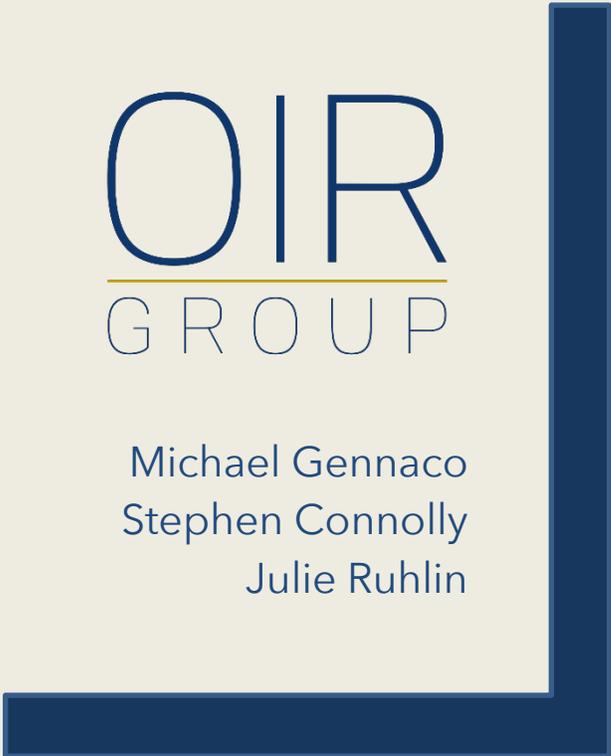


City of Anaheim

INDEPENDENT REVIEW OF
MAJOR INCIDENT, USE OF
FORCE, AND INTERNAL
AFFAIRS INVESTIGATIONS

June 2021



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Table of Contents

- Introduction 1
- Major Incidents 4
 - Shooting Case #1 6
 - Shooting Case #2 10
 - Shooting Case #3 14
 - In-Custody Death #1 18
 - In-Custody Death #2 19
 - Shooting at Dog Incident 22
 - Other MIRTs: Review of Critical but Non-shooting Cases 24
- Internal Affairs Investigations 27
- Uses of Force 35
- Recommendations 43

Introduction

This report comes on the heels of a distinctive, challenging year that was dominated in unforgettable ways by the COVID-19 pandemic. Its consequences affected every aspect of society, and will do so for years to come. But 2020 will also be remembered for the ways in which law enforcement practices returned with great intensity to the forefront of national attention. Galvanized by the murder of George Floyd in Minneapolis in late May, communities all over the country took to the streets – and to their local governments – to demonstrate against police violence and systemic injustice and for meaningful change.

Anaheim experienced its own versions of these protests; to the credit of both the participants and the police who had responsibility for public safety, the city largely avoided the excesses that resulted in extensive property damage, looting, arrests, and controversial uses of force in other jurisdictions. But many community members nonetheless managed to express their strong desire for greater law enforcement accountability and for new ways of addressing longstanding social problems.

A record number of participants attended the (virtual) June meeting of the Police Review Board (“PRB”) – the seven residents who provide oversight through their unique access to the inner workings of the Anaheim Police Department (“APD”). And the Department engaged with the City Council and the public as it responded to initiatives like the “8 Can’t Wait” policy review and the responsive new legislative measures imposed by the state of California.¹ Meanwhile, efforts to adapt to pandemic-induced losses in revenue began in earnest, with inevitable implications for the APD budget and its allocation of resources.

¹ One of the new directives from the state legislature ended the authorized use of the carotid control hold, a force option that had been the subject of some controversy in recent Anaheim cases, and that we have written about in prior reports.

In the midst of these developments, both the Police Review Board and OIR Group² issued public reports with findings and recommendations about APD practices, with a particular focus on critical incidents. The Department offered thoughtful responses to both of these reports and each of these recommendations in turn; it has adopted many of them, and some remain works in progress. And the Chief also expressed his interest in more regular, timely feedback from the City's oversight entities.

For the PRB, a relatively new body that continues to grow in its understanding of police issues, this has translated into more active questioning of the Department in the context of its regular monthly meetings. PRB members continue to respond to the scene of critical incidents – a unique level of access for volunteer civilian monitors – and are also invited to participate in formal, confidential debriefing sessions once preliminary facts have been gathered.

For OIR Group, the Chief's request has meant a couple of things. One is a new opportunity to provide quicker observations, recommendations, and requests for further investigation by APD in the context of its "Major Incident Review Team" ("MIRT") process. Instead of waiting until the process is completely over to share formal input (which can routinely mean a gap of more than a year after the incident itself), we now send the Department a preliminary memo after the initial briefing, and *while the investigation is still pending*. This allows us to add our perspective to the scope and outcomes of the review itself, and not just offer responsive commentary after the fact. We have prepared three of these memos under the new protocol, and hope that they are contributing to a more holistic and effective process overall.

At the request of the City Attorney, there also has been a change in the timing of OIR Group's reporting protocols. Beginning with this report, critical incidents that are the subject of pending or potential litigation will not be included in our public reports until after the litigation has been resolved. As a result of this new protocol, two of the 10 critical incidents we reviewed are not included in this report, and any public reporting will be delayed until the litigation is concluded.

² OIR Group is a team of police practices experts that provides independent oversight for jurisdictions throughout California and in other states. It has worked with the City of Anaheim in monitoring APD since 2007.

As in the past, the contents of this report come from three major categories of internal review process to which we have been given access as part of our role in the City. These include the following:

- Eight Major Incident Review Team (“MIRT”) reports on critical incidents. These include three officer-involved shootings (two of which were fatal), two in-custody deaths involving officer force, a dog-shooting case, an on-duty traffic accident resulting in serious injury to a civilian APD employee, and peripheral issues arising from APD’s handling of a controversial 2017 case that involved an off-duty officer from another agency.
- 38 Internal Affairs investigations into allegations of officer-misconduct – a sampling of the total output of completed cases from 2019.
- 30 complaint cases that were screened, reviewed and resolved without a full formal investigation.
- 22 supervisory reviews of individual uses of force as entered into the APD “Force Analysis System” (“FAS”) that occurred in 2019.

As we have said before, our assessment of individual critical incidents and our opportunity to evaluate representative completed cases in the misconduct and force arenas serves a couple of important functions. One is the outside, independent scrutiny that helps to promote the legitimacy of the Department’s internal investigations through transparency. The other is the potential for constructive influence on the Department’s processes that we try to provide through our own knowledge of best practices.

Both of these functions are dependent on APD’s cooperation. To some extent, transparency is inevitably subject to the Department’s control over its own files, records, and personnel. And influence is, of course, dependent on APD’s receptivity to candid dialogue, the discussion ideas, and the adoption of recommendations for strengthening its operations in various ways.

As in the past, we have occasional hitches in our communications with APD, and occasional disagreements that persist even after both sides have fairly had their say. But we take this opportunity to acknowledge that Anaheim remains relatively unique in Orange County in its accommodation of civilian oversight. We appreciate the cooperation and collegiality that we experience in our interactions with City officials and with APD personnel at all rank levels.

Major Incidents

As in the past, a centerpiece of our relationship with the City of Anaheim is our involvement in monitoring APD's critical incident review process. For obvious reasons, these incidents – which include all officer-involved shootings and other in-custody deaths – generate public attention in ways that the day-to-day operations of the Department often do not.³ When lives are lost, the implications of police action are especially profound, and it is important for law enforcement to give thorough, rigorous attention to each case in terms of both officer accountability and the search for improvements to future performance.

Beginning with the chance to respond to the scene and receive an initial briefing when these events happen, OIR Group has had unique access for several years to an administrative review process that is itself unique in its structure and thoroughness. Most of the incidents discussed below are the subject of a formal criminal investigation that is led by the District Attorney's Office; the gathered evidence is evaluated by the D.A. as to the legality of the Department's actions.⁴ But prosecutions of police officers are extremely rare, even in controversial cases, in part because the legal standard for pursuing them is very stringent.⁵ Accordingly, the Department's *administrative* process takes on added significance as a formal means of ensuring that performance both complies with policy and

³That said, it bears mentioning that (as is true with all law enforcement) such events constitute a tiny fraction of the APD's annual uses of force (and in turn, force of any kind only occurs in a very small percentage of APD arrests).

⁴ Where applicable, we include the District Attorney findings for each of these cases below.

⁵ California legislators have sought to lower this bar in recent years in an effort to reduce the number of deadly force incidents involving the police. Recently, they have made relevant changes to the statute – including one that allows tactics and efforts at de-escalation to be considered when evaluating the incident.

otherwise meets agency – and community – expectations whenever deadly force is involved.⁶

All of the cases within this category are also inherently momentous enough to warrant careful review for whatever peripheral lessons can be gleaned. We have long advocated a holistic model of assessment that incorporates every aspect of the event, from the actions of the dispatchers at the outset of the call to the protocols for investigation, family outreach, and community dialogue in the aftermath.

At its most effective, Anaheim’s MIRT process is exemplary in accomplishing these goals. It is deserving of acknowledgment that two of the shooting incidents we discuss below resulted in APD separating the involved officers from the agency – a form of serious accountability that is creditable. But we have found that there are worthy lessons to be learned even when policy compliance is not at issue.

The cases we discuss below often feature elements that reach a high level of holistic insight and response. In other instances, we see shortcomings where we think the Department should have dug deeper or more broadly in its investigation, or potentially reached different conclusions. While we hope our findings and attendant recommendations about these completed matters will be useful as applied to APD’s approach in future cases, we also are enthusiastic about the potential impact of the new “preliminary feedback” memo we mention above. Ideally, this earlier chance to offer our perspective will help strengthen the thoroughness of future reviews through greater concurrent input.

Meanwhile, we note some recurrent themes in this report in terms of certain fundamental protocols. They include the timing and conditions of officer interviews, the importance of separate administrative interviews to supplement the criminal investigation process, and the value of inclusive issue-spotting and analysis when it comes to officer or Department performance. While we have agreed to disagree with APD leadership regarding some of these topics, the dialogue continues to be open – and as discussed below, it remains productive.

⁶ As discussed below, the fourth shooting case we cover includes an express reference to this concept within the formal District Attorney letter announcing the decision not to prosecute.

Shooting Case # 1

This hit shooting caused a chest injury to a 23-year-old male subject, but he recovered after being treated at the hospital. He was in his own bed during daytime hours when two APD officers arrived at the apartment he shared with his mother. The officers were there to conduct follow-up into an allegation of multiple incidents of domestic violence that the man's girlfriend had reported to police the day before.

Informed that the man was now at the residence, three different APD officers responded to the scene. Two made entry into the apartment after the mother came to the door and let them in, pointing them in the direction of the bedroom where the subject was reportedly sleeping. Officer #1 entered the darkened room first, appeared to struggle to locate a light switch, and suddenly fired one round from his duty weapon. Just a few seconds passed between his crossing the threshold into the room and firing.

Officer #1 immediately began to assess the subject's injury and instructed Officer #2 to retrieve a medical kit from one of the radio cars on scene. Officer #2 left to do this, and put out radio transmissions calling for a supervisor and paramedics to respond. He returned promptly and took over care for the wounded man, who was conscious and bewildered about what had happened. Eventually, paramedics arrived and took him to the hospital.

He was successfully treated for his injury. The District Attorney eventually charged him with several counts relating to the underlying domestic violence allegations.

As for the investigation into the justification for force, District Attorney investigators responded to the scene and took the lead in the subsequent criminal review. Officer #2 was interviewed as a witness later that day; it was five days later when Officer #1 made a voluntary statement to detectives.

By the time that interview occurred, there was speculation – and considerable supporting evidence – that the shooting had been accidental. A weapon-mounted flashlight on Officer #1's gun contributed to the theory that he had fired the round mistakenly, perhaps when attempting to utilize the flashlight inside the dark room. And other factors corroborated this idea – including Officer #1's own reactions in

the immediate aftermath (as recorded on the officers' cameras) and the eyewitness perceptions of Officer #2.

However, when it came time for his own interview several days' later,⁷ the officer asserted that the shooting had been an intentional response to a perceived threat posed by the subject as he lay in bed. He claimed a fear that the subject was armed and was possibly intending to harm his partner in the doorway behind him. Even when confronted with the contrary impressions left by the recordings, Officer #1 maintained his original position.

The District Attorney's Office issued its findings approximately one year later. It reached conclusions regarding both the nature of the shooting itself *and* the possible criminality of false statements that the D.A. ultimately believed Officer #1 had made in his interview. It determined that the accidental shooting was "excusable" given that he lacked both malicious intent and the sort of disregard for human life that would make criminal negligence applicable.⁸ And it found that the false statements, while clearly problematic, also did not implicate relevant criminal statutes.

MIRT Review and Analysis

Against this backdrop, officer accountability issues fell to APD's administrative process. Having already conducted supplemental interviews of involved officers and done its analysis of the case, the Department moved quickly after the completion of the District Attorney review and decided to discharge Officer #1. The aforementioned evidence was all significant in this regard, and the Department agreed with the conclusion that Officer #1's assertions about the shot being intentional were not truthful. (He had reiterated them during the administrative process.)

Additionally, though, the Department did a painstaking analysis of ways in which Officer #1 had deviated from training and proper tactics in his entry into the apartment, handling of his weapon, and subsequent actions and decision-making. Some of this was used to debunk Officer #1's version of the story (to show how

⁷ We take this opportunity to reinforce our belief in the importance of "same shift" statements in the aftermath of deadly force incidents. It would, of course, had been interesting and useful to hear a more contemporaneous version of events, particularly given the way the investigation ultimately unfolded.

⁸ The officer's immediate efforts to render medical aid supported these conclusions.

his actual conduct was inconsistent with his claims about what he was doing and why). Other aspects, though, provided potential learning opportunities that APD identified and articulated well in the attendant MIRT memos. We are unclear, though, as to whether any of these insights translated into broader training reminders or follow-ups of any kind.

We focus here on two that merited attention beyond accountability for Officer #1. One related to the lack of planning or coordination among the responding officers. In spite of the subject's documented propensity for aggressive behavior and the serious allegations that prompted the APD intervention, the officers barely communicated with each other prior to making entry into the apartment and encountering the man inside his own darkened bedroom. Clearly, some further preparation and a more tactical mindset could have been beneficial.

A second issue had to do with the weapon-mounted light with which Officer #1's handgun was equipped. In our work with different agencies, we have encountered past examples of accidental shootings that occur when officers are attempting to engage the light and inadvertently pull the trigger. Given the Department's theory that this is what caused the shooting in this incident, the case offered a pointed opportunity to visit this equipment concern as it pertained to APD personnel.

The initial MIRT review flagged both of these issues as actionable, based on the known facts from this event. However, the materials we reviewed did not formalize them as topics or capture any remedial steps that were taken. This seems like a missed opportunity to benefit from the insights that were initially identified.

In fact, our most recent public report contained the following recommendation:

APD should strive to achieve with more consistency the identification and remediation of tactical decision-making issues that the MIRT process accomplishes at its best.

We were encouraged by the Department's public response, which was to accept the recommendation and renew its commitment to a "greater focus" on tactics and related decision-making. And it should be noted that that the APD review process for most of the cases in this report was complete *prior to* the public release of our previous set of findings and recommendations – and prior to APD's stated re-commitment to these principles. Still, the reminder is a useful one to the extent

that the MIRT process has aspired to be holistic and comprehensive throughout its several-year history, and has often succeeded. We accordingly reiterate it here.

RECOMMENDATION 1: In every officer-involved shooting, the MIRT process should evaluate planning, communication, and tactical decision-making with an eye toward reinforcing effective performance and remediating (at the officer or Department-wide level) where necessary.

RECOMMENDATION 2: APD should survey the use of weapon-mounted lights on authorized weapons, and determine whether modifications are needed regarding approved equipment and/or training.

Some “action items” did emerge formally from the MIRT process, and these were useful. They pertained to the medical bags that are now part of the equipment in patrol cars, and included some additions to the first aid materials (including new emergency “chest seals”) along with attendant inventory cards and training. This was a constructive step; it offers a good, concrete example of APD’s capacity for effective review across a range of potential subjects.

We also commend Officer #2 for his forthright participation in the various investigative processes. His eyewitness perceptions were a cornerstone of the understanding about this incident that ultimately emerged.

On one level, his willingness to share them truthfully, even to the detriment of his colleague, is only consistent with standard duties, responsibilities, and expectations. But we recognize that fulfilling this obligation at the expense of another officer is likely to produce conflicted emotions – and is easier to require than to fulfill. (See the widespread public skepticism about the willingness of law enforcement personnel to testify against the interests of colleagues or intervene or report when an officer uses excessive force.) In this case, Officer #2 handled his role creditably.

Shooting Case # 2

This fatal officer-involved shooting began when APD officers received a call for service from a fast food restaurant about a transient refusing to leave and upon responding encountered the man in the restaurant's parking lot. The man walked away while officers followed on foot. Less lethal force was deployed in the form of bean bag munitions, to no apparent disabling effect. At one point, the man turned into a dead-end alley way as at least seven APD officers followed.

An apparent firearm was produced by the man, and multiple officers yelled "Gun" in response, with several of them reporting that the man was holding the gun to his chin. Officer #2 passed Officer #1 and other officers and observed the man behind a parked vehicle at the end of the alley way. Officer #2 commanded the man to get on the ground while an on-scene sergeant yelled "Cover! Cover! Cover!" to responding officers. Officer #1 used a parked car for cover. Officer #2 did not seek cover and began firing at the subject while advancing on him, ultimately firing nine rounds. Officer #1 fired seven rounds at the subject from behind his position of cover.

APD began lifesaving efforts, and the man was transported to a local hospital. He eventually expired from his injuries, which included two gunshot wounds to the head.

The object suspected to have been a firearm turned out to be an air pellet gun.

The criminal investigation subsequent to the incident followed protocols that we have challenged in past reports. The first pertained to the delayed timing of the respective voluntary interviews of the shooting officers: six days after the incident for Officer #1 and ten days for Officer #2. To reiterate our view: best practices call for "day of" interviews of involved officers, an approach that promotes accuracy and investigative integrity by eliminating potential sources of interference.

Secondly, the involved officers were provided the opportunity to review the body-worn camera footage prior to being interviewed. We have maintained that a "statement first" approach is more consistent with best practices since it eliminates the video's potential influence on recollection. (A second, supplemental interview *after* viewing, with a chance to address any discrepancies or provide clarifications as needed, is also something we endorse.)

As mentioned in the Introduction to this Report, the Department instituted a new policy in 2020 that requires an interview with seven days of a shooting. While this is a positive step (and would have meant a faster timeline for at least one of the interviews), it obviously still falls short of a “day of” interview that should be the investigative norm and we take this opportunity to again advocate for revisions to APD’s investigative model.

RECOMMENDATION 3: APD should revise its investigative protocols to ensure that any officer involved in a shooting is interviewed prior to the end of shift.

RECOMMENDATION 4: APD should revise its investigative protocols to ensure that officers involved in a shooting provide a pure statement prior to reviewing any audio/video footage of the incident.

Per the usual protocol, the District Attorney’s Office investigated and assessed the officer’s actions for possible legal violations. It ultimately concluded that the officers were criminally justified in their use of deadly force.

MIRT Review and Analysis

The MIRT evaluation of the case focused exclusively on whether the delivery of deadly force by the two officers was consistent with Department policy. It determined that it was, based on the apparent firearm that the subject was holding and ended up pointing in the direction of the officers. The Department did not conduct a formal analysis of broader tactical issues implicated by the facts in this case – and specifically whether the decision-making was consistent with APD training and expectations. The only “Action Item” emanating from the review was to direct the training detail to explore the implementation of situation-based training. (There was no documented follow up to that recommendation in terms of its substantive implementation.) In short, the holistic review that is the intended aim of the MIRT process was not undertaken with the rigor that the circumstances of the case seemed to warrant.

This gap was most evident in the handling of Officer #2’s actions. The MIRT memo summarized him as “unwittingly” entering the dead end of an alley as he pursued the subject on foot, thereby finding himself with no available cover. The summary indicated that Officer #2 observed the subject behind a parked vehicle

armed with what appeared to be a handgun, and recounted how Officer #2 began shooting at the subject and moved closer to the subject while continuing to fire.

But there was no discussion of pre-shooting tactics. This was a shortcoming, insofar as Officer #2 had apparently deviated from the instructions of the on-scene sergeant to seek cover, choosing instead to do the opposite and close distance between himself and the individual whom he believed to be armed.

The officers were not administratively interviewed by APD to further explore the tactical decision making of the officers. As a result, APD gained no further insight about why Officer #2 ended up placing himself in what he described as an “ambush” situation, in contrast with the other officers on scene who were not similarly compromised. Without an administrative interview, APD was also not able to effectively explore with Officer #2 whether he heard the sergeant instruct the officers to seek cover and whether he could have moved to cover after firing his first rounds. An administrative interview could have also asked Officer #2 about his decision to continue firing and draw even closer to the subject, placing himself further away from available cover and increasing the threat level to him as a result of that decision.

Moreover, in his interview for the criminal investigation, Officer #2 suggested that he also used deadly force due to concern about other officers who were coming up behind him and out in the open. He also suggested concern about a school being nearby and his intent to not allow the subject to get close to the school. However, apart from Officer #1 – who actually had found a position of cover – none of the other officers perceived a threat to themselves to the point of using deadly force. Moreover, since the subject was admittedly at a dead end, there was no likelihood of his being able to elude the assembled officers and threaten the school children. These issues could have and should have been explored during an administrative interview in an effort to better understand the stated rationales – and assess them against the other available evidence.

As noted above, captured on body-worn cameras, and referenced in the investigative material, the on-scene sergeant repeatedly yelled “Cover!” prior to the application of deadly force. Yet the sergeant was not asked about these instructions – and his perception of their ultimate influence – during the criminal interview. Again, this is a gap that an administrative interview of that on-scene supervisor could have filled, in keeping with APD’s commitment to both accountability and improvement through self-scrutiny.

These issues (the lack of supplemental interviews to address potential administrative concerns, and the unduly narrow focus on the justification for deadly force) are matters we have raised repeatedly in past reports. In the previous case, we also cite the value of a rigorous tactical analysis in every MIRT, so that useful insights can be identified and addressed. Such an approach to this incident would presumably have been useful.

RECOMMENDATION 5: APD should incorporate supplemental administrative interviews, and an assessment of tactical considerations, into its standard approach to critical incident review.

Finally, we also took note of another aspect of the sergeant's interview for the criminal case, which contained the following passage about his state of mind after observing the two officers use deadly force:

[A]t that point, I'm thinkin' I'm gonna' f- ... I'm gonna' dump some rounds into him if he's still, if he's still a threat. I'm pissed because [PAUSE] ... I start to get angry... because he was j-, in my mind he was trying' ta shoot us. So I'm, I'm angry. Um, I'm not angry because I wanna' exact justice on him. I'm angry because I wanna' stop this guy from pointing his gun at us, and potentially shooting us.

The “rough edges” in this account are presumably reflective of candor in the immediate aftermath of a traumatic event. Some of the phrasing – particularly the description of dumping rounds into an individual and the acknowledgement of strong feelings that perhaps affected objectivity and decision-making – caught our attention as being worthy of follow-up. Moreover, to describe the use of deadly force in this way in a document that would be available to the general public upon request has the potential to erode public confidence. The point of further review would be to get at the underlying mindset of the sergeant and see whether feedback for future reference would be worthwhile.

RECOMMENDATION 6: The Department should review critical incident interviews with an eye toward identifying and addressing insights into officer mindset or response that may emerge, as well as identify comments that raise issues of professionalism or mindset and address as needed.

Shooting Case # 3

This incident was a shooting that involved two officers, a vehicle pursuit, and numerous rounds; it resulted in the death of a 50-year-old man. On a Saturday morning, APD received a call for service from the man's family based on concerns about his behavior. He was allegedly under the influence of drugs and was acting strangely at the family home, including engaging in an argument with one of his siblings who had been visiting their parents. When the man's father saw the man seated in his own pickup truck, parked on the street in their residential neighborhood, he approached to speak with him so that the brother could leave without further incident. At that point, the father noticed what appeared to be a gun in the cab of the truck. He was concerned about the safety of the brother, whom he contacted and who then called 911.

When two APD officers, working patrol in the same radio car, arrived at the scene shortly thereafter, they had been told by dispatchers that the man had been hallucinating and had both a gun and a knife with him in the vehicle. The man was still seated on the driver's side of his truck, which he soon started. The officers attempted to stop him at the scene, but he ignored their commands and efforts to block his path. Instead, he drove off, and the officers got back in their car and pursued him with lights and sirens activated.

Within a minute, the officers saw the man reach down inside the truck; he was holding what appeared to be a gun seconds later, and allegedly reached out the window of his vehicle as he drove to point it at them. Officer #1, who was driving, responded to this by firing several rounds through the windshield of the radio car with his duty weapon; he also mentioned a plan to ram the subject vehicle from behind, though he did not do so. Officer #2, the passenger, armed himself with a rifle and soon fired the first two of his own rounds, also through the windshield.

The pursuit continued for approximately one mile, ending up at the point of origin as the subject pulled over and stopped outside his family home. During that time, Officer #1 fired numerous additional rounds in response to the subject's threatening actions (including dangerous driving and further weapon pointing). At the end of the pursuit, the officers stopped their own car in the street near the subject vehicle. With the truck door opening, and with the subject not overtly

surrendering, they each fired repeatedly before approaching the truck and finally recognizing that the subject was incapacitated from multiple wounds.

They removed him from the truck and, along with later arriving officers, attempted to render aid until paramedics arrived. The subject was transported to the hospital but was pronounced dead shortly thereafter.

The District Attorney investigation encompassed body-worn camera footage from both officers as well as considerable physical evidence and the eyewitness testimony of both family members and several civilian witnesses. The officers themselves gave voluntary interviews to the criminal investigators four days after the incident.⁹ The camera footage, while certainly reflective of the officers' state of mind during the pursuit and reflective of other key events, does not provide a clear view of the subject and the weapon he was allegedly pointing out the window during the pursuit. (The final aspects of the incident, once the officers were out of the car, are more visually complete). But third-party witnesses confirmed the officers' account in this regard.

The District Attorney issued its "declination to prosecute" letter some ten months later, citing the threat perceived by the officers – both to themselves and to the various pedestrians, drivers, and neighborhood residents in the area. This sense of threat was a result of the weapon (which turned out to be an air-propelled BB gun that resembled a real firearm) as well as the driving behavior during the pursuit that showed a disregard for others safety. A knife had also been found in the man's possession at the scene.

However, at the same time it asserted that there was not a legal basis to prosecute the officers for their use of deadly force, the District Attorney's Office took the extraordinary step of expressing its concern about the incident and the actions of the officers. This was largely based on the extreme number of shots – 64 by Officer #1, and 11 rifle rounds from Officer #2, with insufficient apparent regard for backdrop or ongoing necessity. Several of the rounds had struck houses in the neighborhood (though without resulting in injury).

Describing itself as "alarmed" by the incident, the D.A. Office's letter included the following quote: "While the District Attorney does not address tactics, training, or administrative procedures, the District Attorney of Orange County, and the public,

⁹ We repeat our position that APD should move toward a model that involves "same shift" interviews of officers using deadly force, through compelled statements if necessary.

expect the APD to make sure that the conduct of the two involved officers is reviewed administratively for proper, fair, and complete accountability.”

MIRT Review and Analysis

To the Department’s credit, it brought its own significant concerns to bear on the administrative review process and conducted a thorough investigation. This included supplemental administrative interviews of both officers in an effort to gain a more thorough understanding of what had occurred.

The initial MIRT meeting about the incident produced several action items apart from the officers’ respective compliance with policy. These included the following:

- The development of a training bulletin regarding the elements of a “public safety statement” that officers should provide to a responding supervisor in the immediate aftermath of a shooting. The purpose of this is to ascertain key information that might be necessary to stabilize the situation and ensure that any involved parties – and any rounds that were fired – are accounted for. In this incident, the sergeant had initially neglected to get this information, resulting in delay in the Department’s realization of the scene’s overall scope and complexity.
- Addressing the standards for showing training videos to officers at briefing; this was an outgrowth of the facts that, on the morning of the shooting, the officers had both attended a briefing that featured video from an incident in another jurisdiction that involved a rolling gun fight and an officer firing several times through his own car windshield.
- Reinforcement through presentations at formal training days of the Department’s policy regarding shooting at vehicles, and about the effects on hearing related to shooting in enclosed spaces.¹⁰

As for the officers, the Department ultimately removed both of them from employment with the agency. Officer #1 (who was the driver and who fired the vast majority of the rounds) was a lateral hire from another police department and was still in his probationary period. Accordingly, APD was in a position to release him without providing a basis for doing so, and it did end his tenure approximately

¹⁰ Both officers’ hearing was clearly compromised as a result of the weapons fired from inside the patrol car.

three months after the incident – and prior to the District Attorney’s official announcement. But it is important to note that the Department did not end the matter by simply resolving the accountability issue with the most serious consequence available. Instead, it conducted a detailed review and analysis that tracked each aspect of the encounter and found several glaring issues in Officer #1’s tactics and decision-making.

These shortcomings emerged at several steps along the way. While acknowledging the legitimate threat perception created by the realistic appearance of the subject’s BB gun, the Department emphasized that this factor is neither an isolated one nor a blanket justification for any and all responsive acts. Instead, it reinforced the principals that officers must be mindful of backdrop and the collateral threats to bystanders, that shooting at and from vehicles carries with it several complicating factors that merit careful consideration in the moment, and that each individual trigger pull in a deadly force scenario must be justified by the immediate circumstances.

The actions of both officers in continuing with aggressive tactics through and beyond the subject stopping his own vehicle and offering no further active resistance were also cited. The incident provided an important reminder that, where possible, giving a subject the opportunity to surrender through the use of commands and cover remained a responsibility that both officers fell short of meeting.

As for Officer #2, he was differently situated in terms of accountability. Not only was he a more tenured member of the Department (with greater attendant employment rights), but he was also the passenger in the vehicle who was in large part reacting to his partner’s highly questionable aggression during the pursuit. He also fired significantly fewer times. The investigative process for his case involved multiple administrative interviews and extended for several months.

Ultimately – with timing that coincided with the District Attorney closing its case – the Department determined that Officer #2’s last several rounds (after the end of the pursuit) had been excessive. Moreover, APD found that Officer #2’s failure to assert a safer course of action during the pursuit, or to follow Department tactics and training regarding the final moments of the encounter, constituted unsatisfactory performance that reached the level of a policy violation. These decisions were the basis for the Department’s decision to dismiss him.

On the whole (and as reflected in the District Attorney's strong admonitions about the officers' behavior), this incident was both highly unusual and gravely concerning. Appropriately, APD brought a significant level of rigor to its administrative review process. To the Department's credit, it produced the individual accountability and the broader remedial responses that were warranted by the facts.

In-Custody Death # 1

Officers responded to a call of an attempted burglary just after midnight on the date of the incident. The 911 caller reported that a man was in her backyard, and that her neighbor had said he had been trying to break into cars before jumping a fence into her yard. The caller stated the man had fled northbound. A number of officers and a sergeant responded to the area and began looking for the subject, who had been described as Black or Hispanic, wearing black clothing.

The sergeant first spotted the subject as he was trying to enter another backyard, and ordered him to stop. The subject began walking, and then running away. The sergeant began broadcasting his location and the subject's direction of travel while following him from a distance and directing other arriving officers. The first officer to contact the subject grabbed his sweatshirt as he ran across the street, but the subject spun free and ran through a yard and onto a front porch, with the officer close behind. The subject apparently tripped over the step up to the porch, and the officer closed in and held him down as the subject struggled to get free. The pursuit lasted fewer than 30 seconds.

Other officers arrived in the next moments and restrained the subject by holding him down and attempting to get him handcuffed. The subject spoke mostly unintelligibly, while officers continually said, "stop resisting" as he struggled against their restraint. None of the officers struck the subject. At one point, the subject said, "just shoot me," to which an officer responded, "we're not going to shoot you." At another point, an officer said, "let go of my Taser," and the subject responded, "just give it to me."

The struggle lasted just over four minutes, and then the subject went quiet and officers observed he had lost consciousness. Officers observed that he was breathing and had a light pulse. They moved him from the porch into a front yard, where they and paramedics would have more room to maneuver, and placed him

in an upright position. During the struggle, the dispatcher had proactively requested Fire and Rescue to respond, and officers made an additional request after the subject was subdued. They continued to monitor his pulse until paramedics arrived about five minutes later. Paramedics initially registered a pulse, but approximately two minutes later, the subject's pulse stopped and paramedics began CPR and other lifesaving measures. They revived him and ultimately transported him to the hospital, where he died eight days later.

During those eight days, initial rumors surfaced that the subject had suffered facial fractures, raising community concern about unreported strikes or other trauma to the subject's head. The forensic pathologist who conducted the post-mortem examination, however, concluded there was no evidence of skull or facial fractures, and no signs of any fatal trauma. The report from Coroner's Office identified the cause of death to be sudden cardiac arrest due to occlusive coronary atherosclerosis and effects of methamphetamine. The manner of death was determined to be accidental.

The District Attorney's Office conducted an investigation and ultimately concluded there was no evidence to suggest any criminal liability on the part of the involved officers. APD convened a MIRT, which similarly concluded officers had not violated any Department policies. There was an issue with the late notification of the Homicide Detail. Because the subject had lost consciousness and required on-scene life-saving measures, Homicide should have been notified of the incident that night, despite the fact the subject was alive and hospitalized. Though not identified as a formal action item by the MIRT review, Homicide issued a Department-wide Training Bulletin to remind personnel of Department policy regarding criteria for notification of major incidents.

In-Custody Death # 2

Just after 5:30 on a Saturday evening, APD Dispatch started receiving calls about a man acting erratically – walking or running in traffic on a major thoroughfare, and rolling around on the ground outside a liquor store. In all, seven separate individuals called 911 to report on the man's whereabouts and activities. The callers all described the same individual and indicated he was “disturbed,” “upset,” and appeared to need medical or mental health assistance. Two officers arrived within six minutes of the initial call, and located the man in a parking lot just off the street.

One officer immediately ordered the subject to “take a seat,” and he complied, sitting down on the ground. He then told the subject to “lay down” and the subject again complied, but then began rolling on the ground. Officers immediately began to restrain the subject, grabbing his arms and handcuffing him behind his back, while one officer put a knee on his upper back, between his shoulder blades, and the other straddled his lower body, restrained his legs, and began applying a hobble restraint to the subject’s ankles. The man was talking or yelling, some of which was unintelligible, but he also repeatedly said, “I’m gonna die,” and, “Somebody help me.”

As the officers were still struggling to restrain the subject, they noticed he suddenly became unresponsive and was no longer breathing. Less than a minute had passed since the time officers first contacted him. Officers rolled the subject onto his back and expedited a request for paramedics as they began lifesaving measures. They registered a faint pulse, and administered one dose of Narcan. That did not revive the subject, and when they no longer found a pulse, they began CPR. They used an Artificial Manual Breathing Unit (AMBU) bag to ventilate him, and administered a second dose of Narcan. They applied an Automated External Defibrillator (AED) to his chest, which evaluated the subject’s condition and determined that no electric shock was advised.

Paramedics arrived within about six minutes and continued resuscitation attempts as they transported the subject to the hospital, where he was pronounced dead a short time later. The forensic pathologist who performed an autopsy on the subject determined the cause of death to be acute methamphetamine and amphetamine intoxication, with no signs of significant trauma.

The District Attorney’s Office investigated this in-custody death and concluded the involved officers’ conduct was reasonable under the circumstances and the officers were not criminally liable for the death.

MIRT Review and Analysis

The MIRT review did not identify any issues with the officers’ conduct or the incident in general, though one action item was assigned relating to the maintenance of digital audio tracks in both real time and condensed time formats.

In our view, there are two issues relating to alternative approaches to this situation the officers might have considered that should have been explored further during the MIRT process. Our intent in raising them is not to question the ultimate

finding that the officers' conduct was "in policy," but to suggest that the review process missed an opportunity to extract lessons to be learned from this incident.

Officers said it was clear to them the subject was intoxicated or under the influence of some controlled substance. This was consistent with the information provided by the 911 callers, all of whom said the subject was behaving erratically. Those callers also said it was clear the man needed help, in that he was experiencing some kind of medical or mental health emergency. Officers arrived, and immediately identified an urgency to detain him out of concern that he posed a threat to families who were eating outside at a restaurant (on the other side of an iron fence separating the liquor store parking lot from the dining area) or that he would get up and run into traffic again. Officers made no attempt to talk to the subject, even though he had complied with initial commands to sit, and then lay, down. Instead, they almost immediately went hands-on, with two officers getting on top of the subject to pin him down and handcuff him. While this was consistent with their training – control and neutralize any potential threat – it is fair to question, in our view, whether a different approach consistent with principles of de-escalation (calling for medical assistance and attempting to talk to the subject and calm him while also containing him) might have led to a better outcome.

Acknowledging that an officer might have approached a situation differently, deployed another tool, communicated more effectively, recalculated his or her risk assessment, or made a different tactical decision does not necessarily undermine a finding of justifiable use of force. Unfortunately, the consideration of alternative scenarios is too often seen as unfair, after-the-fact criticism of an officer's performance instead of a constructive attempt to improve the ways in which officers approach and resolve problems. Even if a full evaluation of alternatives concludes there was nothing the involved officers could or should have done differently, engaging in the analysis is a worthwhile endeavor.

The second tactical or training concern not addressed in the MIRT process here relates to the officers' restraint techniques and risk factors. The officer who had his weight on the subject's upper back described the subject's resistance as arching or pushing up as if he was trying to get the officer off of him, as the officer used his body weight to keep the subject down. When asked whether he was concerned about restricting the subject's ability to breathe, he said he was not, because subject was still able to talk and yell. He said he got off of him as soon as he stopped talking.

The frequently-cited supposition that a person who can talk can also breathe has been described as “perhaps one of the most lethal misconceptions in both EMS and law enforcement.”¹¹ The amount of air movement needed to produce sound via the larynx is significantly less than what is needed for respiration, which requires air to move into the lungs.¹²

Even though the officer had his weight on the subject for a very short period of time, his reliance on the subject’s ability to speak as evidence that he was not impeding his ability to breathe should have signaled to Department reviewers a need for remedial training on this topic on both an officer-specific and Department-wide level. Instead, the final administrative report that emerged from the MIRT process wrongly confirmed that the subject’s ability to talk was evidence that the officer was not “smothering” him.

RECOMMENDATION 7: APD should re-evaluate its policy and training on restraining prone subjects using an officer’s body weight.

RECOMMENDATION 8: The Department should debrief the involved officer and review and update its training curriculum to correct the false perception that a subject’s ability to talk indicates that his breathing is not being restricted.

Shooting at Dog Incident

Officers were called to a residence regarding a man who had come to the home in violation of a restraining order. Two officers observed a man appear to climb the fence in the backyard of the residence, and then ran after him into the backyard area. The backyard was dark and full of debris that made the yard difficult to negotiate. The officers immediately encountered a large dog; it barked, growled, and lunged at one of them. That officer fired one round which struck the dog and

¹¹ *Screaming Their Last Breath: Why First Responders Must Never Ignore the Words “I Can’t Breathe”*, Steve Cole, NRP, FTO, Jun 2, 2020.

<https://www.calibrepress.com/2020/06/screaming-their-last-breath-why-first-responders-must-never-ignore-the-words-i-cant-breathe/>

¹² Lexipol provides a description of the physiological demands of respiration, geared toward the implications for law enforcement: <https://www.lexipol.com/resources/blog/i-cant-breathe-what-it-means-for-law-enforcement/>.

led to its death. After the shooting, the family members screamed at the officers in reaction to the loss of their pet.

According to the police report, a perimeter was then established, but the subject was not apprehended at that time.

Although the incident fell within APD's parameters for initiating a formal MIRT review, it was not a matter subject to the standard involvement of the District Attorney's Office.

MIRT Review and Analysis

The MIRT found the use of deadly force was in policy and no action items were developed through the process. At the time of the shooting, the officer who discharged his weapon was clearly threatened by the charging dog. However, during the initial MIRT discussion, OIR Group raised the tactical advisability of the officers rushing into the backyard of the house. We were disappointed that this question was not formally addressed in the subsequent investigation and review process.

The officers indicated in the police report that they did not know whether the subject was armed or whether there were any weapons in the backyard with which the subject could use to hurt officers. Based on the officers' own reporting, the entering of the poorly lit backyard area to chase a subject who could have been armed was a high-risk maneuver. It placed them in a vulnerable position should the subject have remained and determined to aggress them. Moreover, by moving into the back yard as quickly as they did and with the lighting conditions the way they were, the officers could have interpreted ambiguous moves by a subject who remained as an act of aggression resulting in the use of deadly force.

Considering all this, in reviewing this matter, the Department could have considered alternative approaches to the situation presented, such as not immediately entering the back yard and instead developing a perimeter. In fact, as noted above, this is what responding officers eventually did.

Ideally, the MIRT analysis would have evaluated the tactical decision of the officers to enter a darkened yard full of debris that placed themselves at risk and which resulted in the use of deadly force against the pet.

RECOMMENDATION 9: APD should always consider the viability of safer tactics as a component of its standard analysis in critical incident reviews.

Other MIRTs: Review of Critical but Non-shooting Cases

The MIRT process has evolved over time to encompass non-shooting incidents that are nonetheless serious in their consequences, public interest level, and/or potential for learning opportunities. Four of the cases that were completed during the review period related to traffic accidents that resulted in serious injury or death to involved parties. We summarize each of these below, with a focus on the Department's administrative findings and action items.

Incident # 1: Traffic Accident with Injury

This case related to a traffic collision that seriously injured a young civilian employee of the Department. The woman, a Traffic Control Assistant for APD, was working a scheduled event and was sitting in her Department vehicle on a break. The small APD truck was parked in a traffic lane that had been closed off by cones as part of the plan to facilitate the slowing and stopping of cars and allow for periodic pedestrian crossings. The driver's side door to her vehicle was open, and the woman was not wearing a seatbelt.

Unfortunately, an intoxicated driver who had fallen asleep drove onto the scene and hit the truck without braking. This ejected the Traffic Control Assistant from the truck and caused serious injury. The driver was arrested and charged with related felonies.

MIRT Review and Analysis

To its credit, the Department gave careful attention to this accident in an effort to determine whether learning opportunities were presented. Two useful responses emerged to the identified issues relating to planning and safety in the traffic control context.¹³

¹³ Strangely and incorrectly, the MIRT summary memo we reviewed listed *no* "Recommended Actions" or "Actions Taken" as a result of the process. But that characterization is belied by the other information in the file; in fact, the APD appears to have done a fine job in terms of both issue-spotting and follow-through.

The first was for APD’s relevant personnel to receive training on particular state standards as provided in the Department of Transportation’s “California Manual for Uniform Traffic Control Devices,” with a specific focus on temporary traffic control techniques such as the lane closure in this case. That was accomplished in a timely manner. And it was supplemented by a change in policy that referred to the DOT manual overtly, and required compliance with its provisions regarding planning and on-site safety measures.

The injuries to a valued employee were understandably disheartening to the Department. It is commendable that it used the MIRT process to provide the sort of self-scrutiny and constructive changes that critical incident review can ideally accomplish.

Incident # 2: Non-Hit Shooting by Off-Duty Officer from Outside Agency

In 2017, an off-duty police officer from another jurisdiction fired a shot into the ground during a confrontation with middle-schoolers in his neighborhood. Anaheim police responded – and eventually took one of the involved teenagers into custody. Much of the incident was captured on cell-phone video, and circulation of the recordings on social media helped escalate it into a large-scale public controversy – with some of the criticism being directed at APD.

A protest the next evening attracted some 200 people to the neighborhood for a gathering that lasted more than two hours. Eventually, APD – which had been closely watching developments at the scene – dispersed the crowd in an operation that also resulted in several arrests.

Public criticism concentrated into a protest the following day in the same neighborhood; a group of some 200 individuals – some of who were unruly – gathered in the evening near the site of the shooting. While the off-duty officer was the primary target of the demonstration, the larger conversation incorporated questions and challenges about APD’s response, and whether it had improperly taken the officer’s side.

We have been following this case from the outset, and have written about it in past reports. Several different aspects of it – from the performance of the dispatcher who handled the original 911 call to decision-making of the initially responding officers to the handling of protest to some of the detectives’ actions in the related

investigations – have produced remedial steps of one kind or another. But we have been puzzled by the Department’s reluctance to make full, efficient use of the MIRT process to address this matter.

In a previous report, we expressed our concerns as follows:

Strangely, though, the Department’s use of the MIRT process was halting, inefficient, and ultimately unsatisfying. After considerable vacillation, the executive command finally authorized a MIRT review – but the initial meeting did not occur until several months after the incident. This delay undermined some of the significant advantages of the MIRT format. These include timeliness and clear coordination when it comes to identifying issues of various kinds and ensuring the proper administrative response.

It was also the case that no formal action items emerged from this initial meeting – a strange outcome in a case that had produced a number of identified concerns. Eventually, though, under new leadership and in an effort to effectively bring together the incident’s different strands, the Department did in fact produce a memo to summarize what had occurred, the issues that were identified, and the outcomes of the various legal and administrative proceedings that had ensued. It also utilized the civil litigation in this matter – in which claims against the City and involved personnel were eventually dismissed – to frame some of the elements that had been raised as allegations. It also took a further look at the effectiveness of APD’s operational planning and performance with regard to the protest activity that occurred on the following evening.

However belated, the resultant memo offered a clear and useful encapsulation of events. But it was clearly an unorthodox, “after the fact” approach that deviated from APD’s usual MIRT format – to the detriment of the overall effectiveness of the review process.

Internal Affairs Investigations

Part of our ongoing responsibilities with the City include monitoring APD's handling of misconduct allegations that involve its personnel. These cases fall into different categories. Some are internally generated (such as the review of a vehicle pursuit that reached extreme speeds, or employment concerns arising from a supervisor's improper use of sick time). Others are external, and begin with a complaint from a member of the public. Depending on the seriousness of the allegations in these public complaint matters, and the ability of the Department to reach conclusions based on an initial review of evidence such as body-worn camera recordings, these cases are handled with varying degrees of formality and thoroughness.

Regardless of the source of the allegation or the format that the investigation ultimately follows, the goals should effectively be the same: to ensure that concerns about possible misconduct are taken seriously, scrutinized carefully, and remediated appropriately when policy violations or other issues are revealed. Our chance to monitor a sampling of APD's work in this arena is a window into processes that are central to the functionality of any police agency. And because the Department (and law enforcement in general) continues to retain so much control over these investigations and their outcomes, our access constitutes a level of transparency and accountability that is itself unique in relation to other jurisdictions.

Very occasionally, at the special request of APD or in response to a matter that has come to the attention of the Police Review Board, we are able to "weigh in" with oversight about a case that is still pending. But our basic focus is systemic rather than individual: we assess the effectiveness of specific (and completed) investigations with an eye toward influencing APD's approaches going forward.

Unlike some of our recent reports, none of the Internal Affairs cases we reviewed in this cycle involved allegations of misconduct that warranted dismissal, and significant suspensions were also rare. Indeed, only a minority of them were actually sustained as policy violations. This is not unusual in and of itself – and

not an inherent cause for skepticism about the process. But the dynamic does speak to a couple of aspects of the administrative process we have cited before. One is that many of the behaviors that antagonize individual members of the public are “below the radar” of notoriety or large-scale controversy – which means that they could more easily be brushed aside or discounted by the Department. Accordingly, it is all the more important to monitor APD’s rigor and objectivity in responding to these lesser matters. The other is that, taken together, these cases offer a collective insight into the Department’s commitment to upholding its own standards on a day-to-day basis. The extent to which APD achieves this has far-reaching implications.

As in the past, we found APD’s efforts to be appropriately conscientious, and often impressive. If there are shortcomings, they tend to be on the periphery of the core question of whether misconduct in fact occurred. We discuss some of these collateral issues below, including the quality of notification letters to complainants and the tendency toward light disciplinary consequences. At the same time, we saw several instances in which the Department showed admirable diligence in follow-up with complainants and thoroughness in tracking down potentially relevant evidence.

Two cases offered interesting examples in this latter regard. In one, the complainant alleged that the Department was utilizing a helicopter with an expired registration. The investigator tracked down the relevant paperwork, made sure it was current, and included it in the case file.

In another complaint arising from a traffic stop that the driver believed was racially motivated, the man questioned the officer’s assertion that the registration information about his vehicle had raised concerns. Specifically, the plate had supposedly come back to a different colored car when the officer ran it on the computer. The investigator re-created the computer search and corroborated the particulars of the officer’s version as recorded on the body-worn camera.

Other cases showed a similar attention to detail. For example, a few of the complaints we reviewed involved alleged lost or stolen property belonging to individuals who had been arrested. The investigator conducted a painstaking review of both paperwork and video recordings in order to refute the claims. And in one instance, a gap in Department policy contributed to a protocol not being followed – namely, an inmate signing for his or her property at the time of release – that might have helped achieve a more definitive resolution. The Department

used the case as an opportunity to tighten up its relevant procedures. The idea of maximizing the value of the discipline process as a forum for issue-spotting and organizational improvement as well as accountability is something we have long advocated, and this case fit that model.

A few of the complaint cases involved allegations that came from individuals who had contacted the Department on multiple previous occasions, and whose concerns were seemingly a function of instability. (For example, more than one expressed frustration with APD's failure to properly investigate assaults conducted from out of state through the use of electronics.) The case files showed a couple of commendable features – the patience of officers who were responding to the underlying calls for service, and the effort to loop in mental health professionals or other services.

All of these features reflect well on the professionalism of APD and its investigative process. Below, we cover some of the areas where we note potential for further improvement:

Notification Letters

Any law enforcement agency is obligated to inform a complainant of the outcome of its investigation. Most agencies take a minimalist approach to this requirement for a couple of reasons: they feel constrained by officer privacy protections when it comes to providing detail (which is valid but can be taken too far) and they appreciate the efficiency of a repeatable boilerplate approach (also understandable but potentially off-putting to recipients).

In our view, this practice can amount to a lost opportunity. A more detailed letter has the potential to accomplish worthy ends, even in cases in which the result itself could be disappointing to the recipient. These benefits include an opportunity for the agency to take credit for its actual investigative work and the legitimacy of its conclusions, and a chance to offer the kind of personalized detail that shows the complainant's issues were identified correctly and taken seriously. The principle of thoughtful, individualized notifications also applies to cases when the complaint is sustained – when an apology or other form of “extra effort” could help enhance the complainant's perceptions of the experience.

APD's version of these letters is solid on average. They generally include at least some reference to the individual allegations at issue and often mention the evidence that the Department was able to consider. But we noted individual

shortcomings in tone, detail, or even accuracy – as in a case involving a person whose recovered car was returned to him by APD with a significant amount of suspect contraband still inside. Though the Department identified performance lapses by three different involved employees, the brief notification letter said that “no wrongdoing or misconduct” had been revealed. This presumably did little to promote the crime victim’s confidence in the review process.

We looked at another example in which a victim advocate in a sexual assault case raised concerns about comments made by an officer during an interview. The investigation revealed that the officer’s performance had in fact fallen short of expectations in what is obviously a particularly sensitive context. The resulting letter communicated this outcome, but did not go beyond that acknowledgment. Language such as the following would be an easy – and welcome – addition: “We regret that your experience fell short of our community’s expectations for service.”

Lastly, we note one notification letter in which a transgender complainant was addressed in keeping with biological sex rather than preferred gender identity. APD policy does not appear to speak to this question, and it may merit further attention from Department leadership.

RECOMMENDATION 10: APD should further refine its process of providing notification letters to complainants so as to maximize opportunities to provide meaningful information and strengthen community relations.

RECOMMENDATION 11: APD should review its approach to addressing transgender individuals in light of their preferred gender identity, and make formal adjustments to policy and training.

Disciplinary Consequences

We have covered the topic of appropriate consequences in prior reports, and found further examples in this group of cases of sustained policy violations that led to seemingly minor discipline. Examples included the following:

- Two officers were found to have violated policy in their handling of an alleged assault on a security guard (the victim and her supervisor both took exception to the decision to cite and release the suspect). Issues included delay in activating body-worn camera recordings and

unbecoming conduct and discourtesy, but both officers received a written reprimand – the lowest level of formal discipline.

- Officers who failed to inventory and recover evidence including a syringe and brass knuckles from a stolen car were found to have performed in an unsatisfactory way per policy – and both received a “supervisor’s observation,” which is actually not formal discipline.
- An officer was found to have underperformed on two separate calls for service in the same day, one involving a protective order in a domestic case, and a potential vandalism case at a place of business. He received a one-day suspension.
- An officer who was alleged to have inaccurately filled out a timesheet for an overtime assignment was found to have engaged in “unsatisfactory performance” (as corroborated by video evidence of his late arrival). He received a “supervisor’s observation.”

Our interest in (slightly) stronger consequences in cases like these is not about a desire to punish, but because remediation is an important aspect of a disciplinary system’s effectiveness. It sends a message to the involved officers and to the Department as a whole regarding what matters and how seriously APD leadership takes different transgressions.

Accordingly, we encourage APD to re-weigh its response to some of these sustained violations going forward – not only in terms of the amount of discipline, but also by considering a couple of other approaches. These include “alternatives to discipline” and “discipline held in abeyance,” two concepts that could increase the impact of outcomes with no additional financial penalty to affected officers.

“Alternatives to discipline” refers to pro-active gestures that, in certain situations, would be well-suited to addressing harm in a complaint context. A common example would be an apology by the offending party to the community member who experienced discourtesy or was otherwise aggrieved by the misconduct.¹⁴

¹⁴ One example from these cases involved an off-duty encounter between an APD officer and a state park officer who was (correctly) stopping him. The officer gave a false identity and then, after acknowledging the truth, made a point of saying he knew the other officer’s boss. Required outreach to this individual might have made a meaningful supplement to the (admittedly severe) discipline that the APD officer received.

“Days in abeyance” are a way for an agency’s leadership to “have it both ways” – to send a strong message of accountability without imposing financial hardship through a lengthy suspension. The idea is simple: that the Department responds to a sustained policy violation with, say, a two-day suspension, but only imposes one day off. It “holds” the other day for a pre-determined period of time as a suspension that would only have to be served in the event of a second related violation (which would carry its own separate penalty). The full length of a suspension that is held all or partly in abeyance can also be used as for progressive discipline should that become necessary.

RECOMMENDATION 12: APD should consider alternatives to discipline and “days in abeyance” as concepts to enhance its ability to provide appropriate and meaningful consequences in the event of policy violations.

Racial Bias

The issue of racial discrimination in policing continues to be a significant source of tension in jurisdictions throughout the country. Like other agencies, APD treats allegations of racial bias as a formal component of its complaint review process, even when it is collateral to other concerns. In reviewing the Department’s handling of these cases, we noted that none of the several allegations that emerged during the review period were sustained.

This is not unusual; in fact, individual allegations are so difficult to prove – dependent as they are on insight into the mindset of involved officers – that they are very rarely sustained.¹⁵ And we do not take exception to any of the individual case outcomes in light of the available evidence. However, we do wonder if the full potential of these reviews is always being realized. Even in cases in which the allegation is not sustained or even clearly unfounded, the perception of the aggrieved party warrants consideration and could potentially serve as a learning opportunity – especially given the centrality of these issues to community legitimacy for police.

In one notable case, a Black female complainant was publicly handcuffed and detained by APD officers for approximately fifteen minutes because of the

¹⁵We also acknowledge that the allegations in this highly sensitive arena can also be lacking in substantive legitimacy or even sincerity.

mistaken belief that she was a fraud suspect whom they intended to arrest. The woman was extremely – and understandably – upset. And, while the subsequent investigation established that the mistake was an understandable one, and that the officers had been acting in good faith (and not in violation of policy), we had the sense that more could have been done by way of outreach, apology, and explanation. Instead, she received one of the aforementioned letters that refuted her allegations of misconduct and left it at that.

In other cases, the bias complaint was dismissed on the basis of video evidence without apparent follow-up or questioning of the officers at issue. Again, the point is less about the outcome than about the possibility of legitimate, problematic *perception*, and the search for tools to better equip officers to navigate this terrain without immediate defensiveness or hostility.¹⁶

Holistic Review of Body-Worn Camera Recordings

Many of the complaint cases we evaluated for this report involved allegations that were resolved without formal interviews of involved personnel. There are a few reasons why this occurs, and we acknowledge that not every complaint case requires a full-fledged investigation in order for its lack of validity to be established. Often, as we saw for ourselves, the body-worn camera videos debunked the complainant’s claim in a definitive way.

At the same time, though a policy violation may not have been established, we occasionally saw instances in which the recordings captured behavior or comments by officers that perhaps did warrant further attention – if only as a helpful reminder about professionalism. A few examples include the following:

- Extensive profanity at the conclusion of a dangerous vehicle pursuit as officers worked to take the suspect into custody.
- Officers shining a flashlight repeatedly in the eyes of a person who was filming them during an enforcement action.
- An officer who told an angry adult detainee, “I’m not gonna play games with you, little girl.”

¹⁶ In one case involving the brief detention of an older, disabled Black man for a check into possible impairment, the officer responded to the man’s allegations of bias by stating “Don’t use that excuse your whole life,” and “Don’t play the race card.” This comment, which is clearly inconsistent with APD’s stated values, was not addressed in the investigation file.

None of these behaviors necessarily rise to the level of a policy violation requiring formal discipline – but they also were not the Department at its best. Ideally, the review and investigation process includes a holistic effort to intervene in some constructive way (such as counseling or training) when issues like this are identified.

RECOMMENDATION 13: APD should take advantage of identified issues during its administrative review process and follow-up with appropriate, constructive interventions – even when underlying allegations are not substantiated.

We take this opportunity to add that, in reviewing the recorded evidence, we also saw multiple examples of patience, professionalism, and de-escalation by APD personnel in the context of heated encounters with individuals who would go on to be complainants. As much as this is expected, it also deserves recognition and affirmation.

Uses of Force

Another regular part of our monitoring responsibilities is to review incidents in which force was used by APD members, the vast majority of which are relatively minor and result in neither an Internal Affairs case nor investigation by MIRT personnel. Nonetheless, while both the injuries involved and the risk management consequences for the City and Department may be less severe in these “less significant” events, any use of force is an exercise of police power deserving of attention for a number of reasons. Thorough scrutiny of these incidents sends a signal to both the public and to officers that the Department is paying attention to how it wields its authority, and provides an opportunity for the Department to address individual accountability as well as broader issues of performance, training, tactics, equipment, policy, or supervision. And increasingly, the public expects that there will be scrutiny of force events to learn whether de-escalation techniques could have prevented the need to use force altogether.

For this report, we reviewed the documentation, recorded evidence, and supervisory analyses for 22 randomly selected use of force incidents from 2019. None of the force resulted in serious injury, and all were found to be within policy – conclusions that we do not dispute.

We have seen, since our last report, a maturation of the Department’s “Force Analysis System” (FAS) to the point where many of the features we saw as missing from the Department’s internal review in past years are now consistently included in the documentation and analysis. Of course, the primary focus continues to be on whether a particular use of force was objectively reasonable and justified by the circumstances.

The Department’s embrace of FAS to collect and store under one file number all of the information having to do with each incident is an obvious improvement, allowing for streamlined tracking and enhanced ability to monitor and analyze trends. It provides easy reminders to supervisors about things that need to be included. For example, we consistently saw notations about the efficacy of Taser

applications that we have found lacking in past reviews. The presence of the FAS coordinator, and the routing of all reports to him and through his lieutenant in the Professional Standards Division for final approval no doubt facilitates this more consistent, thorough approach.

Nonetheless, our identification of areas for improvement treads largely familiar ground. Despite our positive review of force reporting and tracking, we found a number of cases where the Department's review missed opportunities to address important issues relating to the use of force or subsequent investigation. Instead of focusing only on the application of force and officers' compliance with policy, we have over the years encouraged the Department to take a deeper, broader look at these events.

The cases we reviewed were a mixed bag. We saw a couple of cases where the process recognized and addressed a training or tactical concern, exemplifying the type of broader, constructive analysis we see as ideal:

- Officers responding to a call where they intended to take the subject into custody on a mental health hold got into a fight with the uncooperative subject. Officers exercised appropriate restraint and the force was in policy, but the reviewing lieutenant instructed the supervising sergeant to go back and watch body-worn camera recordings with the involved officers, to discuss some behavioral indicators of the subject's intent to assault them that the officers might have missed.
- An officer who was interviewing a victim a bit down the block was slow to respond when his partner started struggling with an agitated suspect. That incident was referred to Training for follow-up with the involved officer.

But we saw a number of others where there was no documentation of analysis beyond the conclusion that the force complied with applicable policy, where we thought such analysis might be warranted. For example:

- In one case, an officer was patiently talking with a subject who was under the influence and had earlier created a disturbance at a business. While the officer was talking to him, though, he was calmly sitting and seemingly cooperative. Two other officers arrived and immediately began giving the subject commands in loud voices, then quickly went hands-on with him. The incident resulted in a minor use of "hands on"

force following the ineffective use of a Taser. Our review of the video of the incident led to questions about whether the first officer's calm approach (consistent with principles of de-escalation) might have resulted in the subject's compliance without the need to use force but for the intervention of additional officers. Those questions were not explored in the FAS documentation.

We saw other missed opportunities to commend officers for positive performance, and to use those incidents as broader learning opportunities. For example:

- A cadre of officers was very calm and patient in dealing with a “man behaving erratically” who had prompted a call for service in the middle of an empty parking lot, sitting on the metal rail of a cart return frame. Two officers eventually circled around and then rushed him from behind, while another moved in to kick away the folding knife that was at his feet.

Overall, we are not convinced the Department has fully embraced the force review process as a forum for “getting into the weeds” and trying to identify aspects of the incident that could be used in constructive ways to guide future behavior. We continue to believe that prompting supervisors to answer a few broader questions about the utilization of de-escalation tactics and officer decision-making would facilitate the type of holistic assessment we envision on a more consistent basis, and reiterate a recommendation we made in our December 2019 report (Recommendation 37).

RECOMMENDATION 14: APD should require supervisors to evaluate all the circumstances surrounding a use of force before reaching a conclusion about whether the force was consistent with APD policy, and should pursue and document any related insights or lessons learned from the broader event.

Formalizing Concepts of De-Escalation

Last year, the California legislature enacted law that now requires all law enforcement agencies to use de-escalation techniques as alternatives to force when feasible. To its credit, APD's current policy is responsive to the new law:

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, [officers] should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force. (Government Code § 7286(b)(1)).

To further promote this principle and to ensure compliance with the new state law and current policy, whenever an encounter between police officers and the public results in a use of force, APD should evaluate the encounter not only in terms of whether the officer's actions were consistent with its traditional use of force policies, but also whether the use of force might have been avoided by deployment of de-escalation techniques. But without a companion reporting and reviewing component to the new policy, the Department will be insufficiently aware of the degree to which consideration of de-escalation strategies are actually being considered or deployed in the field.

To be more specific, a number of agencies who have recently incorporated concepts of de-escalation into their force policies have also required officers who use force to describe in their reports whether any de-escalation strategies were deployed prior to the force application, and if they were not, to explain why de-escalation was not feasible. Similarly, as part of the evaluation of an officers' uses of force, supervisors are required to expressly consider and document whether officers effectively considered de-escalation. APD should do the same.

RECOMMENDATION 15: APD should develop policy that instructs officers who use force to describe any attempts to de-escalate the situation prior to the application of force, and if no de-escalation efforts were attempted, to explain why such efforts were not feasible.

RECOMMENDATION 16: APD should develop policy that instructs supervisors who are reviewing use of force incidents to consider and include in their analysis the officers' use of de-escalation techniques, and if none were attempted, to evaluate the officer's decision-making under the circumstances.

Investigative Issues

We were generally impressed by the level of force documentation and the inclusion of information within the FAS system. However, there is one persistent problem affecting the quality of investigations into these force incidents – the continued inconsistency of interviews of individuals on whom force was used. This repeatedly has been the subject of recommendations in our various reports over the years. APD has made some progress on this front: We did not see, for example, frequent instances of officers who were involved in the force incident being tasked with interviewing individuals on whom they'd used force as part of the administrative review process.

Unfortunately, though, subjects were interviewed by supervisors in only three of the 22 cases we reviewed. APD policy requires to conduct a recorded interview of the person on whom force was used, “[w]hen possible”. FAS documentation contains fields for supervisors to indicate whether this interview was obtained and if not, to explain the reason.¹⁷ In some cases, the explanations were obvious (for example, where a subject was taken into custody on a mental health hold and video clearly shows the subject's lack of coherent speech, for example). In others, though, the explanations provided were cursory and not entirely satisfying (for example, simply indicating “uncooperative” or “refused to speak”). To correct this, we suggest a tightening of the policy language and encouragement for sergeants to more fully document any inability to obtain a subject interview, including using their body-worn cameras to record their attempts.

¹⁷ In a couple of cases, we noted that sergeants indicated that a subject interview had been conducted, but recordings suggest the only interviews were completed by handling officers.

RECOMMENDATION 17: APD should tighten its “Supervisor Responsibility” section of its use of force policy to require supervisors to interview the person upon whom force was used, absent clearly documented extenuating circumstances.

We noted a couple of other investigative shortcomings among the cases we reviewed, including two instances where there was some reasonable dispute over facts that should have been documented:

- A subject who was poked in the eye during the course of his apprehension insisted that one of the arresting officers did it on purpose. The reports didn’t mention this allegation, and the supervisory write-up in FAS allowed the accused officer to speculate as to what might have happened without actually documenting or resolving this issue.
- A subject claimed to have been pushed to the ground during the course of her arrest, and seemed genuinely confused about why that happened. The body-worn camera recording does not provide a perfectly clear view of the incident, and it is possible that the subject was unsteady on her feet and simply lost her balance, but the allegation was not fully explored.

In one case, a sergeant was the first on scene and initiated contact with the subject while waiting for officers to arrive. The eventual use of force – beanbag rounds fired at the subject who was reaching into a vehicle in a way that suggested he may be retrieving a weapon – was directed by the sergeant. The FAS analysis concluding that the force was in policy was completed by the sergeant who directed force. Though we do not dispute the conclusion (indeed, the force itself was exemplary in some ways – the sergeant and officers maintained distance and cover while clearly communicating commands to the subject), having the involved sergeant write the evaluation veers from the ideal of objective analysis in ways that undermine the legitimacy of the process.

RECOMMENDATION 18: In cases where a sergeant uses or directs force, APD should assign the task of completing the FAS entry and analysis of policy compliance to an uninvolved sergeant or lieutenant.

A final investigative issue – albeit one we again saw raised in just a single case – has to do with gathering outside evidence related to an investigation of a use of force. In that case, a notation in FAS indicated that there were a number of businesses with surveillance cameras that may have captured the incident, but that those businesses were all closed at the time the sergeant was on scene conducting his investigation. There is no indication of whether the sergeant followed up to attempt to locate any potential surveillance recordings. The incident was captured on officers’ body-worn cameras, and while we understand the instinct to rely on those recordings, the better practice is to gather all available evidence relating to these events.

Addressing Communications Issues

In another reprise from our last report, some incidents we reviewed here raised questions about the professionalism of officers’ communication with subjects. Pointedly, the use of profanity in some cases creates a negative impression and the view that the officer is not in control of his or her emotions, particularly contrasted with the many cases we reviewed where the officers *did not* swear at the subjects, and where the outcomes were seemingly better, and certainly no worse.

- While apprehending a subject accused of trespassing who had attempted to flee from officers, one officer repeatedly swore at the subject (“give me your fucking hands”; “get your ass up”; “don’t kick me or I’m going to hurt you”). The subject was a homeless man who had set up an encampment from which he was being roused. Once in custody, he was concerned about his belongings, and an officer on scene, among other things, said “don’t put your shit where it doesn’t belong, it’s as easy as that.” At the hospital later, the subject was relaying concerns about his property to a different officer, who responded respectfully and considerately. The contrast between these two approaches was striking. Formal recognition of that fact by the supervisor reviewing the incident would have been appropriate.
- Another case where we heard excessive profanity was during the apprehension of a rape suspect after a vehicle pursuit and felony car stop. The higher-stress circumstances there, again contrasted with the many cases we reviewed where officers used no profanity, seem to support the belief that the use of profanity is in some cases tied to a heightened emotional response. This is worthy of further exploration by the supervising sergeants

and lieutenants. Curbing the use of profanity is a good enough goal, by itself, but if its use signifies an officer's tendency to "lose it" in the course of his or her duties, it is all the more important that the Department address it as part of its force review process.

Of course, there are many instances where APD officers resolve situations through effective, professional communication efforts. Many of the cases we reviewed provided examples of calm, respectful interaction with subjects (and we acknowledge there are many more that generally are not captured in ways that would become the subject of our review). Nonetheless, the persistence of the use of profanity is an issue to which the Department should be attentive.

Recommendations

- 1 In every officer-involved shooting, the MIRT process should evaluate planning, communication, and tactical decision-making with an eye toward reinforcing effective performance and remediating (at the officer or Department-wide level) where necessary.
- 2 APD should survey the use of weapon-mounted lights on authorized weapons, and determine whether modifications are needed regarding approved equipment and/or training.
- 3 APD should revise its investigative protocols to ensure that any officer involved in a shooting is interviewed prior to the end of shift.
- 4 APD should revise its investigative protocols to ensure that officers involved in a shooting provide a pure statement prior to reviewing any audio/video footage of the incident.
- 5 APD should incorporate supplemental administrative interviews, and an assessment of tactical considerations, into its standard approach to critical incident review.
- 6 The Department should review critical incident interviews with an eye toward identifying and addressing insights into officer mindset or response that may emerge, as well as identify comments that raise issues of professionalism or mindset and address as needed.
- 7 APD should re-evaluate its policy and training on restraining prone subjects using an officer's body weight.
- 8 The Department should debrief the involved officer and review and update its training curriculum to correct the false perception that a subject's ability to talk indicates that his breathing is not being restricted.

- 9 APD should always consider the viability of safer tactics as a component of its standard analysis in critical incident reviews.
- 10 APD should further refine its process of providing notification letters to complainants so as to maximize opportunities to provide meaningful information and strengthen community relations.
- 11 APD should review its approach to addressing transgender individuals in light of their preferred gender identity, and make formal adjustments to policy and training.
- 12 APD should consider alternatives to discipline and “days in abeyance” as concepts to enhance its ability to provide appropriate and meaningful consequences in the event of policy violations.
- 13 APD should take advantage of identified issues during its administrative review process and follow-up with appropriate, constructive interventions – even when underlying allegations are not substantiated.
- 14 APD should require supervisors to evaluate all the circumstances surrounding a use of force before reaching a conclusion about whether the force was consistent with APD policy, and should pursue and document any related insights or lessons learned from the broader event.
- 15 APD should develop policy that instructs officers who use force to describe any attempts to de-escalate the situation prior to the application of force, and if no de-escalation efforts were attempted, to explain why such efforts were not feasible.
- 16 APD should develop policy that instructs supervisors who are reviewing use of force incidents to consider and include in their analysis the officers’ use of de-escalation techniques, and if none were attempted, to evaluate the officer’s decision-making under the circumstances.

- 17 APD should tighten its “Supervisor Responsibility” section of its use of force policy to require supervisors to interview the person upon whom force was used, absent clearly documented extenuating circumstances.
- 18 In cases where a sergeant uses or directs force, APD should assign the task of completing the FAS entry and analysis of policy compliance to an uninvolved sergeant or lieutenant.