopped, regardless of how many public or department policy questions remained unanswered and regardless of whether all witnesses had been interviewed or all evidence collected and analyzed. It is in this state that the investigations were then submitted to the District Attorney's office for a filing determination. Although the District Attorney's protocol for responding to law enforcement shootings calls for a District Attorney investigator to respond to the scene,[140] we have seen no file which contains investigative work by the District Attorney's Office. Typically, the District Attorney's analysis is based upon reports and evidence submitted to the District Attorney by the Sheriff's Homicide Bureau. Los Angeles County Sheriff's Department.[141]

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[139] See Appendix L, County Shooting Settlements [REDACTED]. While Homicide Bureau investigators did not ask such questions, plaintiff's counsel representing survivors of the uses of deadly force were not reluctant to do so. [REDACTED].

[140] See Protocol for District Attorney Officer-Involved Shooting Response Program For Officer/Deputy Involved Shootings and In-Custody Deaths on the District Attorney's web-site.

[141] SH2381947 for example.

2) IAB Force/Shooting Response Team Reviews

The Internal Affairs Bureau is responsible for preparing and reporting reviews of all deputy involved shootings, whether anyone was injured or not, any death which follows the use of force by a department member and uses of force which result in great bodily injury.[142] The Internal Affairs Bureau Force/Shooting Review Team is activated by the on-call Internal Affairs Bureau Lieutenant and responds to the scene of the investigation.

Each Internal Affairs Bureau Force/Shooting Response Team consists of representatives from the Internal Affairs Bureau and may include personnel from other units such as, most commonly the Training Bureau, Civil Litigation, Risk Management and in the appropriate circumstances may include representatives from specialized units such as Traffic Services, Medical Services, and Custody Training.[143] The purpose of the Internal Affairs Bureau Force/Shooting Response Team as stated in policy is to investigate these force incidents in order to "enhance the Department's quality assurance and control and ensure department-wide consistency in [the Department's] review process.[144]

Department policy calls for the Internal Affairs Bureau Force/Shooting Response Team, in contrast to the Homicide Bureau, at the conclusion of the criminal investigation to prepare an administrative review of that investigation which provides an analysis of the incident for adherence to department policies and performance and training standards, recommendations for changes in policy and an assessment of the Department's exposure to civil liability as a result of its operations and procedures.[145]

In the force incidents reviewed by the Office of Inspector General, the Internal Affairs Bureau Force/Shooting Response Team reviews covered whether the involved department members followed the Department's policies and the tactical principles contained in the Manual of Policy and Procedures, which include but are not limited to command, cover, concealment, danger area, designated shooter, danger area, tactical position advantage, field of fire, target acquisition, point of aim and shooting back drop.[146] In many cases, the only persons interviewed by the

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[142] MPP 3-10/130.00 Activation of the IAB Force Shooting Response Teams, accessed on Intranet 6/11/18.
[143] MPP 3-10/120.00 IAB Force/Shooting Response Teams.
[144] MPP 3-10/120.00 IAB Force/Shooting Response Teams.
[145] MPP 3-10/130.00 Activation of IAB Force/Shooting Response Team.
[146] MPP 3-10/150.00 Tactical Incidents.

Internal Affairs Force/Shooting Response Team were the deputies who used the force.

None of the reports by the IAB Force/Shooting Response Team provided to the Office of Inspector General included discussion or analysis of the broader public policy issues implicated by the pre-shooting tactical decisions of the deputies involved.[147] This was true even in cases in which persons who were totally innocent bystanders were shot and killed by deputies as a result of pre-shooting tactical missteps, such as the April 7, 2014, killing of John Winkler in West Hollywood and the August 1, 2014, killing of Frank Mendoza in Pico Rivera. In addition to the tragic loss of life inflicted by these intentional but mistaken shootings, each resulted in multi-million-dollar liability to the County. [148]

3) Delays in Commencing Force Reviews

Except to the extent the Internal Affairs Bureau Force/Shooting Response Team assists the Homicide Bureau to secure the scene and locate witnesses, the Internal Affairs Bureau Force/Shooting Response Team does not commence its investigation until notified that the District Attorney's determination letter has been received.

This results in lengthy delays in the commencement of the Internal Affairs Bureau Force/Shooting Team force review. For example, in 2020, as of November 12, the District Attorney has returned filing determinations in thirteen deputy involved shootings. The oldest of these shootings took place on September 10, 2015, 1,708 days before the determination letter was issued on May 14, 2020.[149]

[147] See examples, United States District Court, Central District of California cases CV 16-03150 ($3.5 million) and 2:16 CV 09412 ($2.7 million), Los Angeles County Superior Court cases BC588831 ($2 million) and BC579140 $2.5 million), and Los Angeles County claim 16-2210 ($1.49 million).

[148] West Hollywood, April 7, 2014, $5 million, SH2353685; Pico Rivero, August 1, 2014, SH2362639, BC594206, $14.35 million.

[149] A complete list of these shootings is found in Appendix M, Shooting Details through Nov20.

INCIDENT INFORMATION		INVESTIGATION and REVIEW		ELAPSED TIME (in days) FROM:		
		HOMICIDE	DISTRICT ATTORNEY	Incident to		Completion to
INCIDENT DATE	CITY	DATE of BOOK	DETERMINATION LETTER	DA LETTER	BOOK COMPLETION	DA LETTER
2/11/2016	LANCASTER	8/8/2017	2/2/2020	1452	544	908
6/28/2018	SOUTH EL MONTE	11/8/2018	2/2/2020	584	133	451
7/4/2017	PALMDALE	5/29/2018	2/4/2020	944	328	616
8/12/2018	EAST LOS ANGELES	4/26/2019	2/27/2020	564	257	307
12/24/2016	PICO RIVERA	6/11/2017	2/28/2020	1161	169	992
3/31/2019	COMPTON	1/20/2020	4/16/2020	382	295	87
6/27/2019	EAST LOS ANGELES	2/6/2020	5/12/2020	319	223	96
9/10/2015	DOWNEY	6/16/2016	5/14/2020	1708	280	1428
11/25/2019	EAST LOS ANGELES	2/10/2020	6/5/2020	193	77	116
7/26/2019	MALIBU	12/10/2019	7/28/2020	367	136	231
9/8/2016	LOMITA	3/1/2017	8/24/2020	1446	174	1272
8/2/2019	SOUTH GATE	11/13/2019	9/14/2020	409	103	306
10/31/2017	RESEDA	2/23/2018	9/16/2020	1051	115	936

While this 1,708-day delay in 2020 is an outlier, it is not exceedingly so. As shown above, four other shooting investigations took more than 1,000 days to complete.

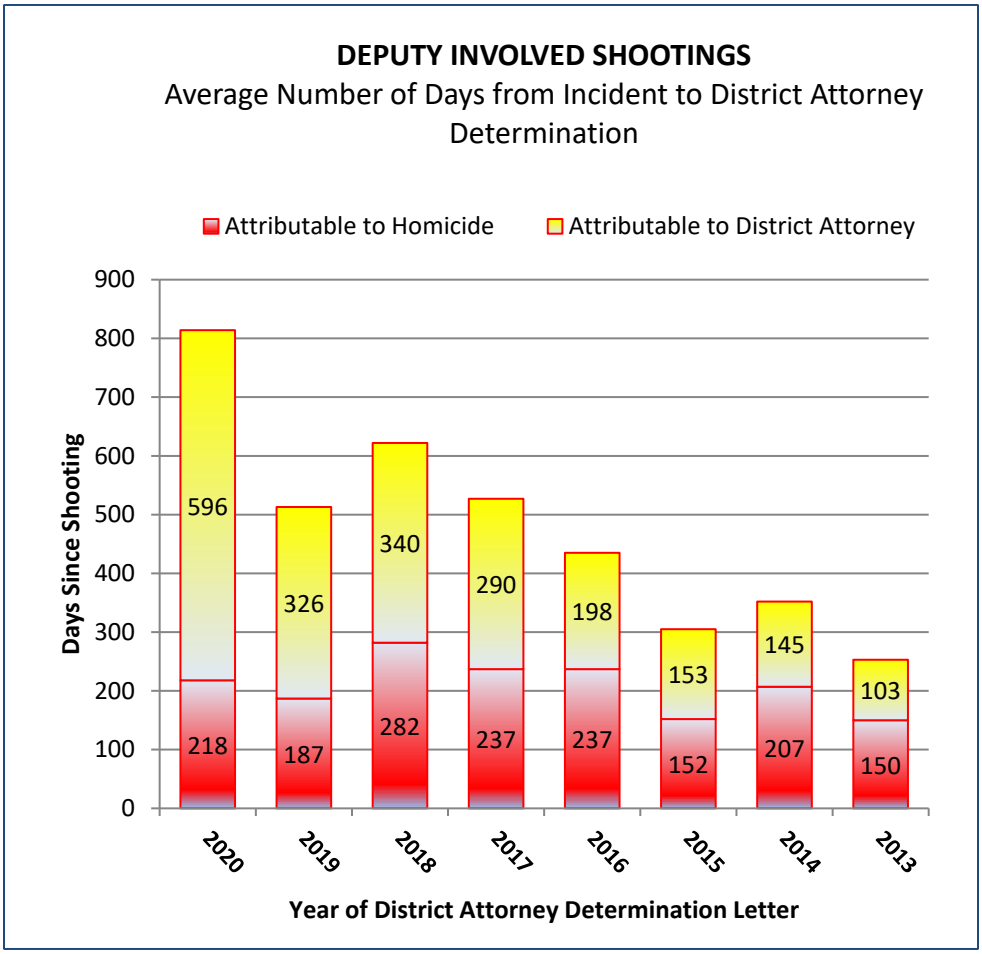
The below table shows the District Attorney determination letters which took the longest to issue (when measured from date of shooting) in each year since 2013, and how many days prior to the letter being issued the shooting had taken place.

YEAR	DETERMINATION LETTER ISSUED	DATE OF SHOOTING	PERSON SHOT	DAYS SINCE SHOOTING
2020	5/14/20	9/10/15	Eddie Tapia (killed)	1,708
2019	6/6/19	8/2/16	William Bowers (killed)	1,038
2018	12/11/18	2/24/16	Francisco Garcia (killed)[150]	1,021
2017	9/27/17	5/13/15	Delshon Jackson (injured)	868
2016	8/01/16	8/26/14	Kerry Wesson (killed)	706
2015	3/05/15	9/17/13	Not available (not determined)	534
2014	6/11/14	6/24/12	Juan Serra (killed)	717
2013	5/15/13	2/26/12	(not determined)	444

[150] Deputy Luke Liu was criminally charged in felony case BA473437 with voluntary manslaughter in this case. Date shown is date the District Attorney announced the charge.

The average delay between the shooting and the District Attorney's determination letter in those shootings for which determination letters have been issued in the past five years is 814 days in 2020, 513 days in 2019, 622 days in 2018, 527 days in 2017, 434 days in 2016, 305 days in 2015, 353 days in 2014 and 253 days in 2013.

The below chart shows the portion of the delay attributable to the Homicide Bureau investigation and to the District Attorney's case evaluation. Because the District Attorney does not state in the determination letter when the Homicide Bureau presented the case file to the District Attorney, the measurements are based upon the date of shooting, date the Homicide Bureau reports the investigation was submitted to the District Attorney and the date of issuance of the District Attorney's determination letter.



DIS: Average Number of Days from Incident to District Attorney Determination Letter[151]

[151] Source in Appendix M, Shooting Details through Nov20.

As of November 15, 2020, there remained twenty-two investigations which had been submitted by the Homicide Bureau to the District Attorney in the District Attorney had not yet issued a filing determination. The average age of these shooting cases on November 15, 2020, was 630 days since the date of shooting, with the longest being 1,184 days since the August 16, 2017, fatal shooting of Kenneth Luis, Jr., and the shortest being the November 13, 2019, fatal shooting of Omar Garcia-Espinoza.[152]

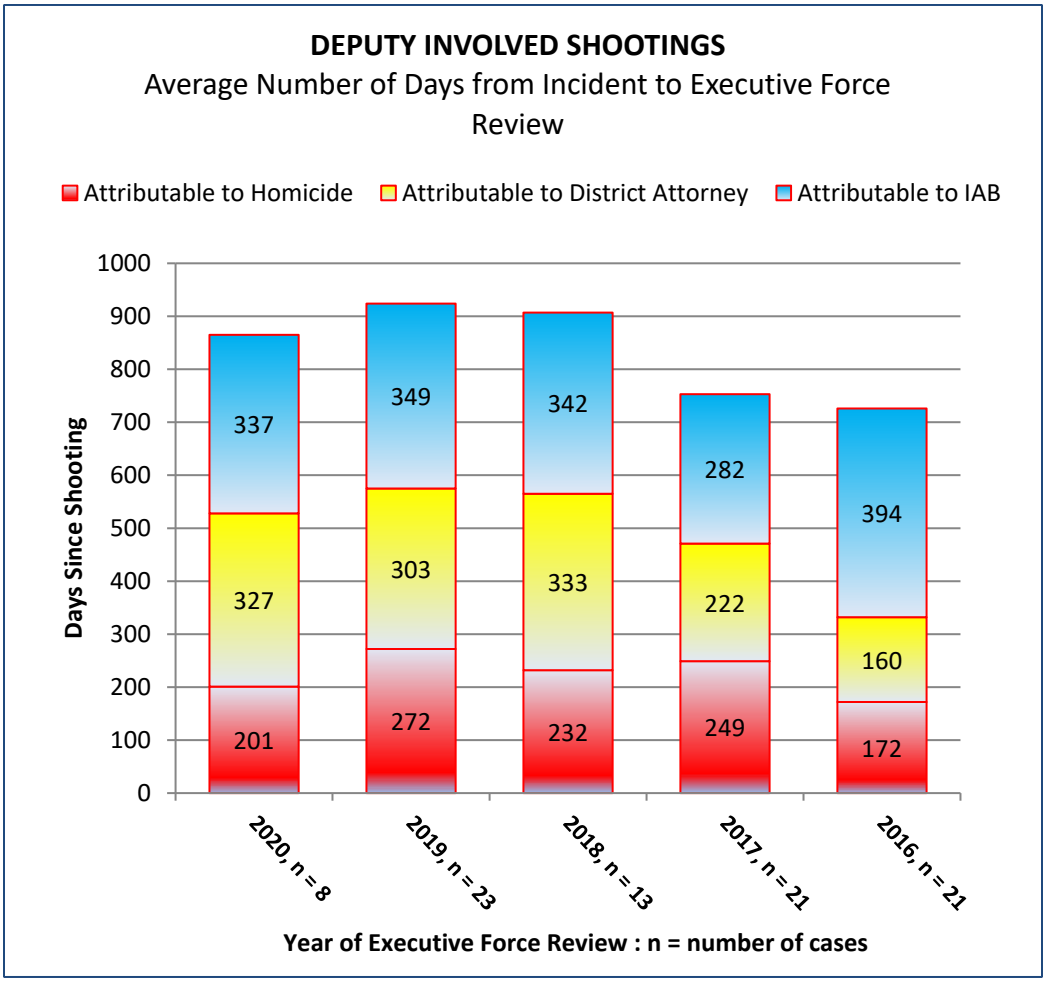
SHOOTING DATE	CITY	HOMICIDE	
		DATE of BOOK	SENT TO DA
8/16/2017	LOS ANGELES	7/31/2018	8/2/2018
12/10/2017	ARTESIA	6/18/2018	6/20/2018
2/4/2018	LOS ANGELES	9/19/2018	9/21/2018
2/6/2018	EAST LOS ANGELES	8/30/2018	9/5/2018
4/4/2018	EAST LOS ANGELES	8/17/2018	8/21/2018
7/19/2018	PICO RIVERA	3/30/2018	4/8/2019
8/17/2018	LENNOX (UNINC. AREA)	7/26/2019	8/16/2019
10/7/2018	COMPTON	7/26/2019	7/30/2019
10/27/2018	LENNOX	6/20/2019	7/8/2019
11/1/2018	CITY OF INDUSTRY	1/13/2019	3/7/2019
2/17/2019	LANCASTER	10/17/2019	10/23/2019
3/14/2019	WALNUT PARK	10/17/2019	11/6/2019
3/16/2019	PALMDALE	8/30/2019	9/11/2019
5/10/2019	BELL GARDENS	12/18/2019	12/24/2019
5/21/2019	LYNWOOD	11/24/2019	12/3/2019
6/6/2019	INGLEWOOD	11/5/2019	11/6/2019
6/18/2019	LONG BEACH	2/3/2020	2/11/2020
8/1/2019	LOS ANGELES	4/15/2020	5/26/2020
9/12/2019	SANTA CLARITA	2/17/2020	2/20/2020
10/6/2019	WHITTIER	5/15/2020	5/30/2020
10/30/2019	LANCASTER	5/15/2020	5/21/2020
11/13/2019	EAST LOS ANGELES	5/15/2020	(unk)

Completed Homicide Deputy Involved Shooting Investigations Awaiting District Attorney Determination Letters

[152] Source Appendix M, Shooting Details through Nov 20.

As of November 15, 2020, there were thirty deputy involved shootings in which the Homicide Bureau's investigation had not yet been completed. In the oldest of these, Jose Meza was fatally shot near San Gabriel in the late afternoon of June 6, 2019.

These delays are in addition to the investigative delays by the Internal Affairs Bureau Force/Shooting Response Team. The following chart shows how long it takes for a case to be investigated, evaluated by the District Attorney and reviewed by the Internal Affairs Bureau Force/Shooting Response Team before the Executive Force Review Committee sees the case:



Deputy Involved Shootings: Delays in Completing Force Review[153]

There were ten shooting cases heard at Executive Force Review Committee in which the Internal Affairs Bureau Force/Shooting Response Team review exceeded the one-year statute of limitations. However, it is possible that in one or more of these ten cases the statute was tolled due to an underlying lawsuit. If such was the case

[153] Source Appendix M, Shooting Details through Nov 20.

discipline of an employee found to have engaged in conduct not within policy would not have been barred.

4. Consequences of Bifurcation

Due to the separate investigations with different (and incomplete) objectives, the loss and corruption of evidence and resulting cost, both to the integrity of the investigations and the County, is substantial as illustrated in the following cases.

a. Evidence Not Collected: Shooting of Angel and Jennifer Mendez

The case of *Cty. of Los Angeles v. Mendez* (2017) 137 S.Ct. 1539 involved the legal issues surrounding the shooting of Angel Mendez (Angel) and Jennifer Mendez (Jennifer) by Los Angeles County Sheriff's deputies who had entered the "shack" in which the Mendezes were living through a closed door without a warrant and without announcing their entry. The home was what one of the deputies described as a shack and sat in the backyard of a residence. Upon the deputies' unannounced entry Angel sat upright from the bed upon which he was sleeping and grabbed a bb-gun. The entering deputies saw the bb-gun, perceived a threat and immediately started firing their weapons. Both Angel and Jennifer, who was pregnant, beside whom Angel had been napping were struck by the deputies' gunfire. Both Angel and Jennifer survived their wounds.

The Homicide Bureau investigated the criminal aspects of the shooting and presented the case to the District Attorney for filing consideration. The District Attorney opined that the shooting was lawful due to the threat perceived by the shooting deputies.

The IAB Force/Shooting Response Team's review of the tactics used in the shooting was presented to the Executive Force Review Committee, which found that the shooting was "reasonable, necessary, and in compliance with Department Policy" and "determined that the tactics used by [the deputies] were sound and reasonable."[154]

In federal court, after a trial on facts in large part developed through the discovery process, a verdict was returned in favor of the Mendezes. The case was appealed all of the way to the United States Supreme Court, which issued a unanimous ruling remanding the case to the Ninth Circuit to determine whether the constitutional violations were the cause of the Mendezes' injuries. This resulted in a $4 million

[154] SH2274774, Executive Force Review Committee findings, dated October 1, 2010.

judgment against Los Angeles County because of the deputies' "unconstitutional" entry into the Mendez residence, notwithstanding the Department's findings that the tactics and the shooting were within department's policies.[155]

The facts establishing the constitutional violations in the Mendez case were fully developed during the lawsuit's discovery process and subsequent trial, not by the Homicide Bureau investigation or by the IAB Force/Shooting Response Team's force review. And while violating the constitution is a per se violation of department policy,[156] such violations were not typically part of the IAB Force/Shooting Team Reviews which were reviewed by the Office of Inspector General. Neither does department policy call for such a review.[157]

Between fiscal 2014 and fiscal 2017 the Department has incurred twelve judgments over $500 thousand each for a total of $27,119,061, the largest judgment being $8,850,000, the smallest being $519,500. For that same period, the County settled thirty-one lawsuits for $500,000 or more for a total of $50,967,998, the largest being $5,300,00 and the smallest being $500,000.[158]

Of these forty-three shooting cases, the Department found no violations of the Department's force policy as a result of either the Homicide Bureau investigation or the IAB Force/Shooting Response Team review.

b. Corruption of Evidence: Exposure to Investigation

In addition to the failure to collect relevant evidence in the course of the Homicide Bureau investigation and the IAB Force/Shooting Response Team review, the passage of time between these two processes results in the degradation of evidence. In the months, or years, which pass between a force event and the testimony about that event, it appears from the cases we reviewed that memories fade and are influenced by exposure to other information.

Deputies and witnesses inevitably have discussed the details of an event with their colleagues, friends and family, union representatives, attorneys and counselors

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[155] *L.A. Cty. v. Mendez* (2019) 139 S.Ct. 1292, denying certiorari in *Mendez v. Cty. of L.A.* (2018) 897 F.3d 1067 (on remand from *Cty. of Los Angeles v. Mendez* (2017) 137 S.Ct. 1539).

[156] MPP 3-01/030.10 Obedience to Laws, Regulations, and Orders.

[157] MPP 3-10/150.00 Tactical Incidents.

[158] Appendix L, County Shooting Settlements [REDACTED] (not included are the publicly reported 2018 settlement in the killing of Frank Mendoza of $14.35 million and 2019 award of $4.1 million resulting from the U.S. Supreme Court decision in *Mendez*).

which affects their memories and perceptions of the events. In some cases, such as the example below, deputies and witnesses are deposed by plaintiff's counsel before they are even interviewed by Internal Affairs Bureau Force/Shooting Review Team investigators. In preparation for these depositions, deputies commonly discuss the case with private counsel, County Counsel and union representatives, each of whom is duty bound to advocate for specific factual interpretations.

It is perhaps inevitable that this exposure may shape or influence a person's recollection of events as illustrated by the investigation into the deputy-involved-shooting in which two deputies initiated a pursuit of a jaywalker. The jaywalker fled into a stranger's house, where one of the deputies shot and killed him.[159]

The deputies were interviewed by Homicide Bureau investigators on October 16, 2015, the morning of the shooting. The shooting deputy told investigators that he wanted to conduct a pedestrian stop because the man had been outside of the crosswalk. The shooting deputy did not think the man looked like a "gangster." His partner was of the opinion the man was a gangster but did not recognize him and was of the opinion they had no reason to stop him. Homicide investigators asked the partner deputy if the man had tattoos. The partner said he saw "something" on the back of his head but could not describe it further. According to both deputies, the jaywalker was pursued because he fled.

The completed Homicide Bureau investigation included information that Amar Road and Azusa Avenue were the northeast boundary of a "safety zone" covered by a gang injunction which applied to members of the Bassett Grande and Puente 13 criminal street gangs. Photos and the medical examiner's drawings showed the jaywalker had "Puente" tattoo on the back of his head. Proof of service of the injunction on Rangel was included in the Homicide Bureau file.

The Homicide Bureau investigation was submitted to the District Attorney on November 19, 2016, 400 days after the shooting. The District Attorney issued her determination letter on July 20, 2017, 643 days after the shooting.

On March 12, 2018, 878 days after the shooting, the IAB Force/Shooting Response Team interviewed the partner deputy. In this interview, at which the attorney who represented the shooting deputy represented the partner deputy, the partner deputy's recollection of the events had changed significantly.

The partner deputy told the IAB Force/Shooting Response Team investigators the reason the jaywalker was pursued was the jaywalker was "dressed down in 415(g)

[159] FO2388441, SH2388439.

baggy clothing" (although 415(g) is the Sheriff's Department's radio code for "Gang member-disturbance" – there was no 415G broadcast on PATCH or L-TAC during this incident), had "a big old tattoo on the back of his head that said 'Puente' or something like that" and "[the jaywalker is] in the safety zone. We got a gang member in the safety zone of the gang injunction."

It is clear from the investigative file that the partner deputy, after his initial interview by Homicide investigators, was exposed to information that he did not possess at the time of the incident or the time of his initial interview. He explicitly stated that he learned from one of his partners additional information. This makes the partner deputy's later account of the incident inherently unreliable and a poor basis upon which to base any policy evaluation or disciplinary decision.[160]

This phenomenon is not a reflection at all on the integrity of the deputies. In the course of an investigation, information is acquired from multiple sources – attorneys, other witnesses, colleagues, reports, etc. It is unreasonable to expect a person interviewed years after an incident to remember and distinguish between the sources of the information acquired during the intervening years. Nonetheless, the delay in the investigation, the sharing of an attorney, and the exposure to the investigative file makes the statements inherently unreliable.

Moreover, the depositions of witnesses and deputies taken before a shooting is reviewed by the Executive Force Review Committee are often not part of the IAB Force/Shooting Response Team review. Hence, this additional and likely material evidence is in many cases not reviewed or relied upon by the EFRC panel in making a determination of whether the deputies' conduct was within policy or not.

These procedures and practices, the limitations on investigators' access to witness employees, the bifurcation of criminal and administrative investigations and the failure of the Department to enforce its own policy that employees cooperate with criminal investigations, work together to effectively cripple internal criminal investigations, administrative investigations and force reviews.

[160] FO2388441, SH2388439.

c. Loss of Evidence to Time

1) Failures of Recollection

At the very outset of an investigation Unit Order 2-12, as more fully described above in Part II in the subsection on *Obstruction of Criminal Investigations*, restricts access by internal criminal investigators to department employees who are witnesses to criminal conduct and the procedure and practice of not compelling witness employees to cooperate in criminal investigations deprives the Department of critical evidence. The practice of bifurcating the investigations and waiting until the criminal case is resolved before commencing the administrative investigation thereafter results in lengthy delays which compromises investigations in a manner which paves the way for the creation of false or inaccurate narratives.

How these procedures and practices lead to the loss of evidence is illustrated in the case of IV2337502 ([RHO] and [SIGMA]).[161] In this case, described above in subsection Part II(B)(2)(b)(2) *Obstruction of Investigations*, a prisoner was badly beaten and left in his cell severely injured, bleeding and bruised, without medical treatment for four days. The deputies who were not identified or interviewed by Internal Criminal Investigation Bureau investigators were ultimately identified and interviewed by the Internal Affairs Bureau investigators.

Due to delays attributable to the Department's procedures and practices the first of these interviews did not occur until over three years after the events. By then seven of the nine employees interviewed by Internal Affairs Bureau investigators claimed to not recall whether they worked or what happened during their assign[ed] shifts on the days of the incident. Two years and five months of the delay was waiting for the resolution of the criminal case. (This case was not finally resolved until the final decision of the Civil Service Commission was rendered in 2020).

2) Unavailability of Necessary Witnesses

In the matter of [NU], some of the security staff at the hotel where [NU] was apprehended had left the employment of the hotel by the time IAB investigators conducted the administrative investigation. Those security personnel were not interviewed, although, as discussed above in the section on *Witnesses not Located or Interviewed*, those security personnel had significant relevant evidence. The

[161] IV2337502.

[NU] administrative investigation was in monitor status while the criminal case of [NU] was investigated and prosecuted in the state of Nevada.[162]

5. Delays in Completing Administrative Investigations

The Department has established guidelines to ensure that administrative investigations are completed in sufficient time for discipline to be imposed within a year of the Department's knowledge of the misconduct as required by the Public Safety Officers Procedural Bill of Rights (which is often referred to as the Peace Officers Bill of Rights, or POBOR) (see Government Code section 3304(d)).

In 2016 the Sheriff's Department's Audits and Accountability Bureau completed an audit of the administrative investigations completed by the Internal Affairs Bureau in 2014.[163] In 2014 department policy provided that administrative investigations were to be completed as soon as practicable but, unless an extension was requested, within ninety days.[164] If the subject employee had been relieved of duty, the policy called for the administrative investigation to be completed within sixty days.[165]

The AAB audit revealed **zero compliance** - none of the administrative investigations reviewed had been completed within the mandated time frame.

In response to this audit the Department did not increase staff or take other measures in order to ensure investigations could be completed within the ninety-day time frame. Instead, the Department increased the permissible time frame within which administrative investigations were to be completed from within ninety days of department knowledge to approximately 245 days (120 days before the statute date for sworn personnel and 245 days after department knowledge for non-sworn personnel).[166]

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[162] IV2377060.

[163] Los Angeles County Sheriff's Department Audits and Accountability Bureau, Administrative Investigation Timeliness Audit (2016-5-A), November 15, 2016.

[164] The Department's guidelines are contained in the Administrative Investigations Handbook. The Manual of Policy and Procedures (3-04/020.15 Administrative Investigation Procedures) provides that the procedures which govern administrative investigations are contained in the Administrative Investigations Handbook.

[165] See Administrative Investigations Handbook, page 3.

[166] 3-04/020.12 SUPERVISORS' AND MANAGERS' RESPONSIBILITY FOR ENSURING THE TIMELY COMPLETION AND ADJUDICATION OF ADMINISTRATIVE INVESTIGATIONS

Notwithstanding the increase from 90 days to 245 days in the amount of time within which the Department mandates that administrative investigations of sworn personnel be completed, the Department is still not in compliance with its own policy.

The Office of Inspector General reviewed for timeliness the 183 Internal Affairs Bureau administrative investigations of sworn personnel which were initially presented to the Case Review panel between January 2016 and October 2020.[167] These are among the most serious cases investigated by the Internal Affairs Bureau as only those cases in which the proposed discipline is either more than fifteen days of suspension from service or demotion in rank or discharge from service are heard at Case Review.

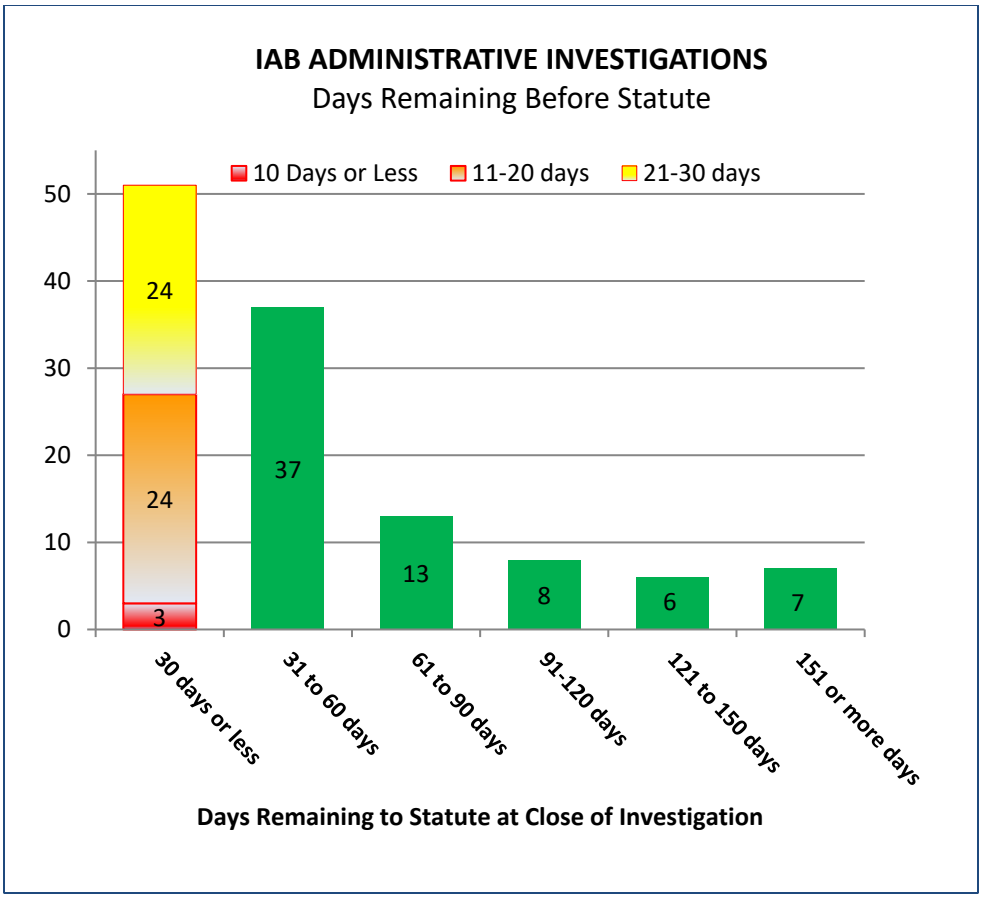
Of these 183 investigations, we excluded from our analysis fifteen criminal investigations in which IAB relied primarily on a preceding criminal investigation, five investigations in which the subject of the investigation departed from the Department before the case was reviewed and one case in which we were unable to ascertain the statute of limitations date. Of the remaining 162 investigations, forty contained no information within the file by which it could be ascertained when the investigation had been completed. although twenty-two of these forty cases were scheduled for case review within fourteen days of the statute of limitations.

In 2016, the year the Department's timeliness audit, none of these IAB administrative investigations of sworn personnel were completed within the ninety-day time frame in effect at that time. Only one of these 2016 IAB investigations was completed within (at the time proposed) policy. That case was completed 163 days before the statute of limitations.

While the Department's performance has improved since 2016, only 13 of the 128 administrative investigations reviewed were completed within the guideline mandating completion no later than 120 days before the statute date. None of these investigations was completed within the former guideline of ninety days from department knowledge.[168]

[167] See list of cases in Appendix P, Transmittal Delays [REDACTED].

[168] Due to the COVID-19 pandemic, California's governor extended the statute of limitations by sixty days by executive order N-40-20, dated March 30, 2020.



IAB Administrative Investigations[169]

These delays seriously compromise the availability of legally competent evidence and the integrity of the deliberative and evaluative processes involved in these most serious of cases, those involving suspension, demotion or dismissal. As discussed more fully in the section on the Case Review process, the steps developed by the Department to ensure thorough and complete analysis of each of these disciplinary decisions must be compressed into a time frame which, in some cases, is impossible to meet.

These delays add close to a year to the already lengthy delays experienced by employees who have been relieved of duty or whose administrative investigation is pending the resolution of a criminal investigation or Homicide Bureau force investigations as described above.

[169] Source, Appendix P, Transmittal Delays [REDACTED].

PART III: DEPARTMENT ADJUDICATION AND REVIEW

A. The Decision to Discipline (the Letter of Intent)

Los Angeles County Civil Service rules require that before a Sheriff's Department employee is discharged or is reduced in grade or compensation, the employee must receive written notice of the intent of the Department to invoke that discipline, the specific grounds and the facts which support the determination.[170] This notification is in the form of a letter commonly referred to as the Letter of Intent.

The Department follows the generally accepted practices of California law enforcement agencies and the labor organizations which represent their employees in that the Department's decision to discipline the employee is made prior to the employee having an opportunity to confront or challenge the evidence. The employee's first formal notice of the misconduct of which the employee is accused, the first description of the evidence adduced by the investigation and considered by the adjudicators in making their findings, and the first notice of whether and to what extent the Department intends to discipline the employee is the Letter of Intent.

B. Adjudication

There are three steps to each adjudication:

1. Findings of fact, what facts the evidence proved to be true.
2. Findings of violations, that is, what policies the misconduct violated.
3. Appropriate Discipline, what discipline is appropriate for the employee and the policies violated.

The Internal Affairs Bureau makes no findings of fact, submits no factual analysis and does not identify the possible policy violations revealed by the investigation.

The finder of fact in administrative investigations, including those investigations conducted by the Internal Affairs Bureau, is the 1) employee's unit commander and in force review investigations the Executive Force Review Committee and/or 2) the division chief or division director. In some cases, the investigative summaries contain no factual summaries, but instead a series of the Internal Affairs Bureau

[170] Los Angeles County Civil Service Commission Rules section 18.02.

investigator's synopses of interviews of witnesses, many of whom provide incomplete or contradictory statements.[171]

1. Adjudication of Administrative Investigations

Administrative investigations are adjudicated by the employee's unit commander who determines the charges with the assistance of the Advocacy Unit and the discipline to be assessed with the concurrence of the area commander and the division chief or director.

During most of the period during which the cases reviewed by the Office of Inspector General were adjudicated, department policy called for administrative investigations to be transmitted by the Captain of the Internal Affairs Bureau to the Advocacy Unit for preparation of a disposition sheet.[172] In practice, we have observed administrative investigations are instead transmitted directly to the affected employee's unit commander.[173]

The letter of transmittal usually informs the unit commander of the date by which the unit commander's findings are due, and in the cases, which involve sworn employees who are protected by the Public Safety Officers Procedural Bill of Rights, the date of the statute of limitations.[174]

Within the time specified in the transmittal letter, the unit commander must, in consultation with the Advocacy Unit:

1. Review the investigation;
2. Prepare a "disposition sheet" which identifies
    a. which, if any, policies were violated as established by the evidence adduced at the investigation;
    b. the evidence which supports findings of policy violations;
    c. the mitigating and aggravating factors;
    d. the applicable Guidelines for Discipline;
    e. the employee's prior discipline; and,
    f. the employee's performance history.[175]

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[171] See for example, IV2365542.
[172] See MPP 3-04/020.15 Administrative Investigation Procedures.
[173] Los Angeles County Sheriff's Department Audits and Accountability Bureau, Administrative Investigation Timeliness Audit (2016-5-A), November 15, 2016, ante.
[174] See Appendix R, sample Transmittal Letter.
[175] See Appendix S, sample Disposition Sheet (from the Advocacy Disposition Handbook, March 2018).

3. Consult with and obtain the concurrence of the unit commander's area commander and the chief or director of the unit commander's division with the findings.

Either the unit commander, the area commander, the chief or director of the division or the Advocacy Unit may return the investigation to the Internal Affairs Bureau for further investigation. Otherwise, the investigative case file and the disposition sheet are returned to the Internal Affairs Bureau for final review. As noted below, due to time constraints investigations were rarely returned to the Internal Affairs Bureau for additional investigation.

2. Adjudication of Force Review Investigations

Use of force cases investigated by the Internal Affairs Bureau Shooting/Force Review Team such as deputy-involved shootings and force resulting in significant injury are adjudicated by the Executive Force Review Committee. At the force review hearings conducted by this committee, the Internal Affairs Bureau investigator presents the investigation and answers questions. In cases involving the use of deadly force which are investigated by the Homicide Bureau, Homicide Bureau investigators are present.

These force reviews are typically attended at the very least by the subject employee's unit commander, area commander and division chief, the Chief of the Professional Standards Division, as well as representatives from the Training Bureau, the Risk Management Bureau and the Advocacy Unit.

By policy, force review investigations are adjudicated in the following manner:

1. The Executive Force Review Committee makes findings as to whether the tactics and use of force were out of policy and, if so, recommends the discipline to be imposed.

2. The unit commander, in consultation with the division chief or division director, either acts on the Committee's recommendation or submits a dissent to the appropriate division chief or division director.

3. If agreement is not reached on whether the employee's conduct was in violation of policy or what discipline is appropriate, the Chief of the Professional Standards Division makes the final determination.

In practice, when the discipline is decided upon, the Executive Force Review Committee panel provides the Advocacy Unit with the Executive Force Review

Committee's findings and recommended discipline. Advocacy staff prepares the disposition sheet. The disposition sheet is provided to the Chief of the Professional Standards Division and the unit commander for approval.

Either the unit commander, the area commander, the division chief, or the Advocacy Unit may return the investigation to Internal Affairs Bureau for further investigation. Otherwise, the investigative case file and the disposition sheet are returned to the Internal Affairs Bureau for final review. Again, as noted below, due to time constraints investigations were rarely returned to the Internal Affairs Bureau for additional investigation.

3. The Advocacy Unit

The Advocacy Unit is composed of sworn personnel employed by the Department and attorneys employed by County Counsel but embedded within the Department. By policy these attorneys provide legal advice to the Department at all stages of the disciplinary process.[176]

It is the role of the Advocacy Unit to ensure that the charges in each disposition sheet, letter of intent and letter of imposition match the gravamen of the conduct the finder of fact has adjudicated to be founded.

4. Time as a Factor in Adjudicating Investigations

Time is a significant factor in adjudicating most administrative investigations and force review investigations. The investigative files we reviewed ranged from hundreds of pages to thousands of pages. In both administrative investigations and force review investigations, the adjudicators must review the investigation, make factual findings and disciplinary determinations within days of receiving the files.

Internal Affairs Bureau investigations, because they are of the most serious cases, are voluminous and often consist of not just the investigation conducted by the Internal Affairs Bureau investigators but also the investigative files of criminal investigations, and in some cases the unit level administrative investigations of related conduct. Included in each file are documents, video recordings, transcripts and audio recordings of witness interviews and descriptions of collected physical evidence.

[176] MPP 2-04/010.15 Advocacy Unit; and MPP 3-04/020.30 Administrative Investigation Disposition.

a. Timeliness of Administrative Investigation Adjudications

1) Sufficiency of Time to Complete Comprehensive Factual and Legal Analysis

Unit commanders, even with the assistance of their staff members and the Advocacy Unit, are not given sufficient time to do a complete factual analysis of the case or identify aggravating and mitigating factors.

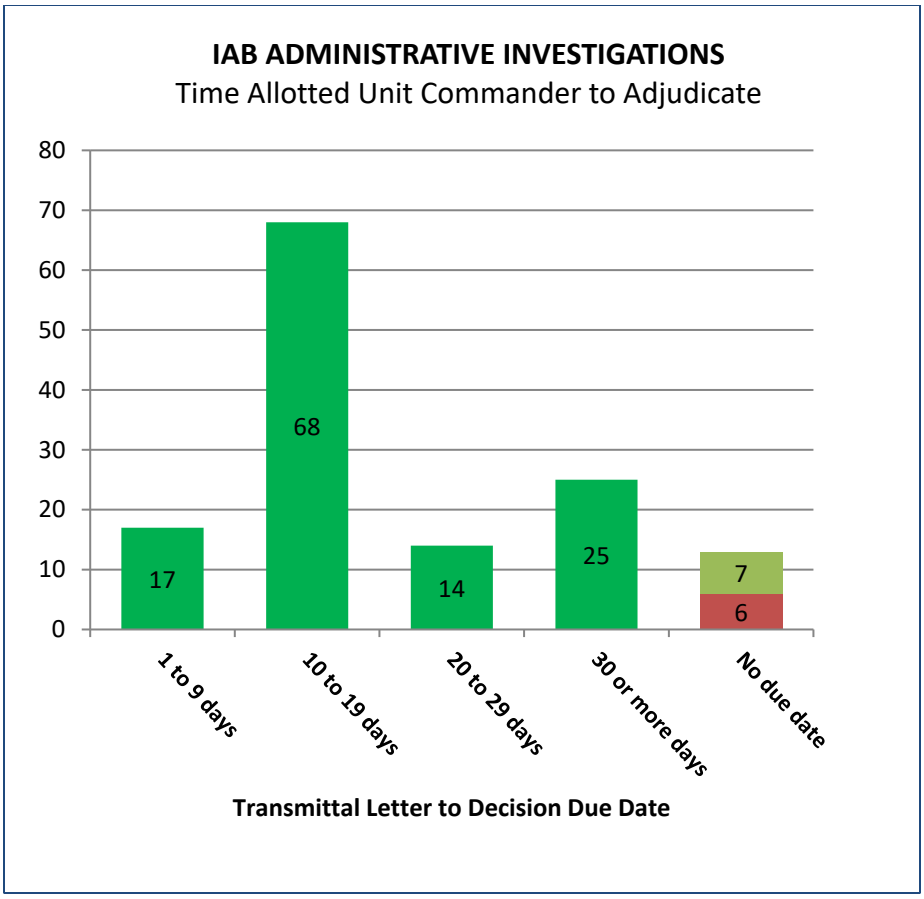
Policy provides that the unit has thirty days in administrative investigations to adjudicate the case and prepare and return the disposition sheet.[177] We reviewed the 183 IAB administrative investigations of sworn personnel which were initially presented to the Case Review panel between January 2016 and October of 2020.[178] In the case files of 137 of these Internal Affairs Bureau administrative investigations the transmittal letter from the Captain of the Internal Affairs Bureau to the unit commander was present. Forty-one of these investigations had no transmittal letters.

In ninety-nine of these administrative investigations the unit commander was provided less than thirty days within which to adjudicate the case. In thirteen administrative investigations the unit commander was told to complete the investigation as soon as possible or not told at all when the adjudication was due. In six of those cases there remained fewer than thirty days before the running of the statute of limitations would prevent any adjudication whatsoever.

In only twenty-five of these administrative investigations was the unit commander provided more than thirty days to adjudicate the case.

[177] Administrative Investigations Handbook.

[178] Appendix P, Transmittal Delays [REDACTED].



Time Allotted for Dispositions

As an illustration of the scope of this issue, we note the one case with five days remaining had an investigative file of 474 pages.[179] One of the cases had a due date within seven days of the transmittal letter and an investigative file containing 1,149 pages.[180] Another with a due date within nine days of the transmittal letter, consisted of 826 pages.[181]

Even in those cases in which the investigations are thorough and complete, it is not reasonable to expect a complete review and analysis by the unit commander (or any other person), the Advocacy Unit, division commanders, or the Case Review panel for disposition purposes of investigative files such as these in the time allotted. In these cases, decision-makers and Advocacy staff are often forced to rely on summaries of the investigations, briefings by the investigators and/or their administrative aids.

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[179] IV2382482.
[180] IV2393635.
[181] IV2336434.

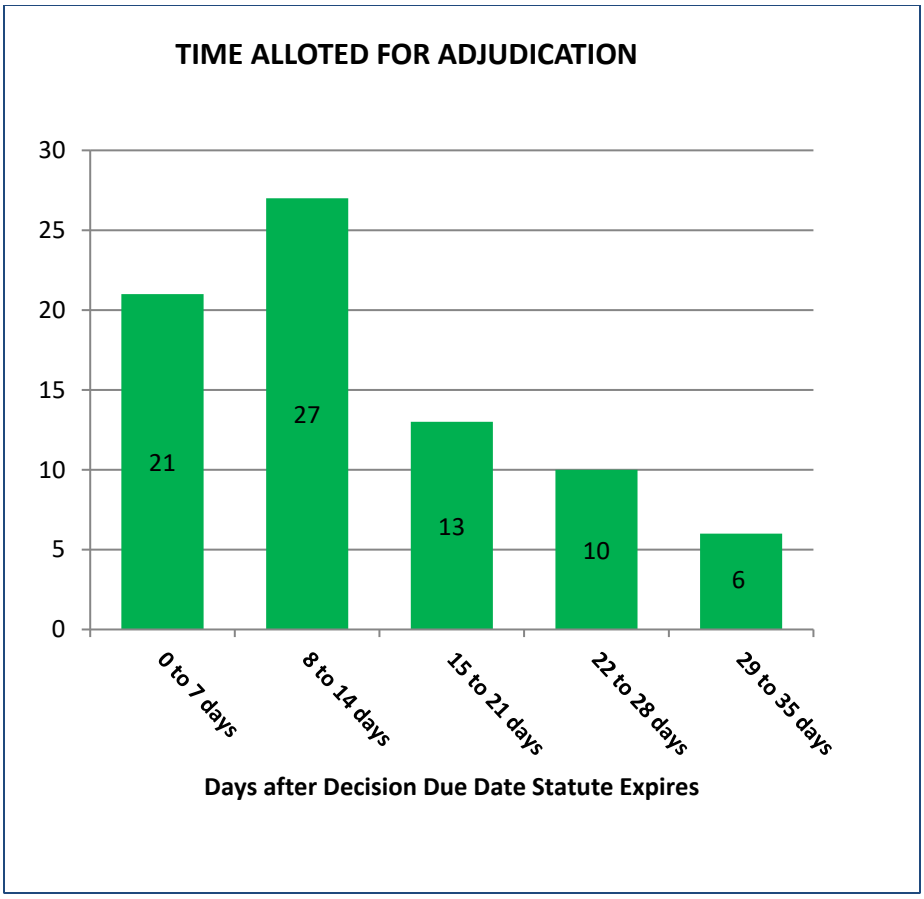
2) Sufficiency of Time to Complete Additional Investigation Where Needed

As described above in the section on investigations, many Internal Affairs Bureau administrative investigations are incomplete. Potential leads have not been followed, additional evidence has not been identified, all identified evidence has not been collected, all witnesses have not been identified and all identified witnesses have not been interviewed. However, with the short time frames within which adjudication must take place, there is too often not sufficient time to ask for additional investigation.

In cases in which the unit commander determines additional investigation is necessary, department policy allows for an additional thirty-five days; twenty-five days for re-investigation and ten days to adjust the disposition to account for new facts developed.[182]

Of the 137 administrative investigations cited above which contained transmittal letters, in 77 there remained thirty-five or fewer days between the due date of the decision or the transmittal letter and the statute of limitations date. In forty-eight of those cases, there remained fourteen or fewer days between the decision due date and the expiration of the statute of limitations. Of the thirteen administrative investigations in which no due date for the decision was given, in seven the transmittal letter was dated fewer than thirty-five days before the statute was to expire.

[182] Administrative Investigations Handbook, p. 3.



b. Time as a Factor in Adjudicating Force Reviews

1) Sufficiency of Time to Complete Comprehensive Factual and Legal Analysis

Much like the Internal Affairs Bureau administrative investigations, the Executive Force Review Committee panel is rarely allotted sufficient time to do a thorough factual review and analysis of the cases presented to them.

The Office of Inspector General reviewed 253 force reviews presented to the Executive Force Review Committee between January 2016 and November 5, 2020. Of these, the Office of Inspector General was provided the completed Internal Affairs Bureau Force/Shooting Response Team force reviews contemporaneously with the committee members in 215 cases. In 179 of the 253 cases (70%), there remained less than ten days between the date the panel was provided with the investigative file and the due date of the decision.

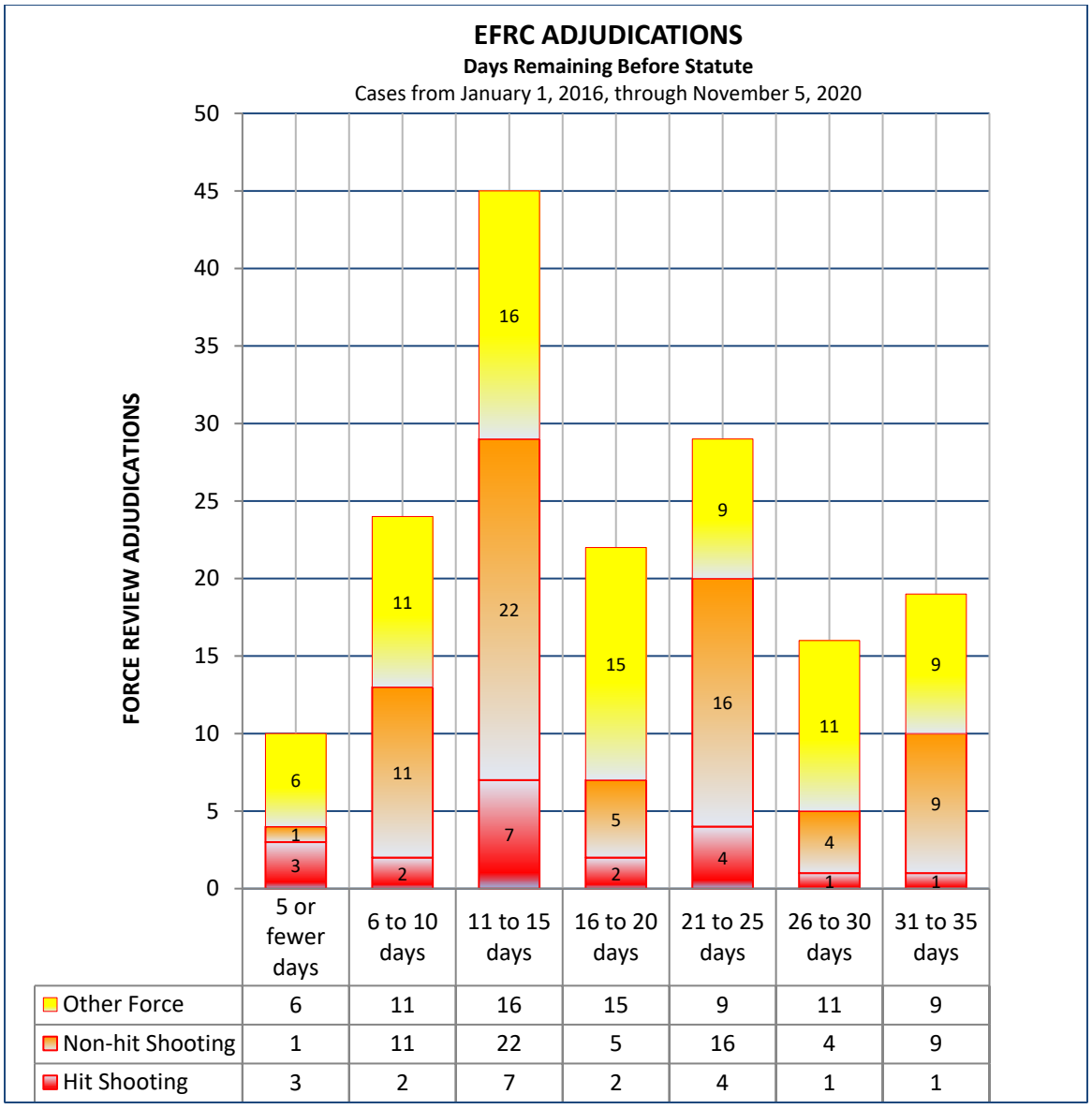
2) Sufficiency of Time to Complete Additional Investigation Where Needed

As discussed above in the section on the Delays in Completing Administrative Investigations, department policy allows for an additional thirty-five days should additional investigation be required; twenty-five days for re-investigation and ten days to adjust the disposition to account for new facts developed.[183]

Of the 253 Internal Affairs Bureau force review administrative investigation cases reviewed, 169 (67%) had thirty-five or fewer days left before the statute of limitations date in which to conduct additional investigation should it be necessary to cure defects in the Internal Affairs Bureau investigation.

The following table reflects how many days remained between the adjudication by the Executive Force Review Committee and the expiration of the statute of limitations for imposing discipline in force reviews presented to Committee by the Internal Affairs Bureau Force/Shooting Response Team.

[183] Administrative Investigations Handbook, p. 3.



Internal Affairs Bureau Force Reviews[184]

Of the 165 Internal Affairs Bureau Force/Shooting Response Team force review investigations presented to the Executive Force Review Committee in which fewer than thirty-six days remained between the Executive Force Review Committee and the statute date, two hit shootings, one use of force, and one non-hit shooting were presented after the statute of limitations for disciplinary action had already expired.[185]

[184] Appendix T, Force Review Cases [REDACTED].

[185] Hit shootings SH2469350 and SH2344520, force incidents FO2420337 and SH2331867.

c. Absence of Evidence

Department adjudicators, whether the employee's unit commander or members of the Executive Force Review Committee, are not in the best position to evaluate the credibility of witnesses and judge the weight of the evidence. Department adjudicators do not participate in the interviews of witnesses. They are unable to observe the demeanor of witnesses, physical and demonstrative gestures or cues, if any, exchanged between witnesses and other persons present at the interview.

Although not as helpful as participation in the interviews, being able to listen to video or audio recordings, when available, is very important. Listening to tone of voice, inflection and pauses or speaking over sequences can be critical in evaluating a person's credibility.

When adjudicators are given only days to review, analyze, and adjudicate the evidence collected, a deliberate review and evaluation of this evidence is not always possible. Lack of time prevents adjudicators from listening to all of the audio recordings or viewing all video recordings. This can deprive adjudicators of highly relevant evidence. Tone of voice, inflection, enunciation, body movement, gestures, and silent communication with investigators or representatives in the interview and other "tells" are all important factors in evaluating witness credibility. Some, but not all, of these are available on audio and video recordings. Where available, the finder of fact must have the time (and inclination) to listen and watch the recordings of witness interviews.

In the investigation of [NU] there are ten hours and thirteen minutes of audio and video recordings. Six hours and thirty-two minutes of these recordings are continuous video of the subject while in public places from moments before he picked up the hotel guest's wallet until he was escorted out of the hotel with a department supervisor. The videos contain highly probative evidence, not available by any other means, of the subject's possible culpability, the possible culpability of his companions, his credibility during the Internal Affairs Bureau investigation and his overall acceptance (or lack thereof) of responsibility for his misconduct. For example, his claim that he was so highly intoxicated that he was unable to recall taking and keeping the wallet and money might be countered with the fact that from 7:29 pm to 1:00 am he didn't have to use the restroom, was able to follow direction of security staff, was able to stand completely still and walk with a steady gait and was able to stand and hop on one leg while kicking the very small wallet around in the hallway with another deputy.[186]

[186] IV2377060.

In the investigation of Williams for fraternizing with a narcotics trafficker and interfering with a criminal investigation, there are hours of recordings of conversations between the subject and a criminal suspect who fled the scene of a "bust" and was later arrested by a narcotics enforcement team. After the suspect's arrest, he and the deputy spoke multiple times on the phone. In many of those conversations, the suspect asked for, and the deputy provided, advice on how to avoid arrest or avoid prosecution on the charges for which the suspect was ultimately arrested. By listening to the subject's tone of voice, the manner in which the suspect spoke to the deputy and the content of the conversations, the extent of their relationship was apparent.[187]

In the first case, it is highly unlikely that the decision-makers had an opportunity to review all of the investigation including the video prior to making their decision. If they had, the deputy might have been discharged for theft and false statements. Instead, however, as is often the case, the case review panel gave the deputy the benefit of the doubt based on the characterizations of his interview with internal affairs presented at the case review and approved a suspension of fifteen days. In the second case, it is again unlikely that the case review panel members had reviewed all of the audio evidence or they would not have authorized a suspension of thirty days given that fraternization and obstructing a criminal investigation generally results in termination.

d. Reliance on Case Summaries

Unit commanders and Executive Force Review Committee members routinely do not have sufficient time to complete a thorough examination of the evidence. Unit commanders and Executive Force Review Committee panel members have reported in many cases they must rely instead on the investigative summaries written by the internal investigators.

As discussed in Part I(C) *Initiation of Internal Investigations*, the investigative summaries are not reliable substitutes for listening to (or being present at) interviews or even reading the transcripts of interviews. Investigative summaries sometimes omit critical evidence or include information as evidence which is not evidence at all. Below are a few instances in which we found the investigative summaries are incorrect or misleading due to misstatements, omissions, or inclusions of not-competent evidence.

In the shooting of Johnny Rangel, the investigative summary prepared by Internal Affairs Bureau investigators reads "[b]oth deputies described Suspect [] as a gang

[187] IV2387901.

member" and cites Deputy A's Homicide transcript. However, Deputy A did not describe the suspect as a gang member. The relevant portion of the transcript of his interview by the Homicide Bureau reads:

> **Investigator:** Did he look like a gangster?
> **Deputy A:** At that point I really ...
> **Investigator:** At the time could you tell? At that point...
> **Deputy A:** No. No, just a male Hispanic with a shaved head.[188]

Deputy A's state of mind leading up to the shooting is important and his perception of the suspect as a gang member is highly probative of the perceived threat.

In the case of [THETA], discussed also in regards to [CHI] in Part *I(C) Initiation of Internal Investigations*, the case summary prepared by Internal Affairs Bureau investigators reads "[The police officer] and [Deputy [CHI]] responded to the scene and assisted in detaining [subject deputy]." The evidence that Deputy [CHI] not only witnessed reportable force but actually had to use reportable force in order to detain [THETA] was omitted from the summary. That Deputy [THETA] attempted to evade arrest and that it was necessary to use force to capture and subdue him is highly relevant to the disciplinary decision of the unit commander and the case review panel. Without reading the arrest reports authored by, and the Internal Affairs Bureau investigators' interviews of, the [City] Police Department officers who reported that [THETA] had to be wrestled to the ground as he fled and forcibly handcuffed, [THETA]'s conduct while resisting arrest would remain completely unknown.[189]

In the case of Hobbs, he falsely claimed in an affidavit in support of search warrant that an informant had told Hobbs that at the location to be searched the informant had seen a "completely naked woman, wearing a respirator and completely dripping in sweat." The recording of that informant's call revealed no such statement was made by the informant. Tragically, a person was killed in a deputy involved shooting when the search warrant was executed at the location. No contraband was found. During deliberations it was speculated by some within the Department that perhaps a County Building and Safety Department employee had made that statement and that Hobbs misattributed it in his affidavit. The Internal Affairs Bureau investigative summary reads "ICIB investigators interviewed those (Los

[188] SH2388439, FO2388441.
[189] IV2384228.

Angeles County Building and Safety Department) individuals and were unable to determine who provided details regarding the "completely naked woman, wearing a respirator and completely dripping in sweat" to the subject deputy. This is misleading. Internal Criminal Investigations Bureau investigators were able to establish none of those individuals provided those details to the Hobbs.[190]

The case summary prepared by Internal Affairs Bureau investigators in a force review in which an arrestee's arm was broken (cited also above in the section Part I(C) *Initiation of Internal Investigations*, indicated that both the handcuffing deputy and the witness sergeant stated the suspect on whom force was used was instructed by the handcuffing deputy to place her hands behind her back during a resisted handcuffing. A video of the arrest, however, directly contradicted their statements and revealed that no such command was ever issued.

In the case of [XI] (also cited in Part II(A)(3) *Witnesses not Located or Interviewed*), an arrestee who appeared to be badly injured was found in station lockup by the watch commander. The report of the arrest made no mentions of injuries (*or force used*). The arrestee was hospitalized with traumatic head injuries. The Internal Affairs Bureau investigative summary indicated that the doctor who examined the arrestee wrote in his chart that the suspect had been in a bar fight before his encounter with the deputies. The summary, however, failed to mention that neither the arrestee or any of the witnesses told Internal Affairs Bureau investigators, the source of that statement was not identified and none of the witnesses to the arrest were asked about or said anything about such a prior incident or the statement itself.[191]

5. Inconsistent Adjudication

As we observed in *Part I: Initiation of Internal Investigations*, there have been as many as seventy or more unit commands and as many as fifteen division, each with a division chief or division director, within the Department during the period covered by this report. Just as each incumbent of these positions has his or her own view of what is acceptable conduct, what misconduct warrants disciplinary action and what discipline is appropriate, our review revealed that there is a wide disparity among unit commanders and other department managers about the quantum of evidence required to

[190] See also ICIB URN916-00001-2003-441.
[191] IV2408882 (and related FO2408274).

prove misconduct and which policies the evidence establishes were violated by the employee's misconduct.

In some cases, these differences were explicitly stated by department managers in the course of the Executive Case Review meetings (described in more detail at B. *Executive Case Review* below) at which Office of Inspector General staff was in attendance.

Inconsistent Policy Selection

We observed multiple cases in which the policy violations adjudged to have been violated did not match the conduct which was established by the evidence.

Even in cases in which the investigation established the underlying conduct, different unit commanders have expressed different views as to what policies apply to the factual findings. For example, the Department's discipline guidelines[192] provide that violating MPP 3-01/040.85 Cooperation During Criminal Investigation by knowingly giving untruthful or misleading statements during criminal investigations is punishable by an array of disciplinary options from a minimum of fifteen days suspension from service to discharge but that violations of MPP 3-01/050.10 Performance to Standards are punishable by an array of disciplinary options from written reprimand to discharge.

We found cases in which employees were disciplined pursuant to a specific MPP section which addressed the gravamen of the employee's misconduct, such as knowingly providing false or misleading statements to criminal investigators. However, we also found cases in which the evidence established that an employee committed misconduct covered by a specific MPP section but received less discipline than the guidelines called for such misconduct because the unit commander selected MPP 3-01/050.10 Performance to Standards as the policy violation, not MPP 3-01/040.85 Cooperation During Criminal Investigation.

For example, [ALPHA]'s conduct during the investigation regarding [BETA], referenced above in Part I(C) *Initiation of Internal Investigation*, [ALPHA] was found by the unit commander to have "knowingly providing untruthful or misleading statements to an officer from [another police agency] during a

[192] Guidelines for Discipline and Education-Based Alternatives, Los Angeles County Sheriff's Department, September 28, 2012.

criminal investigation [by that agency]." Notwithstanding this factual finding the unit commander did not find [ALPHA] in violation of the MPP sections which apply to knowingly false statements made during an investigation, 3-01/040.69 Honesty Policy, 3-01/040.70 Dishonesty/False Statements, 3-01/040.85 Cooperation During Criminal Investigation. Instead, the unit commander found the deputy to be in violation only of violating MPP 3-01/000.13, Professional Conduct - Core Values; and/or 3-01/030.05, General Behavior. The unit commander completely ignored the false statements made by [ALPHA] to Internal Affairs Bureau investigators investigating the arrest of [BETA].[193]

Differing Standards of Proof

While the legal standard of proof in an employment setting is by the preponderance of evidence, meaning the evidence shows that it is more likely than not that the employee engaged in misconduct, that standard of proof was not uniformly adhered by the unit commanders whose cases were presented at Case Review, the division chiefs who presented those cases, or the executives who comprised the Case Review panel.

We did not observe any cases in which an employee was disciplined based upon a lesser standard. However, we did observe multiple cases in which the Department employed a higher standard of proof, through beyond a reasonable doubt up to and including beyond all doubt. In some cases, the unit commander's judgment was accepted by the Case Review panel, and in some cases it was not.

As discussed in [CHI] in Part I(C) *Initiation of Internal Investigations*, notwithstanding the police reports and statements by arresting peace officers to the Internal Affairs Bureau investigators that [CHI] had tackled [THETA] and assisted in [THETA]'s resisted handcuffing [CHI]'s unit commander adjudged "the determination of force being used and not reported during this incident [] unresolved" because of "no additional witness statements that provide any information that Subject [CHI] used force, and Subject [CHI]' account of the incident." MPP 3-10/010.00 Use of Force Defined defines force as any physical effort used to control or restrain another, or to overcome the resistance of another. MPP 3-10/100.00 Use of Force Reporting Procedures provides that "take downs" and handcuffing techniques resisted by the suspect are reportable force.

[193] IV2430379 and IV2390151.

There was no explanation by the unit commander as to why the following statements by participating peace officers were discredited.

"We end up wrestling him to the ground. Big guy." (takedown)
"Deputy [Subject] grabbed his left arm and I grabbed his right arm. [He] was then pulled to the ground. Deputy [subject] was able to control [suspect]'s left arm, but [suspect] was attempting to get on his knees and pull away from my grasps." (takedown and resisted handcuffing)
". . . it took some force to detain him, roll him over and actually get him in handcuffs. Once in handcuffs, he started to identify himself as an off-duty deputy." (resisted handcuffing)

"At the time, he was trying to push up and get up still so, again, we used force to force his body down, get him in a control hold and put him in handcuffs." (resisted handcuffing).[194]

In the case of [MU] a video recording appears to depict a deputy grabbing a prisoner by the hair and slamming the prisoner's head into a wall while a second deputy looks on from within an arm's reach away. The onlooking deputy did not report the force. The other deputy admitted he shoved the prisoner's head "on the wall." Nonetheless, Internal Criminal Investigations Bureau investigators wrote, in the same paragraph the following contradictory statements: ". . . the grabbing of [prisoner]'s hair resulted in his head being violently jerked; thus making it appear that [prisoner]'s head hit the wall" and "It does not appear [prisoner]'s face hit the wall." Whether the prisoner's head struck the wall or not, the video depicts a use of force by the deputy who shoved the prisoner's head "on the wall." Notwithstanding the video, the deputy seen in the video standing within an arm's reach of the prisoner while facing the prisoner as the prisoner's head is grabbed by the other deputy and "violently jerked" denies seeing this occur. At case review the division chief and unit commander each opined that since it is possible, no matter how unlikely, that the deputy did not see what was happening in front of him, he should not be disciplined.

In the case of Williams (see also subsection c*. Absence of Evidence*, above), over the course of two days he was overheard on a wiretap in seven phone calls with a recently arrested and released-on-bail narcotics trafficker. Williams is heard coaching the trafficker in creating a fictitious story to avoid involvement in the investigation and provided information to the trafficker. It was also learned that the sergeant had known the trafficker for years and the

[194] IV2422300 ([CHI]) and IV2384228 ([THETA]).

trafficker was an usher at Williams's wedding. Notwithstanding this evidence, the Williams's chain of command said they accepted at face value the sergeant's denial that he knew the trafficker was a criminal or that he had been arrested and accepted his explanation that he was just talking hypothetically when giving him advice on how to evade prosecution.[195]

We also observed that the standard of proof employed by the unit commander (and in some cases adopted by the Case Review panel) appeared to turn upon factors not related to the weight of the evidence. Among these other factors we observed were: 1) the popularity of the employee among peers; 2) the status and identity of the person making the initial allegations (as opposed to the person's credibility), 3) whether the employee was a 'good' employee, 4) how long the employee had been in service, 5) how long before the employee was due to retire, and 5) how strongly the employee's union would contest the findings.

While some of these factors might be helpful in deciding the discipline to be imposed, these factors do not address the weight of the evidence.

6. Preparation of Letter of Intent

Upon completion of the adjudication, the unit prepares the disposition worksheet which contains which policy violations are supported by the evidence, a description of the evidence which supports the findings, the mitigating and aggravating factors in assessing the discipline, the employee's prior discipline and performance history and the proposed discipline.[196]

The completed disposition worksheet is provided to personnel at the Internal Affairs Bureau who are responsible for preparing a "letter of intent" and notifying the employee that it is the Department's intent to impose discipline. The letter of intent includes the charges, the findings of fact, and the level of discipline the Department intends to impose for delivery to the employee. Unless the discipline the unit proposes to impose is a suspension for sixteen days or more, demotion to a lesser rank or discharge, the letter of intent is given to the unit commander for delivery to the employee. In those cases in which the proposed discipline is to be more than sixteen days, demotion to a lesser rank or discharge, the case must first be reviewed by the Case Review panel before the letter of intent is delivered to the employee. When the discipline is discharge, the letter of intent is served upon the employee by the Internal Affairs Bureau.

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[195] IV2387901.

[196] Appendix S, sample Disposition Sheet.

C. Executive Case Review

During the period covered by this report the Professional Standards (and Training) Division with the Advocacy Unit's assistance is responsible for scheduling the Case Review within sufficient time to deliver the letter of intent, if the disposition is approved, prior to the expiration of the statute of limitations. The stated purpose of this review is to ensure uniformity in the assessment of the most serious discipline meted out by the Department. However, if the unit determines, with the division commander's concurrence, that discipline lower than a sixteen-day suspension is appropriate, the case is not required to be scheduled for Case Review and there is no further review.

1. Case Review Panel

The Case Review Committee panel consists of the undersheriff (or executive officer) and two assistant sheriffs. When the undersheriff is not available, a third assistant sheriff is designated to act on behalf of the undersheriff. Although this was not incorporated into formal policy in the Manual of Policy and Procedures at the time the cases the subject of this review were heard, it was the established procedure and practice and was memorialized generally in the Administrative Investigations Handbook published in 2005. On July 13, 2018, this established procedure was incorporated into the Manual of Policy and Procedures.[197]

2. Case Presentation

The persons present at Case Review meetings include the panel members, the Chief of the Professional Standards Division, the Chief's aide and one or more Professional Standards Division commanders, the Captain of Internal Affairs Bureau, the captain's operations lieutenant, the investigators who investigated the case and their supervising lieutenant. From the employee's unit, the division chief or director, division commander, the chief or director's aid, the unit captain, and the operations lieutenant are often present. From the Advocacy Unit, a sergeant advocate, an attorney from County Counsel, and a lieutenant supervisor are present. Prior to the end of June 2014, one or more attorneys from the Office of Independent Review was present. Starting in July of 2014, a constitutional policing advisor from the Constitutional Policing Office was present and since March of 2016, one or more deputy inspector generals from the Office of Inspector General are generally present.

[197] MPP 3-09/325.00 Case Review Committee.

The division chief or director generally provides a verbal presentation of the facts of the case and the proposed findings and discipline. Throughout the case presentation, the Case Review panel asks questions of the division chief, and occasionally to the Internal Affairs Bureau investigators.

We were not present during any case review in which demonstrative or physical evidence was presented or during which an audio recording of an event or interview was played for the panel. We were at very few case reviews during which a video recording of an event or photos depicting the location or evidence were shown to the panel, even when those were extremely relevant and may have been dispositive.

In all but the rarest circumstances, the presentation consists exclusively of the chief's characterizations to the panel of the evidence. And, for all of the reasons and more described in the adjudication process above, these characterizations are often incomplete or inaccurate. We observed cases in which chiefs made characterizations of statements by subjects or witnesses that were simply wrong. Although the Internal Affairs Bureau investigating sergeants are present during case review, unless called upon, we seldom observed them correct misstatements or mischaracterizations of facts. We did not observe on any occasion a transcript being shown or an audio recording played to accurately portray the statements of involved parties.

On multiple occasions, it appeared that the division chiefs or directors relied on the investigative summaries or summaries made by others who had reviewed the file instead of the evidence in the investigative files. In the case discussed above where the summary of the investigation referenced a statement in a medical chart which could not be attributed to any particular person, there was substantial discussion by the chief presenting the case about the unverified statement in the doctor's chart.

We saw multiple instances where it appeared a division chief or director relied on the absence of information to generate a theory of a case that led in the opposite direction from where the evidence pointed. For example, in the case discussed above involving a search warrant, there was speculation that the building inspector who denied telling the subject deputy about the naked lady denied making the statement because he felt culpable in the death of the man shot by deputies during the service of the search warrant. Yet, there was absolutely no evidence that the building inspector, who had retired and moved out of state, was even aware of the shooting death, let alone that he felt any sense of responsibility for the death.

The reasons for these issues are attributable to multiple causes, but the root of these causes is almost always time. In most cases, it is the unit commander who

spends the most time reviewing the evidence. Although the area commanders and division chiefs or directors are consulted by the unit commander during the adjudication process, most of the work is necessarily done by the unit commander. But, as described in the section on adjudication of administrative investigations, even they often have had little time to review and analyze the evidence thoroughly.

There was too often very little time remaining for the division chiefs or directors to prepare for their presentation at Case Review. In forty-two of the eighty-seven cases (48%) cases in which we were provided sufficient information by the Department to make this determination, the division chief or director had one week or less between the decision due date and the Case Review date to prepare for the presentation.

3. Case Evaluation

At the conclusion of the presentation, the case is discussed in three parts. First the facts of the case are discussed. All persons present in the room are generally given an opportunity to weigh in on their evaluation of the evidence as presented by the division chief or director. Few of those present are as conversant with the case as is the division chief or director. It is at this phase where we most commonly observed questions asked of the captain who actually reviewed the case and occasionally of the investigators. However, frequently the factual discussions revolved around the evidence that was of some controversy during the presentation, such as the unattributed unverified statement in the doctor's chart.

The second part is a discussion regarding the appropriateness of the charges selected. The chief and sometimes personnel from the Advocacy Unit would generally take the lead in these discussions. We were present for cases in which the possibility was discussed of changing the charges in order to avoid the necessity of discipline. In one case in which the evidence supported a charge of falsifying a report in violation of the Manual of Policy and Procedures section that then covered false statements there was a discussion during which it was suggested that the charge be changed to a charge of failing to perform to standards, in order to avoid the significant discipline set forth in the Discipline Guidelines. In another case, the evidence supported a fraternization charge which generally results in a mandatory dismissal. In that instance, it was suggested, again that the employee be charged with failing to perform to standards so as to avoid the mandatory discipline.

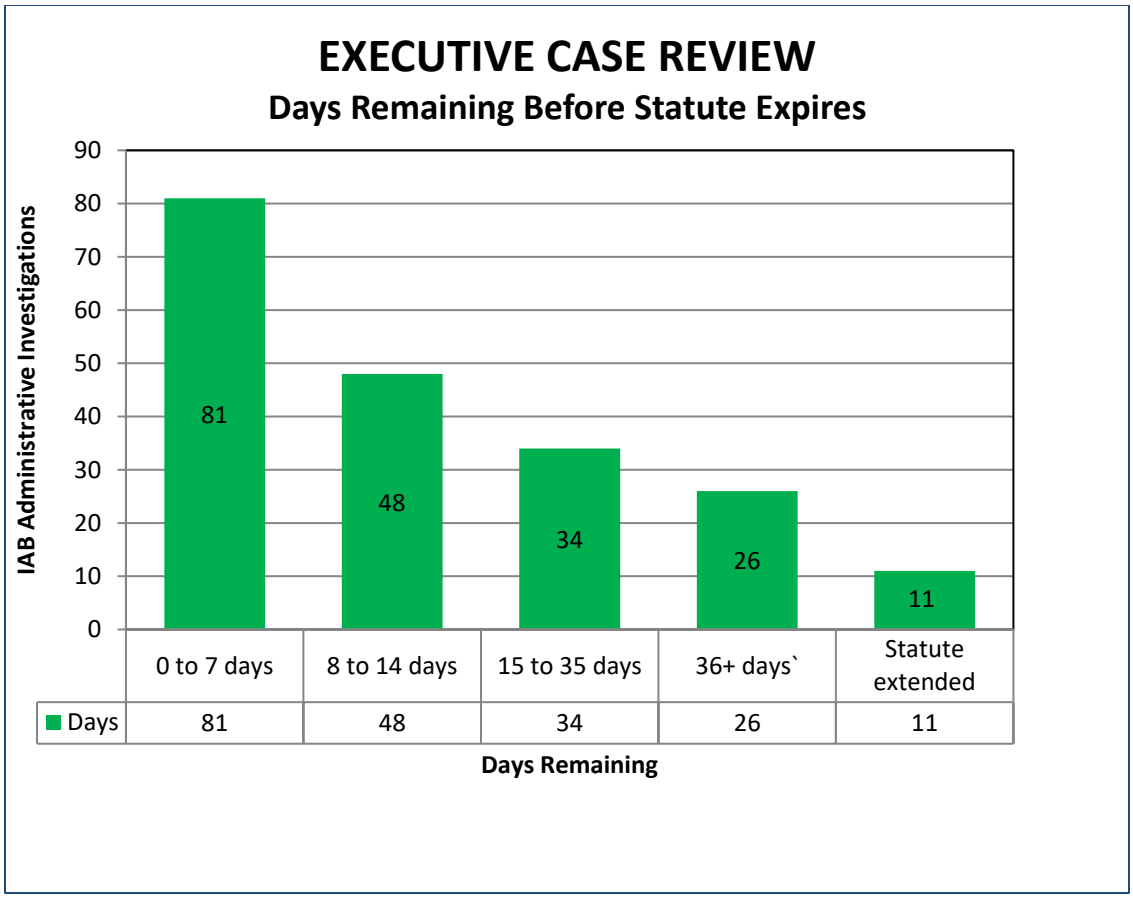
The third part of the discussion, in which personnel from the Advocacy Unit also participate, is the likelihood of success before the Civil Service Commission. Senior department executives have opined to the Office of Inspector General that to impose discipline that is overturned by the Civil Service Commission detracts from

the credibility and effectiveness of the disciplinary process. This view is institutionalized by the Department in how it evaluates cases and imposes discipline. The possible success of the case before the Civil Service Commission is weighed along with the weight of the evidence and the applicability of the policy violations to the gravamen of the employee's conduct. However, assessing the likelihood of success is *de facto* an assessment of the factual sufficiency of the investigation masquerading as a legal concern.

One possibility rarely discussed at meetings of the Case Review panel is conducting further investigation, even in those cases mentioned above where the additional evidence could be dispositive. The reason for this is time – in 163 of the 195 IAB administrative investigations of sworn personnel subject to executive case review between 2016 and through 2019, there remained thirty-five or fewer days before the statute of limitations expired, precluding any additional investigation. As discussed above in subsection (*4) Time as a Factor in Adjudicating Investigations*, department policy and procedure requires a minimum of thirty-five days should additional investigation be required or requested.[198] One hundred twenty-nine of these cases were presented for case review with fourteen or fewer days remaining before the statute expired, making any request for additional investigation essentially futile.[199]

[198] Administrative Investigations Handbook, p. 3.

[199] See Appendix P, Executive Case Review Cases [REDACTED].



Time has also prevented the Department from imposing discipline in cases in which the Department has determined discipline is appropriate. In at least two discharges at which the Office of Inspector General was present for the case review, we were advised the Department was unable to complete deliberations in time to deliver the letter of intent to the employee before the statute of limitations expired.[200]

4. Ratification

In cases in which all three of the Case Review panel members concur with the findings of fact and findings of policy violations, the letter of intent to impose discipline is approved. In those cases in which there has been disagreement amongst the panel members, the case is presented to the Sheriff for a decision. In all cases in which the intent to impose discipline is approved, the Case Review panel members individually sign the Disposition Worksheet, as does the Sheriff after a briefing by one of the panel members. The Sheriff's concurrence and signature is a requirement imposed for the first time after former Sheriff Jim

[200] IV2379813, IV2412037.

McDonnell took office in December of 2014. Prior to that time, neither the Sheriff's concurrence nor signature were required to authorize Case Review level discipline.

D. The Decision to Discipline

At the conclusion of the adjudication process the employee is served with the Department's Letter of Intent, notifying the employee of the Department's intention to discipline the employee. In the cases of sworn personnel this notice must be provided to the employee within the statutory time limits, as discussed above in Part III(C)(4) Ratification, generally within a year of the Department's knowledge of the alleged misconduct.[201]

PART IV: IMPOSITION OF DISCIPLINE

Discipline may only be imposed after the employee to be disciplined has been served with the Department's Letter of Intent and had an opportunity to respond to the intended discipline either in writing or at a hearing, at the employee's option. If after the employee's response the Department imposes discipline the imposition of discipline takes place immediately. However, the employee may appeal the Department's imposed discipline in accordance with the County's civil service rules.[202]

A. Employee's Opportunity to be Heard

Before the adjudicated discipline described in the Letter of Intent is imposed the employee is afforded an opportunity to contest the discipline. This is the first opportunity in the disciplinary process at which the employee is afforded the right to respond.

Upon being served with the Letter of Intent the employee may accept the discipline or within ten days may respond either orally or in writing and request a hearing. As part of the grievance process, the employee is entitled to a grievance hearing, or *Skelly* hearing (named for the California Supreme Court case of *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, in which the California Supreme Court found that a government employee was entitled to a hearing prior to the imposition of a final decision to discharge under the Due Process Clause of the Fourteenth Amendment).

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[201] Government Code section 3304.

[202] These rules are contained in Appendix 1 to Title 5 of the Los Angeles County Code of Ordinances.

The Department refers to grievance hearings in which the subject of the grievance is suspension for more than thirty days, demotion or dismissal, as *Skelly* hearings. Grievance hearings of other discipline are referred to as grievance hearings. This internal distinction is one of convenience, not substance. *Skelly* hearings are attended by division chiefs and commanders and representatives from the Advocacy Unit, whereas generally 'grievance' hearings may be attended by only the employee's captain and the captain's aide. Both hearings are attended by the employee and an employee representative if the employee so chooses.[203]

The *Skelly* hearing does not afford the employee the full array of rights generally attributed to due process. There are generally no witnesses presented by the Department and the employee does not generally have the right to compel the production of evidence or witnesses on his or her own behalf.

B. Imposition of Discipline

At the conclusion of the hearing the Department may impose the discipline as described in the Letter of Intent, rescind altogether the Letter of Intent and impose no discipline or change the findings and impose the same or lesser discipline. If discipline is imposed, the notice to the employee of the imposition must describe the discipline imposed and the specific grounds and the facts which support the imposition. This notification is commonly referred to as the Letter of Imposition.

If the findings or the intended discipline described in the Letter of Intent are modified or rescinded department policy and procedure provide that a finding as to each of the policy violations alleged in the Letter of Intent is to be made.[204] So if a finding of founded in the original letter of intent was changed after hearing to "unfounded" the latter finding is to be included in the letter of imposition.

The imposition of discipline is immediate. Once served with the Letter of Imposition a discharged employee is no longer an employee of the Department or the County. The employee may, however, appeal the imposed discipline to either the Employee Relations Commission (if discipline is suspension from service for five or fewer days or lesser discipline) [205] or the Civil Service Commission in a manner provided by the

[203] Administrative Investigations Handbook, page 28.
[204] Manual of Policies and Procedure 3-04/020.25 Administrative Investigation Terminology. Potential findings other than founded are exonerated, unfounded or unresolved.
[205] For this report no cases which were within the jurisdiction of the Employee Relations Commission were reviewed.

employee's collective bargaining unit and the Los Angeles County Civil Service Commission rules.

C. Due Process and External Appeals of Imposed Discipline

Appeals of cases in which the imposed discipline is discharge, demotion or suspension from service for more than five days are within the jurisdiction of the Civil Service Commission.[206]

It is before the Civil Service Commission that the disciplined employee for the first time has the opportunity to exercise their full array of due process rights. The Civil Service Commission is composed of five commissioners, each one of whom is selected by a respective member of the Board of Supervisors to serve a four-year term. The commissioners are supported by a permanent staff of approximately eight full-time employees, including an Executive Director. For each day during which a commissioner attends an official meeting, she/he is entitled to receive $150 per day, not to exceed sixty-five days in any given fiscal year. Commissioners do not receive compensation when they serve as hearing officers.

The Commission's jurisdiction is triggered by the filing by an employee of a petition for hearing. The filing is reviewed to determine whether it contains allegations that fall within the jurisdiction of the Commission, among other non-discretionary factors.[207] When a matter is granted a hearing, the Executive Director of the Commission generates a random list of hearing officers equal to the number of parties plus one. This list of potential hearing officers is provided to each party. Each party then has the opportunity to strike from the list one hearing officer candidate. Either the remaining candidate or, when more than one candidate remains on the list, the selection of the Executive Director becomes the hearing officer.

1. Civil Service Commission Hearings

Employees who are granted a hearing are entitled, among other things, to:

- Be represented by counsel or by a representative;
- Subpoena and cross-examine witnesses;
- File any relevant briefings;

[206] Rule 4.03(A), Appendix I to Title V, Los Angeles County Code of Ordinances.
[207] See Rule 4, Hearings, Appendix 1 to Title V of the Los Angeles County Code of Ordinances.

- Cross-examine all employees of the commission or of the director of personnel who have investigated any of the matters involved in the case and whose reports are offered in evidence before the commission or hearing board;
- Impeach any witness before the commission or hearing board;
- Present such affidavits, exhibits, and other evidence as the commission or hearing board deems pertinent to the inquiry; and,
- Argue the case.

In these hearings the Department, as does each county department, carries the burden of proving by a preponderance of the evidence that the discipline was justified.

Employees are able to present any relevant evidence, regardless of any common law or statutory rule that may make such evidence otherwise inadmissible in a civil or criminal court. For example, Mandoyan was permitted to introduce in his civil service hearing the letter he wrote to his captain, even though Mandoyan did not testify (and subject himself to cross-examination).[208] Such a letter is hearsay and to be admissible in court would have to meet one of the hearsay rule exceptions contained in the California Evidence Code.[209]

At the conclusion of the hearing, the hearing officer's findings are submitted to the Commission. The Commission may either agree in whole or in part with the hearing officer's findings. The Commission then notifies the parties of its decision. Any party, including the Department, may make objections to the proposed decision and argue the case before the Commission. The Commission then reaches a final decision.

A final decision of the Commission may be appealed to the courts.[210] Such appeals are beyond the scope of our analysis.

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[208]See the Inspector General's report, Initial Implementation by the Los Angeles County Sheriff's Department of the Truth and Reconciliation Process, July 2019.

[209] See civil service hearing officer's report of Mandoyan's Civil Service Commission hearing, also chapter 10, Hearsay Evidence, California Evidence Code (sections 1200-1390), and California Supreme Court holding and dicta in *People v. Duarte* (2000) 24 Cal.4th 603 at 611-612.

[210] Any party may challenge the decision of the Civil Service Commission by filing a petition for *Writ* of Administrative Mandamus in the Superior Court (see *[Martius] v. Los Angeles County Civil Service Com.* (2006) 137 Cal.App.4th 1255).

2. Timeliness of Civil Service Commission Decisions

After the Commission issues a final decision, the employee's administrative remedies are considered exhausted. However, this is not a quick process. We reviewed the final decisions of the Civil Service Commission in the appeals by sworn personnel which became final between January of 2016 and December of 2018. The average length of time between the Department's Case Review Committee decision to discharge a deputy and the final decision of the Civil Service Commission was 928 days, approximately two years and three months. The shortest period between the Case Review Committee's decision and the Commission's final decision was 554 days.[211] The longest elapsed time between a Case Review Committee decision and a final decision by the Civil Service Commission was 2,062 days.[212]

These delays are in addition to the delays described earlier in this report in Part II *Internal Investigations* and Part III *Department Adjudication and Review*.

The quality of the testimony presented at Civil Service Commission hearings is reportedly, and understandably, significantly impacted by these lengthy delays between the underlying conduct and the Civil Service Commission hearing. The passage of time when combined with the lack of thorough questioning in the course of investigation and the incomplete investigations cited elsewhere in this report, impacts the evidence presented at these hearings. Witnesses become unavailable, witnesses' memories fade (and, as discussed earlier, sometimes the memories of witnesses who were not thoroughly questioned in the course of the investigation become better) and those witnesses who do appear have their statements for the first time subject to cross-examination.

While these evidentiary problems can be overcome in civil service hearings by the use of hearsay, which is permitted, the Office of Inspector General has reviewed hearing officer findings in which the hearing officer has specifically cited the less-convincing nature of hearsay testimony as a contributing factor in assessing the credibility of that testimony.

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[211] [D. PSI], Case Review August 9, 2016, final decision February 14, 2018.

[212] *[E. OMICRON]*, Case Review January 22, 2013, final decision September 15, 2018. [*OMICRON]* was one of seven deputies disciplined by the Department for involvement in the Jump Out Boys. (Prior to the final decision in his case three subjects had taken their discharge up on writ to the Superior Court, which set aside the Commission's findings. [*OMICRON's*] decision was consistent with the court's ruling on those employees' writs. The writ is contained in Appendix X [REDACTED]).

D. Outcomes

If the effectiveness of its adjudication process is measured by outcomes, the Department's adjudication process is of limited success. We reviewed 204 dispositions in cases in which a sworn employee was served with a Letter of Intent to discharge and in which the disposition became final in the years 2015 through 2019 inclusive.[213]

Only 101 of the 204 discharges were actually imposed. Eighty-two of the discharges were sustained by the Civil Service Commission, thirteen of the discharges were summary discharges due to felony convictions or a conviction of a misdemeanor which disqualified them from serving as a peace officer and six employees accepted their discharge without appeal.

The Department changed its mind in the cases of sixty-six discharges. The Department chose to allow thirty-seven of the discharged employees to continue working for the Department. The Department agreed to allow twenty-nine discharged deputies to resign or retire without imposing the discharge.

The Civil Service Commission ordered the Department to reinstate twenty-five discharged employees.

Thirteen deputies resigned or retired before the discharge had been imposed.

The dispositions of these 204 discharges are shown in the following table:

[213] We use the term discharges rather than cases because some administrative investigations involved multiple subjects, each of whom received a separate disposition, and some subjects were the subject of more than on administrative investigation. The list of dispositions reviewed is contained in Appendix U, Final Dispositions [REDACTED].

	2015	2016	2017	2018	2019	TOTAL
SETTLEMENT AGREEMENTS	**11**	**17**	**16**	**10**	**12**	**66**
Pre Imposition	**0**	**12**	**13**	**4**	**6**	**35**
Reduced	0	7	7	1	5	20
Dismissed			1	1		2
Resigned		2	3	2	1	8
Retired		3	2			5
Post Imposition	**1**	**5**	**3**	**6**	**6**	**21**
Reduced		3	3	3	3	12
Dismissed						
Resigned	1	2		2	3	8
Retired				1		1
Unknown	**9**	**0**	**0**	**0**	**0**	**9**
Reduced	3					3
Dismissed						0
Resigned	4					4
Retired	2					2
CIVIL SERVICE COMMISSION	**34**	**19**	**22**	**18**	**14**	**107**
Sustained discharge	21	18	19	13	11	82
Reduced Discharge	11	1	2	3	3	20
Overturned Discipline	2		1	2		5
OTHER DISPOSITIONS	**7**	**5**	**7**	**3**	**4**	**26**
Resignations	3	2	1			6
Retirements	3		1	3		7
Convictions	1	3	5		4	13
ACCEPTED DISCHARGE	**1**	**1**	**2**	**2**		**6**
TOTALS	**53**	**42**	**47**	**33**	**30**	**204**

E. The Department Changes Its Mind

Notwithstanding the Department's concerns about the credibility of its disciplinary process, the Department entered into settlement agreements reversing its own decision to discharge a deputy in sixty-six of the discharges reviewed by the Office of Inspector General. Thirty-five of these settlement agreements resulted in the deputy returning to their assignment as a sworn member of the Department.

Of these sixty-six settlement agreements, thirty-five were entered into prior to the Department imposing discipline. Twenty-one of the settlement agreements were reached after the Department had already discharged the deputy. In ten discharges we were unable to determine whether the settlement agreement was reached prior to the deputy's discharge being imposed.

None of these case files, all of which contained the original disposition worksheets signed by the Sheriff, contained any documentation that the Sheriff had also been advised of or approved of the subsequent settlements. Each of the settlement agreements was signed by the deputy and the deputy's division chief but were not signed by any of the Case Review Committee panel members or the Sheriff.

None of the case files included the factual, legal, ethical or tactical basis, or any other explanation for the modifications in findings or change in discipline. There is no description of the process by which these decisions to reduce the discipline were made or the roles of identified individuals in making those decisions.

The terms of some of these settlement agreements appeared to be unlawful and therefore unenforceable. The Office of Inspector General reviewed settlement agreements which called for the destruction of records, the alteration of records and, in one case, provided that the Department would not place the deputy on "any current or future *Brady* list."[214] In three cases the settlement agreements were memorialized in the Performance Recording and Monitoring System but were not part of the case file.[215] In two cases the settlement agreements were designated as "unwritten," resulting in there being no "best evidence" of the terms of the agreement.[216]

Some of the settlement agreements were intrinsically troubling. In one case reviewed by the Office of Inspector General a deputy was discharged after pleading no contest to and being convicted by the court of a crime of domestic violence. (This case is also discussed in Part III(A)(2) *Incomplete Investigations*). According to the arresting agency's report the deputy had forcibly removed the victim's panties from beneath her dress, struck her three times in her back when she rolled over to prevent intercourse and broke down the door of the room to which she fled

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[214] The prosecution team, which includes the Sheriff and his deputies, has a duty under the case of *Brady v. Maryland* (1963) 373 U.S. 83, to disclose to the defense in criminal cases information about unreliable witnesses, including peace officers. The *Brady* list is maintained by the Los Angeles County District Attorney's Office. Only the courts have the ultimate legal authority to determine whether a peace officer's conduct rises to the level that information about that peace officer must be disclosed to the defense.

[215] IV2339775; IV2363496 and IV2370971.

[216] IV2380831, IV2393908, allowed to retire in lieu of.

to make her 9-1-1 call, retreating only when the deputy realized she was on the phone with the police.

The Department's file contained a certified copy of the court clerk's transcript of the plea and conviction (and the Office of Inspector General obtained the reporter's transcript of the proceeding). The Department conducted no further investigation and notified the deputy he was to be discharged due to the court action rendering him unable to perform his duties (carry a gun).

In November of 2017, the Department reinstated the deputy and changed the discipline to a fifteen-day suspension. Upon inquiry by the Office of Inspector General into this settlement, the Department provided a new document similar in appearance to the original certified clerk's transcript, but which reflected that the deputy had not been convicted and, in fact, had not even appeared in court on the date reflected in the certified copy previously provided to the Department (and the transcript later obtained by the Office of Inspector General). The "new" document also reflected that the deputy was not convicted but placed on deferred entry of judgment for eighteen months. This same "new" document reflected that approximately eighteen months later the plea was set aside, and the case was dismissed pursuant to Penal Code section 1001.96.

Because the disposition of a domestic violence case pursuant to Penal Code section 1001.96 was an illegal disposition (the law prohibited such an action in a domestic violence case)[217] the Office of Inspector General requested to review the court file. The court clerk denied the Office of Inspector General access to the file. Within forty-eight hours of our request, the court file was destroyed. This matter was reported to the supervising site judge of the court,[218] who provided the Office of Inspector General the reporter's transcript. The reporter's transcript reflected the certified clerk's transcript originally provided to the Department accurately reported the plea and conviction.[219]

The Department's file in this matter contains no information as to who provided or who in the Department received the false court record. The Department's file in this case is one of those files in which there is no settlement agreement.

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[217] See chapter 2.96 Deferral of Sentencing Pilot Program, Title 6 of the Penal Code, sections 1001.94 through 100.99.
[218] IV2363498, Consolidated Court Case 4LG02705.
[219] The Office of Inspector General is in possession of the court clerk's transcript and the transcript of proceedings.

In at least twenty-one of these pre-imposition discharges the Department removed findings of dishonesty, false statements, falsifying records, or falsifying reports and the deputies were returned to duty. Only one of these files contains a reference as to why these findings were deleted. That file involves three deputies who were criminally prosecuted for falsifying a loan application in order to qualify for a loan. According to the file the judge dismissed the case. According to the court record the dismissal was not based upon a finding that the information was not false but because the prosecutor had failed to prove the bank was provided the false documents, a necessary element of the crime charged.[220]

In no fewer than eight discharges, findings of domestic violence or violations of the Department's policy of equality due to unwanted sexual contact with other employees were removed.

None of these deputies' names appeared on the list of deputies' whose conduct must be disclosed to the court in criminal proceedings.

1. Department Dispositions before Imposition of Discipline

No fewer than thirty-five of the settlement agreements rescinding the Letter of Intent to discharge were after the *Skelly* hearing and before the discipline was imposed. In two of those cases the Department agreed to rescind the letter of intent to discharge and impose no discipline at all. In twenty-two discharges, the deputy was allowed to return to work. In no fewer than twelve and perhaps as many as nineteen of the discharges the deputy was permitted to retire or resign in lieu of being discharged, potentially permitting the deputy to seek employment elsewhere, even in law enforcement, without disclosing that there were sustained findings of misconduct made by the Department.

a. Cases Revisited by the Case Review Committee

By the Department's procedures and practices, as described in 2016 to and subsequently observed by the Office of Inspector General, when the division chief or director in a case which was heard by the Case Review Committee (which includes all discharge cases) determines at the *Skelly* hearing that a change in a finding or discipline is appropriate, the case must be brought back to the Case Review Committee for a revisit unless the Committee pre-approved a post-*Skelly*

[220] Transcript of proceedings, February 12, 2015, in *United States v. Khountgthavong, Benny, Billy and Johny* CR13-0904-R, United States District Court for the Central District of California, Western Division.

reduction in the discipline.[221] At the revisit, the reasons for the change must be presented to the Case Review Committee.

In practice this was not always done. Of the cases reviewed by the Office of Inspector General in which the division chief or director modified the discharge after the *Skelly* hearing and before imposition, only four appeared on the Case Review Committee's agendas for meetings to which the Office of Inspector General was invited. In these cases, the finding for one deputy was changed from FOUNDED to UNRESOLVED based on additional investigation and no discipline was imposed.[222] For two of the cases, the findings were not changed at all but the deputy's discipline was reduced to less than discharge.[223] The remaining deputy had the charges and the findings of fact substantially modified and the discipline was reduced to less than discharge.[224]

b. Skelly Dispositions not Revisited by the Case Review Committee

Of the administrative investigations in which the division chief or director modified the discipline after hearing from the deputy without re-presenting the case to the Case Review Committee (at least without notice to the Office of Inspector General), the findings for one deputy were changed from FOUNDED to UNRESOLVED and no discipline was imposed. This case involved a deputy who tested positive for marijuana and had admitted to using Hemp Oil purchased online.[225]

In the cases of three administrative investigations the findings were not changed at all but the deputies' discipline was reduced to less than discharge.[226] In the remaining administrative investigations, the subject deputies had their charges and the findings of fact substantially modified and the discipline reduced to less than discharge.

As previously mentioned, staff from the Office of Inspector General has not been present at any post-letter of intent *Skelly* hearing. Because none of the case files we reviewed contained either a description of the evidence or information produced

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[221] As discussed above, the procedures as described to the OIG in 2016 were incorporated into policy on July 13, 2018, in MPP 3-04/020.80 Modify Findings and/or Discipline. For this report the OIG did not review any cases in which a post-Skelly hearing settlement agreement was implemented after the implementation of the policy.
[222] IV2322771.
[223] IV2406081 and IV2384228.
[224] IV2387901.
[225] IV2423313.
[226] IV2381478, IV2401186 and IV2389271.

at the *Skelly* hearing or a description of the division chief's reasons for changing the discipline or the charges, we are unable to opine on whether the modifications were evidence-based.

c. Pre-Imposition Settlement Agreements

In twenty-nine of the cases reviewed in which pre-imposition settlement agreements were reached, a representative from the Advocacy Unit wrote a memorandum addressed to the Captain of the Internal Affairs Bureau which set forth the procedural posture of the case and terms of the settlement agreement. Attached to these memoranda were the actual settlement agreements. Ten of these memos were authored by county counsel embedded in the Advocacy Unit. Nineteen memos were authored by sworn personnel within the Advocacy Unit.[227]

Two settlement agreements were documented in the Department's Personnel Recording and Monitoring System but were not in writing. There was no documentation in the file for four of the settlement agreements.

None of these settlement agreements reviewed by Office of Inspector General staff were signed by county counsel or the Advocacy Unit sergeant. Office of Inspector General staff was informed by department personnel, however, that county counsel from the Advocacy Unit has historically been, and continues to be, present at *Skelly* hearings in discharge cases. Office of Inspector General staff has further been advised that county counsel opinions on the merits of the case have been and continue to be relied on by division chiefs and directors in making their disciplinary decisions and that the settlement agreements, while not signed by county counsel, are prepared by county counsel to conform to the decisions which county counsel helps to inform. No such opinions were contained in any of the case files reviewed by the Office of Inspector General.

d. Other Pre-Imposition Dispositions

In addition to the cases in which the Department entered into settlement agreements, two deputies were unsuccessful in obtaining a more favorable disposition after the *Skelly* hearing and resigned prior to the letter of imposition being served. One deputy retired after receiving the letter of intent to discharge him.

[227] Two of the discharges involved the same employee and one settlement agreement encompassed both of that employee's discharges.

2. Department Dispositions after Imposition of Discipline

After the grievance hearing the division chief must decide whether to impose the intended discipline. Within thirty days of the Department's decision to impose discipline, the letter of imposition must be served on the deputy.

Of the 204 administrative investigations reviewed by the Office of Inspector General, no fewer than 128 and perhaps as many as 150 letters imposing discharge were delivered to discharged deputies.[228] After being discharged the deputy is no longer an employee of the Department or of the County. The deputy's only remedy is to appeal the discipline to the Civil Service Commission. During the pendency of the appeal the deputy is not employed by the Department and is not able to carry any weapons, wear a badge, or exercise any police powers.

The County and employees may still enter into settlement agreements at any time prior to the Civil Service Commission's final decision and did so in no fewer than twenty of the discharges in which a Letter of Imposition had been issued.

a. Post-Imposition Settlement Agreements

At any time prior to the final decision of the Civil Service Commission, the matter may be resolved by the County and the employees.

In the cases of twelve administrative investigations the Department entered into settlement agreements reinstating deputies who had been discharged but whose appeal was pending before the Civil Service Commission.

Eight deputies were permitted to resign or retire in lieu of discharge.

b. Approval of Post-Imposition Settlement Agreements

Office of Inspector General staff reviewed these settlement agreements to determine if they had been signed by County Counsel representing the County in the civil service proceedings. Only five of the settlement agreements were signed by the counsel the County had retained.[229] Seven settlement agreements were signed only by the Department's division command. [230] Eight cases had no

[228] Civil Service Commission (107), Convictions (13), Post-imposition Settlement Agreements (21) and Unknown (10).
[229] IV2375943; IV2384305; IV2291399; IV2372914; IV2299474.
[230] IV2408955; IV2436989; IV 2412373; IV2415123; IV2333689; IV2333686; IV2396225.

settlement agreements in the file.[231] One of these cases was the case returning to service the deputy convicted of domestic violence based upon a falsified court document (discussed above).

The factual, legal, ethical or tactical bases for none of these post-imposition settlement agreements were documented in the administrative investigation case files made available to Office of Inspector General staff. Office of Inspector General staff was advised that the reasons for these settlement agreements are varied. We ourselves have observed in civil service hearing transcripts testimony from department personnel who during the internal investigation were 'unavailable' or demonstrated failures of recollection but who appear at civil service hearings with refreshed recollections to testify on behalf of discharged deputies.

Some members of the Department's own command staff have assisted with the deputy's defense. In one case we observed a department manager assert, in a case in which a deputy had been found to have submitted a false report (CHP-180), that it was the custom and practice at that deputy's station to routinely falsify these reports.[232]

We have been told a case may sometimes be settled because a designated hearing officer has demonstrated in the past or during the proceedings antipathy toward the Department or the Department's case. There is evidence to support this.[233]

We were also advised that some of the settlement agreements were entered into after unfavorable findings by Civil Service Commission hearing officers but before the matter was heard by the Civil Service Commission or based upon recommendations from outside counsel who represent the Department.

As previously stated, none of these reasons were documented in any of the case files the Department provided to the Office of Inspector General.

In the nine cases reportedly resolved by settlement agreement in which the outcome was the deputy's resignation or retirement in lieu of discharge, only two actual settlement agreements were located. Neither was signed by County Counsel.

[231] IV2419806; IV2321682; IV2417210; IV2442339; IV2420774; IV2370971; IV2364796.
[232] IV2308233, June 7, 2016.
[233] Civil Service Commission hearing officer reports.

CONCLUSION AND RECOMMENDATIONS

As the Citizen's Commission on Jail Violence did in 2012, our review of the Department's disciplinary process and the internal investigations policies, procedures and practices which inform that process found multiple structural and cultural impediments to effective discipline within the Department.

In order to establish and restore public and employee confidence in the Department's disciplinary outcomes, we recommend the following reforms.

PERMANENT REFORMS

Addressing Structural Impediments

1. Create an Office of Law Enforcement Standards

There should be created within Los Angeles County, ideally within the Department of Human Resources, an independent Office of Law Enforcement Standards. This Office of Law Enforcement Standards should be headed by a Chief of Law Enforcement Standards. The incumbent of this position may be a sworn peace officer qualified to hold the position of Sheriff or Chief of Police under Government Code sections 24004.3 or 38630(b) and who is not disqualified from holding a position as a peace officer under Government Code section 1029.

The Chief of Law Enforcement Standards should be appointed by the Sheriff and that appointment should be ratified by the Civilian Oversight Commission.

All functions and positions currently allocated to the Professional Standards Division and the Administrative and Training Division as defined in the Manual of Policy and Procedures[234] should be transferred to this Office of Law Enforcement Standards, including the Internal Affairs Bureau, the Advocacy Unit and the Risk Management Bureau.

The Office of Law Enforcement Standards should be adequately staffed to timely fulfill all of the functions within its scope of authority within a reasonable time by developing and instituting a rational staffing plan taking into account:

[234] Manual of Policies and Procedures – Version 2020.6.10.1.

- The number of internal and external complaints and referrals to be reviewed and evaluated
- The number of cases to be completed
- The number of hours required to complete a typical case.
- The number of days within which it is desirable to complete the case.

The Board of Supervisors should by ordinance allocate positions to the Office of Law Enforcement Standards by separate ordinance and specifically budget for the items authorized by this ordinance based upon the staffing plan presented to the Chief Executive Officer by the Office of Law Enforcement Standards.

The budget for the Office of Law Enforcement Standards should be transferred from the Sheriff's Department.

2. Investigation of Allegations of Misconduct

The Office of Law Enforcement Standards should review **all** allegations of misconduct and service reviews.

The Office of Law Enforcement Standards should have the independent authority and discretion to initiate an administrative investigation, including adding additional subjects and charges into existing administrative investigations:
- When evidence of other misconduct is uncovered in the course of an investigation.
- Based upon the Office of Law Enforcement Standards' review of the complaint, allegation or supervisor's review of the complaint or allegation.

The Office of Law Enforcement Standards should have the exclusive authority to conduct administrative investigations into allegations of misconduct.

Administrative investigations should be conducted concurrently with criminal investigations following the practices established by the Los Angeles County District Attorney's Office in investigating the *Rampart* scandal and as implemented by the Los Angeles Police Department in order to safeguard the constitutional rights of subject employees against self-incrimination.

Force reviews which are currently conducted by the IAB Force/Shooting Response Team should remain within the Department and should be conducted by a special Division similar to the Force Investigation Division of the Los Angeles Police Department.
- Potential misconduct detected in the course of a force review should be documented and referred to the Office of Law Enforcement Standards.

- The practice of assessing discipline based upon the force review should be discontinued.

3. Adjudication of Misconduct Allegations

Advocates from the Office of Law Enforcement Standards, and only from the Office of Law Enforcement Standards, should be responsible for selecting policy violations to be administratively investigated in all of the cases investigated by that office. The letter of intent should be replaced with a notice of charges which notifies the subject employees of:

- Allegation(s) of policy violation(s).
- A description of the conduct which is the basis for those violations.
- The right to a hearing **before** discipline is imposed.
- The Department's intent to assess discipline if policy violations are found.

Before the imposition of discipline, the subject employee(s) should be afforded a full hearing before a neutral hearing officer.

- This hearing would replace the current grievance and *Skelly* hearings, as well as the Civil Service Commission hearing.
- The hearing should be held within a time agreeable to both the employee(s) and their collective bargaining unit.
- All due process rights currently afforded under Civil Service Rule 5 should be afforded the employee(s), including the right to:
  - Representation.
  - Be presented with all of the evidence.
  - Question the witnesses present.
  - Present evidence and witnesses on their or her own behalf.
  - Testify in their own defense.

At the conclusion of the hearing, the hearing officer should provide to the unit commander or other department designee and the employee[s] a letter of finding, in a form of a disposition sheet which contains the hearing officer's findings as to:

- Facts
- Policy violations
- Aggravating and mitigating factors
  - Severity of infraction
  - Aggravating factors
  - Mitigating factors
  - Intent, truthfulness and acceptance of responsibility
  - Degree of culpability

With the concurrence of the Office of Law Enforcement Standards an employee and an employee's unit commander or higher ranking authority should be permitted to waive the hearing and agree to a letter of finding.

4. Imposition of Discipline

The discipline [if any] for each employee should be selected by the employee's unit commander or higher ranking authority based upon:

- The hearing officer's findings as to:
  - Facts
  - Policy violations
  - Aggravating and mitigating factors
    - Severity of infraction
    - Aggravating factors
    - Mitigating factors
    - Intent, truthfulness and acceptance of responsibility
    - Degree of culpability
- The Department's guidelines to discipline for the violations found by the hearing officer
- The employee's past performance and disciplinary history

The employee should be notified of the imposition of discipline in the same manner as is currently the practice.

5. Settlement of Cases

The authority to settle a case by changing, modifying or withdrawing any finding by the hearing officer should reside exclusively with the Office of Law Enforcement Standards.

If an employee chooses to resign or retire after a hearing has been commenced at the employee's request, the hearing should continue, findings should be issued and the appropriate discipline should be imposed as a matter of record.

6. Appeals

Appeals should continue to be heard as currently provided by statute and the rules of the Civil Service or Employee Relations commissions, with the exception that the commissions' and hearing officers' findings of facts shall be based upon the factual record as established at the hearing held prior to the imposition of discipline.

Addressing Cultural Impediments

1. Define Affirmative Duties of Employees

The Department should, by policy, procedure and practice:

- Impose a clear and unequivocal duty on **all** employees to report **all** violations of federal statute, state law, Charter of Los Angeles County, Los Angeles County Code, local ordinance, rules of the Department of Human Resources, lawful orders issued by a supervisor and any rules, regulations or policies of the County, including the Department.
- Require unit commanders to document **all** allegations of violations of federal statute, state law, Charter of Los Angeles County, Los Angeles County Code, local ordinance, rules of the Department of Human Resources, lawful orders issued by a supervisor and any rules, regulations or policies of the County, including the Department, whether the sources of those allegations are internal or external in the same fashion.
- Impose an affirmative duty on all unit commanders and higher ranking executives to ensure that **all** allegations of violations of federal statute, state law, Charter of Los Angeles County, Los Angeles County Code, local ordinance, rules of the Department of Human Resources, lawful orders issued by a supervisor and any rules, regulations or policies of the County, including the Department are referred to the Office of Law Enforcement Standards.

2. Conform Rights Afforded Employees to California Law

"Subject rights" should be extended exclusively to those employees who are the subjects of administrative investigations. Interviews of employee witnesses in criminal cases should be conducted in conformance with investigative standards applicable to all other witnesses in all criminal investigations and not in conformance with the standards applicable to administrative investigations as outlined in the Public Safety Officer's Procedural Bill of Rights.[235]

3. Invocation of Privileges by Employees

Employees who invoke any privilege and refuse to provide evidence or statements should be required to **personally invoke** that privilege.

[235] Cal. Gov. Code §§ 3300 *et seq.*

4. Compliance of Attorneys with California's Conflict Rules

The attorney representing the subject of an administrative investigation should not be permitted to represent any other subject or witness in that investigation unless that attorney represents on the record to investigators that rule 1.7 of California's Professional Rules of Conduct has been fully complied with as to each person represented.[236]

5. Bring Policies, Procedures and Practices in Conformity to Law

The County should work with the employee collective bargaining units representing Sheriff's Department employees to:

- Develop, implement and ensure adherence to policies that do not delay, interfere or obstruct internal and administrative investigations or corrupt the evidence or statements obtained in internal and administrative investigations.
- Ensure that representatives' involvement in the investigative/scheduling process does not extend beyond that required by the Public Safety Officers Procedural Bill of Rights.

6. Enforce a Duty of Honesty

The Department should develop, implement and adhere to policies which impose an affirmative duty upon employees to tell investigators of all material facts within the knowledge of the employee, explicitly require employees to NOT omit any material fact in any criminal investigation or any administrative investigation or inquiry authorized by law no matter the entity conducting the investigation or inquiry.

The Department should develop, implement and adhere to policies which make clear that witnesses have no right to evade, delay or avoid any questioning or conceal any evidence in any investigation or make for themselves a determination of what evidence is relevant (or not).

The Department should restate its false statement and dishonesty policies so that there is no confusion among department members about what is a false statement and the consequences for making them.

- The Department should adopt the definition of 'false' contained in the Black's Law Dictionary: *False* = untrue.[237]

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[236] Rule 1.7, Conflict of Interest: Current Clients, State Bar of California, Rule Approved by the Supreme Court [California], Effective November 1, 2018.

[237] Black's Law Dictionary, 11th ed., s.v. "false."

- The Department should include in its false statement policies the definition contained in Penal Code section 125 since 1872, "An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false."[238]
- The Department should adopt guidelines for the discipline of false statements which distinguish between:
  - False statements made with knowledge the statements are false (dishonesty)
  - False statements made when it is not known whether the statement is true or false (dishonesty)
  - False statements made due to the lack of competency of the employee to observe and relate
  - False statements made due to mistake of fact
- The Department should require employees whose defense to false statement and dishonesty charges is their competency under the circumstances to have observed, recorded or related their observations, to undergo fitness for duty examinations.

7. Require Employees to Cooperate with Government Investigations

The Department should develop, implement and adhere to policies which require full and complete cooperation by department employees in investigations, including employee misconduct investigations, which are conducted by other law enforcement for government agencies.

8. Harmonize Policies, Procedures and Practices

The Department should ensure that all procedures as embodied in any form, including training materials, unit orders, directives, or other communications are in compliance with the Department's policy and that accepted practices are consistent with those procedures and with department policy.

9. Protect the Integrity of the Disciplinary Process

The Department should develop, implement and adhere to policies which protect the integrity of the Department's internal criminal investigations process and the disciplinary process, including:

- Make public the transcripts of the disciplinary hearing in matters which involve law enforcement interaction with the public

[238] Cal. Pen. Code §118.

- Identify and discipline those department members who make false statements as described in recommendation six above in social media or other forums regarding the disciplinary process and outcomes.

The County should enact ordinances which permit the County to make public administrative investigations when the subject of those investigations explicitly or implicitly by their conduct waives their right to confidentiality by publicly misrepresenting the facts or findings.

INTERIM REFORMS

The above reforms require discussion between the Department and its employees' bargaining units, amendments to County Code and reforms to the County's employment rules. There are short term measures which the Department can implement immediately which would mitigate the issues addressed in this report.

- Adequately staff the Internal Affairs Bureau so that the investigations can be completed in a timely manner.

- Conduct regular audits of the Internal Affairs Bureau efficiency.

- Provide appropriate training to Internal Affairs Bureau investigators in order to address deficiencies such as; failure to follow the evidence and properly document findings, proper interviewing techniques, ignoring inculpatory evidence, failure to search for documentary evidence including video and audio tapes.

- Minimize the role of legal and non-legal representatives in the process to that required by law. For example, representatives should not be allowed to control the interviews, answer for the employee, reframe questions and control the scheduling of the interview. Employees are rightfully entitled to a representative but should not be allowed to unnecessarily delay the interview process to accommodate a specific representatives schedule.

- Immediately begin Internal Affairs Bureau investigations and not wait for the completed criminal investigation.

- The Department executive staff should fully understand the practical application of the *Gates-Johnson* agreement which would serve to expedite the Internal Affairs Bureau investigations.

- Internal Affairs Bureau investigation reports should always have a section regarding "other related issues discovered."

- Have Advocacy attorneys prepare all letters and correspondence to employees and have these letters approved by a member of County Counsel not embedded within the Department.