

*The Los Angeles County*

# **Sheriff's Department**

**2nd Semiannual Report by**

**Special Counsel Merrick J. Bobb & Staff**

**April 1994**

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# 1 . I n t r o d u c t i o n

This is the second Semiannual Report by Special Counsel and Staff to the Board of Supervisors and Sheriff Sherman Block on the progress of the Sheriff's Department in implementing the Joint Statement of Judge Kolts and Sheriff Block of January 1993 and the recommendations of the **Kolts Report** of July 1992 on recruitment, training, job performance and evaluation, record keeping and management practices, excessive force, community sensitivity of deputies, and the Department's citizen complaint procedures.

**In our first Semiannual Report in October 1993, we concluded that we were guardedly optimistic. The Sheriff's Department had made progress since July 1992 on the road to implementation of many of the Kolts recommendations and the Department's own initiatives on control of excessive force. This time, we conclude that the Department's progress remains on track and, in some areas, the Department has been particularly impressive and has done extraordinarily good work, in particular in the face of the January 17th earthquake which placed significant strain on the Department.**

These include the ongoing work of the Professional Standards and Training Division, especially in the areas of increased scrutiny of shootings and force cases, the work of the rollout teams, the Commanders' Panel, the revised use of force policies, and the risk management functions, including the improved relationship with the County Counsel's office and improved retention of evidence helpful in the defense of the Department.

We give credit to the leadership in Region II for inaugurating Quality Service Plans, where each station in the Region is drafting detailed plans to augment community-based policing and strengthen relationships and teamwork within the station and between the station and the communities it serves.

We were impressed with the fine work of the Evaluations Task Force, which has given thoughtful consideration to new ways to evaluate the performance of personnel and create incentives to implement the Sheriff's Core Values, service-orientation, risk reduction, and management of force.

We continue to value the fine job done by the Training Bureau, especially with respect to the content of force training classes. We respect the solid proposals that have been made for new selection standards for Field Training Officers. We acknowledge the first-class work of the Kolts Recommendations Implementation Team. We continue to respect and admire the good work of captains and lieutenants throughout the Department, in patrol stations, custody facilities, and special units.

**At the same time, there are areas where our concerns have deepened. Some of those areas are ones where budgetary constraints limit the Department's options, and we are mindful of those difficulties.** For example, as much as we would like the Department to engage in immediate, large-scale hiring in order to bring in fresh recruits and to create movement and promotional opportunities for existing personnel (to say nothing of improving the frankly dismal statistics on women and minorities within the Department), we have to recognize that the money to do so may not be there. There are other projects we reluctantly see as delayed or scaled back because of money. We will point these out throughout this report. On the other hand, we intend to remain vigilant to assure that implementation of Kolts recommendations is not held hostage to budget considerations and that the priorities for existing resources do not slight Kolts implementation.

**Apart from those areas in which the budget legitimately constrains initiatives like large-scale hiring, there are areas within the Department's control where we have deep concerns. None is greater than our concern about the Department's determination and capacity to mobilize and act quickly in the face of warning signs that things have gone awry at a given station or facility.** We are actively monitoring the situation within the Department and will watch with great care how the Department responds to the challenges posed and comment accordingly in the future.

**There are other areas where progress could have been made or fresh thinking should have been brought to bear on old problems.** For example, the Department

made a commitment to reduce the amount of time a deputy is assigned to a custody facility to a range of 18 months to two years when the resources are available to do so. In other words, if the Department can expand rapidly in the patrol field, it could move deputies out of the jails sooner. We do not contend that the money is there at the moment to fund that kind of expansion. But unless the Department can garner more contracts to serve more areas, or can expand its presence in areas already served, or can substantially increase its budget, the ability to rotate out of custody in 18 months to two years will remain beyond reach. In the interim, the Department promised it would look at options to at least expedite the custody rotation. We have seen none, and the length of the custody rotation continues to grow longer; estimates now put it at six years.

The Department also promised to continue “its current policy and practice of full cooperation with and full access to the Department” by our team. Although the Department has generally lived up to that promise with exceptional good faith, we found in this last review that the Department was somewhat slower in producing information in a number of instances and caused us concern, on a couple of occasions, that some individuals were not cooperative and forthcoming. To be sure, these are a few instances in a general pattern where the Department has been very helpful and cooperative, and, because the examples are contrary to the general pattern, they tend to stand out. We also had a concern that the Department had placed the burden of implementing the Kolts recommendations almost entirely on PSTD and that other executives were getting by without doing all that much. We hope that over the next two years, as we continue to audit and monitor the Department, we shall not observe similar problems.

**In sum, and on balance, we respect the progress the Department has made, and, as noted above, the Department in general is on track. This is no small accomplishment, and the Sheriff and Undersheriff deserve to be commended for it.** The LASD is about to launch the most sophisticated and flexible tracking system in the nation at a time when other police departments seem to be scrambling for seed money to begin far more modest efforts in that direction. The Department has shown itself to be willing to consider and act upon fresh

ideas. Sheriff Block and the County of Los Angeles are about to embark on an unprecedented and very promising plan to improve the resolution of citizens' complaints with the opening of the office of the Ombudsman and the appointment of a panel of judges.

Unlike other police departments, the personnel in the LASD are not divided into a host of mutually-antagonistic camps. Some of the brightest and most moral and decent individuals we have come across work in the Los Angeles County Sheriff's Department. Our disagreements with the Department may be as vigorous as ever, but we have increasing comfort that our relationship with the Department is characterized by mutual respect, good faith, and a common set of goals.



## 2 . A c c o u n t a b i l i t y   a n d   E v a l u a t i o n

### *Accountability*

The **Kolts Report** concluded that the Sheriff's Department was not adequately holding personnel at all levels sufficiently accountable for managing risk, reducing unnecessary force, and implementing community-based or service-oriented policing strategies. Executives were delegating authority without adequate training of those to whom power had devolved, particularly to captains and lieutenants. The Department was not providing clear definitions of duties and expectations. As a consequence, at least as regards risk management, force reduction, and community-based policing, there did not seem to be a consistent, coherent practice to evaluate supervisors, managers, and executives and to hold them accountable to specific, well-articulated standards. Nor did there appear to be adequate collection, dissemination, and analysis of data to permit the Department to identify trends and patterns and have early warning of problems. With respect to risk and force, management seemed to be largely crisis or incident-driven, reactive, and defensive.

In the two years since our initial investigation, however, there has been progress in addressing these deficiencies, although the Department has only partially implemented the Kolts recommendations on accountability to date. We want first to acknowledge three areas in which there has been exceptional progress.

- Our last report noted the progress that has been made by the Kolts Response Implementation Team ("KRIT") and by the Professional Standards and Training Division ("PSTD"). The momentum there has continued, and we again acknowledge Chief Graham and his staff.
- As we will discuss herein, the work of the Evaluation Task Force, under the leadership of Commander Ken Bayless, has been excellent, although the Department has not taken steps to consider this Task Force's recommendations since September, 1992.
- As we will also discuss, Chief Baca has initiated a process of planning and goal-setting in Region II which is very promising in terms of accountability.

At the same time, however, we perceived a disturbing tendency on the part of some other executives to assume that implementation of the Kolts recommendations was primarily, or perhaps even only, the responsibility of the KRIT and PSTD. We were concerned that there was an attitude of “that’s not my department” in some quarters; a sense that since Chief Graham was doing the job and had won the respect of Special Counsel and staff, that others could scrape by without doing all that much; that the Department could get by with producing some window-dressing or “blowing some smoke”.

Recently, that unfortunate situation has changed to some extent, partly as a result of the reactivation of task forces Sheriff Block had established in May, 1992 to implement his “Core Values” statement. Those task forces, which had produced some excellent preliminary work, had thereafter languished. Very recently, however, under the general supervision of Assistant Sheriff Duane Preimsberger, the task forces have started to make speedier progress toward concrete recommendations. As in many large organizations, the process in the LASD for formulation of new policy and getting the myriad sign-offs and buy-offs is tedious and requires patient negotiation of pitfalls. Despite the cumbersome process, some newly-formulated policies are emerging.

One is a restatement of the personal accountability of all ranks in the LASD. Proposed revisions to the LASD’s Policy Manual were formulated by an Accountability Task Force. The LASD states that those revisions have been negotiated with the unions and are ready to be formally routed and approved by the LASD’s Executive Planning Committee, or EPC, composed of the Chiefs, Assistant Sheriffs, Undersheriff and Sheriff. The EPC is anticipated to act within the next three months. The revisions are an attempt to set forth areas in which Department personnel will be held “personally answerable” for their individual actions. The revisions are most successful with respect to the duties of the lower ranks but are deficient and disappointing as regards the higher ranks. The revisions to the Manual provide that:

*“[i]t is the responsibility of all members to meet the standards of performance established for their position. Accountability is also a commitment to the Department and the public we serve. All members will be evaluated on their compliance with the Department’s Manual of Policy and Procedures, all directives in support of the manual, statutory and case law, “Our Missions” statement, “Our Core Values” statement and the “Law Enforcement Code of Ethics.” Additionally, supervisors and managers will be responsible for, and evaluated on, their enforcement of these areas.”* Proposed Manual Revision Section 3-01/005.00.

Except for the curious omission of the Department’s executives from the last sentence, the above-quoted provision is sufficiently broad and inclusive to include notions of strict accountability for use of force, risk management, and service and community orientation. It incorporates, by reference to other policy statements, notions of non-discrimination within and outside the Department on the basis of gender, race, ethnicity, or sexual orientation. It is an acceptable statement.

## **1. High Executives**

The proposed manual revisions attempt to describe the duties of all personnel within the Department in terms of accountability. The proposed revisions, however, for some reason do not purport to change in the least the definition of the duties of the Sheriff, Undersheriff, and Assistant Sheriffs. We believe that the duties of each should specifically include accountability for use of force, an obligation to manage risk, and a duty to insure non-discrimination. We have no doubt that each of these high executives would acknowledge these responsibilities and say that they “go without saying.” Possibly so, but it would nonetheless be salutary to articulate them and assign specific responsibilities. There is no evidence that there was serious reconsideration of the duties and responsibilities of these high officials.

## 2. Chiefs

The first set of major revisions has to do with the duties of Division Chiefs. It is good to see that managing loss prevention is specifically mentioned, although the statement is overly general and does not specifically address liability risk, force, and non-discrimination. Although the revisions advert to the need for short and long term planning, they could be improved by a more thorough description of how a Division Chief should look and plan ahead; anticipate problems, trends, and the need for resources; shape his or her division for future challenges and opportunities; be experimental. The Chiefs should be looking two, five, and ten years out and developing a vision and a plan for their areas of responsibility. A Chief should help shape current practices with an eye to anticipated needs down the road. We believe that the areas for which a Chief is held accountable and responsible should include a great emphasis on forward planning. The Division Chief is often the forerunner of ideas that should be applied throughout the Department. The experiments and reforms in Region III under then-Chief Morris and under then-Commander Lee Baca set the standard in many areas. The accountability draft could benefit from a more thorough description of the duties of a Division Chief.

## 3. Commanders

The accountability draft for commanders is more disappointing in that it fails to define the role of the commander with precision and does not adequately stress accountability. The draft also has the odd notion that commanders “should employ the **least intensive management style** to assure that subordinate units are operating . . . within appropriate disciplinary guidelines [and] within appropriate qualitative and quantitative performance levels.” (emphasis supplied.) Although the goal of empowerment of captains is laudable, and we agree that commanders should not micro-manage captains, we nonetheless believe that, regardless of “style,” the **most intensive** management

should be at the intersection of the station and the region. Commanders should be proactive managers; more than workhorses, stand-ins, or gatekeepers for chiefs.

Commanders should have affirmative obligations to supervise the stations or facilities within their ambit. They should be active and personally responsible for the performance of all the stations or facilities, particularly with regard to risk and liability management, which of course primarily involves monitoring use of force, citizens' complaints, disciplinary decisions, and other indicia of risk.

In the **Kolts Report**, we recommended that a Division Chief should require his or her commanders to meet with their captains to formulate a written annual plan for each station with respect to risk management, reduction in use of unnecessary force, community-based policing programs and strategies, training, and the like:

*In the Sheriff's Department today, there is no clearly defined way to measure what the captains are doing and how well or poorly they are doing it. There are few goals and timetables. We would like to see each captain sit down with his or her area commander and prepare a written annual negotiated plan for the station setting forth specific goals, timetables for attaining them, and ways to measure progress. It should include a specific plan for reducing force, reducing citizen complaints, handling claims, mediating resolvable disputes . . . interacting with the community, implementing community-based policing, and imposing discipline. Annual performance review of captains should include specific review of whether the plan was met. There should be incentives for captains to reach these goals, and disincentives if they do not.*

*Similarly, commanders should sit down annually with their chiefs and prepare a plan to assure that captains under their charge meet the targets . . . . The performance review of commanders should contain a substantial component for evaluating whether their captains have met their goals.*

**Kolts Report**, Chapter 25, "Accountability within the Department," pp. 336-37.

With the notable exception of Region II, where Chief Lee Baca and Commanders Ashby and King have required each station to prepare a Quality Service Plan, these important recommendations do not appear to have been implemented. Because Region II has begun to think about these issues, and service plans have actually been produced, we will digress to describe them in greater detail. We recommend that the experiment taking place in Region II be emulated throughout the Department.

We have reviewed the Quality Service Plans prepared pursuant to a memorandum to captains in Region II from Chief Baca and the two commanders. Although several are rather sketchy, some of those plans are very well-crafted, and none are better than the ones prepared by the Carson, Century, and West Hollywood Stations, which, among other things, set specific performance goals for 1994. The Carson station, under the leadership of Captain Joe James, has a detailed ten-step plan to increase satisfaction in all sectors of the community with the performance of the Sheriff's Department under overall goals of treating everyone with dignity and respect. The plan also has specific performance goals for the station for 1994 and a well-developed employee wellness program, including stress management training, communication strategies training, annual wellness checks, and other features. Conflict resolution is stressed throughout.

The Century Station, under the leadership of Captain Carole Freeman, also has performance goals. The plan also has ambitious personnel development plans: All station personnel will receive training in conflict resolution semi-annually; all supervisors and managers will receive training as mentors in the areas of anger control, stress reduction, and service-oriented leadership; all patrol sergeants and team leader deputies will receive training in constituency building, problem solving, service performance assessment, and training and mentoring skills; and all station personnel will receive training to include stress management and anger control, cultural diversity, problem assessment, use of force, performance standards and expectations, and situational planning. We will follow with interest the implementation of these plans at the Century Station under

Captain Art Herrera, who is succeeding Captain Freeman.

The West Hollywood Station, under Captain Bill Mangan, proposes a community satisfaction survey, among other good ideas, and requires that the all sworn personnel at the station actively attend community meetings and events to provide an effective liaison and sounding board for community access to the Sheriff's Department. The plan lists a broad variety of community organizations that will be included, from the City Council and Chamber of Commerce to two different gay and lesbian organizations, a Senior Citizen's council, and the Chabad Russian program.

We commend the work of Captains Mangan, Freeman, and James, and will follow with interest the implementation of the Quality Service Plans. Chief Baca also deserves commendation for the substantial progress toward increasing accountability and responsiveness to the community. Our only two suggestions with respect to the Quality Service Plans are that (i) they might specifically address plans to reduce liability risks, including unwarranted force, and (ii) they might address how the captain intends to evaluate and act upon data soon to be available through the PPI.

As is apparently becoming the case in Region II, the Chief of a region should require the commanders to demonstrate detailed personal knowledge of each station; to know the number, kind, and variety of problems in a particular station and what specific strategies are in place to respond to them; to know about the problem officers or potentially problem officers at each station and to know specifically how they are being supervised and dealt with; to know how many preventable injuries or accidents have occurred at each station and what the plans are to reduce them; to know the lawsuits or claims filed against each station and the potential exposure; to know whether problem cliques are forming at any stations and what assistance has been given to the captain to deal with it; to know the strengths and weaknesses of management at each station; to know what training has been received by station personnel and what training is needed; and to know how to attract departmental resources and personnel to address and forestall the problems.

It may be argued that these are all the responsibilities of a captain. We agree; but we also perceive that widely disparate performance by captains is tolerated within the Department. There are some exemplary captains who know how to manage a station or facility and do not require much oversight. They function much as a police chief of a medium-sized city, and they do the job well. There are others, unfortunately, who are not as capable and whose stations may pose grave liability risks that perhaps are not being attended to.

The problems we observed two years ago in the **Kolts Report** with respect to the accountability are still present. In-depth knowledge and oversight of stations by some commanders appear deficient. Among some commanders, there seemed to be a passivity, or a tendency to rationalize, or a laissez-faire attitude that was disturbing. As a result, we re-emphasize the Kolts recommendations that commanders should be personally accountable for the stations they supervise.

We do not believe that making commanders accountable for the foregoing is at variance with a philosophy of empowering captains. Rather, we see the captains and commanders working in tandem to analyze the needs and the problems of a given station and coming up with a plan to be executed by the captain. **The role of the commanders and chiefs is not micro-management of a station, and they should in general grant reasonable discretion to captains; however, if it is necessary to step in to avert a disaster, the "least intensive management style" should be tossed to the winds and intervention should be forceful.** In our view, there is no place in the Sheriff's Department for the bizarre notion of "least intensive management" at the first hint there are deputy cliques at a station running roughshod over sergeants or lieutenants, as has occurred, or if uses of force are starting to get uncomfortably high, as they have been at times, or if there are incidents where large numbers of deputies are caught behaving inappropriately on or off duty, as also has been the case. In those instances, the chief and commanders should come in like gangbusters and be the guarantors to the rest of the



Department that the station is not out of control and the captain is intervening and dealing with the problem. If not, the chief, the commanders, and the captain all should be held to account. The proposed sections on the accountability of commanders could benefit from another look.

#### **4. Captains**

The accountability revisions do not specifically mention risk management in so many words until the proposed revisions for captains, which require that the captain “strive to minimize risk to the Department by monitoring, reviewing, documenting, disciplining and rewarding their employee’s activities.” That is appropriate but, as noted earlier, we think that there should be accountability for risk management, reduction of excessive force, and non-discrimination at all levels of the Department, including those senior as well as those junior to captains.

The detailing of responsibilities for lieutenants, sergeants, deputies, and others is generally well-stated, if somewhat over-general, in the proposed manual revisions. To the extent that we have criticism, it is that lieutenants and sergeants may be over-loaded with responsibility. As we have noted before, the Department has too few sergeants and field supervision suffers as a result.

In sum, the Department’s sense of who is accountable for what, as expressed in the proposed manual revisions, is more successful at the lower ranks and less successful thereafter. **The main deficiency is that it pushes responsibility and accountability down to captains, lieutenants, and sergeants. The duties become more and more detailed the lower one goes. The draft is too timid even to touch the duties or responsibilities of the Assistant Sheriffs, Undersheriff, or Sheriff. Indeed, the duties of the Sheriff are simply a restatement of the Government Code. The draft fiddles a bit with the duties of chief and commander, but shrinks before the obligation to make**

commanders and chiefs truly accountable. From our vantage point, which is to assess whether the Department is implementing the Kolts recommendations on accountability, the draft on accountability leaves much to be desired. This draft demonstrates that the Department still has not fully come to grips with nor implemented the Kolts recommendations on accountability. We will continue to monitor this area with care.

## *Evaluations*

As noted in the **Kolts Report**, there is a widespread perception within the Department that managers and executives are almost never evaluated critically or disciplined; that discipline is reserved for deputies and the occasional sergeant. The irony that there are executives who have been promoted, despite conduct for which deputies are suspended, is not lost on LASD deputies. We do not advocate a reign of terror for managers and executives, but the evaluation process for everyone still leaves much to be desired.

Efforts to revise the Department's evaluation process have been put on hold pending resolution of the work of the accountability task force. Although the Evaluation Task Force got out ahead and presented a plan to the Executive Planning Council in September, 1992, the efforts of that committee has been stalled since then. We reviewed the work of that Task Force, under the leadership of Commander Ken Bayless, and were favorably impressed. We were distressed that the fine work of that committee has not been implemented. The Task Force identified many of the key deficiencies in the current system: That the evaluation process is too generic and not relevant to specific job duties; that there is inadequate or no feedback during the rating period; that the evaluations do not deal with areas of risk management; that they do not routinely track critical data; and that they are of limited use to management or employee. Evaluations were not being

used as a vehicle to reinforce Department “core values” and to promote department-wide change.

The Task Force came up with a form of evaluation for sworn personnel, deputy through captain, that addressed many of these issues in a thoughtful and comprehensive way. Although the length of the form was perceived by many inside the Department as daunting, we thought it was not anywhere nearly as cumbersome as had been made out and that it incorporated some excellent ideas. It required raters to discuss performance levels with the rated employee at least twice a year in addition to the year-end review. The authors of the form additionally created two new blocks for the rater to judge the employee with respect to “Professional Traits” and “Areas of Risk Management.”

Among the “Professional Traits” to be judged were: consistently displays a service ethic toward others; treats others as you would wish to be treated; displays sound, thoughtful judgments; accepts full accountability for personal actions and areas of responsibility; shows sensitivity to victims, witnesses, complainants and the general public, assisting them as much as possible; is unwilling to accept unprofessional conduct by others; and brings issues needing corrective actions to the attention of supervisors if they are beyond the scope of the employee to handle.

The “Areas of Risk Management” were also extremely well-done. The employee is to be evaluated with respect to: showing respect for human dignity in the application of necessary force (or in the review of such incidents); showing respect for human life in the potential for, or application of deadly force (or review of such incidents); using appropriate and safe field enforcement tactics; being knowledgeable and complying with laws, policies, and procedures including those concerned with sexual harassment, non-discrimination, and areas involving potential monetary exposure or liability; defusing volatile situations through calm, controlled actions; practicing safe and professional driving habits; and being vigilant to safe weapons control practices. These categories were exceptionally well-conceived and well-stated. We commend those who worked on the Task Force.

The proposed form made another very significant step forward in terms of risk management. It required the rater to find out if the employee had primary involvement during the rating period in a shooting; a completed formal administrative investigation; an investigated citizen's complaint; a force incident; a complaint involving sexual harassment; a complaint involving some form of discrimination; a new or adjudicated administrative claim or civil suit; disciplinary actions or remedial training; investigation of criminal misconduct; or a traffic accident. The form then required the rater to fill out an additional short form detailing remedial action taken, if appropriate. We suggest that the form might be less onerous if the line "a force incident" were modified to read "a force incident involving injury, complaint of pain, indication of misconduct, or force greater than a control hold or a comealong." Otherwise, we give the form our highest praise and recommendation for the manner in which it treats risk management.

The proposed form also had space to describe specific job expectations for the current assignment of the person being rated and the employee's own goals as formulated in a discussion with his or her supervisor. The form also had series of questions tailored specifically to different units. One other question we raise is whether it might be attempting too much to use the same form for all personnel from deputies to captains. It might be useful to have separate forms tailored to the specific accountability and job requirements of each level.

The Task Force should devise evaluation forms for commanders, chiefs, and the other high executives. The absence of such forms reinforces the notion that commanders and those senior to them are above criticism and formal evaluation and can hold everyone else responsible and accountable without being answerable themselves. This is the principal flaw in the draft prepared by the Accountability Task Force. The Evaluations Task Force should tackle the problem. If it does as good a job as it did with the evaluation form for deputies to captains, the Department will be well-served.

Finally, we note that there must be adequate training for the new areas of accountability and evaluation. The **Kolts Report** specifically recommended “intensive training programs for captains and area commanders.” **Kolts Report**, p. 342. The management of risk and use of force need to be taught; and the Department is not yet doing it adequately. We were disappointed that Commander Pash’s excellent idea of a Captain’s School apparently has not yet come to fruition.

In the next six months, we will concentrate heavily on the questions of accountability and evaluation. We will see if the forms have been adopted and implemented. We will follow with great interest the work of the various Core Value Task Forces as policy is formulated in these areas. **We will look carefully to see how the questions of risk management, use of force, and non-discrimination are dealt with; who within the Department is made really responsible; what carrots and sticks are used; whether commanders, chiefs, and other executives have the courage to place greater responsibility and accountability on themselves or whether they try to push it all down to captains and lieutenants.** Above all, we think no one can pass the buck either up or down the ranks on these issues. It stops at every executive’s desk, each custody facility, and every patrol car. The Department needs to articulate better the specific duties, responsibilities, and accountability at each level in the LASD.



### 3 . T h e D e p u t y

Since the Kolts investigation began in December, 1991, we have kept foremost in mind the impact of our recommendations on the lives and dignity of the victims of unnecessary force and the impact of our recommendations on the lives and dignity of the deputy sheriff. There can be no question that abusive behavior or unnecessary force on the part of any police officer must be firmly and quickly dealt with, and a culture that is permissive of such conduct must change. As this Report demonstrates, there are encouraging, if tentative, signs that there is a diminution in the serious incidents that gave rise to the Kolts investigation. It is too soon, and perhaps we shall not know definitively for years, whether there is a durable change in culture and practice within the LASD. We hope that the change we are observing is not evanescent.

It is therefore appropriate, given these tentative indications of progress on the issue of excessive force, to reflect on the impact of the last few years on the life and dignity of the deputy sheriff, and we hope to do the same focused reflection in the future on sergeants and others. But for now, it is the deputy sheriff that we would like better to understand, and, in an attempt to do so, we have spent a lot of time with many of them.

As part of our ongoing investigation, we ride along with deputies with some frequency; usually, we go to a station on a Friday or Saturday night and spend the better part of the PM and Early Morning shifts, from six or seven at night until two or three in the morning, out on the streets in a patrol car, responding to calls along with the deputies and observing traffic stops, narcotic arrests, warrant checks, and the deputies' interactions with the people on the streets and the people who have called for help. We've watched them break up loud parties, take care of battered women and deal with abusing husbands and boyfriends, search for burglars in empty warehouses, calm down abusive, foul-mouthed drunks and people turned paranoid on PCP, transport a hyperventilating, drugged-out man picked up running down the middle of a busy street to County USC, return lost children to their parents, search houses and cars for weapons and drugs, give a stumbling drunk a ride home so that he would not be run over, go through dark alleys, swarm and subdue a recalcitrant inmate,

confront agitated mobs, engage in high-speed chases, arrive at the scene where a gunshot victim lies bleeding and dying, draw their weapons in response to real danger, break up a knife fight at a bar, begin to experience the grim aftermath of shootings where they have had to take a life.

We have ridden with the deputy sheriffs from most of the stations in the LASD: East Los Angeles, Temple, Carson, Firestone and Lynwood (now known as Century), Lennox, Marina Del Rey, West Hollywood, Industry, Lakewood, Norwalk and Pico Rivera. We've ridden some of the stations many times; indeed, we've been to East LA, Lynwood, Firestone, Lennox, and West Hollywood five or six times each, and we've made a point to spend time at each of those stations during each of our review periods. We know that, in most instances, the deputies we ride with are handpicked and are the cream of the crop at the stations; and we're also aware that they are on their best behavior. Notwithstanding the stage management, we always learn a lot.

We've also ridden with the Gang Enforcement Teams and with Field Sergeants. We have gone to briefing at several stations, including Lennox, Lynwood, Temple, Firestone, and Carson, and we've taken questions and received critical comment (to put it mildly) from deputies and sergeants. We've met with watch commanders at the stations, and have observed them in action taking use of force reports and counseling deputies, and, at quieter moments, they have shared their thoughts and views. We've received thoughtful counsel from them.

We have also spent time at various of the custody facilities. We spent two days at the Inmate Reception Center near Central Jail; we visited the Hall of Justice Jail before it closed; we've been to the North County Correctional Facility; we've visited Biscailuz and we've seen Sybil Brand. We've visited the lockups at most stations, and we've visited the Jail Ward at County USC. A few weeks ago, Captain Al Scaduto personally gave three of us a tour of Men's Central Jail, telling us that there was nothing we could not see. He was not simply making an idle offer: When a serious scuffle that was put down with serious force broke out between an inmate in a crowded corridor and a deputy, Captain Scaduto, to his credit, and on his own initiative, led us to the scene to see the incident rather than scurrying us away. We've met in large and small groups with deputies, sergeants, and lieutenants at these facilities and elsewhere.



We have learned many things from deputies. Deputies have made clear to us how hard their lives can be. Many have been anxious for us to understand what its like to be a deputy sheriff. We will be asked if we've ever been on a police force, or have had a weapon pulled on us, or have been shot at, or have been spit upon, or called filthy names, or have had urine poured on us or excrement thrown at us from a jail cell, or have been the target of a false citizen's complaint that would end our careers in "a hot second," or have been "fronted off" by a group of young punks. They also want us to know that not all deputies use excessive force and that they are also distressed by the behavior of the "cowboys."

As we observe deputies in ride-alongs and have long conversations with them, and as we bridge some of these gulfs in experience and try to engender some trust, deputies tell us about low morale. We are told that there has been too little movement within the Department for too long; deputies in custody are waiting four, five, and six years to get on patrol; the Sheriff/Marshall merger has exacerbated the problem because the marshalls were integrated into the seniority lists in such a way as to lengthen the stay in custody for the deputies who were already there; patrol deputies who want to move on and become detectives or training officers or move to a special unit feel stuck; some managers and executives are harsh and punitive, building cases for their own promotion by "burning" deputies and looking for fault; some executives are hypocrites, dishing out punishment for conduct they engaged in when they were deputies and got away with; the media is too critical and unfair; plaintiffs' lawyers are sleazy; the Kolts group is a pawn of those who think that every police officer is a brutal thug; the tracking system will simply be a numbers game and the results will be applied punitively and the wrong people will be rewarded.

Whether we agree or not with what they say, how they say it and what we hear distress us. In our last Report, we noted that the last years have been difficult ones for the deputy; the intense scrutiny of the police in the last few years has brought to light the need for reform and may have relegated to the shadows the good police work of most deputies. We empathize with the struggle of deputies to comprehend what is expected of them at a time when the definition

of what constitutes a good, aggressive, hard-working police officer has undergone some change. We deplore budgetary difficulties which lead to a diminution of hiring, training, movement, advancement, and promotion within the Department and curtail time for briefings where deputies could learn why the Department has instituted new procedures and policies regarding force.

In our last Report, we also deplored that the deputies had not been adequately informed as to how the tracking system will operate. Some steps have been taken to remedy that deficiency, including a long-overdue but important bulletin by Sheriff Block. The cynicism still remains, however. We take executives at their word when they say that it will be used sensitively and with judgment in a fair and balanced way; some deputies are not as willing as we are to give the brass the benefit of the doubt. We have advocated for the publication of standards and guidelines so that all can see how the information will be used; the Department has let this important task remain undone.

In the **Kolts Report**, we raised the issue whether it was appropriate to assign a deputy fresh out of the academy to a correctional facility for many years. In the Joint Statement of Sheriff Block and Judge Kolts of January, 1993, the Department stated that it was its goal to reduce the amount of time that a deputy is assigned to a custody facility to a range of 18 months to two years. The Department noted that it could not reach this goal in the near term because of fiscal constraints and the attendant reduced opportunities to transfer deputies to patrol. Nonetheless, the Department pledged to “continue to look at options to expedite custody rotation.” Our investigation reveals that little, if anything, has been done in that regard, surely in large part because of the budgetary constraints that have not eased.

The Department in general is confronting the terribly difficult question of what will happen if the budgetary constraints are not eased in the near term. The LASD is monitoring the consequences to itself of absence of movement. It keeps careful watch, for example, on attrition.

What we have not seen, however, is a serious, focused scrutiny of what to do about the long custody rotations, particularly as they have become an enduring fact of life, at least for the foreseeable future. This serious problem needs to be addressed, and in our next Report we will examine the Department's response.

As noted before, the truth is that what it means to be a good deputy has undergone change over the last few years. The change is good and long, long overdue. Steps to institutionalize that change should not be slowed. As we said last time, the need for better communication and the existence of uncertainty on the part of deputies is no reason to slow down implementation. Rather, it is a call for better explanations.

At times, it seems that the "brass" in the LASD infantilizes the deputies. Bad deputies are "problem children;" new deputies from the academy are "babies;" the complement of deputies at a station are "the kids." Although this reflects a caring and protective attitude, we wonder whether these ways of viewing the deputies may lead to them being treated on occasion like recalcitrant children who should do as they are told "because I said so; that's why" rather than being dealt with as responsible adults. These "babies" carry guns, and society places great responsibility on the shoulders of these "kids." The deputy sheriff has far more discretion than a seasoned judge in a black robe contemplating taking away a convicted defendant's freedom. The deputies deserve to be dealt with as adults, and they need to get full and complete and meaningful explanations of things.

By the same token, they need to be held accountable and responsible as adults. Many of them may be in their twenties and fresh-faced, but their profession demands uncommon maturity and responsibility. Too often, management belittles misconduct assuming that the deputies will "grow out of it."

One good way to inculcate the responsibility to act wisely and reasonably is by the careful selection of Field Training Officers and Field Sergeants to teach and supervise deputies in patrol and by careful selection of sergeants and trainers in custody facilities so that deputies learn to act appropriately early on. If these role models can inculcate the

Sheriff's "Core Values" and teach service-orientation and the use of only reasonable and warranted force, then these lessons will be taught as integral to the job and not seem imposed from above. We are vitally interested in how FTO's, mentoring sergeants, and teachers are selected and trained, and we will scrutinize that selection process in future reports.

We have no doubt that if their FTOs and training sergeants show them it is so, the deputies will understand and agree that service-oriented policing, or community-based policing, is in the deputies' and Department's best interests and is consistent with higher public security and officer safety. It is not at odds with professional, aggressive, active policing. It does not mean balking from the use of reasonable force if necessary, including deadly force. But it does mean that unwarranted and unnecessary use of force is unacceptable.

It is unfortunate that some of the messages the deputies receive are from groups or individuals who question the Department's sincerity or motives regarding the mission to reduce excessive force and to achieve greater accountability; people who see the implementation of Kolts recommendations or "Core Values" as momentarily politically expedient, or a reaction to outside pressure, or window-dressing, or a ploy to placate the Kolts group or the media or the Supervisors, or a way to smooth relationships between the Department and the County over liability costs.

We do not share in that cynicism. As we said nearly two years ago, the Kolts recommendations do not run counter to the direction in which Sheriff Block was moving the Department. Unless we see foot-dragging or evidence to the contrary, we will continue to give the Sheriff and his executives the benefit of our belief that they are acting in good faith and for the best motives. The leaders in the LASD could help to counter some of the cynicism by deputies by frankly acknowledging that things may have been different when they were growing up in the Department, and that conduct that was acceptable — or even rewarded and may have led to promotion — is wrong and unacceptable today.

In our last Report, we said that the managers and executives should have three paramount goals, and we will continue to evaluate whether there is movement toward meeting them. They are:

(1) to put a lasting end to the use of gratuitous and unwarranted force.

(2) to hold all personnel accountable so that misconduct is dealt with quickly and firmly, and persons at risk of using force inappropriately, or otherwise causing potential liability, are identified and re-trained, or, if necessary, punished or removed from the force before a terrible incident occurs.

(3) to reward, praise, promote, and steadfastly defend good, hard-working, productive, and highly professional deputies, who get criminals off the street, but who know when and how to use force judiciously and in a measured way, who are service-oriented and want to get to know and help people in the communities they serve, and who are courteous and professional in their dealings with the public and with each other.



## 4. Review of Shootings & Serious Force

In the six months since our last review, the LASD has continued to experience a decrease in officer-involved shootings and serious force incidents. The figures for shootings and other force incidents are set forth in Table 1 below. Although it is difficult to draw firm conclusions from the overall decrease in shootings and serious force, many within the Department have expressed the hope that the significant downward trend reflects a more judicious use of force on the streets and in the jails.

This is not to say, however, that there do not continue to be incidents of very disturbing uses of force resulting in severe injuries or death. For example, the very recent announcement of an FBI investigation of a March 4, 1994 death at the Jail Ward of County USC Hospital, involving the LAPD as well as deputy sheriffs, causes us to sound a cautionary note. The LASD's internal investigation, however, was commenced with a rollout on March 4. We will carefully review the results of investigations of the incident.

No one should make the serious mistake of concluding that brutal conduct is a thing of the past. Rather, there is an encouraging, and, we hope, accelerating trend downward in the

1				
<b>Officer Involved Shooting Incidents*</b>				
	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994**</b>
Number of Shooting Incidents	56	47	29	7
Number of Officers Wounded	10	6	4	0
Number of Officers Killed	0	2	0	0
Number of Citizens / Suspects Wounded	40	31	12	5
Number of Citizens / Suspects Killed	23	18	22	2
* Incidents during which an LASD Officer intentionally fired at and hit a citizen / suspect				
**Through March 31, 1994				
<b>Non-hit Shooting Incidents*</b>				
	<b>Aug. / Dec. 1993</b>		<b>1994**</b>	
	14		4	
* Incidents during which an LASD Officer intentionally fired at and hit a citizen / suspect				
**Through March 31, 1994				
<b>Incidents Requiring PTSD Rollout</b>				
	<b>Aug. / Dec. 1993</b>		<b>1994**</b>	
	45		25	
* Through March 31, 1994				

number of such incidents. That this trend has been accompanied by a decrease in officer fatalities and injuries suggests, albeit inconclusively, that a more discerning approach to force has not compromised officer safety, but may have enhanced it.

During the last six months, the LASD has continued to refine its new procedures for review of shootings and serious uses of force. As discussed below, these new procedures are working well to carry forward the Department's reformed approach to serious uses of force. Excellent progress has been made, and we will offer some suggestions for further improvement.

### *The Commanders' Panel*

In the last two years, the LASD has substantially revised and improved procedures and policy concerning investigation and review of officer-involved shootings and serious force incidents. Two key changes stand out: (i) the expansion in membership and duties of the PSTD Response Team, consisting of representatives from IAB and the Training Bureau, among others, to conduct on-the-scene reviews of shootings and serious force incidents, and (ii) the creation of a panel of three commanders – one from PSTD and two chosen on a rotating basis by the PSTD – to conduct a rapid review of shootings and serious force incidents for their policy, tactical, or risk management implications. The involved officer's captain can choose to attend the commander's panel to provide any insight he or she may have concerning the incident or personnel under review or to answer questions put by the panel.

In our last report, we expressed strong approval of the commanders' panels but also expressed a few reservations about the adequacy of procedural safeguards to ensure a thorough and fair review. As we will describe below, these reservations have been put to rest over the last six months, and, with the exception of one case described below, we conclude that the panels are thorough and well-prepared and are making appropriate decisions respecting the disciplinary and training aspects of the incidents under review.



From its inception on August 1, 1993 through April 7, 1994, the LASD has convened seven different commanders' panels to review a total of 44 separate shooting or serious force incidents. We examined all the available reports relating to these incidents. We also reviewed the decisions reached by the various commanders' panels, as well as memoranda of the action taken by the involved officer's captain in response to the commanders' decisions. Finally, we interviewed many of the commanders and captains who participated in the panel proceedings.

We want to point out one excellent improvement in procedure since our last review. Currently, the Department strongly urges the Training Bureau representative on the PSTD Response Team to seek a voluntary interview with the involved officer. To their credit, many deputies volunteer to speak with the training official. The deputies often provide valuable, and otherwise unavailable, information necessary for a thoughtful review of the incident. One deputy reported feeling more comfortable discussing an incident with a training sergeant, whose goal was to provide constructive criticism, that with IAB, which he thought was more adversarial. With relatively few exceptions, the IAB and Training Bureau reports were of high quality.

The commanders reviewed the cases before them with great care. As one PSTD official noted, the commanders' panels permit open and frank discussion:

*[The commanders on the panel] are being careful when they look at these [cases]. They learn pretty quickly that saying, "I've got nothing to say about this one," is a pretty dumb thing to do, because another commander will suggest in a careful way that there's lots to say, even if it's only that the deputy deserves an "attaboy" or commendation. Every single one of these cases has raised some important issue, whether it's policy, tactics, training, or whatever. And we are now, for the first time, spending a lot of energy to see how we can improve. . . .*

*You can say whatever you want about the panel, it's not perfect yet, but I have seen it work. And somewhere, down the road, it's going to save some deputy's neck and . . . also hopefully save the county money from lawsuits.*

We also commend those panels which opened formal IAB investigations where the reports before them failed to answer key questions regarding policy or tactics. Finally, we were pleased to see that the panels have not permitted the captain of the involved unit to act as “defense counsel” for his or her officers. Commander Gerald Minnis, who chairs the commanders’ panel, and the lieutenants and sergeants from PSTD who work with the commanders’ panel, are to be highly commended for seeing to it that the commanders’ panel has gotten off to a solid start.

Some reservations remain, however. The first is a reluctance to open an IAB investigation of the incident unless, as one member of the panel put it, “we’ve got provable misconduct here.” This disinclination to order an IAB investigation is wrong as a matter of policy and deprives panel members of key information which only an IAB investigation will provide.

One example of the foregoing, in which we strongly disagree with the result reached by two members of the panel, was a decision to forego a formal IAB investigation of an incident in which an officer struck a suspect five times in the head with the butt of his gun. Since July 1992, the LASD has expressly forbidden the use of headstrikes with impact weapons unless the circumstances justify the use of deadly force. From the file before the commanders’ panel, it appeared that four of the headstrikes met the test of the post-July 1992 policy.

The final headstrike, however, was inflicted while the 180-pound suspect was pinned beneath a 250-pound assisting deputy. According to the officer’s own written report, he struck the final blow with the butt of his gun because the suspect, who was lying on his stomach, assertedly was about to bite him on the hand or arm. The written materials before the panel failed to explain exactly how the suspect was to accomplish this, or on what basis the officer concluded (if indeed he did) that this threat was sufficient to meet the July 1992 criterion that a headstrike may not be administered unless the use of deadly force is justified.

The record before the commanders' panel thus demonstrated that the officer's conduct was, at least on the surface, a serious violation of policy. In addition, the circumstances leading up to the fifth headstrike – a long foot pursuit followed by a protracted struggle – made it even more reasonable that the final headstrike should have triggered an IAB investigation. Indeed, **any** force used at the conclusion of a pursuit (and especially headstrikes) is at the top of the list of incidents which the LASD itself has said must be scrutinized with particular care to determine if the force was excessive and unnecessary.

Without in any way concluding that the fifth blow was outside of policy, we nonetheless were dismayed that the commanders' panel, splitting two to one, treated the incident merely as one of questionable tactics and recommended that the officer in question be counseled about the same. The result was a mistake: This is a classic case for requiring an IAB investigation, whether or not the IAB investigation would lead to a recommendation that the officer be disciplined. It would have provided the commanders with additional facts and analysis and answered open questions about the justification or reason for the fifth headstrike. It also would have reinforced the July 1992 policy by setting a precedent for all suspicious headstrikes to automatically be scrutinized by IAB. A suspicious headstrike, especially at the end of a chase, presents too high a risk to the Department to be treated in any other way.

We commented above that various commanders were reluctant to order an IAB investigation unless there were "provable misconduct." We perceived here an echo of unacceptable past practice, where an IAB investigation would be ordered up where a decision to discipline had all but already been made. In many such instances, the IAB investigation turned out to be neither dispassionate nor thorough; rather, it was simply paperwork to justify a previously-made decision to punish. For many reasons set forth in the **Kolts Report**, this was wrong. This kind of cart-before-the-horse investigation will likely lack integrity and fail to stand up to a later challenge before the Civil Service Commission. We strongly advocated using IAB to conduct thorough and dispassionate investigations **before**

a decision to punish is made.

A second reservation we have is that the commanders on the panel do not, as a matter of course, take into consideration all of the investigatory materials before making a decision. For example, in cases where the PSTD Response Team has obtained a tape-recorded statement by the involved officers or civilians involved, the panel neither listens to the audiotapes nor reads a transcript of the interview. Instead, the panel apparently reviews only an executive summary of the incident. On a few occasions, the panel has asked the member of the PSTD Response Team who conducted the interview what he or she remembered of a given interview. Because the interviewer may not have listened to the audiotape in advance of the commanders' panel, and because considerable time may have elapsed since the interview, the interviewer's unrefreshed memory may be unreliable. In any event, without listening to the tape or reading a transcript, the commanders on the panel cannot test or assess the credibility of the officer or the integrity of the interview. Therefore, we urge the Department to provide the commanders' panel with transcripts of all taped interviews of the involved parties and independent eyewitnesses.

A third reservation has to do with officer-involved shootings, cases which require the highest level of scrutiny. The commanders' panel generally does not defer a review of the shooting until the Homicide Bureau's investigative report on the incident, commonly known as the "shoot book," is available. The LASD explains that it may take a long time for the shoot book to be completed, and the need for prompt review is more urgent, and, in any event, the PSTD Report provides the commanders' panel with a reliable picture of the shooting.

This explanation is unsatisfactory because it wrongly downplays the value of the Homicide shoot book, which will typically include transcripts of interviews with the officer who fired the shots and the crime lab and medical examiner reports — key documents which are generally not included in the PSTD Report.

If the need for prompt review dictates that the commanders' panel must meet prior to

the availability of the shoot book, it might be wise to require that the commanders' panel review the shoot book *after* making its initial decision, if only to see if new issues or concerns are raised by the shoot book. Along these lines, we were heartened to learn that at a recent commanders' panel, a member of the PSTD staff had taken the initiative to obtain reports that were prepared for ultimate inclusion in the Homicide shoot book so that they would be available to the commanders at the review.

### *Perceptions about the Commanders' Panel Within the LASD*

Six months ago, we reported some discomfort and skepticism within the LASD concerning the purpose and utility of the commanders' panel. Some feared that the panel would intimidate or undermine captains. We are pleased that in the last six months, there is growing acceptance as more persons observe or participate in the panel sessions. As of April 12, 1994, 20 different units had matters before the panel. Credit for allaying the discomfort and refuting the cynicism goes to Commander Minnis and the commanders who have sat on the review panel. They have shown by their conduct that the panel is not a "star chamber," but rather a forum for careful evaluation of the many complex issues raised by the use of force. Commander Minnis has also invited representatives from around the Department to observe the panel in action. This has de-mystified its functioning and built confidence within the LASD. The panel is quick to commend officers who used force appropriately or with commendable restraint. And, with few exceptions, the commanders have not hesitated to take steps which may lead to discipline.

Some sergeants and deputies continue to have two separate but related concerns. The first is that the commanders' panel was designed as an instrument to "get" deputies. As the foregoing discussion indicates, this concern is misplaced. The track record of the commanders' panel thus far indicates that it is not a lynch mob. To date, of the 40 incidents which have come to final disposition by the panel, one has resulted in a recommendation of discipline. In the majority of the remaining cases, re-training or counseling was ordered.

A second concern of some sergeants and deputies is that, even with input from the Training Bureau and the concerned captain, the commanders are too far removed from the street or custody experience to put shootings and serious force incidents in their proper perspective. The concern assumes that the panel is overly critical or harsh or unrealistic in its judgments. It is a variant of the argument that is often voiced that one who is not a street cop oneself cannot possibly sit in judgment on the conduct of a street cop. The commanders in the panels we observed granted deference to the real, heart-pounding decisions made out on the street.

Some sergeants and deputies suggested that the presence at shooting and force rollouts of members from the Special Enforcement Bureau (“SEB”) might be more valuable in injecting current “street experience” into the analysis than the work of the Training Bureau. We have the impression that the persons already at a rollout number only slightly less than a battalion. We did not perceive that reports by the Training Bureau officers lacked “street perspective.” Indeed, the quality of the Training Bureau reports remains very high. We leave it to the Department’s informed discretion to decide whether the quality of analysis would be enhanced by the inclusion of SEB officers or others at rollouts.

### *Possible Trends Observed In Shooting and Force Cases*

Our review of cases taken to the commanders’ panel in the last six months pointed out a continuing trend that the LASD might wish to consider: Officers seemed needlessly to have injected themselves into dangerous situations without first requesting backup, or a containment, or even communicating with other officers at the scene.

It was only by sheer luck that deputies escaped death or injury. In several of these incidents, an officer split from his partner in a foot pursuit of a suspect known or believed to be armed. In such cases, the officer found himself in serious trouble when he caught up with the suspect only to find there was no partner or other officers to provide backup. In

those dire straits, the officer was forced to use deadly, or near deadly, force whereas if two or more officers were present, or a containment had been established, less serious force would have been necessary and officer safety would have been enhanced. To this point, these cases have resulted in additional counseling or training for the officers involved. We raise for the Department's consideration whether more general training or instruction should be given about the dangers of splitting from one's partner and failing to call for a containment and backup before initiating a pursuit.

In sum, and putting aside the reservations discussed above, there is reason for satisfaction with the LASD's current examination and review of shootings and serious force incidents. This area is of great importance and we will continue carefully to assess the Department's progress.





## 5 . L i t i g a t i o n

### *Background Data*

The LASD has made good progress regarding litigation. Although litigation results and costs in any six-month period are subject to wide variation, as shown in Table 2, there was marked improvement in the period between July 1, 1993 and December 31, 1993 which, if continued, will significantly reduce County costs. The number of new lawsuits served involving Sheriff Department activities is down significantly and, within this lower number, the percentage of lawsuits alleging excessive force is down (even allowing for a definitional change noted below). It is particularly encouraging that the rate of force-related new filings is declining even faster than the rate of decline in all suits naming the Department. Even though the number of newly-served lawsuits for the County as a whole is not declining according to County Counsel, it is heartening that the percentage of all County cases involving the LASD is declining.

In the first half of Fiscal Year 1993-94 (July 1, 1993 through December 31, 1993), 29 lawsuits were served alleging excessive force by the LASD. (All figures in this section are based on statistics jointly provided by the Department and County Counsel, unless otherwise noted.) In the same period, the County approved settlement of 34 force-related lawsuits, for a total payout of \$1,507,400, and suffered losses in five excessive force trials, with judgments aggregating \$159,500. Of these cases, settlement for \$20,000 or less was approved in 17 cases, with aggregate approved payouts of \$162,000 (including one settlement of unresolved issues in a case where the plaintiff previously won a verdict of \$2,500 on a related cause of action); 17 cases were approved for settlement of more than \$20,000 each, with an aggregate approved payout of \$1,345,400. Four of the above-described verdicts were for less than \$20,000 each (totalling \$34,500); one plaintiff verdict was over \$20,000 (\$125,000). In addition, LASD figures show two excessive force claims were paid before lawsuits were filed, for \$10,000 and \$20,000, respectively.

**LASD Litigation Activity, Fiscal Year 1992-93 and July 1 to December 31, 1993**

	FY 92-93		7/93 - 12/93	
<b>New Force Related Suits Filed<sup>1</sup></b>		104		29
<b>Total Docket of Excessive Force Suits</b>		468		270
	FY 92-93		7/93 - 12/93	
<b>Lawsuits Terminated</b>	<b>Number</b>	<b>\$ Aggregate</b>	<b>Number</b>	<b>\$ Aggregate</b>
	68 <sup>2</sup>	n/a	59 <sup>3</sup>	n/a
<b>LASD Prevailed</b>				
<b>Verdicts Against LASD</b>				
\$1 - \$20,000	1	4,206	4	34,500
\$20,001 +	6	651,231	1	125,000
Subtotal	7	\$655,437	5	\$159,500
<b>Settlements</b>				
\$1 - \$20,000	47	457,077	19 <sup>4</sup>	192,000
\$20,001 +	27	1,917,500	17	1,345,400
Subtotal	74	\$2,374,577	36	\$1,537,400
<b>Total Verdicts &amp; Settlements</b>	84	\$3,030,014	41	\$1,696,900
<b>Defense Costs<sup>5</sup></b>		\$8,391,031		\$1,400,634

1. The LASD changed its attribution of "force related" litigation since the last Report. The bulk of the decrease from the last fiscal year is because of this change.
2. The LASD obtained 49 dismissals and won 19 verdicts.
3. The LASD obtained 52 dismissals and won 7 verdicts.
4. Includes two claims settled prior to suit being brought, one for \$10,000 and the other for \$20,000.
5. Includes allocation of County Counsel costs and outside representation. The lower relative cost in the first six months of 1993-94 may be the result of a time lag in the posting of expenses.

According to the Department, during the first half of Fiscal Year 1993-94, the County obtained dismissals in 52 lawsuits and seven verdicts in force cases. The LASD reports that the docket of force cases dropped from 468 on June 30, 1993 to 270 on December 31, 1993; most of that drop in the force caseload, however, results a reallocation of previously-denominated force cases into the "non-force" category. As we recommended in our last Report, the County Counsel and the LASD began cooperating more, including, among other efforts, reaching agreement on what is a "force" case.

The 270 cases include those alleging force by a deputy on a civilian, but exclude cases which previously may have been characterized as force cases if they alleged negligent failure to prevent inmate-upon-inmate violence or injury caused by unintentional conduct (e.g., a gate being negligently closed on a citizen's hand). Lawsuits and claims involving personnel, property damage, car accidents, false arrest or civil rights allegations have been excluded from the "force" category unless use of excessive force also is alleged.

Among 18 cases in which settlements were approved or verdicts rendered for at least \$20,000, two resulted from fatal shootings, one from an accidental non-fatal shooting, and 15 from other uses of force (including one in which a deputy allegedly fired into the air as well as allegedly using excessive force).

For the first half of Fiscal Year 1993-94, the County Counsel reports expending \$1,400,634 for defense fees and costs in force-related actions. The cost of force-related approved settlements (including both lawsuits and claims) and adverse verdicts totalled \$1,696,900.

## *Analysis*

The LASD is more quickly investigating claims and lawsuits and is working more closely with County Counsel to provide timely information. Combined with improved force reporting and evidence preservation, the result is reduced lawyer time and cost and an improved settlement and litigation posture. As one County Counsel attorney put it, "I'd give the Department an A" on its efforts to cooperate and coordinate better with County Counsel on defense of litigation, and the Department, in turn, appreciates the cooperation shown by County Counsel.

While some had worried that increased information-gathering would result in providing plaintiffs' attorneys with increased leverage, the County Counsel's office reports that this has not been a problem. Instead, where information from pending IAB, ICIB or

other departmental review indicates likely liability, the Department and County Counsel have been more aggressive in settling cases. For instance, two separate incidents resulting in the resignation of two deputies and in the suspension of a third were settled shortly after claims were filed. We applaud this effort because it reduces litigation costs, gets payments made quickly in cases where there is probable County liability, and eliminates any possible disincentive by County Counsel to aggressively defend departmental discipline in Civil Service actions. Additionally, at least in federal civil rights suits, County liability for payment of plaintiffs' attorney fees is capped on the date of a bona fide settlement offer where plaintiff's counsel rejects the offer and thereafter fails to win more than the offered amount at trial. Since attorneys' fees in such cases may greatly exceed awards to plaintiffs — a fact which may make plaintiff's counsel unwilling to settle after putting significant time into a case — such cases are especially appropriate for regular internal status review.

In our last Report, therefore, we recommended improved communication between the Department and County Counsel concerning the status of individual cases and overall caseload management. We are pleased that it has begun to occur. The Department and County Counsel are meeting to review initial case assignments and case status, although no regular review process has yet been instituted. It is too early to verify statistically, but anecdotal evidence is that such meetings have resulted in quicker movement of cases. Regularizing such efforts, and including outside counsel in them, would enhance this effect. County Counsel recently refocused on the issue and has agreed to implement monthly status meetings. We believe those meetings will reduce the time later expended on cases which should settle early and allow more time for cases where there are strong defenses.

As new filings have diminished, a higher proportion of these new cases has been assigned to County Counsel staff, and fees to outside firms have accordingly been reduced. This change appears to be partly responsible for a significant reduction in attor-

neys' fees and costs paid during the period. Even though County Counsel rates billed to the Department exceed those of outside counsel, preliminary evidence points to fewer hours billed for similar cases and similar results. We will continue to monitor the costs and the use of outside counsel, keeping in mind that the use of outside counsel is necessary at times for County Counsel to balance caseloads and staff needs, obtain specialized expertise, and deal with potential conflicts of interest when the County and the deputy must have separate counsel.

We are encouraged by the apparent drop in attorneys' fees and costs in the six months ending December 31, 1993, but we must hedge our encouragement with caution because the decline in part may reflect billing cycle or budget cycle differences, since the attorneys' fees and costs are reported on a cash, not accrual basis.

The most recently filed administrative claims (which mostly have not yet matured into lawsuits) include many for incidents occurring after the initial **Kolts Report** was issued. While most of these filings remain in the preliminary stages, often with sketchy details, some trends appear to be emerging. In addition to the reduction noted above in the number and percentage of claims and cases alleging force, it appears that headstrike and canine complaints are down, as are allegations arising out of loud party calls. These are areas in which the Department has modified its policies and procedures. We are encouraged by these results to date and will continue to monitor them.

It is interesting to note that there was only one verdict of \$20,000 or more in force-related cases during this period (although a \$4.4 million verdict was handed down in April of this year in a case where settlement efforts were not successful). In contrast, there were 17 settlements of more than \$20,000, including three of at least \$250,000, and three other settlements at \$20,000 each. One possible explanation is that the Department and County Counsel are doing a better job of assessing liability and settling before trial those cases where exposure is greatest. If additional figures over time back up this explanation, the County and the LASD are to be congratulated both for avoiding trial where settlement is

appropriate and for defending through trial those cases where there are meritorious defenses.

On a less optimistic note, there has evidently been no progress on our recommendation that the County allow departments to retain a portion of savings resulting from under-expending their annual budget allocation for judgments, damages and defense costs in order to provide a tangible incentive for further efforts (just as departments theoretically must pay for “overruns” in such costs). Unfortunately, “savings” (including \$6 million from the Department, according to one estimate) continued to be reallocated among all County programs at the end of the 1992-93 fiscal year, and there is little prospect that policy will change given the County’s increasing financial crunch. Nonetheless, we believe that these funds should be returned to the LASD and earmarked specifically for those areas of training most likely to reduce litigation risk — non-lethal force alternatives, FTO training, captain’s training, and training aimed at the reduction of prejudice and bias.

### *Risk Management*

On January 14, 1994, the Department issued an analysis of claims management and litigation issues entitled “Report on Risk Management” (“January 14 Report”). That analysis reviewed several years of departmental loss experience and, in addition to the **Kolts Report**, drew upon a 1993 County-wide risk management report by McGladrey and Pullen and on a 1993 audit of county claims management for the Contract Cities Association prepared by Lancer Claims Services. The January 14 Report reviews the Department’s efforts in litigation and personnel management relating to a wide variety of claims exposure, including workers compensation and health and safety, traffic accidents and drug testing, as well as use of force.

The January 14 Report describes the consolidation of previously decentralized risk

management in the LASD into a centralized Risk Management Bureau within PSTD. The bureau was created to better coordinate information gathering, claims and litigation management, and policy and training revisions. The Department believes its efforts in improved risk management are principally responsible for an asserted 45% reduction in suits and claims filed in calendar year 1993, reversing a pattern of increasing claims in each of the previous four years.

The January 14 Report echoes our criticism of the prior lack of coordination in data-gathering and sharing between the Department and County Counsel, emphasizing that “no risk management effort will be effective if vital information is not available to risk managers.” This comment reflects the frustration of all those who have attempted to analyze civil litigation data for the Department. The Report also notes with favor the recent efforts of the LASD and County Counsel efforts to get information on claims to attorneys and claims managers early and to settle early those claims which have merit. While the January 14 Report focuses attention on early resolution of traffic accidents, the concept is equally applicable to force allegations.

Data in the Report reinforces our view that attorneys’ fees have not been rigorously managed. Forty percent of the Department’s suits are handled by outside counsel; yet, 75% of the attorneys’ fees are budgeted for those cases. Although statistics do not address variations in the complexity of cases which might account for the disparity, our research does not identify any significant case-based differences over time. Accordingly, the LASD’s views on the merits of management of attorney time are correct.

The Department recommends steps to improve risk management. While some go beyond the scope of our review, others relate closely to the issues we have addressed. The report recommends improved information gathering and sharing through an automated information system. We agree. We also concur in recommendations for improved cost and billing information. We understand that the Risk Management Bureau is preparing a risk management plan for the entire Department. We look forward to seeing it.

The January 14 Report recommends that the County more vigorously pursue its subrogation rights, citing statistics tending to demonstrate the County's subrogation efforts have at best been desultory and, in any event, have been largely ineffective. We concur with the LASD suggestion of an LASD pilot program to seek recovery on subrogated claims and to retain a portion of any funds received. Similarly, the January 14 Report parallels our recommendation that the Department retain a portion of any savings it achieves from its allocated share of the County's Judgment and Damages account.

Finally, the report recommends that the Department be permitted to "create and manage its own (in-house) legal defense unit, staffed with attorneys and support personnel under contract from County Counsel," or as an alternative be permitted to establish its "own legal defense teams to handle civil litigation." We applaud the Department's desire to assume responsibility for all phases of its risk management, including the cost and management of its litigation defense. Should there be a failure of current efforts to enhance the LASD's role in the management of civil litigation and to engender better cooperation between the Department and County Counsel, this recommendation may have merit.



The **Kolts Report** examined numerous lawsuits which had been filed against the Department accusing the canine unit and certain deputies of excessive force in the use of dogs. The plaintiffs complained of being attacked and mauled by Department dogs without cause or justification, citing bites to all body parts, including the face, neck, and genitals. We examined these claims and lawsuits and concluded that the LASD could reduce its exposure without compromise of officer safety by adopting two new policies.

The first recommended new policy was that the LASD make an announcement in all instances in both English and Spanish that a dog was about to be released. The rationale was that if afforded an opportunity to do so, a suspect may well prefer to surrender rather than risk a dog bite. Encouraging suspects to surrender reduces risks of harm to deputies and suspects, and, further, the fewer the bites, the lower the liability risk. Also, the fact that an announcement was made and was ignored by the suspect might influence a trier who is assessing whether the suspect somehow assumed the risk or brought about his own misfortune by failing to give himself up. Conversely, a surprise attack and a mauling by a dog without an opportunity to surrender is harder for the Department to explain and defend to a trier of fact.

The second recommendation was that the dog be ordered to release the bite immediately after it was determined that the suspect was unarmed, regardless of whether the suspect was struggling with the dog. The previous practice was apparently to permit the dogs to continue biting until the suspects followed the handlers' instructions to stop resisting the dog and to become completely passive. The more needless the injury, the more indefensible the act; the more needless the injury, the greater the liability risk. The Department strongly agreed with the Kolts recommendation.

The **First Semiannual Report of Special Counsel and Staff** noted that the LASD had implemented the recommendation with respect to earliest possible release of the bite, and our current review demonstrates that the policy continues to be in force.

## *Canine Announcements*

The **Kolts Report** recommended that a “canine announcement should be mandatory in all cases, and be made in English and Spanish.” The LASD, in turn, adopted a written policy that “announcements shall be made, in English and Spanish, in all deployment situations,” but sanctioned “unannounced” searches where justified by “emergent” circumstances. The **First Semiannual Report of Special Counsel** evaluated “unannounced” searches and concluded that although the number of exceptions to the announcement rule was small, the rationales for failing to make the announcement were weak. Accordingly, we re-affirmed the Kolts recommendation that canine announcements should be made in every instance.

The LASD continues to support a general requirement that announcements be made in all cases, but still argues that a mechanism should exist for the exercise of discretion to determine whether in narrow circumstances the announcement before a search for an armed suspect would pose an unacceptably high level of risk of harm to the officers in question. We take seriously any concern by the Department that a given recommendation of ours could compromise officer safety; and accordingly, we have revisited this issue in our current review.

We reviewed LASD dog bite reports and statistical data to determine the frequency of unannounced searches during the period September 1993 through February 1994, as well as the reasons cited for not making announcements before deploying the canines. That data suggest that unannounced searches remain the exception, not the rule. During this review period, there were a total of 24 apprehensions by dog bite. Of these, 22, or 91%, were preceded by canine announcements made in English and Spanish. During the prior review period of June 1992 through August 1993, announcements were also made in 91% of apprehensions by dog bite.

The data also suggest that the two unannounced searches appear to be justified in view of the unique circumstances of those searches. In each incident, the deputies were searching for armed robbery suspects who had pointed guns at pursuing deputies; because of the violent nature of the crimes and the suspects' resistance to arrest, Special Weapons teams had been deployed to assist in the searches; the same considerations dictated the use of covert search tactics that could have been compromised by canine announcements; the areas being searched afforded the multiple suspects numerous places to hide and to take aim at or ambush pursuing deputies; the canines did not pose a risk to innocent bystanders in that members of the public were not in the containment areas; there were no tactically sound alternatives to canine deployment that presented fewer risks of injury or less serious injury to the suspects; and, even without an announcement, the suspects had been afforded opportunities to surrender themselves to pursuing officers before the canines were deployed. In sum, given the totality of these circumstances, we find the rationales are plausible for the LASD's decision to deploy the canines without first making the canine announcements. In particular, (i) the foreknowledge that there were likely to be multiple suspects armed with guns (ii) in a contained location where an officer ambush was likely, combined with (iii) a tactical demand for stealth or surprise based upon strong considerations of officer safety, (iv) for which no reasonable alternative sufficed to extract the suspects, including sending in the Special Weapons team, are factors that impressed us in these two cases. There may thus be very narrow circumstances in which a prior announcement could be dispensed with.

We are concerned, however, that absent stringent safeguards, in the future, the exception could be allowed to swallow the rule requiring canine announcements. In order to minimize that risk, we recommend that the LASD revise its canine policy to require that any unannounced searches be approved **in advance** by the highest ranking officer present at the search location, preferably by the SEB captain or a commander, and in no instance by someone holding a rank below that of lieutenant. This requirement would be in addition to,

and not in lieu of, the present requirements that (i) the handler articulate the reasons for the unannounced search on a canine activation form, supplemental reports, and in a memorandum to the Canine Services Detail Lieutenant; (ii) that such memoranda be reviewed by the Captain of the SEB and the Canine Review Committee; and (iii) that IAB roll out to the scene.

### *Bite Ratios*

We examined LASD statistical data to determine whether the LASD's bite ratio has remained below 30% during this review period, that being the ratio that experts generally agree should not be exceeded. According to the LASD's figures, during the period September through December, 1993, canines were deployed in 322 searches leading to the apprehension of 53 suspects. Fifteen of those suspects received dog bites — a bite ratio of 28%. During the period January through February 1994, canines were deployed in 199 searches leading to the apprehension of 37 suspects. Nine of those suspects received dog bites — a bite ratio of 24%.

In conclusion, we are optimistic about the progress made in implementing the recommendations of the **Kolts Report** to improve the canine unit. We will continue to monitor this area carefully. We will follow up to see if our recommendations regarding unannounced searches are adopted, and we will continue to carefully review all dog bite cases and scrutinize any where there purports to be a rationale for dispensing with an announcement.

## 7 . C i t i z e n ' s C o m p l a i n t s

The **Kolts Report** was prompted in part by a perception that citizens attempting to lodge a complaint were at times ignored, subjected to verbal abuse, or worse. One of Judge Kolts's key recommendations was that there be a "stop to any discouragement by any member of the LASD to the filing of a citizen's complaint." It was further recommended that the complainant be able to receive and fill out a citizen's complaint form at a variety of County facilities in addition to a Sheriff's station. During the last several months, we investigated whether these recommendations have been implemented and whether the Department is taking steps to assure that the information is fully and fairly recorded so that competent decisions with respect to resolution or further investigation can be made. We also looked at how the LASD is memorializing the results of complaints that are resolved short of investigation and how the Department is treating clearly frivolous complaints.

Our work in this area has only begun. This Report discusses availability of citizen complaint forms. In addition, this Report discusses the results of a review of a sample of citizen comments recorded on Service Comment Forms. Our next report will look at how these complaints are currently being resolved and how discipline for founded complaints of excessive force has been applied.

### *Availability of Forms*

Currently, people may communicate their satisfaction or dissatisfaction with the LASD in a number of ways. They may call in complaints or commendations to the LASD's 24-hour hotline. They may fill out citizen complaint forms available from various city and county agencies and facilities. Finally, they may simply call or visit the station in question.

As we noted in our last Report, citizen complaint forms (as contrasted to Service Comment Forms) are available at the field offices of the Los Angeles County Board of Supervisors. During the present audit, we contacted each of the 42 contract cities served by the Sheriff's Department to determine whether citizen complaint forms were available there

as well. To our disappointment, fewer than half (19 of 42) make the forms available.

As of March 25, 1994, citizen complaint forms were available in these 19 cities: Agoura Hills, Avalon, Bradbury, Carson, Cerritos, Duarte, Hawaiian Gardens, La Canada-Flintridge, La Puente, Lawndale, Lomita, Palmdale, Paramount, Pico Rivera, Rancho Palos Verdes, Rolling Hills, Santa Fe Springs, Temple City, West Hollywood.

As of the same date, citizen complaint forms were not available in these 23 cities: Artesia, Bellflower, Calabasas, Commerce, Cudahy, Diamond Bar, Hidden Hills, Industry, La Habra Heights, Lakewood, La Mirada, Lancaster, Lynwood, Malibu, Norwalk, Rolling Hills Estates, Rosemead, San Dimas, Santa Clarita, S.C.R.T.D., South El Monte, Walnut, Westlake Village.

A frequent response of cities that do not have forms is that they send the complaining individual to the local Sheriff's station (6 of 22). Some cities have, or had, the LASD forms, but prefer to use their own complaint form (4 of 22). Complaints were also handled through the city manager's office or the city council. The absence of forms at contract cities does not mean that the various stations did not distribute them. But it does mean that the Department may not be receiving all the complaints against it, and if it does receive complaints lodged in different forms in the different contract cities, it is not clear that they are being dealt with in the same way as complaints on the Department's own form.

The contract cities account for more than half of the individuals served by the LASD. If citizens are attempting to lodge complaints through the cities' complaint procedures rather than going to the LASD station, and if those complaints are not being consistently forwarded, the statistics on the numbers of citizens' complaints being received by the LASD are inaccurate and may give a misleading impression to the Department as a whole and to captains who have several contract cities.

**The LASD stations should annually distribute citizen complaint forms to contract cities and to the field offices of the Los Angeles County Board of**

**Supervisors.** The LASD should attempt to persuade each contract city to use the LASD form, and each station in the LASD with contract cities should set up mechanisms to receive the forms and any other complaints that are lodged.

### *The Initial Processing of a Citizen's Complaint*

In November of 1991, the LASD adopted the policy requiring that each and every citizen complaint or commendation, regardless of the source, be recorded on a Watch Commander Service Comment Report ("SCR") as the first step in initiating Departmental review. The SCR divides citizen comments into three categories: (1) officer commendations; (2) complaints of officer misconduct (e.g., allegations of excessive force, discourtesy, or false imprisonment); and (3) service complaints (e.g., complaints about general Departmental policies, response times, or traffic citations). The stated purpose of recording service comments is to standardize documentation of comments about LASD service and to ensure consistency in the way that such comments are reviewed by the Department. The information collected on SCRs is now available on an interim computer system and soon will be available on the PPI.

Since March 1992, the LASD has recorded over 9,000 SCRs from all of its operating units. The number of commendations currently recorded slightly outnumber the number of personnel complaints. Of the allegations in the SCRs from mid-1992 to present, discourtesy constitutes approximately 40% of the allegations and excessive force between 8-9%.

In order to assess the uniformity and accuracy of the information captured on the SCRs, we reviewed approximately 200 recent SCRs from a variety of stations and custody facilities. We are apparently the first to conduct a quality control audit; the LASD has not itself done so. Recognizing that errors in SCR reporting were likely to occur when the SCRs were introduced, we limited our review to those SCRs which had been completed in fall of 1993 and presumably reflected comfort with the new procedures for handling complaints.

The SCRs reviewed in our sample revealed a troublesome lack of consistency in reporting among stations completing SCRs. For example, one station regularly recorded SCRs for **internally-generated** commendations, thereby creating the false impression that it had received large numbers of commendations by the public. The practices of several other stations also produced a biased picture of service comments. Specifically, they would not generate multiple SCRs when multiple officers were the subject of one citizen's complaint, but would generate multiple SCRs when multiple officers were the subject of one citizen's commendation. Again, the result was to distort the information provided to management and to create a misleading impression that there were a relatively greater number of commendations, and a fewer number of complaints, than there really were.

Moreover, many of the SCRs turned over to PSTD for entry in the interim computer system lacked documentation describing the nature of the incident or indicating exactly how citizen complaints were resolved. If an SCR did not have an attached memorandum explaining the complaint or its resolution, then no information was input other than the bare fact that the complaint was somehow resolved. This is not enough. If SCRs are to be a meaningful management tool, then each of them should indicate how a complaint was resolved. If a complaint is resolved because the citizen recanted his accusation, that is important information and bears upon the credibility of the complainant as well as the credibility of the LASD personnel who were the subject of the complaint. Likewise, if a complaint is resolved because there was no clear policy violation and the citizen was satisfied through a meeting with the captain and the deputy, that information should be readily available. Watch commanders should be taught the importance of providing this information so that those who may later review the complaints, including defense counsel for deputies later accused of wrongdoing, can separate the wheat from the chaff. To its credit, PSTD responded to our concerns about the integrity of its data and has embarked on a program to ensure their accuracy.



The above criticisms notwithstanding, the LASD is to be commended for its commitment to capture all citizen comments on SCRs. For the first time in its history, the LASD has a tool, which, if used properly, can provide meaningful information about the level of satisfaction and the kinds of complaints it has received from the many communities it serves. When steps are taken to make sure that all complaints are being received, and when there is greater standardization for recording complaints, commendations, and resolutions, the information on SCRs will be an important tool for risk management as well as the provision of service-oriented or community-based policing.

The success of the SCRs depends also in a crucial way on the requirement that **all** citizen complaints, no matter how frivolous on their face, be recorded. This requirement, which we view as a bedrock commitment by the LASD in connection with Kolts implementation, causes consternation to some sergeants and lieutenants who must complete the forms, no matter how frivolous, and conduct some investigation, no matter how apparently pointless. To its credit, the PSTD has kept careful track of the number of investigations, and its statistics show that the number of investigations is not substantial on a daily basis. That is not to say that a given sergeant or lieutenant, in a given station, may not at times have a legitimate complaint that he or she is under water. Deputies also worry that if there is no way to distinguish a frivolous complaint from a serious one, a misleading impression of their performance could result if someone with a penchant for filing frivolous complaints “papered” a deputy repeatedly.

As we made clear in our last Report, the proper response to these problems is to amend the form to provide a box to check that the complaint was frivolous. A special committee of lieutenants appointed to examine this issue will shortly recommend such an amendment.

One caveat is in order: A check-off for a frivolous complaint must not be allowed to become a substitute for adequate investigation and documentation of a complaint. The term “frivolous” is subjective. Different watch commanders will have different views as to what is frivolous and what is not, and complaining citizens may have different views from

watch commanders. One principal idea behind recording and doing adequate investigation of all complaints is to build an adequate record to defend litigation that might result. This will not be achieved if watch commanders are short-circuiting investigation by checking the “frivolous” box.

If a complaint is truly frivolous, the results of the investigation entered into the PPI should **document** it; no SCR should be permitted to pass muster if all it does is check a “frivolous” box. A deputy deserves that frivolous complaints be noted as such and that untoward consequences on the deputy’s career not be permitted to flow from frivolous charges. On the other hand, as stated above, “frivolous” is too subjective; watch commanders need to show a complaint is frivolous and not merely conclude that it is so.

We wonder whether some of the complaints that SCRs and investigation of them are unduly time-consuming arise from misperceptions about the amount of investigation or documentation needed for each incident. Our review of 200 recent SCRs suggests that certain stations are spending more time on investigations of citizen’s complaints than may be warranted under the particular circumstances. Although it is vital to err on the side of completeness in order to defend possible future litigation, some overkill may be occurring. A forthcoming amendment to the LASD Policy Manual, which we have seen in draft form, will address some of these concerns. Perhaps in addition, watch commanders could be provided with sample completed Service Comment forms and accompanying memoranda illustrating how the differing kinds of citizen complaints should be documented.

Some hostility toward SCRs may stem less from a concern about extra work than from a general disinclination to record negative complaints, particularly those which are viewed as frivolous or unreasonable. Ironically, but perhaps predictably, when it comes to **positive** citizen comments and commendations, officers at many stations find the time not only to document the commendation extensively (in some cases more extensively than citizen complaints), but also find time to draft a personal thank-you note from the

station captain to the citizen. We have never heard a complaint that it takes too long and is too burdensome to document a commendation. It seems that complaints about the burdens of SCRs seem always to surface in the context of recording and investigating **negative** citizen comments.

In sum, the LASD should take steps to assure that the complaint forms are widely and easily available in contract cities and elsewhere. The forms should be amended to include a check-off for a clearly frivolous complaint, but it should be made clear that checking the box does not substitute for a thorough and reasonable investigation of what ultimately might be found to be a frivolous complaint.



## 8 . T h e P P I T r a c k i n g S y s t e m

The **Kolts Report** found that the LASD was deficient with respect to collecting, tracking, and analyzing data necessary to manage risk and reduce liability. In January, 1993, the Sheriff assured the Board of Supervisors that the Department would complete and fully implement an early warning and tracking system that records, integrates, and reports data regarding use of force, citizens' complaints, administrative investigations, criminal investigations or prosecutions, civil claims, civil lawsuits, and disciplinary history. The Sheriff further committed that it would be "the policy of the Department that such information shall be given its proper weight and be considered as part of the mix, along with all other relevant data and input, in connection with personnel evaluations and management decisions." Joint Statement of January 4, 1993.

In the **First Semiannual Report of Special Counsel**, we concluded that the LASD had made "remarkable strides" on the technical side in developing this tracking system, called the Personnel Performance Index, or PPI. We agreed with the Department that PPI was the most sophisticated computer tracking system of its kind. We agreed that the Department was setting the standard and was creating a marketable product. We also expressed concern that the Department had not yet articulated standards for how executives and managers were to use the data, and that there was widespread discomfort, particularly among deputies, that the system would be used punitively. As will be discussed below, our assessment of the technical progress remains the same: The Department is doing an excellent job. On the other hand, our concern about the lack of articulated standards has deepened, although the Sheriff has tried to dampen the discomfort and fear among deputies in a recently-issued bulletin.

The PPI was originally scheduled to be fully operational in late October, or early November, 1993. However, technical difficulties with the PPI software (which we discuss more fully below) have intervened. The LASD now expects to "turn on the switch" in late June, 1994.

## *Technical Issues*

Given the Department's laudable and ambitious goals for the PPI, its complexity, and the technical difficulties of fashioning a system for a Department as large as the LASD, we were neither surprised nor troubled to learn during this audit that unexpected problems with the computer software had delayed the implementation of the PPI.

After investigating the causes of the delay, we conclude that the LASD's Data Systems Bureau acted appropriately and responsibly when it learned of the serious software problems. Sheriff Block is also to be commended for requiring Data Systems Bureau to build a quality product rather than rushing to meet an artificial deadline for implementing the system. Finally, TRW deserves praise for agreeing to a no-cost amendment to its original contract with the County and for devoting substantial additional resources to the project.

Both the LASD and TRW anticipate that the PPI will be fully operational by late June of this year. Within the next month or so, the Department should begin training roughly 450 members of the Department, including captains and certain lieutenants and sergeants. We will attend the PPI classes to evaluate both the content and tone of the training.

We will also continue to examine some issues which the Department has understandably put on hold pending resolution of the current software problems and implementation of the PPI. Those issues include whether reasonably available older data is being input into the system; quality control issues; and the inclusion of criminal investigations into the database.

## *Management's Use of the PPI*

In our last Report, we encouraged the Department to provide its managers with "concrete guidelines and expectations for using the PPI system." Although the LASD's

Executive Planning Council identified this recommendation as one demanding an immediate action, the Department has failed to develop guidelines and expectations for using the PPI. We had difficulty finding anyone in the LASD who would step up to the bat and admit that development of the guidelines was his or her responsibility.

Now, within a matter of weeks, the PPI will be ready to go. The captains will get training on how to push the buttons on the PPI. But we are aware of no documents which will teach them how to use the information on the screen and how they are to be held accountable for the judgments and decisions that will be based in part on this information. These standards should be developed quickly. Because these standards have not been developed and disseminated, there remains understandable discomfort and fear on the part of deputies about how the system may affect their careers and their opportunities for promotions, special assignments, and transfers.

We were disappointed to learn that the LASD has done little since the fall of 1993 to explain to line supervisors and deputies the capabilities and functions of the PPI system. In the six months since our report, the LASD has given only one such presentation on the PPI. On February 8, 1994, Sheriff Block issued a bulletin describing, in general terms, the PPI's features and the principles. The Sheriff's bulletin is intended to ease fears that the information will be misused.

We spoke to many Department managers and executives who believe that nothing can ease the deputies' fears until the PPI goes into operation and the deputies see for themselves that the system will operate fairly. Although that might be true as a general proposition, we still think that clearer policies and more explanations should be provided in advance and would ease concern. We believe that most deputies will understand and even embrace the idea of the PPI if it is presented to them in a comprehensive and credible way.

That the Department has not devoted more resources than dispatching already-over-worked PSTD members to an occasional briefing itself contributes to the atmosphere of fear and discomfort. The paucity of explanation, which has been the case for far too long, opens

the door for the vocal and cynical to stampede the credulous into distrust. Critics sow unease among deputies by positing absurd hypotheticals about deputies being punished for a certain number of unfounded complaints, or that a deputy will be selected for a desirable assignment, based upon the unexplained absence of any reported use of force, rather than based upon a record of using appropriate and reasonable force when necessary and restraint when advisable. The best way to dispel the fear of the unknown, and to squelch the rumor-mongering, is by providing information and explanation.

The task of articulating all the standards for the use of PPI is complex, but certain general principles can be stated easily: The PPI is a tool for inquiry, investigation, and, if necessary, for intervention. It is not for discipline or punishment per se; nor is it for deciding promotions, selections for desirable assignments, or transfers per se, although patterns of inappropriate conduct over time should influence selection for coveted assignments, promotion, personnel evaluation, and imposition or augmentation of discipline in appropriate circumstances.

The information on the system is a springboard, not an end in itself. It should prompt the captain to inquire further and to have regular dialogue with the sergeants, lieutenants, and deputies about the information the system discloses. If a deputy seems to be getting some citizen complaints and is reporting heavier or more frequent force than his or her counterparts, the PPI should prompt a question of why this is occurring and what, if anything, can or should be done about it, rather than necessarily dictating that the deputy be disciplined.

Each captain or lieutenant should set up appropriate guidelines and standards tailored to the particular station or facility: Perhaps the captain at a small, usually quiet, suburban station will want to know about every citizen's complaint and reported use of force. The captain at Central Jail would be overwhelmed by the same information, and he or she might appropriately develop rules of thumb with respect to wanting to be alerted to unusual patterns among deputies on the same shifts or the same cell blocks.



As to promotions and coveted assignments, it should be possible in some instances to set minimum standards and to quantify conduct that is disqualifying or will lead to removal from a coveted assignment. As we point out in our section on FTO's, there is a draft circulating that would disqualify a candidate who during the past two years had a **Founded** investigation involving unnecessary or excessive use of force, dishonesty, breach of integrity, sexual harassment, or discrimination based upon race, ethnicity, gender, or sexual orientation. Two or more preventable traffic accidents are also disqualifying. We think that minimum standards such as these are entirely appropriate and should be developed for other positions and promotions. The use of the balance of the information on the PPI should help fine-tune the exercise of discretion and judgment among candidates who pass the minimum requirements.

Unfounded or unresolved investigations or the mere reported use of force should never be disqualifying for a coveted position in and of themselves. Nor should they be used to augment punishment in and of themselves. Nor should they alone make a difference with respect to whether a citizen's complaint is deemed founded or unfounded. They alone should not dictate a deputy's evaluation. But they may contain information that would be irresponsible to ignore. If a deputy reports more frequent and heavier force than peers who are similarly situated, then there may be reasons why the deputy may need special attention and intervention. If there is a pattern of citizen's complaints all alleging a kick to the groin after handcuffing, and if at least one of the complaints has been held founded, then a supervisor would be blind to ignore the possibility of a pattern of bad conduct when evaluating a deputy or deciding the next complaint alleging a similar kick to the groin.

Use of force in and of itself is not the issue. Getting a "beef" from a citizen is not the issue. It is whether force is used reasonably. It is whether there are too many beefs, or if the same conduct is alleged time and again.

The whole point is to give management the information it has not had before to get early warning of possible problems so as to manage risk. Management thereafter should be held accountable for how they do it. We will continue to assess the standards that are developed for use of the PPI.



## 9 . C i v i l S e r v i c e C o m m i s s i o n

The **First Semiannual Report of Special Counsel** began gathering facts to test the LASD's contention that the Civil Service Commission and its hearing officers were improperly failing to sustain the Department with respect to its disciplinary determinations. In particular, the LASD claimed that the Commission was not upholding Departmental determinations to discharge officers, and thus frustrating the LASD's efforts to fire problem officers and fully to implement the Kolts recommendations to improve lax discipline.

The contentions of the LASD are vigorously denied by the Department's opponents before the Civil Service Commission: the officers appealing discipline to the Commission, the deputies' union, ALADS, and the attorneys hired by the union to represent officers, in particular, Richard Shinee, a prominent attorney often engaged for difficult disciplinary cases. Their thesis is that the Department is harsh and punitive, poorly investigates cases or distorts the investigatory record to support a previously-made decision to discharge, has lost credibility with the hearing officers as a result, and loses because it deserves to lose. They resent what they characterize as efforts by the Department to put political pressure on the Commission or to suggest that particular hearing officers may be biased.

Because of the importance to the Department's risk management strategy that the LASD make sound decisions to impose discipline and that those decisions be sustained, particularly its decisions to discharge officers, in our last Report we strongly urged the Department to undertake a serious assessment of why the Department is not having greater success in its attempts to discipline for misuse of force. We pointed out that any consideration of these issues would be myopic if it did not assume that there will be a vigorous contest over discharges by seasoned, well-prepared lawyers for the disciplined officers.

In our last Report, we strongly recommended that the Department retain independent, outside labor law trial experts to assess the case selection, investigation, litigation strategy, and trial tactics of cases where the Commission reversed the Department. The recommendation was not implemented, although some efforts to gain further perspective were taken.

The need for such an independent review has only been underscored by our continued

investigation, and we again urge the LASD to engage the best expert counsel available to perform the task. It may be costly to do so, but the investment would be worthwhile if it improves the Department's ability to bring credible, well-founded, and well-investigated cases.

If the LASD decides based upon a thorough and unbiased investigation that discipline is appropriate, the Department's credibility and the success of its efforts to manage risk depend upon its being able to prevail. The Department knows that its decisions will be second-guessed and attacked by competent advocates whose livelihood is based upon getting the best result possible for their clients by using the ammunition at hand to undermine the Department's credibility and expose whatever weaknesses and inconsistencies exist in the Department's cases. The Department must make absolutely certain the case is properly chosen, thoroughly investigated, and convincingly presented by experienced trial counsel.

A proper decision to proceed with discharge encompasses all levels of case development and litigation. The initial IAB investigation must be examined as closely as the litigation strategy. The IAB and Unit level investigations must be accurate and unbiased reflections of the incident as they occurred. These investigations serve as the foundation upon which any discipline, and ultimately Commission review, will be based.

For the current review, we collected information about the results of Commission actions from 1992 through April 1, 1994. The results, with our footnoted caveats and qualifications, are reproduced at Table 3. As with our last Report, the small numbers make it difficult to derive any definitive conclusion from these figures in isolation. Even a relatively small number of changes in Commission decisions between the previous Report and this one appears dramatic. For example, the current data reflect the Commission reversing the Department in 27% of the force-related discharges for which it made final or proposed rulings. This percentage, a significant decrease from the 53% reversal rate for the same category in the last Report, results from the Commission's

having sustained two discharges that had been pending and changing its proposed finding from reversal to sustain the Department in six cases. Because the small numbers create large swings in percentages, we caution against overreading these statistics. It would be error to conclude in any definite way either that the Commission has become politicized and is succumbing to Department pressure or that the Commission is better scrutinizing the records and the recommendations of the hearing officers.

Hearing officers function in some ways like trial judges who hear live testimony, consider other evidence, and compile the record upon which the Commission bases its

3

### 1992 & 1993 LASD Employee Civil Service Commission Appeals

Basis of Discipline <sup>1</sup>	All Appeals <sup>2</sup> of LASD Discipline		Final Resolutions of LASD Discharges <sup>4</sup>	
			LASD Discharge Actions	Commission Reversals <sup>5</sup>
Total	140	100%	75	16 21%
Force Related	36	26%	22	6 27%
Fraternization	19	14%	15	1 7%
Performance <sup>5</sup>	20	14%	10	4 40%
Off-Duty Conduct	12	9%	6	0 0%
Exam Appeals <sup>6</sup>	13	9%	n/a <sup>6</sup>	2 of 10 20%
False Reporting	8	6%	4	3 75%
Theft	6	4%	6	2 33%
Sexual Harassment <sup>3</sup>	8	6%	6	0 0%
Miscellaneous	18	13%	6	0 0%

1. While there is potentially some cross-over between categories, this summary characterizes matters on one basis of discipline. For example, some disciplinary actions based on off-duty conduct related to use of force or theft.
2. The number and percentage relate to all disciplinary actions – exam appeals, suspensions over five days and discharges – that reached the Civil Service Commission from January 1, 1992, through April 1, 1994. These figures include pending actions that are either awaiting hearing or Commission consideration of Hearing Officer recommendations. Not included are 14 cases in which prosecution of deputies for criminal conduct is ongoing (two of these are for on-duty use of force). In these cases any appeals are held in abeyance pending resolution of the criminal case and the deputy is placed on leave without pay.
3. Sexual harassment includes on-duty misconduct towards civilians.
4. The right two columns look only at discharge actions for which the Commission has made final or proposed findings.
5. Actions include proposed Commission findings, which could conceivably be changed. Actions where the Commission reduced discharges to suspensions are counted as reversals. Actions "settled" based on a deputy's forced resignation are counted as sustained. Where the result of "settled" is unclear, the case is not counted.
6. "Discharge" is not applicable in the case of exam appeals

decision. Unlike a trial judge, however, the hearing officer does not render a binding opinion or definitively find the facts. The hearing officer is empowered only to make a recommendation to the Civil Service Commission, which can accept the hearing officer's recommendation, reject it, or conduct a de novo hearing on the matter itself. As a practical matter, the Commission has concurred with the hearing officers' recommendations for the vast majority of cases —approximately 70% of the time for LASD discharge cases considered since 1992. The Commission sustained the Department contrary to the hearing officers' recommendation of reversal in approximately 30% of the discharge cases since 1992.

The LASD infers bias against the Department from the observation that particular hearing officers tend to rule more often than others against the Department. It is correct, as a raw statistic, that one hearing officer recommended reversing the Department in five of the six cases the hearing officer considered since 1992 (recommending reversal for two suspensions for false reporting, two discharges for sexual harassment/misconduct and one excessive force discharge). It is also correct that another hearing officer recommended reversing the Department in ten of the twelve cases the hearing officer considered (recommending reversal for six excessive force discharges, two false reporting discharges, one fraternization suspension and one rudeness suspension). The Commission ultimately sustained the Department in six of the twelve cases for which these two hearing officers recommended reversal. The Department has begun to analyze how these two hearing officers' reversal rates for the Department compare to the same hearing officers' reversal rates for other County departments.

Without further research, we are reluctant to draw any conclusions from this data. There are plausible alternative explanations which must be explored. One of the principal reasons we advocate the engagement of outside experts is to do just that: The Department should get itself a fresh, unbiased perspective on how properly to assign responsibility for the Department's losses. Before concluding a hearing officer is biased,

one needs a careful, detached review of the underlying record and the proceedings before the hearing officer. We also note that the Department is not a helpless pawn with respect to hearing officers on its cases: Three hearing officers are proposed and each side gets one opportunity to remove a hearing officer who is unacceptable for whatever reason. This is a common technique in arbitration and acts as a check against a biased factfinder. Part of any inquiry in the area must look at whether, as part of a well-thought out litigation strategy, the flexibility to eliminate potential arbitrators is a factor that is exercised carefully by the Department.

In sum, we will continue to watch this area carefully, and again urge the Department to ascertain whether the quality of its investigations or advocacy on its behalf is adequate. If it should turn out that the investigations are deficient, the Department can remedy them. If the advocacy is inadequate, the Department can upgrade its representation, or seek different representation, or, failing those steps, engage an accomplished labor attorney on a contract basis or to work in-house.

We strongly believe that the complexity of all LASD labor-management issues, and not merely those regarding Civil Service Commission Proceedings, demands very competent, sophisticated counsel. The Department needs such a lawyer in-house or available to it on a regular basis to plan and help execute strategy with respect to such issues; to think proactively and affirmatively and fashion proper strategies to achieve management's legitimate goals.





## 10. The Ombudsman and Judge's Panel

Laudable progress has been made by the Department and the County in the selection of independent persons of high integrity to function as ombudsman and as panel judges. Rudolph De Leon has been selected as ombudsman, and Judges Richard P. Byrne, James Reese, Philip Newman, Peter Smith, and Dana Henry will comprise the panel of judges. All are extremely well-qualified.

Based upon public skepticism that the LASD was willing to receive and fairly evaluate citizens' complaints, combined with empirical evidence of intimidation and discouragement of complainants and statistics proving that the overwhelming number of citizens' complaints of excessive force were dismissed by the Department as meritless, Judge Kolts concluded that to assure greater legitimacy, integrity, accountability, and trust, it was necessary to include citizens in the process for receipt and investigation of complaints. To that end, the **Kolts Report** recommended the creation of an ombudsman's position and the appointment of a panel of judges to assure that citizens' complaints were investigated and resolved in a timely, thorough, and fair manner.

In his Joint Statement with Judge Kolts of January 4, 1993, Sheriff Block formally committed the Department to meaningful community and citizen involvement in the resolution of grievances or complaints concerning excessive force and agreed that he and the Board of Supervisors should select an individual "of great integrity and independence to assure that citizens' complaints are investigated in a timely fashion and who will communicate to the citizen the progress of an investigation and its results to the extent permitted by law." In addition, the Sheriff committed the Department to "meaningful citizen participation to assure the adequacy, thoroughness and reasonableness of departmental resolution of citizen complaints." *Id.* To that end, the Sheriff formally agreed in the Joint Statement to the selection of a panel of retired judges reflective of the diversity of the County population and mutually acceptable to the Board of Supervisors and the Sheriff to review the adjudication of citizens' complaints of injurious force upon the request of the complainant.

The respective roles of the ombudsman and the panel of judges have been refined over the last year, and recently the selection of the ombudsman and panel of judges was announced publicly.

Part of our task is to evaluate whether the agreements between the Sheriff and Judge Kolts have been met by the selection of the ombudsman and the panel of judges. We conclude that the selection of Rudolph V. De Leon as ombudsman appears to meet the requirement that the ombudsman be an individual of great integrity and independence. We further conclude that the members of the panel of judges are distinguished jurists reflective of the County population in terms of gender, race, and ethnicity.

Mr. De Leon has a distinguished record of public service and wide professional experience in the area of policing and education. He has an extensive background in law enforcement, having served, among other positions, as Special Assistant to California Attorney General John Van de Kamp, Deputy Secretary of the Youth and Adult Corrections Agency, a member of the State Board of Prison Terms, a Captain in the Los Angeles Police Department in the Hollenbeck area of Los Angeles, and as the Founder of the Hollenbeck Youth Center. In addition, Mr. De Leon has taught as an adjunct professor of police science at a number of colleges and universities, including Cal State Long Beach and USC.

Mr. De Leon has received a number of awards which reflect his stature in the eyes of the wider Los Angeles community and his excellent relationships with minority groups. Among other honors, he was awarded the Martin Luther King YMCA Brotherhood Award, the Mexican American Opportunity Foundation Aztlan Award, and the Police Athletic League Service to Youth Award. His current professional volunteer services reflect a commitment to the underprivileged and at-risk youth: He is a member of the YMCA Metropolitan Board of Directors, the Community Youth Gang Services Board of Directors, and the Hollenbeck Youth Center Board of Directors.

These credentials and achievements, along with his fluent command of Spanish, eminently qualify Mr. De Leon for this very important public office. He was selected from a group of four finalists (a fifth had withdrawn from consideration), all of whom had impressive credentials and experience. We have no reason to doubt that Mr. De Leon will perform with independence and distinction.

Mr. De Leon's responsibilities are substantial. The ombudsman must: (i) make the complaint process easier and less intimidating for the citizen to use and understand; (ii) report to the citizen about the progress of an investigation of a complaint and its results to the extent permitted by law; (iii) facilitate consensual resolution of dissatisfactions by the citizen with the investigatory process or its results; (iv) failing consensual resolution, review the thoroughness of the investigation and the reasonableness of the conclusions reached; and (v) arrange for review by a panel judge of more serious force cases upon request of the citizen. Protections have appropriately been included in the Los Angeles County Code to shield the ombudsman and the judges from having to testify in any litigation and to protect the confidentiality of the judges' and ombudsman's files and records.

The panel of judges is similarly distinguished. Judge Richard P. Byrne, who was selected by the Board of Supervisors to assemble the panel and to chair it, is by any measure one of the most highly respected judges in California. He served as Presiding Judge of the Los Angeles Superior Court in 1989 and 1990 and as Chairman of the Court's Executive Committee. He was Supervising Judge of the Juvenile Court in 1989 and 1981. He has served as an adjunct Professor of law at Loyola and Southwestern Law Schools. He has served on the California Judges Association Committee on Racial and Ethnic Bias, among other important assignments. He was the recipient in 1990 of an award from Friends of Child Advocates for his efforts to help meet the needs of children in their relation with the court, and particularly for his role in construction of the Children's Court. He was named Outstanding Trial Jurist of the Year for 1991-92 by the Los Angeles County Bar Association and was named Trial Judge of the Year by the Association of Business Trial

Lawyers in 1988.

Judge Peter S. Smith served as Presiding Judge of the Juvenile Court and has been vice-chairman of the Alhambra Drug Abuse Council and chairman of the Los Angeles County Task Force on Narcotics and Dangerous Drugs. In March, 1981, Judge Smith presided over the first civil jury trial to be seen live on national television — Carol Burnett's successful libel suit against the **National Inquirer**.

Judge James N. Reese served as Presiding Judge of the Appellate Department of the Superior Court, as a member of the court's Executive Committee, and as a Municipal Judge in Compton prior to his elevation. He chaired the NAACP's Legal Redress Committee and is a member of the Urban League and the Black/Jewish Community Leadership Coalition of Greater Los Angeles. He has served on the Health and Welfare Agency's task force on incarcerated minorities.

Judge Philip M. Newman was appointed to the Superior Court in 1975 and served previously on the Municipal Court, where he was Presiding Judge. Judge Newman, who was born in Mexico, is a native speaker of Spanish and served as Consulting Attorney to the Consul General of Mexico. He served as a member of the National Advisory Committee on Legal Services Programs and as President of the Immigration and Naturalization Lawyers Association and the Mexican-American Scholarship Foundation. He chaired the Los Angeles-Mexico City Sister City Committee and received the Judicial Service Award from the Council of Mexican-American Affairs.

Judge Dana S. Henry has served on both the Municipal and Superior Courts. She is a member of California Women Lawyers, served as Vice-President of the Women Lawyers Association of Los Angeles, and is a member of the Business and Professional Women's Association of Los Angeles. In 1990, she won the National Humanitarian Award from the American-Israel Fellowship Society. She was also the recipient of the Community Service Award from the California State Assembly.

The specific procedures to be employed by the ombudsman and panel of judges will be finalized over the next several weeks. The general outline of the procedures, however,

is clear: If the ombudsman is unable to facilitate a consensual resolution, the complainant can opt to provide specific written reasons for dissatisfaction with the investigation or result and request a review by the ombudsman or, for cases involving serious force or death, a review by a panel judge.

The ombudsman or judge will be given the entire file for review, including photographs, tape recordings of witness interviews, and the like. If the ombudsman or judge determines that the investigative record is inadequate or incomplete, he or she will afford the Department the opportunity to amplify the record and reconsider the result in light thereof. If the judge or ombudsman determines that the administrative record was adequate but that it does not reasonably support the outcome of unfounded or unresolved, the judge or ombudsman will make findings and transmit them to the complainant and to the Sheriff for his final determination. If he or she determines that the record is adequate and reasonably supports the outcome, the judge or ombudsman will make findings to that effect and transmit them to the complainant and to the Sheriff.

Our assessment is that the County and the Department have executed in exemplary fashion the first steps to assurance that citizens' complaints are taken seriously and are investigated and resolved in a timely, thorough, and fair manner. The selection of Mr. De Leon and Judge Richard P. Byrne is commendable. The County and the Department owe a large debt of gratitude to Judge Richard P. Byrne for his work on a volunteer basis and his success in assembling a group of highly qualified and diverse judges to perform the extraordinarily sensitive and important roles assigned them.

That individuals of the stature and reputation of Mr. De Leon and Judges Byrne, Smith, Reese, Newman, and Henry are willing to serve is an indication of the importance this community places on improved relations between the LASD and the people it serves. The potential of the ombudsman to achieve consensual resolution of disputes over police conduct has a tremendous upside: If Mr. De Leon is successful, relations between the Department and the community will be placed on a new footing; community trust and

support of the Department will rise; and the cost and pain associated with police abuses will diminish.

We are pleased and excited by these prospects. The implementation of the ombudsman and judge's panel is unprecedented in the nation. It has the potential to be a more informed and dispassionate mechanism for citizen input and scrutiny than any system for civilian review of which we are aware.

That Sheriff Block has permitted competent, independent individuals to scrutinize and judge how the LASD investigates and resolves citizens' complaints is an indication of the Sheriff's faith in the integrity and performance of his Department. In so doing, the Sheriff and his executives have taken an important public step in expanding their own visibility, responsibility, and accountability. The recommendations made in the Kolts Report were intended to be a multifaceted system of checks, balances, doublechecks, safeguards, failsafes, and feedback loops so that force-related problems and their associated pain, social cost, and monetary cost could not remain undetected and unresolved. The Sheriff and his executives and managers, as well as the County, deserve credit for a willingness to make the Department visibly accountable to a high standard through the work of the ombudsman, panel of judges, and Special Counsel.

The task of Special Counsel over the next six months will be to evaluate whether the LASD cooperates as promised with the ombudsman and panel of judges; whether the Department does its part in terms of reaching consensual resolutions; whether the Department is responsive to suggestions with respect to improving the complaint process; whether the Department acts respectfully and responsibly to findings from the ombudsman and judges with respect to incompleteness, bias, or flaws in the investigatory process; and whether the LASD acts similarly to findings that resolutions of citizens' complaints are not reasonable in light of the investigatory record.

As has been noted before, the imposition of discipline is, and will remain, essentially an exclusive Department prerogative. Although the Sheriff's discretion in that regard is

subject to constraint by the Civil Service Commission, the courts, and by labor-management agreements, it is not contemplated that this discretion will be further constrained by the ombudsman or judges or Special Counsel. The task of evaluating the appropriateness and extent of discipline nonetheless is within our ambit, and Special Counsel will continue to carefully monitor the imposition of discipline in all cases, whether or not the ombudsman or panel of judges has been involved. Clearly, even if the investigation and resolution of complaints are scrupulous and fair, the job is not done if discipline is lax or light in view of the conduct at issue. Special Counsel will continue to keep a spotlight on discipline.





In the **First Semiannual Report of Special Counsel**, we took an in-depth look at the Department's efforts to develop programs for training personnel in four key areas: Use of Force, Cultural Diversity, Conflict Resolution, and Sexual Harassment. With the exceptions of sexual harassment training, which has been slow to get off the ground, and training on gay and lesbian issues, the Department has continued to do an admirable job at developing well-conceived training programs. Our investigation in this area has focused, this time around, on interviews with key departmental personnel responsible for training in these areas.

### *Use of Force*

Between July 1993 and December 1993, the Department's Force Training Unit trained 422 deputies, sergeants and lieutenants in a 24-hour pilot program designed to be the model for the first year of a three-year use of force training program. The Force Training Unit has used the pilot program to finalize the curriculum for the first year of training and determine what methods of instructions appear the most effective. Since the end of the pilot program, and as of the beginning of April 1994, the Unit has trained an additional 619 deputies, sergeants and lieutenants in the first eight hour trimester of training while 6,187 deputies, sergeants and lieutenants have yet to receive the first eight hours of training.

While we remain concerned about the ability of the Department to train all personnel within a reasonable time frame, we understand that budgetary and, consequently, staffing limitations have made it difficult for the Force Training Unit to meet such a goal. The Unit currently has one teaching team of six instructors for 7,305 sworn personnel. Recently, the Department has authorized one additional team of six instructors, moving closer to the Unit's goal of four teams of instructors. In addition to the difficulty the Unit faces in adding bodies to its own ranks, budgetary and staffing limitations severely limit the number of sworn personnel that can be pulled from their regular assignments to attend training

sessions. At current staffing levels, the Unit hopes to have everyone in the Department trained by June 30, 1995. This goal is considered "ambitious" by the Unit and appears unlikely to be met. The Department's goal of providing eight hours of use of force training to all deputies each trimester has moved one step closer with the authorization of the second team of use of force instructors. That goal will not be achieved, however, until all four teams of instructors are in place and the Department has a greater ability to release personnel from their regular assignments.

During the past six months, the Unit has continued to fine tune the training program. It has recently lowered the student-teacher ratio from 48 to 36. We have been told that the Unit continues to make extensive use of scenario instruction and use of the invaluable "red man" exercise (so named because the opponent is in red padding). The Unit has recently ordered a suit similar to the red man outfit that will permit instruction in the use of force employing actual batons. We have also been told that the Unit is continuing to use tactical communication within the use of force training.

Unfortunately, we must wait at least until July 1995 before we will see the first example of the Unit's second year curriculum in which the Unit intends to further integrate conflict resolution, tactical communication, and cultural awareness issues. We view all three of these items as crucial to an effective use of force training program and encourage the Department to give considerable emphasis to these areas.

The Department appears to have made progress in providing the use of force training at all levels. All but 17 of the Department's executives have now been given an eight hour overview of the use of force curriculum. The last set of 17 executives is scheduled to receive the overview on April 15, 1994. As of that date, all executives from the Undersheriff through the captains will have received the eight hour overview. In addition, the Unit is working to provide an overview of the use of force training to county counsel.

The Department now claims to have established a mechanism to track and identify the use of force training each deputy receives. This should prove helpful to the Department in defense of litigation and to identify the training received by a deputy who is the subject of an IAB investigation. This information will be invaluable in evaluating the effectiveness of the Department's use of force training.

Since August 1, 1993, a member of the training bureau has accompanied IAB on use of force rollouts. Significant force incidents are written up so that the Force Training Unit can focus on the tactical errors made and use the information to assist in training, allowing the instructors to train from real life events.

In our next report, we intend to again audit the use of force training classes and look at how tactical communication is being integrated into the curriculum. We will also take a closer look at how real life force incidents have been integrated into the use of force curriculum.

## *Cultural Diversity*

As of March 30, 1994, 3,230 sworn personnel and 108 civilians have received training in the area of cultural diversity. Of the 3,230, 2,003 received an eight hour course designed for personnel in custody assignments, and 1,227 received at least part of the 16 hour training designed for patrol and other assignments. The Department appears to be on schedule to complete cultural diversity training for all personnel by the August 1997 deadline set by the Bouman consent decree. The Department hopes to meet that goal with six months to spare.

According to Dr. John Chamberlain, the Department's Training Administrator, cultural diversity training has undergone significant change. The focus has shifted from a "you are racist; you must change" approach to an attempt to get each trainee to reflect on his or her value system and how that value system affects the trainee's police work. The focus is on

understanding how stereotypes work and how they can become problematic. Much to the Department's credit, it has begun to hold cultural diversity training sessions before a mixed audience of sworn and civilian personnel. This structure gives some assurance that the students in the cultural diversity class include a significant number of women and ethnic minorities. This new makeup of the classes permits the deputies to hear alternative points of view and prevents a group-think mentality from developing in the class.

In the interviews we conducted with respect to the cultural diversity training, we were very impressed with the knowledgeable and sensitive perspective of Sergeant Rufus Tamayo. While cultural diversity remains an extremely difficult topic for any institution, let alone a paramilitary institution, Sgt. Tamayo appears to have developed effective methods of dealing with some of the program's most difficult and troubling situations. Sgt. Tamayo explained that when a trainee makes an inappropriate comment or confronts the instructor with a racist, sexist, or other discriminatory statement, whether verbally or in a written question, the Training Bureau now follows a procedure to isolate that individual and focus the class's attention on the inappropriateness of the trainee's comment or action. Apparently this method has proven effective not only at helping the entire class understand important cultural issues, but has also proven effective at aiding the offending individual understand the inappropriateness of his or her remark.

In the cultural awareness training classes we attended last year, we noticed the difficulty the facilitators had in dealing with such confrontations. It is thus a sign of significant development of the cultural diversity curriculum that the instructors now have an effective tool to deal with such situations. It is precisely these types of situations that emphasize the importance of an individual instructor's level of experience at being able to effectively deal with important issues.

Unfortunately for the cultural diversity training program, Sgt. Tamayo has been reassigned within the Department. His efforts, creativity, and commitment to the highest quality of training won our admiration two years ago during the initial Kolts investigation and have

continued unabated to this day. We recall first coming across Sgt. Tamayo's extraordinary work in connection with the Officer Intervention course we monitored in May 1992 when it was presented to Recruit Class 279. In this course, the Rodney King incident and specific, real-life cases involving LASD personnel who have been subject to discipline or prosecution were considered in a careful and thorough discussion of the moral binds and dilemmas patrol deputies must confront in the field. Sgt. Tamayo, in this areas as well as others, did an extraordinary job; he should be commended for directly and thoughtfully confronting and addressing the important issues involved. His departure, along with the occasional departure of the instructors, emphasizes the need for the Training Bureau to memorialize methods and answers which have proven effective at getting the cultural diversity message across to departmental personnel. We suggest that the Department make every effort to put answers to difficult questions in writing and to make sure that the experiences of people like Sgt. Tamayo are available in written form to the next generation of instructors.

### *Gay and Lesbian Issues*

Very little appears to have changed regarding the gay and lesbian unit of cultural awareness training since the publication of our First Semiannual Report. Although the Department continues to offer occasional training in this area, the Department has yet to make a commitment to improve the training on gay and lesbian issues by using openly gay and lesbian deputies as trainers. Although only one openly gay deputy is known to be willing and capable of conducting such training, he has been used but once, and was asked to participate in that one training session not by the Department, but by a civilian outside of the Department who has been active in such training.

Departmental personnel stated that the failure of the Department to use an openly gay deputy as a trainer is because there is only one such deputy currently available and the Department does not want to overuse him. Using him from time to time would not be

overuse; and it's better than not using him at all. By making use of the openly gay deputy as an instructor, the Department could demonstrate a commitment to effective training in this area and encourage other sworn personnel who are gay or lesbian to participate in future training programs.

The failure of the Department to use its own openly gay personnel as trainers on gay and lesbian issues would appear to be further evidence that the Department has a long way to go to improve the atmosphere within the Department for gays and lesbians. We continue to hear reports that anti-gay jokes or remarks remain commonplace within the Department, and we have heard them ourselves. To a greater degree than bigoted remarks regarding race, ethnicity, or gender, such homophobic remarks continue to be tolerated. This pattern of behavior within the Department will not change until the Department makes it clear to all personnel that the conduct is unacceptable and until effective gay and lesbian awareness training is implemented. As we note in the section of this report on recruiting issues, we are particularly concerned that background investigators receive sufficient awareness training so that qualified gay and lesbian applicants for employment with the Department are not eliminated from consideration based upon bigoted, biased, and culturally insensitive attitudes.

In the next review period, we hope to see the Department making use of openly lesbian and gay personnel to teach as part of the cultural awareness training. We will also continue to look for evidence that the message has reached all personnel within the Department that the LASD is committed to the integration of gays and lesbian into the LASD and will not tolerate a hostile or bigoted atmosphere.

### *Conflict Resolution*

Training in Conflict Resolution as a means to resolve citizen complaints, which we strongly recommended, has now been presented to all captains assigned to patrol stations. The Department is now in the process of giving Conflict Resolution instruction to lieu-

tenants. As of March 22, 1994, 63.6% of the lieutenants at patrol stations had received the training. The remaining lieutenants will be trained by the end of September 1994. We are pleased with the progress and will follow with interest how conflict resolution is used at the stations and facilities in the LASD.

### *Sexual Harassment*

In our last report, we commented favorably on the LASD's plans for training of executives regarding sexual harassment and lauded the "top-down" model for training in this area. Although the Department has participated in presentations regarding sexual harassment training to some groups outside of the Department, including some groups of Reserve deputies, sexual harassment training still has not begun for deputies within the Department itself. Although the curriculum has been in place for some time, commencement of sexual harassment training for deputies has been waiting for the assignment of a lieutenant as well as additional instructors. The lieutenant began her new assignment this past March 28.

Incidents of sexual harassment have received a great deal of publicity with respect to the Los Angeles Police Department recently. Several persons within the LASD, including from the Office of the Ombudsperson/Career Resources Center and the Office of the Sheriff, have indicated to us that the problem of sexual harassment within the LASD does not begin to approach the severity of the problem at the LAPD. Nevertheless, the Internal Affairs Bureau opened 24 sexual harassment investigations in 1993, and training in this area remains very important to improve the atmosphere for women within the Department and to help the Department avoid costly legal liability.

Given the importance of sexual harassment training, we hope that training for deputies will have begun within the Department by the time we prepare our next semiannual report so that we can attend training sessions and evaluate the effectiveness of the curriculum. We will also take a close look at the Department's attempts to use pre-tests and post-tests to measure the effectiveness of sexual harassment training.





## 12. FTO Selection and Field Training

### *FTO Selection*

The **Kolts Report** echoed internal LASD criticism of the absence of standardized criteria for selection of Field Training Officers (“FTOs”) and the over-emphasis, in practice, on aggressiveness and arrest records rather than on skills as teachers, mentors and role models. The **Kolts Report** therefore strongly supported LASD proposals then being drafted for uniform criteria emphasizing community-based policing skills and a commitment to work with a diverse population.

Some twenty months later, these selection criteria still are being fine-tuned. Despite the long gestation period, the criteria developed by the FTO Task Force properly include communication skills, interpersonal relations, and “demonstrated ability to work with all facets of the community.” Field Operations staff state that information bearing upon those factors will be derived from sources which include complaint history, field audits, and supervisor evaluations.

The current FTO Task Force proposal recommends mandatory background checks for unreasonable use of force, past allegations of misconduct, discipline, driving history, and commitment to Core Values. The proposed Selection Board Evaluation Form will rate the applicant on ability to communicate, being fair and impartial, commitment to Core Values, community problem solving, cultural awareness, inter-personal relations, reverence for human life, and treatment of people with dignity.

The proposed FTO application form includes a written exercise in which the applicant is asked to describe, in 100 words or more, what he or she would do when faced with a difficult training incident. The applicant may choose to write about any one of three incidents presented, one involving a trainee using excessive force, another involving a trainee being pressured to lie on a report, and the third involving a racial slur used in a trainee’s presence. The examples are carefully chosen and well-written. If the Training Staff receives authentic responses (in contrast to “canned” answers) to these scripted

situations, the essays will be a valuable adjunct to the objective data to be used to screen applicants. During the next audit, we will monitor how these new selection criteria are being applied.

Another proposed requirement is that an FTO cannot be assigned a trainee until the FTO has successfully completed FTO School. At the time of the **Kolts Report**, some six percent of the FTOs had not attended FTO School before being assigned trainees. Until relatively recently, graduation from FTO School has not been a requirement, and, even recently, waivers have been given. The proposal to make FTO School mandatory (and hopefully to eliminate the practice of granting waivers) is one we fully support.

The current proposal also requires successful completion of Advanced Tactical Communications, a course designed to increase effective communication in recognition that poor communication skills may be correlated to use of unnecessary force. Rather than add this course to the FTO School curriculum, Field Operations staff are proposing to add its successful completion to the selection requirements. This matter should be monitored closely, insofar as some station-level personnel have complained that deputies have encountered difficulty completing the course because it is not offered frequently and has been cancelled on occasion. It would be sad if the inability of the LASD to offer this valuable course with frequency reduces the pool of outstanding FTO applicants.

### *Removal or Deselection of FTOS*

The LASD historically had no uniform criteria for removal or deselection of FTOs, who are appointed to the bonus position for three month terms. When Training Staff at patrol stations decided that an FTO was not performing competently or, for whatever other reason should not continue training, the FTO was informally removed, although the FTO continued to draw bonus pay until the three month appointment expired. Both Field Operations staff and Training Sergeants rationalized this informal process because it was

far easier to give the trainee to another FTO and let the FTO's bonus quietly expire than to prove incompetence or other causes for deselection, a more formal process which would likely be grievable. We found this process of "off the record" deselection unsatisfactory because no records were kept which would cause the informal removal to be considered when and if the deputy sought an FTO bonus position again at a later time.

We are pleased, therefore, to note that the FTO proposals now under final review include specific grounds for removal of a current FTO and automatic disqualification of an applicant. They are:

Any of the following during the past 24 months, or after selection:

*Founded investigations involving:*

- Unnecessary or Excessive Use of Force
- Dishonesty
- Breach of integrity
- Two or more Preventable Traffic Collisions
- Sexual harassment
- Discrimination on the basis of race, ethnicity, gender, or concerning sexual orientation

We give our strong support to the adoption of these criteria and will examine in future audits the implementation of the removal and disqualification criteria and the extent to which the Department makes use of the PPI and other appropriate tools to track and assess the performance of existing FTOs. We also note that there is a proposal to extend the appointment of an FTO from three to six months. If such a proposal survives current budget difficulties, the length of the term will make the removal criteria even more important.

### *FTO School Curriculum*

In a laudable self-examination, the LASD created an FTO Curriculum Committee to

review the FTO School. It concluded that the curriculum had “degenerated from its original objective. The main deficiency these FTOs have is lack of teacher/trainer skills. They are also generally unaware of what the Department expect from FTOs. The committee also looked at the needs of newly assigned patrol deputies. These new deputies have a myriad of deficiencies that require special attention from their trainers.”

As a result of this internal review, several classes were dropped from the curriculum and others added to inculcate teaching skills. These changes shaped the revised and significantly restructured FTO Curriculum which was implemented in November, 1993, when two full days of FTO Class 54 were devoted to teaching the “Functions of the FTO as Supervisor, Trainer, Role Model, Counselor, and Evaluator.” FTO Class 54 was also the first to receive a course in Cultural Diversity and in trainee reaction to stress.

FTO Class 54 was also the first class to be given performance tests in addition to the written final examination, which has been significantly altered and updated. In the performance test, the FTO candidates observed reenacted incidents or crimes in progress, and then practiced evaluating and critiquing the performance of the officers involved. We suggest that these excellent tests include opportunities for the candidates to evaluate the reasonableness of force used.

The current coordinator of FTO School is recommending the addition of a class to teach legal standards currently applied to law enforcement. The class will teach conduct to reduce the risk of potential liability and will provide the FTOs with a framework in which to increase the trainees’ understanding of the need for force reporting, heightened review of shootings and force incidents, and the PPI.

In sum, we find that the Department is making significant progress in overhauling and improving the way that Field Training Officers are to be selected and trained. New state standards will be promulgated shortly by the California State Commission on Police Officer Standards and Training, or “POST,” and the LASD may further change selection and training criteria for FTOs in response. We note that there are ongoing discussions

(and occasional disagreements) in the LASD over the organization, sequence, and constitution of the new FTO curriculum. We will continue to closely monitor the selection and training of FTOs.

### *FTO Signed Information Sheets*

In our assessment of LASD Field Training, the **Kolts Report** criticized the hazing of trainees by FTOs and recommended a professional apprenticeship rather than military subordination. Judge Kolts advocated that trainees should be regarded and treated as patrol partners in need of special, individualized training, not as “boots” to be embarrassed, humiliated or tested.

In response, the LASD stated that it had implemented, or was in the process of implementing, policies to provide all personnel with standards by which to treat trainees and to clarify the Department’s position on hazing and discrimination. The Department noted that all FTOs are required to read and sign a “Training Officers Information Sheet” which, among other things, addresses the prohibition against hazing.

The FTO Information Sheet (the earliest version of which predated the **Kolts Report** by almost two years) is impressive: The six-page form provides the novice FTO with an overview of field training, summarizes and clarifies much of what is covered in the FTO class, underscores the importance of effective communication between FTO and trainee, provides clearly stated ground rules to keep the channels of communication open, outlines the duties and responsibilities of the FTO, underscores the seriousness and importance of the FTO position, contains clear admonitions against hazing, with a brief definition and discussion, and exhorts the FTO to be professional and to stress the importance of a “service” attitude in dealing with the public. The form correctly notes that “a proper demeanor and the effective use of tact and diplomacy will often prevent complaints, which cause time-consuming investigations.” The FTO is to sign the form under a paragraph acknowledging that the form has been read and understood and will be obeyed.

The LASD Academy Training Staff and Field Operations staff state that this signed document is put in every FTO's file and could be invoked when and if their performance proved unsatisfactory, as stated in the FTO Manual which requires that the form "shall be signed by all Field Training Officers and maintained in his/her unit level personnel file."

The requirements, however, are not followed uniformly throughout the Department. At times, the FTOs may never be required (or even asked) to read and sign this critical document. No compliance audit has been undertaken by Field Operations. They assumed (incorrectly, we discovered) that all station-level training staff were aware of the requirement. Non-compliance with the policy may simply be oversight; but it also has been suggested that FTOs at one station resist signing. We urge a quick audit by the LASD to determine the extent of non-compliance, if any, and immediate action to achieve full compliance. If there is resistance or reluctance by an FTO to sign, the individual should not serve in this critical role which the LASD recognizes as having the greatest influence on how a trainee will act during the rest of his or her career as a deputy sheriff.

### *Continuing Education For FTOs*

The **Kolts Report** recommended continuing education of FTOs and efforts to measure the performance of an FTO on the job. Advanced FTO training is now available in an 8-hour FTO update presented several times a year by the Field Operations Training Unit. Topics include civil litigation and advanced teaching skills. A Force Survival Workshop was also recently presented. According to Field Operations staff, the FTO update covers some of the topics removed from the FTO School Curriculum that were marginal to the core job of teaching the FTOs how to educate and train young deputies.

The LASD has discussed but not yet implemented a formal mechanism to assess the success of field training on the trainees. One proposal that has considerable merit is to bring all trainees back to Patrol School after three months of field training to assess

whether the field training from the FTO varied from what was taught at Patrol School, to measure the quality of FTOs and training programs in general, to determine how FTOs responded to the trainees' needs, and to collect suggestions for improvement of training. The proposal is excellent in that it provides a feedback loop and an on-going "reality check" for training staff both at the Academy and in the patrol stations. Discrepancies in training could be addressed and discussed before the trainee's habits are set in stone.

If feasible, the FTOs from the same class should also be brought back together sometime after their first training assignment. In addition to being able to share their experiences, the "reunion" might strengthen the community of professional FTOs within the Department and ease whatever sense of isolation might exist.

### *Bonus II FTOs*

The **Kolts Report** recommended that trainees receive regular evaluations of their performance, independent of those provided by their FTOs, as a further check on the content and quality of training of new patrol deputies. The Core Values Task Force on FTOs responded with a recommendation to form a small cadre of highly-skilled, specially qualified FTOs who would be given Bonus II positions, the compensation for which is approximately the same as sergeant's pay. They would ride with trainees to assess the skill of the trainee's FTO and render a second opinion on the trainee's competence, remedy deficiencies in the trainee's performance, and oversee and be mentors for newly-appointed FTOs.

The idea is an excellent one, and we were discouraged to hear from Field Operations personnel that the proposal to create a Bonus II FTO has very little chance of being approved, presumably because of budget considerations. We encourage the Department to re-assess the proposal and implement it.

## *FTO Composition*

As set forth in our chapter on Diversity, there are continuing problems of diversity within the LASD. Those difficulties are more pronounced with respect to the 198 FTOs in the Department than with respect to other groups. The 198 FTOs are 95.4% male and 74.8% Caucasian. In contrast, 87.6% of all sworn personnel are male and 71.7% are Caucasian. The 5945 deputies are 86.7% male and 62.5% Caucasian. The FTO position carries a great deal of prestige and is a stepping stone to promotion. We have in the past criticized the selection process to the extent that it rewards the nakedly ambitious over those particularly well-suited to teach and train. Be that as it may, the position is important and visible. There are few better places to demonstrate a strong Department commitment to diversity.

It is frankly shocking to see that only 4.6% of the FTOs are women, especially since women in general, at 12.3% of all sworn personnel, are already seriously underrepresented. It surely should be possible to construct a corps of FTOs that is more widely representative of the population served by the LASD or the sworn population within the LASD. We will carefully monitor the Department's progress in increasing the diversity of its FTO corps.



# 13. Ombuds person and Sexual Harassment

The Ombuds person/Career Resources Center officially opened in August 1993, although it began serving personnel informally the previous spring. The Ombuds person service provides confidential assistance in the informal resolution of internal Departmental sexual harassment and discrimination complaints. (The “Ombuds person” must be distinguished from the “Ombudsman” who handles citizens’ complaints). While the office is open to complaints about all forms of discrimination, the vast majority it handles involve gender issues.

An example of a sexual harassment case addressed by the Ombuds person is a civilian female employee’s allegation of improper touching by a male supervisor. Hostile environment cases involved, for example, harassing comments. Non-discrimination cases included complaints about harassment by a supervisor, complaints about the County gun purchase policy, unit morale, and expediting the release of a relative’s body from the morgue.

Over half of the office’s discrimination cases in each year involved women seeking assistance. These include not only all of the sexual harassment/hostile work environment cases but also the majority of the “other discrimination” cases. Of the 18 “other discrimination” cases for 1993, only seven were on behalf of complainants other than women: three disability issues, three ethnic group issues (two Latino and one African-American) and one male complaining of reverse discrimination. In 1993 there were no cases involving sexual orientation, while there has been one in 1994, involving facilitation of the gay and lesbian sensitivity training.

As these figures make clear, the overwhelming focus of the office at this time is on issues primarily affecting women. The office does appear to have been successful in being

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**Case Statistics from September 1993 through March 1994**

	<b>1993</b>	<b>1994</b>
	<b>Total</b>	<b>Total</b>
<b>Discrimination</b>	<b>46</b>	<b>21</b>
Sexual Harassment / Hostile Environment	24	10
Other Discrimination	21	11
Sexual Assault	1	
<b>Non-discrimination</b>	<b>18</b>	<b>4</b>
<b>Total</b>	<b>64</b>	<b>25</b>

accessible to many women seeking a resolution to their complaints. We remain very concerned, however, that there is a lack of clarity as to the Ombudsperson's mission.

While the office's official mission also includes resolution of discrimination complaints which are other than gender-related, including racial, ethnic and sexual orientation discrimination complaints, serious efforts will be required to make the office as utilized by these groups as it has been by women.

Current outreach and publicity efforts do not actively promote the office as a vehicle to resolve complaints from gays, lesbians and racial and ethnic minorities. The office brochure does not even mention sexual orientation issues. More fundamentally, no active outreach efforts have been made to targeted groups of employees such as minority officers' associations and gay and lesbian deputies to encourage the use of the office as a resource. Outreach efforts to date have been limited to presentations at unit meetings, which have been reduced due to the elimination of briefings. If the Department seriously desires to make these services available to all, and we believe that it should be, greater and more focused efforts are required.

The scope of the Ombudsperson's activity on complaints is limited to informal investigation and resolution. Typical complaints amenable to this form of resolution include peer and supervisor relationships, Departmental transfer policies and the inconsistent enforcement of policies, such as hair style, which affect women. The Ombudsperson is highly successful in resolving such matters by informally investigating, clarifying facts and policies and, where appropriate, recommending counseling or a change in assignment.

More substantial cases which have been informally resolved include a female deputy who alleged she was stalked by another deputy. Although the allegation did not rise to the level of a Penal Code violation, the commander and ICIB were notified and safeguards were instituted.

On the other hand, cases which allege violation of the law or of Departmental policy

are usually referred to IAB or ICIB for formal investigation. This occurs at the complainant's request or when the allegation is so serious that the Department has a duty to investigate. For example, IAB is currently investigating a case in which a female deputy who filed a sexual harassment charge is now alleging retaliation by other deputies.

Twenty-four sexual harassment files were opened by the Internal Affairs Bureau in 1993. We were able to review all but four of the files relating to these cases. Unfortunately, three of the unavailable files related to cases in which it was determined that the allegations of sexual harassment were founded. The statistics for the 24 cases are as follows:

(i) one of the complainants was an executive seeking an investigation of a facility where the alleged sexual harassment was occurring, one complainant was a sergeant, 13 complainants were deputies, eight complainants were civilian employees and one complainant was a non-employee citizen;

(ii) eight of the complaints were filed against sergeants, 12 against deputies, three against civilian employees, two complaints investigated possible harassment at two stations and we were unable to determine the rank of one subject. Also, two of the case mentioned herein were filed against both deputies and sergeants.

(iii) fifteen of the complaints focused on verbal remarks, four involved sexually explicit items, four involved sexually explicit touching, two focused on a general atmosphere of sexual harassment, and one was a case of sexual orientation discrimination rather than sexual harassment (two of the cases involved both verbal remarks and touching);

(iv) four of the cases were founded or partially founded with respect to the sexual harassment charges, four were founded with respect to charges other than sexual harassment, seven were unfounded, three could not be resolved, three were stopped at the request of the complainant and three remain pending.

We were generally impressed with the extent of the Department's investigation into the 24 sexual harassment cases. IAB generally interviewed numerous persons and collected

pertinent documents before attempting to reach a conclusion. Disciplinary action with respect to the founded cases ranged from counseling to a written reprimand to a suspension of 30 days. Some of the files indicated that briefing on sexual harassment had occurred at the station level.

While sexual harassment charges are investigated by IAB, charges involving employment discrimination which cannot be informally resolved are referred to the appropriate person in the command structure as well as to appropriate formal process. For example, an allegation of ethnic discrimination in the Appraisal of Promotability process was referred to the Assistant Sheriff and is in the Civil Service process.

As of 1994, the Ombudsperson is brought in to work on discrimination cases which go directly to IAB. She also remains involved in cases which originate in her office. This is salutary in that the office has demonstrated sensitivity in the handling of such delicate issues as the job assignment of a complaining employee and physical protection of a complainant.

The Ombudsperson, Lieutenant Irene McReynolds, is to be commended for her sensitive handling of cases. She appears to be fair-minded and sensitive to the needs of both employees and the Department. She appears to have appropriate access to the command structure and to the confidential information needed to resolve complaints.

One important issue for the Department to consider is the extent to which the impact of the Ombudsperson is being diluted by the non-discrimination complaints she is handling. These cases total approximately one-fifth of all office cases for both 1993 and 1994. While the number of these cases may indicate employees' satisfaction with the Ombudsperson's efforts, issues such as Departmental gun purchase or parking policies, or answering questions about union representation, fall outside the scope of the Ombudsperson's mission and divert substantial resources from needed outreach efforts, particularly to minorities and gays and lesbians.

Now that the Ombudsperson's office is established, it would be fruitful to consider how its dispute resolution activities might be made more accessible throughout the Department.

One proposal would be to have the office train a capable individual in each unit to help resolve low-level disputes at the unit level.

In future reports we will look at the Ombudsperson's office again to determine whether the Ombudsperson is being adequately publicized to all appropriate groups, including women, racial and ethnic minorities, and gays and lesbians. We will again look at the Ombudsperson's effectiveness in dealing with discrimination issues and whether the Department is able to keep the Ombudsperson's resources from being diluted by complaints which should be directed to other areas of the Department. We will also continue to look at IAB investigations into sexual harassment complaints.

### *Acceptance of Diversity*

We remain concerned with respect to the opportunities for advancement and the level of tolerance and comfort for minorities and for gays and lesbians. There are far too few women, African-Americans, Latinos, Asians, and openly gay and lesbian individuals in positions of authority in the Department. We continue to hear reports that homophobic remarks remain common within the Department (we have heard them ourselves), along with occasional bigoted remarks about race, ethnicity or gender. None of these remarks can be ignored or tolerated. One of the reasons homophobic remarks have not been addressed within the Department may be because gay and lesbian personnel have not felt comfortable bringing these matters to the Department's attention.

We are aware of only one official complaint of sexual orientation discrimination brought to the Department's attention. We hope the LASD goes out of its way to make the atmosphere in the Department such that any minority, including gays and lesbians, can express complaints and understand that they will be fairly and dispassionately investigated and decided.

In our next report, we will again concentrate on the Department's efforts to increase tolerance of diversity.



The **Kolts Report** observed that women, racial and ethnic minorities, and gays and lesbians were underrepresented in the LASD and were largely absent in the upper ranks of the Department. This demographic distribution was not reflective of the demographics of Los Angeles County and contributed to strained relationships with parts of the community. We thus pay careful attention to the LASD's efforts to increase diversity.

### *Hiring*

The only hiring since our last report has been a small class of 40 candidates who entered the Academy on January 19, 1994. This class was selected from among Deputy Reserve Officers who had successfully completed the application process but were not extended offers due to the freeze on hiring in 1993.

This class includes only two women and one African-American. While there may have been pressure to select this class quickly by using the reservist pool, thus limiting the ability of the Department to improve its demographics, the selection of this class exacerbates to a minor degree the Department's diversity problems.

Of far greater concern is the composition of the pool of applicants from which the next full-sized class is to be selected. There is a class that will begin training at the Academy on May 31, 1994. We understand that the demographics of that class is at least the same, and possibly slightly better, than the current demographics of the Department with respect to women and racial and ethnic minorities. Although this represents some progress, we strongly recommend that substantial efforts be made to increase the diversity of Academy classes thereafter to be selected. As we discuss in the next section of this chapter, we have reason to believe that recruiting efforts for future classes will be substantially improved so as to attract more women, racial and ethnic minorities, and lesbians and gays.

We are also concerned about the quality of the background investigations used for the applicants already in the hiring pool and believe that additional screening should be considered.

As was stated in the **First Semiannual Report of Special Counsel**, the Department engaged UCLA to study the LASD's psychological screening procedures. The study has been completed and recommends the following changes to current procedures:

- *Substituting one psychological screening examination with another;*
- *Adding a test to identify high-risk applicants;*
- *Extending the background investigation to follow up on issues raised in the psychological testing;*
- *Tailoring the clinical interview to job qualifications; and*
- *Clarifying job qualifications.*

The Department is currently considering these recommendations. We believe that these changes are salutary and that their use should be incorporated into the process for hiring any deputy trainees from this date forward, including the next Academy classes.

In our next report, we will analyze any new classes of deputy trainees hired by the Department, looking specifically at their demographics and the selection process.

**Los Angeles County Sheriff's Department Breakdown by Rank, Sex, and Ethnicity as of March 29, 1994**

Class	Total	Male	Female	Caucasian	African-American	Hispanic	Native American	Asian	Filipino
Sheriff	1	1 100%	0	1 100%	0	0	0	0	0
Undersheriff	1	1 100%	0	1 100%	0	0	0	0	0
Assistant Sheriff	2	2 100%	0	2 100%	0	0	0	0	0
Chief	7	7 100%	0	4 57.1%	2 28.6%	1 14.3%	0	0	0
Commander	16	14 87.5%	2 12.5%	14 87.5%	1 6.3%	1 6.3%	0	0	0
Captain	50	44 88.0%	6 12.0%	42 84.0%	3 6.0%	4 8.0%	0	1 2.0%	0
Lieutenant	290	268 92.4%	22 7.6%	244 84.1%	22 7.6%	21 7.2%	0	3 1.0%	0
Sergeant	896	815 91.0%	81 9.0%	756 84.4%	47 5.2%	78 8.7%	1 0.1%	14 1.6%	0
Deputy IV	97	91 93.8%	6 6.2%	71 73.2%	13 13.4%	12 12.4%	0	1 1.0%	0
Deputy	5945	5157 86.7%	788 13.3%	4108 69.1%	564 9.5%	804 18.6%	5 0.1%	130 2.2%	34 0.6%
Deputy Trainee	40	38 95.0%	2 5.0%	25 62.5%	1 2.5%	13 32.5%	0	1 2.5%	0
<b>Totals</b>	<b>7345</b>	<b>6438 87.6%</b>	<b>907 12.3%</b>	<b>5268 71.7%</b>	<b>652 8.9%</b>	<b>1234 16.8%</b>	<b>6 0.0%</b>	<b>150 2.0%</b>	<b>34 0.4%</b>
FTO	198	189 95.4%	9 4.6%	148 74.8%	14 7.0%	34 17.2%		2 1.0%	



## Recruitment

Table 5 shows the Department's breakdown of sworn personnel by rank, sex and ethnicity as of March 29, 1994. Table 5 reveals no significant change since our **First Semiannual Report** or the **Kolts Report**. The Department's inability to improve its demographics is, of course, a result of the lack of hiring.

Given the lack of hiring, we are concerned that the Department is unlikely to meet even its own very gradual goals to improve diversity in hiring. Its goals as set out in its 1993-94 Affirmative Action Plan are to increase minority and female officers as follows (note that the current percentage for each group listed below differs from the more up to date statistics shown in Table 6.)

It is doubtful that the Department will meet even these very gradual goals in the absence of highly targeted recruitment and promotional efforts. In our last report, we recommended

that during the freeze on hiring, recruitment resources should be used to develop more creative and effective means of hiring women, gays and lesbians, and minorities.

Unfortunately, during the hiring lull the recruitment unit was deactivated and personnel were reassigned to other duties. In December, four recruiters were added back to the unit.

In April, the Department began to devise programs to reach out to women, racial and ethnic minorities and gay and lesbian individuals. We understand that the Professional Standards and Training Division, in active consultation with women, minority, and gay members of the Department, has devised certain programs, and are in the process of formu-

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### Deputies

Ethnic Group	Current	Goal
African American	9.6%	10.7%
Latino	18.3%	20.7%
Native American	.12%	.2%
Asian	2.5%	2.5%
Filipino	.43%	.7%
Women	14.8%	15.1%

### Sergeants & Lieutenants

Ethnic Group	Current	Goal
African American	5.8%	6.4%
Latino	8.5%	9.6%
Native American	.08%	.08%
Asian	1.1%	1.4%
Filipino	0%	0%
Women	8.9%	9.5%

lating others, that included wide, extensive testing of potential recruits, combined with concerted efforts to attract under-represented groups. The Professional Standards and Training Division deserves credit for its willingness to listen to women, minorities, and gays and lesbians within its own organization as to the best ways to attract qualified recruits from those groups.

For instance, with respect to minority, women, and gay and lesbian recruiting, recruiters will speak at or otherwise have contact with African-American, Latino, Asian, gay and lesbian, and women's business associations, churches with significant minority and gay and lesbian congregations, minority, gay and lesbian, and women's organizations at university and community college campuses, as well as making extensive use of the radio and print media to reach diverse groups. These ideas provide good, concrete methods to improve the Department's recruiting.

Targeting under-represented groups for initial recruiting contact does not, by itself, increase the Department's diversity. Members of such under-represented groups must be able to pass the qualifying criteria to become deputy sheriffs. The LASD should make sure that its background investigators receive cultural awareness training to insure that prejudice or bigotry do not lead to the disqualification of otherwise good candidates.

In that regard, the Department should continue to monitor whether such disqualifying factors as credit problems disproportionately impact certain minority groups and whether the criteria can be further refined and tightened so that the net to eliminate candidates does not sweep more broadly than necessary to protect the Department's legitimate interests. Similarly, the Department should continue to monitor whether other factors, such as having a husband or wife and children, are used as tests of maturity and stability and, therefore, may lead to discrimination against otherwise mature and stable men and women, including gays and lesbians. In our next report, we will report on the Department's efforts to recruit, hire, and promote individuals from under-represented groups.

## 15 . P s y c h o l o g i c a l S e r v i c e s

Law enforcement responsibilities place deputies regularly in situations fraught with tension, and deputies' emotional stability is constantly tested. LASD deputies must understand when they need help and be able to obtain such help quickly. Management must be able to identify officers who may be experiencing the stress and burnout which may be a precursor to the use of excessive force.

Management should encourage deputies to seek help rather than leaving them to fear the consequences of doing so. Supervisors require training to recognize early signs of problems so that they may assure appropriate intervention, including peer counseling, psychological counseling, medical work-up, emergency referral, or fitness for duty evaluations.

We are very pleased that, toward this end, the Department has approved the hiring of two new psychologists by the Psychological Services Unit ("Psych Services") to provide ongoing consultation and training in the early identification and treatment of stress-related problems. Due to funding reductions, the Psychological Services Unit staff had been reduced to four psychologists from a high of 12 in 1992.

The Department provides psychological services through Psych Services and by contract with two outside entities to which cases are referred by the Health and Safety Unit. Psych Services provides emergency and non-emergency personal counseling, psychological debriefing for traumatic incidents, consultation and training. The Department contracts with an entity called Psychological Resources to conduct fitness for duty evaluations and pre-hiring psychological evaluations. Services to employees filing work-related stress claims are provided by contract with Noetics, Inc.

### *Psych Services*

Regular, non-emergency counseling is the single largest category of service provided by Psych Services. Until a recent change in policy, described below, this counseling has been limited to personal problems only. A personal problem is defined as one which originates

outside of work, even if the problem impinges upon work. Due to the drastic reduction in staff, regular counseling sessions are now limited to ten per year rather than the unlimited number previously available.

Regular counseling may be self-referred or may be recommended by a supervisor but may not be mandated by a supervisor. A supervisor may, however, present voluntary counseling to an employee as an alternative to disciplinary measures.

In 1993, a total of 776 individuals received regular counseling services. Approximately 50% of these clients were seeking help with problems with personal relationships. Counseling is available to the Department employee, to the couple, and to the non-Department spouse. The Department was unable to provide us a breakdown of the major types of problems for which employees sought regular counseling or the extent to which such problems were supervisor- or self-referred. It was not clear if statistics were not kept or if the data could not be retrieved, but in either event, Psych Services' record keeping is inadequate.

Because of this substandard record keeping by Psych Services, we are not at this time able to evaluate whether there is a correlation between personal problems and critical areas of job performance due to the unavailability of meaningful case type descriptions and data. If the provision of personal counseling can be demonstrated to be sufficiently related to prevention of serious work-related problems such as use of excessive force (which in our view has not been studied in a rigorous way by Psych Services), then there may be grounds to consider expansion of Psych Services to facilitate earlier identification of problems and earlier contact with Psych Services.

In 1993, 55% of clients reported that their problem had been going on for over six months before they sought help. Psych Services believes that "individuals fail to seek services until the problem has become longstanding, entrenched and results in serious impairment. It also appears that supervisors are likewise failing to intervene early on." We are concerned about these lengthy delays in seeking and referring for help. These are

exacerbated by waiting periods of two weeks to one month for regular counseling appointments.

Psych Services on a priority basis provides counseling in emergency situations. A call may be defined as an emergency by the person calling, the supervisor making the referral, or the secretary taking the call. An effort is made to err on the side of scheduling emergency appointments for every case characterized as an emergency.

In 1993, the Unit saw 348 office emergencies and 129 emergencies after hours through the Unit's 24-hour on-call counselor, for a total of 477 emergencies for the year. By contrast, in 1990-91 the Unit averaged 82 emergencies per month, for a total of 984 for the year. Emergencies had been steadily increasing since at least 1985-86, and the total has not been as low as the 1993 figure since 1986-87.

In 1993, 41% of the emergencies were referred by supervisors. Among the examples of supervisor referred emergencies were suicide assessments and evaluations for possible hospitalization. Because of substandard record keeping, Psych Services was unable to provide us a breakdown of the types of emergency cases it handled in 1993 or the types of cases referred by supervisors.

Psych Services provides psychological debriefings in cases of officer-involved shootings and "critical incidents." The purpose of debriefings is to prevent long-term effects from occurring as a result of the trauma, in order to prevent Post Traumatic Stress Disorder and possible resultant disability. The intervention may occur individually or in a group but is not group therapy. The psychologist may be called out for debriefing on site for an individual or a group.

An officer-involved shooting debriefing occurs in all shootings where an injury occurs. Although the Department does not require psychological debriefings for non-hit shootings, some units refer some incidents on a case-by-case basis. The Lennox Station mandates a psychological debriefing if an officer is shot at, shoots but does not hit, or misfires. Psych Services is of the view that officers involved in non-hit shootings constitute a high risk

population and could benefit from increased preventive measures. We recommend adoption of the Lennox model.

Critical Incident Debriefing is a one-time psycho-educational intervention following a critical incident, such as a plane crash, reactions to a suicide, a pursuit that results in the death of a bystander, or someone dying suddenly. Because of inadequate record keeping, Psych Services was unable to provide a breakdown of cases handled in 1993 or the extent to which such cases were referred by supervisors.

There has been a substantial reduction in training offered by Psych Services in 1993 as compared to 1990-91. Because of substandard record keeping, Psych Services was unable to provide information as to the number of supervisors trained in 1993, but only three courses were given: two hours of FTO School and Sergeant Supervisory School and four hours of the Custody Supervisors' Force Survival Class. The latter would appear to be the only one which directly addresses the use of force.

This contrasts with 1990-91, in which training was provided to supervisors in these courses but also in such topics as Supervisory Substance Abuse Awareness, Supervision Skills and Learning Theory, Psychological Aspects of Supervision and of Beginning Supervision, Psychological Aspects of Domestic Violence, and "identification and intervening for those at risk of lapses in conduct" in custody facilities. Because supervisors are in the best position to provide the Department with critical information based upon deputies' conduct observed on the job, it is therefore important that supervisors be trained to identify problems at an early stage and take appropriate action.

Even given the constraints of therapist-patient confidentiality, the Department could have potentially valuable information on the psychological problems of its staff and the actions taken by supervisors as a result. Because of inferior record keeping practices, this is not even captured and tabulated regularly, much less reported to supervisors or management on a regular basis.

The only document which apparently compiles data regarding the Department's

employees is the Psych Services' annual report. In the 1993 report, there is no category which is directly related to the use of force. Cases are categorized by symptoms, such as skin problems, jumpy, irritable, withdrawn, memory problems, or weight change. This is a change from the 1990-91 report in which problems were listed by categories which were more helpful in detecting early warning signals, such as depression/burnout, anxiety, substance abuse, and bereavement. Even if supervisors receive the training we have recommended, it is unrealistic to expect them to use the 1993 categories diagnostically to identify problems at an early stage.

Given the lack of usefulness of these categories, and in order to assess each type of service provided by the Unit, we requested Psych Services to prepare case statistics broken down according to regular counseling, emergency counseling, and officer involved shooting and critical incident debriefings. We also requested breakdown of case type by unit and whether each case was supervisor- or self-referred. Because of substandard record keeping, we were advised that the only available statistics were what appears on Table 7.

These statistics provide little assistance in assessing the work of Psych Services. Again, there are no categories which would appear to be directly

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Anxiety	3%	Relationship Problems	53%
Depression	5%	Stress Management	4%
Family Problems	7%	Work Mandated	2%
Grief / Loss	2%	Work Related	2%
Officer-Involved Shooting	14%	Other	2%
Parent / Child	5%	Did Not Answer	2%

related to possible use of force. Nor are they broken down by type of service, unit, or source of referral. As such, they raise more questions than they answer.

Reports to upper management also appear to be deficient. There appears to be no regular reporting which allows the Department to review whether unit heads are making appropriate referrals, especially in the case of potential use of force. There is no regular reporting system regarding how many problems of each type are coming out of each unit. Such reports could be prepared in a manner which preserves confidentiality and are essential to the appropriate design, provision, and oversight of psychological services.

The most recent reports to management with any detail were three monthly reports provided on a sample basis in 1992 to the Undersheriff. While these reports did not have the comprehensive detail that we believe regular management reports should include, they provided some important information and demonstrated that management can be provided information necessary for appropriate oversight without breaching patient/therapist confidentiality. The reports disclosed that suicidal tendencies were the largest single category of very serious mental problems. The implications of these numbers should have been followed by Psych Services and management, but apparently were not.

We were advised that for purposes of confidentiality, Psych Services does not keep files on clients. The only records are of attendance dates. Statistics for the annual report are taken from the intake forms. This greatly reduces the usefulness of the information which can later be reported.

## *Work-Related Stress*

### **Workers' Compensation Cases**

An employee with a work-related stress claim who elects to file a Workers' Compensation claim is referred to Health and Safety, which refers the employee to Noetics, the Department's third party administrator for such claims. Services provided by Noetics include assessment as to whether or not the employee's claim meets the legal criteria for payment, negotiation with outside physicians for fees when claims are granted, and payment of medical bills for approved claims. Counseling is only available through Noetics for claims which have been granted.

From September through November 1993, 13 work-related stress claims were filed, including ten from Field Operations units. Claims came from ten different units throughout the Department, with two claims each filed from three stations. Ten deputies and one sergeant filed claims. Eleven claims were filed for a psychological injury, with



the remaining two claims filed for anxiety. Claims were filed by 11 males and two females. The number of claims expected to be granted in the future is expected to decline as a result of a change in state law on July 1, 1993 which requires that stress be caused at least 51% by work-related problems.

The purposes of the Noetics contract should be to assure that valid workers' compensation claims are granted and that employees with genuinely work-related stress problems receive needed treatment, while minimizing the granting of frivolous claims. It is important that an appropriate balance be struck between these two potentially conflicting purposes.

While appropriate investigation of Workers' Compensation claims is necessary to minimize fraud, it is important that claims be administered in a manner which does not discourage the filing of valid claims which, if left unattended, may lead to the excessive use of force. Given the major exposure of the Department when it loses excessive force litigation, failure to provide treatment by denial of stress claims may not be cost-effective in the long run.

In our next review, we will assess the services being provided pursuant to the Noetics contract to determine whether the Department's overall purposes are being served by its administration.

### **Non-Workers' Compensation**

From 1992 through March 1994, the Unit provided no counseling for problems which originated in the workplace, due to the transfer of all cases involving Workers' Compensation claims to Health and Safety and subsequent referral to Noetics. As a result of this policy change, employees who did not intend to file workers' compensation claims were neither referred to Noetics nor provided counseling by Psych Services.

In 1993, this policy required the Unit to decline services to approximately 3 employees

per week. These employees were advised of three options: to obtain counseling through their private insurance carrier, to seek help through the County employee assistance program, or to file a Workers' Compensation claim. We were puzzled by the decision to remove job-related, non-Workers' Compensation cases from the purview of Psych Services. Since the first two options above have severe restrictions on services or reimbursement available, the policy would seem to encourage employees seeking help to file Workers' Compensation claims.

We were thus pleased to learn that in March 1994, this policy was reversed, and employees who do not intend to file Workers' Compensation claims may now again receive counseling services from Psych Services. We believe that restoration of these services is good, as it removes the incentive for these employees to file Workers' Compensation claims. More fundamentally, these work-related problems may be of a higher priority for the Department to treat than certain garden-variety personal problems in that they may have a greater correlation to the potential use of excessive force.

## *Conclusion*

Psych Services is its own worst enemy. It simply does not keep the kinds of records, or perform the analyses, or make the kind of reports to management that would justify its existence and the important work it should be doing. Nor has management apparently insisted that Psych Services keep adequate records and perform rigorous analysis. Psych Services' resources appear to be devoted to problems that have not been rigorously correlated to those psychological problems which present the greatest risk of liability to the Department or danger to the officers themselves or the people they come into contact with. Personnel in Psych Services were uncooperative and defensive in our efforts to seek information. Psych Services wants to argue that it is under-funded and under-utilized, but it does not have, or was simply unwilling to provide, the information or

analysis that would permit us to evaluate these arguments. **We strongly advise that the system of reporting be improved to advise management on a regular basis of the types and descriptions of cases handled in each category, the units from which they are being referred and whether they are self- or supervisor-referred. Management must receive psychological information on a consistent basis to alert it to problems or potential problems such as hazing, harassment, racial problems, or inaction of a supervisor on an important problem. This would not only prevent serious problems from occurring but would reduce the Department's financial exposure in such cases.**



