

**The San Diego County Sheriff's Department:**  
**A Supplemental Audit Covering Recommendations and**  
**Reforms, 2007-2008**

**Spring 2009**

**By OIR GROUP**

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## **I. Introduction**

The purpose of this supplemental report is simple and straightforward. One year after the publication of an Audit that featured 35 recommendations for reform of the San Diego County Sheriff's Department, this Report re-visits the Department and offers updates as to the status of those recommendations.<sup>1</sup> As the following pages will discuss in individual detail, the Department has made significant progress in honoring commitments it made in the summer of 2007.

Our overall impressions (which cover events through the end of 2008) are favorable, and some of the accomplishments are genuinely praiseworthy in both intention and execution. Additionally, to the extent that the Department has fallen short of achieving some of the goals at issue, a grade of "incomplete" seems to be more fair and accurate than a "D" or "F" would be. The receptivity to change that seemed so striking during the original audit period remained in place during the auditors' second tour of the Department, as did the willingness of Department executives to provide information freely and discuss all topics candidly. New faces in positions of authority and influence have also made positive contributions.

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<sup>1</sup> As with the original "Use of Force Audit," this Report was prepared by attorneys from "OIR Group." The full time job of these individuals is with the Los Angeles County Office of Independent Review, which provides independent civilian monitoring for the Los Angeles County Sheriff's Department. In their outside capacity as private contractors, the OIR Group attorneys have undertaken short-term projects for a variety of law enforcement agencies throughout California.

Remarkably, though, the ability to assess the Department's performance in certain areas relevant to the recommendations has been limited for the best of reasons: a complete lack of deputy-involved hit shootings since the release of the original report last June, and indeed for several preceding months as well. At the time of this report's completion in early December, the stretch had extended to twenty-four months.<sup>2</sup>

The Department's internal review of deputy-involved shootings was a focal point of the original audit. In fact, the genesis for that project was the controversy surrounding three fatal deputy-involved shootings that occurred within five days in the summer of 2005. All three involved Hispanic male suspects, and all occurred in the city of Vista – a confluence of events that was obviously troubling. While the audit was designed to take a broader look at Department practices, and consciously evaluated the “Vista shootings” within a larger context, it did find room for constructive change in the Department's approach to shootings, force, and other critical incidents.

Accordingly, several of the suggested reforms were intended to promote a more thorough and meaningful scrutiny in these areas. The report placed particular emphasis on strengthening officer accountability and addressing potential shortcomings in policy and training. While the Department refrained from accepting every specific idea within the recommendations, it embraced the spirit of them to a noteworthy extent. The

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<sup>2</sup> The Department had averaged 9 per year during the three years (2003, 2004, 2005) covered by the original audit. It had 7 more in 2006.

Department has significantly revamped its basic review protocol, and seems committed to the goals that were emphasized within the report.

The absence of new shooting incidents since December of 2006 is, of course, a positive development. The resulting lack of data for this supplemental report is a price that the Department, the public and the auditors are surely happy to pay. However, it is also true that the potential for a deadly force incident is a constant reality in law enforcement. As Department executives have been careful to note, the officers control only part of every encounter, and a suspect on any shift in any city could dictate a necessary use of deadly force by a deputy. Some theorists do offer explanations for this extended “streak,” such as the proliferation of Tasers as a force option for patrol deputies. Ultimately, though, the gap between shootings may prove to be as much of a statistical anomaly as was the flurry of fatalities in Vista in 2005.

Either way, the true test of the Department’s new approach to internal review remains ahead. There are, however, at least some bases for evaluation: an apparent change in philosophy, some structural reforms that have already been accomplished, and several critical incidents (apart from shootings) that have gone through the revamped process. To the extent these elements offer grounds for assessment, the Department’s progress has been praiseworthy.

The centerpiece of the Department’s enhanced commitment to review is the new “Division of Inspectional Services.” It consists of a civilian Executive Manager, a

lieutenant, four sergeants, and a civilian staff person, and it has been empowered “to assess internal processes and review high risk events” in order to promote “the delivery of the highest quality public safety services.” The Division centralizes and facilitates the Department’s response in a variety of key areas, including civil claims, policy review, force review, and the assessment of critical incidents. The Division also has an audit function that can serve the Department in a variety of ways. This dedication of resources, as animated by the experienced, energetic personnel that comprise the Division, has positive implications for many of the issues that the original audit report addressed in 2007.

On a less positive note is the lack of significant progress in the Department’s development and implementation of an Early Intervention System – a computerized data base for tracking various risk and performance factors at levels down to the individual employee. As detailed below, vendor issues and other roadblocks have arisen to challenge the Department’s path to implementing a system that does require an initial outlay of significant financial resources in a time where extra dollars are not easily had. That said, it is hoped that the lack of any significant discernable progress or target dates for implementation does not signify any weakening of resolve to develop and implement this important and useful device.

The status or evolution of our recommendations, listed below in table form, is further discussed in the subsequent section. We use the terms “Complete”, “Addressed”,

“Incomplete,” “Not Completed,” “In Early Stages,” or “Rejected” to express the Department’s action on each recommendation. This supplemental report will discuss each of the original 35 recommendations, through the prism of the Department’s original 35 responses, which emerged at the same time in June of 2007. The recommendations ranged in scope and complexity, as the following discussions will reflect. Ideally, this report will leave the reader with a detailed grasp of individual issues. It will also offer a cumulative sense of good work the Department has done and of further reforms the Department will ideally continue pursuing.

<b>Recommendation</b>	<b>Status</b>	<b>Comments</b>
1. Revision of deadly force policy re fleeing felons to eliminate inconsistent language	COMPLETE per change in language in Department Procedure 8.1.	Department adopted less restrictive policy but did eliminate inconsistency
2. Revision of "shooting at vehicles" policy in order to provide further guidance to deputies	COMPLETE per change in language to Department Procedure 6.43 and Department Procedure 8.1 -- shooting to disable now expressly prohibited, and shooting in defense of self or others is regulated by tactical considerations.	
3. Creation of foot pursuit policy	ADDRESSED IN PART per revisions in Foot Pursuit Policy and Foot Pursuit Procedures in Department Manual.	Department labored to reach internal consensus on a workable policy, and implemented a limited set of guidelines in June of 2008.
4. Interviewing of all deputy witnesses by Homicide	COMPLETE per Homicide Manual update (3.11.2.B.3.c)	Homicide's receptivity and efficiency in adopting revisions to its procedures (Recommendations 4-12) was exemplary.
5. Walk through by investigators at scene of Deputy-Involved Shootings	COMPLETE per Homicide Manual update (3.11.2.B.3.c)	
6. Documentation of shooters' comments during walk-through	COMPLETE per Homicide Manual update (3.11.2.B.3.c.)	
7. Better access for Med Examiner at scenes involving fatal Deputy-Involved shootings	COMPLETE per Homicide Manual update (3.6.2.C.9.)	
8. Overcoming of language-related obstacles to	ADDRESSED per Homicide Manual Update (3.8.2.A)	

investigations		
9. Form and Waiver system for cooperation of witnesses	COMPLETE per Homicide Manual update (3.8.2.A) and revision of Form INV-8	
10. Obtain and document warrants or consent in conjunction with evidentiary searches	COMPLETE per Homicide Manual update (3.1.2.A.6.)	
11. Include information re charging decisions, etc. in files for DIS cases	COMPLETE per Homicide Manual update (2.10.2.C)	
12. Include relevant radio traffic in investigation books	COMPLETE per Homicide Manual update (2.6.2.A.10)	
13. Provide Risk Management with limited authority to settle claims at the scene	UNABLE TO COMPLETE. County Counsel declined to endorse this new procedure, though Department was interested.	
14. CIRB revamp	<p>A. Separate team (rejected at outset, but new Division of Inspectional Services has a meaningful role in a revamped Homicide procedure; See also changes to Homicide’s approach during interviews)</p> <p>B Change in Structure [COMPLETED very effectively]</p> <p>C Hold deputies accountable [INSUFFICIENT DATA]</p> <p>D Expanded “menu” of CIRB outcomes [COMPLETE]</p> <p>E Timely Reviews [INSUFFICIENT DATA]</p>	The Department had zero hit shootings between 12-06 and 12-08 – a welcome development but an impediment to thorough evaluation of the new processes.
15. CIRB jurisdiction expansion	K-9 bites concept rejected at outset; other categories appear to have been adopted	

16. Taped interviews of suspects in force with injury cases	Department agreed, but with qualifications: <i>in “significant injury cases,” recordings will occur “whenever possible.”</i>	
17. Creation of separate force investigators	Accepted only in part at outset; new “Division of Inspectional Services” does accomplish many of the goals by taking an active role.	
18. Creation of separate “force package” with attendant protocols	REJECTED by Department at time of initial report as not needed.	
19. Reporting requirements for deputies who witness force	COMPLETE per revisions to “Addendum F” of Department Policy Manual (“Use of Force Guidelines”)	
20. Interviewing requirement for civilian witnesses in force cases	Department agreed, but suggested current policy covered the issue. COMPLETED per revisions to “Addendum F” of Department Policy Manual (“Use of Force Guidelines”)	
21. Standardize and improve its attention to collecting evidence in force incidents by: Photographing suspect injuries Obtaining records of medical treatment of arrestee Documenting where applicable the suspect’s refusal of medical treatment	COMPLETE per revisions to “Addendum F” of Department Policy Manual (“Use of Force Guidelines”)	
22. Revamp of K-9 Unit to increase supervision, training, and integration with patrol functions	IN PROGRESS. Department added a sergeant position per recommendation and has worked to improve Department-wide understanding of the unit’s role.	
23. Modify carotid restraint policy and require refresher training	ADDRESSED. Department originally took the position that further analysis was required. It has subsequently decided to keep the current policy intact, but to take steps to heighten the depth and frequency of training.	Department produced a relevant training video that was completed in the summer of ’08.

24. Training scenario re suspects in back of car	COMPLETE per development of specific scenario for force options training received by deputies periodically. Implemented August of 2008.	
25. Re-visit the availability and training regimen for Saps and Nunchakus as force options	ADDRESSED. Department decided to withdraw nunchakus as force option; conducted analysis of current training re Saps and made relevant adjustments to curriculum in Department's "Perishable Skills Program."	
26. Revision of Taser Policy re assaultive behavior; rolling assessment of deployments in the field	ADDRESSED IN PART. Policy clarification accomplished per adoption of Addendum F revisions. Department has not formalized a review process for overall, systemic evaluation of the Taser program.	
27. Breaking out significant force in the jails as a separate package	Department agreed in part. Believed that new unit (now Division of Inspectional Services) would accomplish the underlying objectives.	This is comparable to the Department's approach to Recommendation 17
28. Certain detentions incidents routed to CIRB for review	COMPLETE per reforms to the CIRB protocol.	
29. Referral of inmate assault cases to D.A. regardless of victim preference	COMPLETE per clarification and re-emphasis of protocols within Department's "Detentions Investigations Unit"	This Unit did a particularly commendable job of responding constructively and effectively to a recommendation relating to its responsibilities.
30. Prioritization of computerized Early Warning System	NO MEASUREABLE PROGRESS. Department has continued to research options but has not chosen or implemented a system.	

31. Increased transparency toward public with regard to shootings and force and investigations	COMPLETE per “2007 Internal Affairs and Use of Force Statistics,” a report available on the Department’s public web site in the “Sheriff’s Library.”	This important step will ideally precede other relevant initiatives for communicating with the public.
32. Establishing of a matrix to govern amount and type of administrative discipline for various policy violations	REJECTED by Department at time of initial Audit report. However, Department has published a bulletin for its supervisors that is meant to promote consistency.	
33. Re-structuring of Manual re Risk Management issues to better reflect current Department practice	IN PROGRESS; NEAR COMPLETION	Department set to implement new policy in January ‘09
34. Revision of approach to the mentally ill in patrol setting (borrowing from current custody practices?)	IN EARLY STAGES: Department is in the process of producing a video that will begin to address issues. Patrol training still not as robust as jail training in this area.	
35. Removal of warning language on citizen complaint forms regarding criminality of false accusations.	REJECTED by Department in ’07 as not legally required.	

## **II. Methodology**

Several months after the June 2007 release of the “Use of Force Audit” by attorneys from OIR Group, Department officials contacted the attorneys to discuss the possibility of a supplemental “follow on review.” The review was intended to evaluate the Department’s progress in achieving the numerous reforms with which it had publicly agreed in responding to OIR’s original 35 recommendations. The attorneys’ findings would then be documented in a report that would include individual assessments as to “whether the Department has met the obligation of implementing the indicated changes” in keeping with its initial response.

This supplemental audit had not been contemplated by the parties at the time of the original project, which had lasted almost a year. However, those involved recognized that such an audit would provide an independent progress report to the public regarding the degree to which the Department’s commitment to reform and implementation of the recommendations had been achieved. And the return of the independent auditors would potentially have a galvanizing effect on reform efforts that had stalled as obstacles arose or momentum faded.

Accordingly, at the request of the Department, OIR devised a supplemental auditing project early in 2008. The Department “agreed to provide documentation deemed necessary for the completion of the independent audit.” Meanwhile, OIR Group committed to conducting a review of those materials (sufficient to confirm that many of

the policy-related changes had been made) and to meet with Department personnel as needed to discuss the relevant processes and adaptations. With regard to changes in the “Critical Incident Review Board” process – a centerpiece of the audit’s reform process, the parties agreed to have OIR attend actual meetings of the revamped Board.

OIR began its “second tour” of the Department in February of 2008. Several of the recommendations had already been completed, while others were works in progress that required finishing touches or more. In one instance, OIR helped resuscitate a policy governing “Foot Pursuits” (Recommendation #2) that Department executives had considered but then – after extensive deliberation and debate – rejected as unworkable.

In general, the audit visits seemed to energize the reform process. While the Department had made some quick and decisive moves at the time of the initial Report, it had lost momentum as to some of the remaining recommendations. The phenomenon was understandable: any large and multi-faceted organization must deal with the tension between pending projects and new challenges. Once OIR was authorized to conduct a follow up review, however, the visits prompted a new focus and resolve as to the remaining issues. The impetus that naturally arises from outside scrutiny can be one of the collateral benefits of oversight. The Department, having voluntarily embraced such scrutiny – to its credit – took advantage of the renewed momentum to push projects over the finish line.

Two aspects of the Department's approach to implementing the OIR recommendations are worthy of special mention. First is the decision to place considerable authority and responsibility in the hands of the newly created Division of Inspectional Services, discussed in greater detail below. Doing this ensured that one unit would be responsible for working with the variety of other entities within the Department to effectuate the reforms. It certainly facilitated the audit process as well, not only by providing OIR with a clear and reliable source of information and updates, but by distributing OIR's questions and concerns to appropriate places in efficient ways.

Another extremely prudent strategy was the decision of the Division of Inspectional Services to bring the deputies' employee association into the dialogue as the reforms were devised. By enlisting the union's input in how best to achieve the reforms, the changes in policies and protocols received "buy in" by the association early on in the process. This helped the Department achieve the desired reforms in a way free from the contentiousness that sometimes occurs between unions and management.

By the end of August, OIR had made several visits to San Diego from its home office in Los Angeles, met with the Sheriff, Undersheriff, and Department executives on a number of occasions, attended two full sessions of the Critical Incident Review Board, met with a representative of the County Counsel's office, met with a Department monitor from the American Civil Liberties Union and corresponded regularly with Department officials as updates continued.

This supplemental audit reflects the status of changes as of November 30, 2008. At that point, seventeen months had passed from the time of the initial Audit's release. It is possible that additional progress on these issues and items will be forthcoming. Indeed, such further progress would be welcome, and the Department is encouraged to continue the impressive strides in reform it has made since 2006.

### **III. Homicide Unit Reforms**

During the initial audit process, no individual group within the Sheriff's Department faced closer scrutiny of its practices and work product than did the personnel of the Homicide Bureau, the detectives and supervisors who handle the investigation of deputy-involved shootings. Homicide detectives must gather all the evidence, interview witnesses and principals, and present the facts of the case to the District Attorney's Office, which then assesses whether the deadly force used by officers was legally justified. Clearly, Homicide's role is a central one, and its ability to affect the course of an investigation is significant – a reality that is not lost on skeptics or critics of the process.

Though the Bureau is well-established and well-regarded, and its work was cited as a “model” for local enforcement by more than one outside observer, the dynamic of detectives investigating “brother officers” in a shooting incident is potentially a fraught one. The effectiveness and integrity of a Department's review process in these deadly force scenarios hinges on the protocols of the Homicide personnel.

Accordingly, when OIR reviewed 22 separate shooting “books” that Homicide detectives had compiled for incidents occurring within the initial audit period, it did so from two perspectives. The first was an interest in the substantive facts of each case, and what could be learned from them cumulatively about the involved officers’ force decisions, tactics, equipment, and training. The second was a review of the Homicide protocols themselves, in an effort to identify potential areas for potential refinement or improvement of the investigation process itself.

In many law enforcement agencies, the Homicide detectives are notoriously skilled, hard-working, accomplished – and prickly about outside interference. The same professional expertise and years of experience that makes them suitable for this crucial position can also make them a particularly tough audience when it comes to questions or suggestions for reform. The Sheriff’s Department’s Homicide Bureau certainly fit some of these stereotypes. The detectives do indeed have considerable expertise and enjoy a hard-earned reputation for effective work, both inside and outside the Department. But the patience, candor, and receptivity with which the Bureau’s representatives encountered the audit process has been, from the beginning, both steadfast and remarkable.

Several of the 35 recommendations from the original Report related to specific aspects of Homicide’s protocols in handling the deputy-involved shooting cases. While taking care to point out – sincerely – that the overall quality of the Homicide investigations was quite high, the Report cited practices that had the potential to reduce

the impression of objectivity and thoroughness that is especially vital in the review of deadly force by deputies.

The Department accepted each of these reform suggestions, and the Homicide Bureau moved quickly to incorporate them. Many of them were simple and straightforward, and touched on relatively minor points. Accordingly, the amount of effort needed to accomplish the changes was not great. But the willingness to do so, rather than dismiss the suggestions or challenge the rationale behind them, was reflective of a progressive and professional approach.

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ISSUE: Deputies who were percipient witnesses to a shooting incident were not always formally interviewed by Homicide detectives in the resulting investigation.

RECOMMENDATION:

- 4. We recommend that the Department adopt a standard practice of interviewing all deputy witnesses to the shooting and/ or events leading up to the shooting.**

RESULT: Homicide revised its Bureau Manual to include an express requirement that deputy witnesses be interviewed.

STATUS: Complete

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ISSUE: Detectives assigned to a shooting investigation would sometimes interview involved deputy personnel without first getting a “walk through” of the physical scene to enhance their own frame of reference.

RECOMMENDATION:

- 5. We recommend that the Department consider adopting a practice of conducting a brief “walk through” of the scene for all investigators prior to conducting any interview of involved personnel.**

RESULT: Homicide revised its Manual to ensure that the practice to which it generally adhered was formalized for each investigation.

STATUS: Complete.

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ISSUE: Deputies who had been involved in shootings were generally willing to lead investigators on a “walk-through” of the scene, but those events sometimes lacked effective documentation.

RECOMMENDATION:

- 6. We recommend that the Department adopt a practice of documenting the comments made by the deputy shooters during the walk through. We also recommend that the Department consider adopting a practice of consistently documenting how deputies were transported and separated when performing these “walk throughs.”**

RESULT: Homicide agreed to the changes and added explicit language to its Detail Manual. It now digitally records the walk-through and documents the details of how deputies were transported to the scene.<sup>3</sup>

STATUS: Complete.

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ISSUE: Investigative protocols sometimes caused lengthy delays before the Medical Examiner was given access to the body of a deceased suspect at a crime scene, sometimes resulting in degradation of the body and adding to tensions felt by family members or friends of the suspect.

RECOMMENDATION:

- 7. We recommend that the Department consider ways in which the Medical**

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<sup>3</sup> Homicide investigators followed this protocol in the investigation of a shooting involving US Border Patrol Agents that occurred in October of 2007.

**Examiner can be afforded access in a more timely fashion without compromising the integrity of the scene.**

RESULT: The Department revised its Detail Manual in order to make explicit the importance of providing access to the Medical Examiner as soon as possible without undermining the integrity of the crime scene.

STATUS: Complete.

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ISSUE: Homicide case books featured instances in which language barriers hindered the Department's ability to interview potential witnesses, thus impeding the fact-gathering process.

RECOMMENDATION:

- 8. We recommend that the Department not be deterred by language-related obstacles to information gathering, and that it continue its recent emphasis on bolstering the relevant foreign-language skills of its officers.**

RESULT: The Department first addressed this recommendation by gauging its number of bilingual speaking personnel and found that between four and five hundred personnel were Spanish bilingual. It was also noted that a database was available for dispatchers to

readily locate those Department personnel who were bilingual and that the dispatchers were trained to locate a Spanish-speaking employee when a request was made of them to do so.

The Department then strove to add a bilingual detective to its Homicide team. While to date this effort has not yielded a detective so equipped, the Department will continue to recognize the advantages of adding a bilingual detective to the unit when future openings occur. In the interim, per the specific recommendation of OIR, the Homicide Manual was specifically revised to ensure that an accurate statement be obtained of non-English speaking witnesses: “[D]etectives shall re-interview witnesses when necessary and re-interview those witnesses who do not speak English with an interpreter present so a complete and detailed statement can be obtained.”

STATUS: Addressed.

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ISSUE: It was not always clear from the investigation books whether witnesses to a deputy-involved shooting, many of whom were transported to a patrol station for interviewing and who waited for extended time periods, were made aware of the voluntary nature of their cooperation.

RECOMMENDATION:

- 9. We recommend that the Department formalize its protocols for promoting the cooperation of witnesses and acknowledging their rights under the prevailing circumstances. One option is to promulgate a form and waiver system that clarifies the status of witnesses and their options about traveling to the station to be interviewed.**

RESULT: Though the Department had an existing waiver system, it modified the form in order to directly address the concerns from the audit. Moreover, the Department expanded the availability of the form to all investigatory units.

STATUS: Complete.

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ISSUE: The investigation books featured instances in which the Department's regard for Fourth Amendment issues of search and seizure were not always readily apparent in the context of evidence-gathering after a deputy-involved shooting.

RECOMMENDATION:

- 10. When, for instance, investigators need to enter a suspect's residence or look in a parked car for evidence, we recommend that they consider developing a protocol whereby they will obtain warrants or consent and document those**

**efforts in the investigation file.**

RESULT: Though the Department took the position that it was cognizant of those issues, it also agreed to emphasize the point by adding clarifying language to the Homicide Detail Manual.

STATUS: Complete.

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ISSUE: The investigation books sometimes did not include the most updated criminal charging information on suspects who were hit by deputy fire, but survived. (The outcome of such charges, which often relate to the deputies' stated reasons for using deadly force, can provide an independent means of assessing the incident as a whole.)

RECOMMENDATION:

- 11. We recommend that the Department adopt a protocol to ensure that relevant information about criminal charges and prosecutorial or judicial decisions regarding persons shot by deputies be included or updated in investigation files in shooting cases.**

RESULT: The Department agreed, and updated its Detail Manual to call for inclusion of the latest criminal charge information. A new "Case Summary" feature, included in the

investigation file, includes this information in a direct and readily accessible manner.<sup>4</sup>

STATUS: Complete.

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ISSUE: Though Homicide investigators did collect audio of radio communications related to an officer-involved shooting incident, and did make such information available for review by the District Attorney's Office, the audio was not routinely transcribed for ready review in the book itself.

RECOMMENDATION:

**12. We recommend that, when radio traffic has a significant bearing on the incident and how it unfolded, a transcript of that traffic be included in the investigative books.**

RESULT: Homicide changed its Detail Manual to call for automatic compilation and inclusion of radio traffic for incidents in which such communications have a significant bearing on the reviewers' understanding of what transpired.

STATUS: Complete.

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<sup>4</sup> The file from the October 2007 investigation into a shooting by a Border Patrol Agent included this Case Summary page near the front of the finished book.

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Homicide's cooperation and progressiveness also played an instrumental role in the Department's enhancement of review protocols for deputy-involved shootings. One of the original Audit Report's central points of emphasis was the need for stronger and more holistic review of these deadly-force events:

*From a systems analysis, shootings present an opportunity to assess current Departmental policy, training, practices, and equipment as they apply to the gravest of real-life circumstances. The products of this scrutiny can be beneficial on a going-forward basis, not only to the involved officers but the Department's membership as a whole. Less directly, but no less importantly, the public stands to benefit from the insights, adjustments, and reforms that a thorough review would help produce. (p.74)*

The Report found limitations in the Homicide investigative approach that were consistent with the unit's understanding of its mission: assisting the District Attorney in determining whether the officers' force was legally justified. This question of legality is critical, of course, but it is also narrower than the proper scope of Departmental concern. The interviews by Homicide investigators with involved deputies captured this dynamic starkly, as issues of training and tactical decision-making were rarely addressed or developed. Accordingly, as the Report asserted in 2007, a "significant gap" existed in the Department's review process.

The corresponding Recommendation read as follows:

- 14 a. By assigning a separate team of investigators outside of Homicide Bureau to roll to the scene of officer-involved shootings -- including both hit and non-hit incidents – and take responsibility for a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.**

This was the Department's response in June of 2007:

- 14 a. The Department disagrees in part with the above recommendation. While the Department agrees that a separate unit should take responsibility for a full and comprehensive investigation of the incident, *the Department disagrees with the assertion that the actual investigation of the incident could not be done by the Homicide Unit.* [Emphasis added.]

The Department has created a Professional Standards Unit<sup>5</sup> that will respond to officer-involved shootings and have the responsibility for ensuring that a full and comprehensive investigation is conducted.

The Department clearly understood the reasoning behind the recommendation and the need to bolster existing approaches. Its confidence in the ability of the Homicide team was also well-founded; certainly, the investigators understood the relevant issues and would be more than capable of framing relevant questions. The issues were whether

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<sup>5</sup> This aspect of the Department's response to Recommendation 14a is covered below.

it was advisable to expand the Homicide focus (a potential complication of established dynamics with the deputies and their union representative), and whether Homicide would be amenable to blending new categories of inquiry into their firmly established approach.

Department executives formed a committee in July of 2007 that was intended to create a workable set of guidelines. It solicited the input of Homicide personnel and management from the beginning. Reportedly, the process was remarkably free of contention. As one Homicide supervisor later explained, the expanded list of potential questions was not, in the unit's view, a radical departure at all. Instead, the expanded focus on issues leading up to the shooting, including deputy communication, tactical assessments, movement, and positioning, were being perceived as a more complete means of addressing the "state of mind" questions that have always been paramount in the interview of shooter deputies.

Time will tell. The laboratory of actual shooting investigations will provide the best evidence as to whether the Department's reliance on the Homicide interview – even the "new and improved" version – will be reconcilable with its stated determination to enhance shooting reviews. For now, though, Homicide's flexibility and its willingness to see its role in new ways stand as promising indicators.

Meanwhile, the Department made two other adaptations to policy that related to the deadly force and the circumstances governing its use:

ISSUE: The Department's Manual of Policy and Procedures contained an internal inconsistency regarding the use of deadly force against fleeing felons.

RECOMMENDATION:

- 1. We recommend, with regard to the Department's use of deadly force policy involving fleeing felons, that it reconcile potentially inconsistent language in the Policy and Procedures sections of the Manual in order to provide clarity to its deputies, and, in doing so, adopt the more restrictive calculus set out in the Procedures section.**

RESULT: The Department revised its Manual by changing language in Department Procedure 8.1. to expressly direct that deputy personnel may use deadly force "[t]o apprehend a fleeing felony suspect, if the felony involves death or serious injury or the threat thereof, *or* the deputy has reasonable cause to believe there is substantial risk that the suspect, if allowed to escape, would pose a significant threat of death or serious physical injury." (Emphasis added.) The Department has thereby adopted the less restrictive version of the rule than that which was recommended, but has achieved the main objective of consistency among its policy publications.

STATUS: Complete

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ISSUE: The Department's policy on shooting at moving vehicles sounded clear and forceful but provided no specific guidance to deputies faced with the threat of a vehicle moving toward them.

RECOMMENDATION:

2. **We recommend that the Department revise its “shooting at vehicles” policy to provide more guidance to deputies regarding the decision to shoot. We further recommend that the Department revise the policy to address related tactical decisions – such as the advisability and effectiveness of moving into the real or potential path of a moving vehicle.**

RESULT: The Department redrafted Procedure 6.43 and Department Procedure 8.1 -- making shooting to disable expressly prohibited, and to make shooting in defense of self or others regulated by tactical considerations.

STATUS: Complete

#### **IV. A Revamped Critical Incident Review Board**

As the original audit process moved toward completion in the first half of 2007, the Department committed to strengthening its internal review process and began exploring options even prior to the Report's release. Wisely, it sought to refine and build

upon a process that already existed: the Critical Incident Review Board (“CIRB”).

The original report described the CIRB of 2003-2005 as a body “comprised of Department executives of different ranks who gathered at Sheriff’s Headquarters to hear a presentation about an incident, identify issues, and discuss possible approaches to remediation.” Some useful initiatives, often in the form of training bulletins or briefing items, did emerge from this process. However, the Report expressed concern about limitations in the existing approach:

- Content: As discussed above, the reliance on the relatively narrow Homicide investigation left important questions unanswered in the realm of tactics and policy and individual officer accountability.
- Structure: The previous approach tended toward inclusion of many different voices and ranks, which sometimes impaired efficiency and decision-making.
- Outcomes: The existing process stopped short of making definitive assessments and taking definitive action regarding deputy performance, even in cases where significant issues were apparent.
- Timeliness: Often, reviews did not occur for more than a year after the date of incident, which compromised effectiveness in various ways.

The effort to address those potential weaknesses, and to maximize the utility of the Board’s existence across a range of incidents beyond hit shootings, shaped two of the

most significant recommendations in the original report:

**Report Recommendation # 14:**

- **In light of the above, we recommend that the Department revamp its Critical Incident Review Process in the following ways:**

**14 a. By assigning a separate team of investigators outside of Homicide Bureau to roll to the scene of officer-involved shootings – including both hit and non-hit incidents – and take responsibility for a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance;**

**14 b. By changing the structure of the Critical Incident Review Board to foster clear lines of authority, focused decision-making, continuity, and follow-through. We recommend appointing a small panel of Commanders to review the investigative reports, hear a presentation by the administrative shooting review investigators, and make decisions on each case, as advised by legal counsel, Training, and the unit commander of the station of origin for the incident;**

**14 c. By encouraging a heightened willingness to promote officer safety and sound policing practice by holding deputies accountable when policy violations or performance issues influence shooting incidents;**

**14 d. By expanding the options of CIRB to include ordering individualized training and briefing of involved personnel;**

**14 e. By requiring timely investigations and review presentations.**

**Report Recommendation # 15:**

- **We recommend that the jurisdiction of the re-designed CIRB be expanded to include a protocol for the automatic review of additional categories of incident, as itemized and explained below:**
  - **Deaths incident to arrest by Department deputies**
  - **Non-hit shootings**
  - **A selection of serious force incidents; particularly those resulting in serious injury to the suspect**
  - **Bites by the Department's K-9 Unit**

The Department's agreed with the philosophy behind both recommendations, and with most of the component parts as well. It set out to re-construct its process, and established an important platform for doing so with the creation of the new "Division of Inspectional Services." Led by a civilian "Executive Manager" and staffed by an experienced team of supervisors, the new unit has audit responsibilities across the Department, coordinates the Department's claims review, handles policy reforms and Manual updates, and serves as a clearing house for the review of all force incidents. It also is responsible for facilitating the new CIRB processes.

The creation of this new Division has significant implications for the Department. Some are symbolic: it sends a message when the Sheriff prioritizes these functions and dedicates the personnel and resources necessary to accomplish them thoroughly. In a memo to all personnel dated January 10, 2008, Sheriff Kolender wrote, “Internal law enforcement inspections and audits enhance our performance and hold us all accountable to high standards that should be consistent with policies and procedures that have been established. They are invaluable and help us become a more efficient and effective organization.”

Others of the implications are practical. From a structural perspective, the existence of a stand-alone unit centralizes responsibility and authority, and from there comes the potential for heightened efficiency and productivity. Certainly, the charter members of the Division itself have recognized the opportunities presented by the new approach, and have worked to seize them.

With the Department’s new mindset and the new Division’s ability to transform the mindset into accomplishment, the positive influences on the CIRB process have been striking. The CIRB’s new protocols include the establishment of a four-member Board (and a chairperson) that makes formal determinations for each case that is considered, and actually votes on key questions such as whether an administrative investigation is warranted. These determinations are recorded, and become the basis for “Action Items” that the Division of Inspectional Services personnel record and then shepherd to completion.

The newly constituted CIRB meets regularly. The auditors attended two separate sessions under the revised model, and were impressed with the results. The Board, which had received case materials in advance of the meeting and was clearly well-prepared, followed its new protocols faithfully. The discussions progressed in an orderly and focused manner. Importantly, the Board also showed a willingness to address tactical questions and raised constructive criticisms about officer performance that would have been unlikely to receive a public airing in the past.

One CIRB session attended by the auditors featured a candid and wide-ranging discussion of a fatal deputy-involved shooting. While the shooting was plainly justified as a matter of legal self-defense, the Board did not end the inquiry there. Instead, the panel addressed and critiqued the tactical issues of coordination, communication, and planning among the personnel on scene. The Board did not focus solely on the instant that the deputy pulled his trigger but “rewound the tape” in order to assess earlier decision-making and to discuss whether officer safety had been adequately considered as the deputy engaged the suspect. The Board’s evaluation covered both systemic issues and individual performance. It led to several concrete directives for debriefing with the involved officers and training reminders for the Department as a whole.

Similarly thorough was the Board’s approach (on another meeting day) to an inmate suicide that had occurred in one of the jail facilities. Again, instead of simply concentrating on the suicide itself, the Board’s review considered the handling of the

inmate from the time he was originally booked. It asked whether warning signs had perhaps existed, whether timely safety checks had occurred, and whether there were risk reduction lessons to be derived regarding inmate clothing and the various components of the cells. The discussion was thorough and earnest, and was certainly consistent with the more robust administrative review that had been a centerpiece of recommendations from the first Report.

The “Pre-CIRB” process, in which the Board convenes within two weeks of an incident’s occurrence to get an initial briefing and identify potential issues for further review, is an effective means of prioritizing and of promoting a timely response. This makes the review process more focused and more meaningful. Nor does it compromise the ability to consider all the facts: once the investigative process runs its complete course (which can legitimately take several months), the secondary CIRB review covers new material and “loose ends” as well as the issues that emerged right away.

In another encouraging sign, the jurisdiction of the revamped CIRB has been significantly enlarged and is now suitably broad.<sup>6</sup> It covers the following categories of incident:

- Use of Deadly Force
- In Custody Death
- Pursuits ending with injury resulting in hospitalization and major property

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<sup>6</sup> In this way, the Department has addressed Recommendation # 28, which focused specifically on custody cases involving serious force. The new protocols encompass custody cases as well as those arising from patrol encounters.

damage

- Death or serious injury resulting from an action of a member of the Department
- Law enforcement-related injuries requiring hospital admittance
- Discharge of a Firearm by Sworn Personnel
- *Any other incident as determined by command staff.* [Emphasis added.]

The list reflects a focus on risk management that is thoughtful and proactive.<sup>7</sup> It also captures non-hit shootings, which are rare but which previously slipped from attention with no guarantee of careful scrutiny. Finally, the “catch all” last criterion suggests a Department that views CIRB’s authority broadly and as an asset to the mission, rather than narrowly and as a necessary evil.

Room for continued improvement does seemingly exist. For example, a recent “Pre-CIRB” review of a shooting case arguably truncated the Board’s scrutiny of deputy performance prematurely. OIR did not attend this meeting, but its review of related documentation identified significant issues regarding the tactics and communication among involved deputies. Furthermore, different possibilities regarding the shooter deputy’s intent seemed to warrant further inquiry, particularly since conflicting versions had emerged in the incident’s immediate aftermath.

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<sup>7</sup> One proposed incident category from Recommendation # 15 that did not make the list was K9 bites, which OIR continues to believe should be a priority in the Department’s force review process. However, the Department correctly points out that the more serious bites could come to CIRB’s attention through one or more of the other avenues. Other reforms to the K9 program are discussed below.

The Board, however, made some recommendations about tactical de-briefing but voted unanimously not to pursue a better understanding of the deputy's actions via an administrative investigation. In fact, they agreed not even to conduct a final CIRB on the event itself. While OIR hesitates to second guess, especially having not seen the presentation directly, the case illustrates the importance and the influence of individual Board members in *executing* the mechanisms that the Department has effectively devised.

While the outcomes of that particular case might have raised a question or two, the enhancements to the CIRB process stand as a major benefit of the Department's commitment to reform in 2007. When a new deputy-involved shooting case does finally occur, it is likely to receive a much more thorough and productive consideration than it would have under the earlier paradigm. This is a positive development in the arenas of officer-safety, officer accountability, risk management, training, and policy. Accordingly, much credit is due to the Department and its leadership.

## **V. Other Force-Related Recommendations**

Though the Department qualified or limited its agreement with some of the original 35 recommendations, there were only two it rejected outright. One concerned the issue of whether the Department's "citizen complaint" process should include an advisory about the potential consequences of a false complaint.<sup>8</sup> (The Department found the warning legally valid, and opted not to remove it.)

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<sup>8</sup> This was Recommendation 35 in the original Report.

The other, more central issue pertained to the creation of a separate “force package” for the review of each incident in which an officer used reportable force.<sup>9</sup> The Report considered it a desirable means of assuring the careful, focused assessment and tracking of each incident, and argued that it would make reviews more thorough and comprehensive. The Department took the position that existing processes already captured the relevant information, and that a separate new process would be redundant.

This was not unreasonable, but it did belie the gap between the *potential* thoroughness of current protocols and the uneven *actual* performance that the auditors observed in their review of hundreds of documented force incidents. Fortunately, though, the Department took affirmative steps to bridge that gap. It also acquiesced readily to related recommendations that were intended to strengthen the monitoring of force by Department supervisors. Ideally, it has accomplished some of the goals that drove the original suggestions.

Including the review of all force incidents within the jurisdiction of the new “Division of Inspectional Services” is a useful step in this direction. By requiring that all completed force reports go to D.I.S., the Department is providing quality control, promoting consistency, and facilitating management’s ability to assess trends and direct training appropriately.<sup>10</sup>

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<sup>9</sup> This was Recommendation 18 in the original Report.

<sup>10</sup> In this way, the Department also addressed (in part) Recommendation # 27 in the original report, which urged the same sort of attention to force review in the custody setting that the Report advocated for patrol.

The personnel of D.I.S. are also authorized to “roll out” to the scenes of a variety of critical incidents. Sergeants take turns being on-call around the clock and receive prompt notification in the aftermath of an event that falls within one of twelve categories. In one month in the spring of 2008, for instance, D.I.S. received calls regarding fifteen separate incidents, and responded in person to six of them. These included traffic collisions involving Department personnel, an inmate attempted suicide, and a vehicle pursuit that ended in injury to the suspect.

This sort of immediate and direct response has a number of important implications. It affords D.I.S. the chance to identify potential issues from a first-hand perspective, and at a stage when the ability to shape the subsequent investigation and review is greatest.

OIR advocated a model in which, beyond the roll-out, a designated group of D.I.S. investigators would actually take the lead in official evidence-gathering and presentation of these serious force cases to the C.I.R.B. – a counterpart to the investigative recommendations for shooting cases discussed above. It recommended as much in the original Report:

- 17. We recommend that the Department develop a separate team of investigators that can respond to a selection of critical force cases (based on extent of**

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The use of D.I.S. as a central “clearing house” for force incidents applies to the custody facilities and courts as well as the individual patrol stations.

**injury and other pre-determined standard) and assume responsibility for compiling the facts and information needed for a full and comprehensive investigation of the event, with an emphases on issues of policy, tactics, training, and deputy performances.**

The Department's chosen path continues to place the primary investigative responsibility on the unit of origin for the incident. While this is obviously a different approach, the overlay provided by D.I.S. is directly responsive to the goal of a more holistic review.

Other enhancements to the Department's review protocols include the following:

ISSUE: Deputies who witnessed force used by a fellow Department member were under no obligation per policy to document their observations, thereby leaving a potentially relevant deficiency in the Department's record of the event.

RECOMMENDATION:

**19. We recommend that the Department require per policy that deputies who witness force deployed by fellow deputies report and document those observations in a timely manner.**

RESULT: As part of the extensive revisions to its "Use of Force Guidelines," the Department implemented this change directly by adding a reporting requirement for "all

deputies (or other employees)” who witness force.

STATUS: Complete.

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ISSUE: In some instances, the Department failed to formally document the observations of civilian witnesses to force used by deputies – even when those observations would clearly have corroborated the deputies’ own account of the incident.

RECOMMENDATION:

**20. We recommend that the Department encourage responding supervisors and/or handling deputies to interview civilian witnesses to force incidents, especially those that appear likely to engender controversy.**

RESULT: In its initial response, the Department noted that it already had a policy covering this recommendation, and its use of force policy did indeed require a supervisor to respond to the scene in investigate uses of force that resulted in injury. However, the policy did not specify the additional recommended responsibility to locate and interview civilian witnesses to force incidents. To the Department’s credit, it has revised and improved its policy to elucidate the requirement that civilian witnesses to the force incident be located and interviewed: “Supervisors and/or investigating deputies will make

every attempt to indentify and interview all civilian witnesses to use of force incidents.”  
In this way, the Department fulfilled the spirit of the recommendation.

STATUS: Complete.

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ISSUE: In some instances, the Department’s reports in force cases were not accompanied by photographic evidence or medical documentation, even though injury or the suspect’s complaint of injury was a factor in the incident.

RECOMMENDATION:

- 21. We recommend that the Department to standardize and improve its attention to collecting evidence in force incidents as follows:**
- **By photographing suspect injuries**
  - **By obtaining records of medical treatment of arrestee**
  - **By documenting where applicable the suspect’s refusal of medical treatment**

RESULT: The Department, while contending that its current practices addressed those issues, modified its “Use of Force Guidelines” to eliminate ambiguities and help ensure that standard procedures would be followed with regard to these elements of force reporting.

STATUS: Complete.

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ISSUE: The documentation of suspect statements about force – including instances in which suspects accepted responsibility or even apologized for engaging the deputies – was often superficial and lacking in corroboration beyond the involved deputies’ written account.

RECOMMENDATION:

- 16. We recommend that a supervisor take responsibility for interviewing the suspect on tape about force in cases where injury either resulted or is complained of.**

RESULT:

The Department accepted this recommendation – with qualifications. It modified its force policy to include the following “*In significant injury cases*, the supervisor will be responsible for interviewing the subject about the force used during the incident. *Whenever possible* the interview will be recorded.” [Emphasis added.] Though the

limiting language has the potential to create ambiguity for supervisors, the modification as a whole should have the effect of increasing documentation and enhancing review.

STATUS: Complete.

## **VI. Training Issues**

Several of the recommendations within the original audit report related to enhancements in training, either to bolster the effectiveness of existing Department force or tactical options, or to fill the occasional gaps that the auditors perceived during their scrutiny of the Department in 2006 and 2007. The Department has been responsive in this regard. It prides itself – with good reason – on the quality of its Training Academy and the commitment it makes to maintaining and refining the skills of its personnel. Its good work contributed to the following related accomplishments:

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ISSUE: Our initial review of force reports discovered a number of instances in which both suspects and deputies were injured when suspects became combative while seated in the back of patrol cars. This common situation apparently had not received the Department's focused attention.

RECOMMENDATION:

**24. We recommend that the Training Division develop and promote a teaching scenario which guides deputies on the best range of options for dealing with unruly suspects in the back of patrol cars.**

RESULT: The Department agreed with the recommendation. The Training group developed a specific “Learning Activity” that it incorporates into its classes for new recruits as well as veteran officers completing mandatory refresher training. The Learning Activity addresses the scenario directly and calls for both facilitated discussion and hands-on training.

STATUS: Complete.

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ISSUE: The initial audit revealed that the Department continued to authorize both nunchakus and saps as force options. These weapons are considered somewhat exotic by today’s standards, and their use warrants regular practice by deputies who choose to carry them. However, there was no systematized recurrent training for deputies on these devices.

RECOMMENDATION:

- 25. We recommend that the Department implement a requirement for deputies who wish to continue to carry saps and nunchakus that they receive recurrent training and remain proficient in their use. The Department should also maintain documentation of this recurrent training. If those requirements prove to be impracticable, the Department should consider eliminating saps and nunchakus as authorized force options.**

RESULT: The Department agreed with the recommendation. It removed the nunchaku as an authorized force option (a decision that affected only a small number of deputies and simplified the Department's management of its various force options). With regard to the sap, the Department agreed to include specific training on the sap as part of its state-mandated perishable skills program for active officers. Though training on "impact weapons" in general had always been offered, and certainly related to the sap in particular, the new module covers the saps individually and directly.

STATUS: Complete.

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ISSUE: During the initial audit, the Department's excellent work in developing training for jail personnel in dealing with the mentally ill had made a positive impression. As featured in the original Report, this training had had a dramatic impact in reducing force incidents in the custody setting. Though originating in the jails and tailored to that environment in some respects, the training also featured principles that pertained to patrol as well.

RECOMMENDATION:

**34. We recommend that the Department adapt its training curriculum in dealing with the mentally ill in jail to the patrol setting and provide that training to its patrol deputies.**

RESULT : The Department agreed with this recommendation. Importing the concepts to patrol remains a work in progress, but the Department has made strides in developing relevant training materials. These include training on the phenomenon of excited delirium, and an added element on mental illness issues in relation to use of the Taser. These steps are beneficial, but the Department's excellent custody program remains a benchmark that patrol training should remain focused on reaching.

STATUS: In early stages.

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ISSUE: The hundreds of force reports that were reviewed in the initial audit included several uses of the “carotid artery restraint,” an option that requires some expertise and bears obvious risks relating to choking and injury to the suspect’s windpipe. Though the Department’s training program was quite good, the policy itself seemed liberal about allowing the technique in a range of circumstances, and the frequency of mandatory refresher training was uncertain.

RECOMMENDATION:

- 23. We recommend that the Department modify its carotid restraint policy to require that suspects exhibit assaultive behavior or “aggravated active resistance or aggression” [SDSD Use of Force Options Chart] before deputies are justified in using the technique. We further recommend that the carotid restraint be viewed as an important perishable skill that merits frequent refresher training at mandatory periodic training.**

RESULT: The Department demurred from making a definitive response at the time of the initial Report’s publication, saying that the issue required further study. After further review of its existing policy, the Department took the position that its existing standard was consistent with its support of the technique as “an effective means of controlling a suspect without escalating to the use of a weapon.” It did, however, agree to enhance its training in terms of both frequency and thoroughness. In the summer of 2008, OIR

reviewed a new training video that deals exclusively with the carotid restraint. The video is designed to play at briefings on a twice-yearly basis, thereby providing an effective supplement to the “hands-on” training at the Department’s Academy.

STATUS: Complete.

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ISSUE: OIR was struck during the first audit by the breadth and diversity of the Department’s use of police dogs. While the dogs are indeed a valuable tool, the structure and supervision of the K9 unit did not seem commensurate with the extent and inherent risks of the Department’s deployment.

RECOMMENDATION:

- 22. We recommend that the Department explore the restructuring of the K-9 unit. While centralization may not prove to be preferable, the Department could nonetheless take constructive lesser steps to mitigate existing weak points:**
- **By committing of necessary time and resources for more meaningful regular training.**
  - **By assigning a high-ranking supervisor to head the unit, so as to strengthen its internal workings and reduce friction with various patrol supervisors**

- **By better integrating the K-9s with regular patrol functions, through training bulletins, video presentations, recurrent briefings, and other relevant techniques.**

RESULT: The Department concurred in part with the recommendation. Though it chose to maintain its de-centralized approach in light of the benefits it offers (primarily related to the versatility and ready availability of the dogs at patrol facilities across the county), it did make noteworthy adjustments. One of these was assigning a full-time sergeant to the unit. The Department also seems appropriately conscious of the need to increase awareness throughout patrol about the workings of the K9 unit. OIR has seen an instructive “Power Point” presentation that was prepared by the unit. It provides a useful overview; however, the Department’s leadership should continue to encourage and promote further outreach and training opportunities.

STATUS: In progress.

## **VI. Other Recommendations: Accomplishments, Adjustments, and Occasional Obstacles**

The remaining recommendations cover a variety of topics – a reflection of the latitude that the Department afforded the auditors in their original survey of various

policies and practices. One example of a healthy “give and take” that occurred during this year’s supplemental audit related to the development of a policy regulating foot pursuits – an important but notoriously dangerous element of policing:

ISSUE: During our initial review, we discovered a very detailed training bulletin that informed deputies regarding the potential pitfalls and officer safety issues surrounding foot pursuits. However, we also learned that the Department had not developed any policy of minimal expectations with regard to foot pursuits. Accordingly, we made the following recommendation:

**3. We recommend that the Department create a foot pursuit policy that states that deputies will be expected to:**

- **Broadcast the pursuit and their position as soon as possible**
- **Reassess the pursuit if the suspect enters a structure**
- **Desist pursuing if the deputy loses sight of the suspect**
- **Not split from their partners**

Originally, the Department agreed with the recommendation. As a very detailed policy was being drafted, however, new concern was raised about the limitations on

deputy discretion that the new policy would cause. As a result, departmental executives decided to reverse course and not create a foot pursuit policy after all.

That was the state of this recommendation when OIR revisited the Department in 2008. Given that a comprehensive policy had met with significant resistance and legitimate challenges, OIR pushed for a more modest version: a “floor” of expectations that would begin to regulate behavior in generally accepted ways. As a result, the project was revived and a foot policy was implemented that required radio transmission and discontinuance of the pursuit when the suspect fled into a building or structure. The policy also references the training bulletin that provides more detail regarding officer safety issues. OIR was pleased by the opportunity to assist the Department in honoring its public commitment to creating this policy, and credits the executives who were willing to re-visit the issue in a spirit of constructive compromise.

STATUS: Addressed in part.

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The Taser – a less than lethal force option that works by temporarily incapacitating the suspect through the use of an electric current – has been a cornerstone of the Department’s efforts to give deputies an effective means of bringing physical confrontations to conclusions that are safer and more decisive. The initiation of the program overlapped with the original audit; accordingly, the data was relatively sparse.

OIR did have the following recommendation, though:

ISSUE: Over the past two years, the Department has trained and equipped most of its deputies with the Taser. Its Taser use policy, however, was vague as to the threshold of use.

RECOMMENDATION:

**26. We recommend a revision of the Taser policy to clarify the threshold for use as being assaultive behavior on the part of the suspect, and we encourage the Department to review and adapt its relevant Training and practices as more information about actual Taser deployment in the field becomes available.**

RESULT: The Department clarified its Taser use policy by adopting revisions to Addendum F of the Policy Manual. This gives clear guidance to deputy personnel that the Taser "...shall only be used as a means of subduing and gaining control of a subject displaying assaultive behavior." The Department requires that, following a use of the Taser, a supplemental use of force report must be created and sent to the Division of Inspectional Services, but it has not yet formalized a review process for overall, systemic evaluation of the Taser program.

The progress that has occurred is clearly useful. In our view, though, the centrality of the Department's emphasis on Tasers as a "less than lethal force option" militates in favor of further systemic evaluation. The general perceptions about the

program are favorable, and the correlation between the proliferation of Tasers and the reduction in shootings is strong in the minds of many observers. Still, the evidence about the utility and positive influence of the Tasers is largely anecdotal at this point, and merits ongoing evaluation.

STATUS: Addressed in part.

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One of the more direct and efficient “fixes” from the first audit was handled by the Custody Division, which addressed a small wrinkle in its procedures with an unequivocal message to its personnel:

ISSUE: The audit revealed occasional instances in which the decision about pursuing criminal charges after an inmate assault was left to the victim – be it another inmate or a Department employee.

RECOMMENDATION:

- 29. We recommend that inmate assaults that are criminal in nature and result in injury should be referred to the District Attorney when sufficient evidence exists, regardless of the stated preference of a deputy victim or inmate victim.**

RESULT: The Department agreed with and implemented our recommendation. It updated the Detentions Investigation Unit Training Manual to include the following language: “All inmate assaults that are criminal in nature and result in injury will be referred to the District Attorney’s office when sufficient evidence exists, regardless of the stated preference of a deputy victim or inmate victim.” The Department was also diligent about advertising this change to affected personnel.

STATUS: Complete.

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The Department also followed through with regard to a recommendation designed to foster improved communication with the public. This willingness to begin sharing information is a hallmark of progressive policing, and a very positive indication of a mindset that is taking hold to an increasing extent at all levels of the Department:

ISSUE: Though newly and sincerely committed to improved transparency and better communication with the public, the Department had not explored some attainable means of sharing important information on a regular and easily accessible basis.

RECOMMENDATION:

**31. We recommend that the Department explore means of regularly sharing information with the public about numbers of shooting and force incidents, types of uses of force, numbers and types of internal affairs investigations and the number of times in which investigations were sustained.**

RESULT: The Department agreed with our recommendation and committed to developing a detailed report to be placed on its website. It subsequently developed a “Use of Force/Internal Affairs Statistical Report” that has, in fact, been placed on the Department’s website. The Report calculates the number of force incidents over an annual basis and then breaks them down by type of force used. The Report also contains Internal Affairs statistics as to the number and type of investigations and the outcomes from those investigations. In addition to the data, the Report provides definitional terms for the force options as well as the internal affairs outcomes. The Report is a good start toward increased transparency in these critical areas.

STATUS: Complete.

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One of the original recommendations hit a roadblock that was beyond the Department’s control. It related to the “collateral damage” to the property of bystanders

that sometimes occurs during a deputy-involved shooting incident. Though mechanisms exist for such people to file claims with the County and receive compensation, that process can be cumbersome. It also shifts the burden of organization and follow-through to those who have been harmed somehow. Accordingly, we issued the following recommendation:

- 13. We recommend that the Department explore ways to provide Risk Management personnel with a limited authority to respond to shooting scenes and immediately provide appropriate compensation to innocent third parties who have suffered damage as a result of Department actions.**

RESULT: The Department agreed with the above recommendation but recognized that implementation of the above recommendation might require an ordinance by the Board of Supervisors to provide the Department with limited claims authority.

Since the Department's agreement with this recommendation, discussions were had between Departmental representatives and officials from the Office of County Counsel regarding the viability of this recommended reform. During these discussions, the Department was informed that any authority to settle claims on scene after shooting events would require the Board of Supervisors to enact an ordinance providing that authority. The Department was further informed that County Counsel, the County entity responsible for handling the bulk of claims made against the Department would not be

supportive of such an ordinance.

Proponents of the current system offer several reasons for not ceding settlement discretion to the Department. First, it has been averred that unlike some jurisdictions, the unit at County Counsel responsible for receiving and processing claims actually carefully considers claims as they are received, rather than automatically rejecting them. Second, there have been expressions of concern that providing settlement authority to the Department would result in monies being extended to persons who did not have a legally viable claim. Finally, the relatively low litigation and claims payouts in San Diego County have also been noted as evidence of a system not in need of a fix.

These are reasonable points, but the willingness of the Department to have more discretion suggests that additional consideration is warranted, particularly in light of the potential advantages of an “on the spot” settlement system.<sup>11</sup>

First, the ability of affected but non-involved persons to be compensated for property damage in the immediate aftermath of these infrequent shootings provides a remedy that goes beyond the monetary value of repair or replacement. This sort of intervention also sends a symbolic message that the County cares about the public it serves and wants to deal with it fairly and considerately. It is true that potential legal defenses exist in some of these cases, but relying on such defenses can be short-sighted in

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<sup>11</sup> It is also worth noting that officials from the Los Angeles Office of County Counsel had initial apprehension about adopting such a program, but are now extremely supportive of how it has worked in the several years since initial implementation. While all jurisdictions are different, of course, the endorsement of L.A.’s County Counsel speaks well of the program’s effectiveness.

a neighborhood that has been traumatized by gunfire in its community. A well-trained Sheriff's representative may be aptly positioned to assess these competing concerns on scene and make responsive and timely decisions regarding compensation based on a sense of fairness and equity.

We have become aware of at least one area where by County ordinance, Departmental authorities at the jails have been provided settlement authority to address claims for lost or damaged property valued at \$2500 or less. We suggest that those entrusted with determining how best to handle property damage arising from stray rounds or other necessary police action emanating from deputy-involved shootings consider the discussion presented here and at least talk with Los Angeles County about its "accelerated claim process" before rejecting the proposal out of hand.

STATUS: Unable to complete.

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A common phenomenon in large organizations of any kind is a gradual drift that pulls everyday practice away from "official" or published policy or protocols. This is not necessarily a bad thing – often, the changes evolve for good reasons, and all that is needed is an updating of the relevant manuals. This was the case with the Department's Risk Management policies, and the emergence of the new Division of Inspectional Services provided further impetus for a re-drafting of some sections.

ISSUE: In our initial audit, our review of the Department's policy manual relating to Risk Management reflected a disconnect between the manual's expectations and the reality of risk management's actual responsibilities. For example, the manual spoke of various committees that were no longer in existence and functions that no longer replicated the actual work of the unit.

RECOMMENDATION:

**33. We recommend that the Department re-examine its Manual in relation to Risk Management issues, and create and memorialize a feasible action plan and structure that will achieve the objectives behind the ambitious current language.**

RESULT: The Department agreed to revamp its policy section to reflect the actual work in the risk management arena. As a result, a whole new policy section was drafted and implemented describing the responsibilities of the new Division of Inspectional Services. This new policy provision accurately sets out the revamped responsibilities of the new unit in the risk management arena. In addition, the Division of Inspectional Services created an informational brochure for Department members in recognition of the fact that many employees were unfamiliar with the responsibilities of the new unit. While the new policy language has been informally "approved", the new provision will not be officially implemented until early in 2009.

STATUS: In progress; near completion.

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On of the corollaries to the original audit's focus on increased accountability was an interest in the Department's disciplinary system. While the case work of the Internal Affairs investigators was impressive, and while the Department's high standard of expectation in cases involving integrity issues was admirable, it seemed noteworthy that the Department lacked a formalized set of guidelines regarding the range of discipline for particular offenses.

ISSUE: During our review, we learned that the Department did not provide any guidance to its supervisors in determining the appropriate level of discipline to be imposed when deputies violated policy. We found this information gap to be inconsistent with principles of consistency and fairness and accordingly, made the following recommendation:

- 32. We recommend that the Department develop a set of disciplinary guidelines that set out penalty ranges for particular policy violations and assist the decision maker in considering how aggravating and mitigating factors are to be applied. At the very least, it should articulate principles that would help promote consistency and reduce arbitrary penalties.**

RESULT: The Department did not agree that the development of a set of disciplinary guidelines was necessary. The Department did agree however, to develop and distribute a training bulletin that would articulate principles to help promote consistency and reduce arbitrary penalties. The bulletin features 22 factors for supervisors to consider in determining the appropriate level of discipline for a given violation. While the bulletin does not necessarily increase the likelihood of consistency from decision-maker to decision-maker and case to case, it does promote thoughtfulness and some useful guidelines to analysis.

STATUS: Addressed.

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The last discussion piece concerns a topic for which the Department has fallen short of goals that have been around since the time of the original audit: the design and implementation of a useful “Early Intervention” system that would allow the Department to use available data in a variety of proactive ways. Unfortunately, the Department’s efforts in this arena have not kept pace with the effectiveness and bottom-line productivity that have been so prevalent elsewhere.

ISSUE: Our audit revealed that the Department did not yet have a computerized “Early

Intervention System.” This term refers to a tool that is increasingly associated with national best practices in law enforcement: a database that captures a variety of information about individual employees and general Department activity in order to allow management to track potential patterns or trends and take responsive action if necessary. We have found that Departments who have implemented such a system have been hugely advantaged in the areas of accountability and risk management.

RECOMMENDATION:

- 30. We recommend that the Department prioritize the design and implementation of its proposed Early Intervention System, and that it maximize the system’s effectiveness by promoting its varied and widespread use among Department managers.**

RESULT: In its response, the Department indicated agreement and acceptance of this recommendation and said that the system was in the process of being implemented. This was consistent with Department’s repeated assertions, in which executives seemed to genuinely recognize the potential value of the tool and wanted to incorporate it. Eighteen months later, though, the Department has not managed to deliver in terms of definitive accomplishment or a concrete plan of action.

There certainly are reasonable explanations for the delay. The resource implications alone are considerable, and budgetary prioritization for large police agencies

takes place on ground that can shift quickly. It is also understandable that the Department is interested in implementing a system that is actually going to meet its needs; accordingly, it has proceeded carefully in choosing the appropriate system and dealing with the various vendors in the field.

Nonetheless, with each month that goes by with no significantly measurable progress and no targeted time line, outside voices might begin to wonder when and if a system will ever come on line. . We urge the Department to work hard to achieve some measurable milestones on this project and establish target dates for completion – not just in fulfillment of its commitments, but for the concrete benefits such a system can offer.

STATUS: No measurable progress.

## **VII. Conclusion**

In the summer of 2005, the San Diego Sheriff's Department was a proud and well-established law enforcement organization that had come to a crossroads in terms of both public perception and internal philosophy. A series of controversial deputy-involved shootings had strained community relations and unleashed numerous calls for reform. Though an impulse toward defensiveness would have been understandable, Department executives recognized the need to be responsive as well as the potential value of a thorough review.

From that difficult vantage point, the Department's leadership took the bold step of inviting an audit that was unprecedented in its history – a full-scale independent assessment with open access to Department files and records, and the candid cooperation of personnel at all ranks and assignments. It did so with justified confidence in the Department's extensive strong points, but also with the awareness that uncomfortable criticisms could emerge in a very public way. This was itself an impressive gesture toward meaningful self-improvement. And, as things transpired in 2006 and 2007, the Department followed through on its initial willingness to listen to the findings of the audit, weigh them thoughtfully and objectively, and take corrective action as needed.

More than three years later, the Department is a different and better entity. The particulars of several relevant changes are discussed above in this report. Some are simple or technical or narrow in scope, while others reflect or comprise fundamental new approaches to carrying out the Department's mission. What they all share is a backdrop that has allowed reforms to occur and gives reason for optimism about the future: a revitalized culture that seeks out best practices and embraces opportunities for improvement.

When the next hit shooting does occur – and it will – the Department will approach it in new and improved ways. It will have the tools in place to review the shooting thoroughly and constructively. We hope and expect it will use those tools to ensure proper accountability and derive potential lessons in tactics and training. And when the review is over, we hope it will try to maximize the public's understanding of

what occurred and why, and how the Department's internal reactions were appropriate to the circumstances.

The Department deserves credit for its efforts since the audit was published in June of 2007. As much as the Department has accomplished, however, we urge its current and future leaders to remember the philosophy of progress and self-improvement that allowed the first audit to occur and that has fueled significant reform.

One goal worth pursuing right away is the development of the computerized "Early Intervention System". Even though resource allocation is a challenge for every law enforcement agency in these economic times, it is incumbent on the Department to at least map out a new plan with timetables for initiation of the system. .

It is also true that many of the "paper" reforms and enhancements detailed in the original 35 recommendations are still new to the Department. As noted above, the "ink" is still drying on many of the refinements in policy and changes in review protocols. Others, such as the numerous reforms related to hit shooting investigations, have not been put to the test by actual incidents. It will also take additional time for some of the new mandates and guidelines of the force review process to be adequately tested for compliance in the laboratory of actual patrol and custody incidents. The Department would be well-served by remaining vigilant and taking proactive steps to ensure that deputies and their supervisors are consistently following the new requirements. The ultimate proof of the Department's commitment to reform will come in the real world of

practical application. Regular internal monitoring in the months to come, particularly when a large sampling of force reports have been amassed, will be an important vehicle for the Department to achieve its various goals.

The best law enforcement agencies recognize that adaptation and reform should be an ongoing process. In our view, the San Diego Sheriff's Department has very much lived up to that ideal since its troubling summer of 2005. Tomorrow, of course, is another challenge.