

# **F i f t e e n t h   S e m i a n n u a l   R e p o r t**

## *Introduction*

This is the fifteenth semiannual report commenting on the Los Angeles County Sheriff's Department (LASD) for the Board of Supervisors, the Sheriff, and the general public. The investigation preceding this report took place in the winter of 2001 and the spring of 2002 and reflects the status of the Department at that time. This report contains the results of five lengthy and important investigations undertaken in the last six months.

### **Shootings**

We have looked in depth at shootings of suspects by LASD deputies, and our chapter on the Century Station continues a longstanding exploration of the reasons why that station generates large numbers of shootings. We study Century so closely because it is a microcosm of American policing in inner city, crime-ridden, minority neighborhoods.

Our basic premise is that excessive, unreasonable, and unnecessary force, lethal and non-lethal alike, can be meaningfully reduced through conscientious work on management's part.<sup>1</sup> This assumption faces its hardest test in environments like Century where there is always a debate whether it is the crime-ridden atmosphere that breeds the necessity to use force more often, more harshly, and more lethally, or whether it is a combination of management failure and deputy culture that causes the numbers to soar. We return to Century again and again because we are convinced that management has not consistently done enough. That has changed recently, and with the current leadership at Century

1 Not every use of force by law enforcement is excessive, unreasonable, and unnecessary. Televised images of Rodney King or the recent Inglewood Police Department incident involving Donovan Jackson create a distorted view of how force is applied if the viewer concludes that such uses of force are frequent or typical. The necessity to use a range of force options in an appropriate, reasonable, and moderate way legitimately to overcome resistance by a suspect is an every day occurrence in law enforcement. In the vast majority of cases, LASD deputies use force in this manner, without causing unnecessary, avoidable, or substantial injury to the suspect or to themselves. In many instances, the force used is the minimal amount necessary in connection with an unresisted handcuffing. It is where the force is unnecessary, gratuitous, unreasonable, or disproportionate, as was the case with Rodney King and at first blush appears to be so with Donovan Jackson, that the line is crossed into illegal or unconstitutional activity.

under Captain Eric Smith, things may be different. He appears willing to engage and grapple with the issues without inalterable preconceptions or hardened expectations of outcome. He has launched new initiatives to deal with issues of force, and our chapter on Century reports on his good work thus far.

### **Performance Review**

The LASD was the first law enforcement agency in the country to adopt a computerized tracking system to compile and relate data on employee performance in a wide array of categories bearing upon liability risk. Called the Personnel Performance Index, or PPI, the system keeps track of data on citizens' complaints, uses of force, shootings, internal investigations, lawsuits, claims, and discovery requests in litigation. "Performance Review" is the LASD's process for structured intervention to redirect the careers of personnel whose behavior has demonstrated risk of poor service to the community, excessive force, or potential liability. Most candidates considered for Performance Review are identified through the PPI.

It is important, therefore, to see if the process works: Are the criteria derived from the PPI correctly identifying appropriate candidates? Does the Performance Review process correctly distinguish between the candidates who should be on Performance Review and those who should not? Does the process work in a timely, fair, and well-managed way? Is it supported by the sergeants, lieutenants, and captains who must carry out the structured interventions to redirect and rehabilitate individuals placed on Performance Review? Is Performance Review reducing risk? Our chapter on Performance Review is our first pass at these questions, not all of which we currently can answer definitively. Our investigation of Performance Review is an ongoing one, and we will continue to look for definitive answers.

What we can say so far is this: Performance Review is a success if the appropriate test is whether the specific employees placed on Performance

Review generate fewer high risk incidents after being selected for Performance Review than they did in the three years prior to their placement on Performance Review. The number of shootings, uses of force, citizen complaints, and administrative investigations for those employees is highest in the three years before Performance Review, drops significantly during the two-year period in which the deputy is on Performance Review, and drops again, in all categories except for administrative investigations, in the period after the employee has been removed from Performance Review.<sup>2</sup> This is good news, but it nonetheless is only a partial answer to whether Performance Review is working.

Within the last year, Performance Review in the LASD has been given new life. For a time, it fell into disuse, and a substantial backlog of unresolved cases built up. This has meant that current leadership has had to play catch-up. We acknowledge the burden that has placed on Commander William J. McSweeney, who is in charge of Performance Review, and we urge the Department to provide the resources to clear the backlog and fully revive Performance Review.

What Commander McSweeney is doing is vitally important, and not only for the LASD. Law enforcement agencies across the country are instituting tracking systems like the PPI. Some are doing so voluntarily; others, like the LAPD, at the behest of the United States Department of Justice in connection with settlement agreements. The theory is that actual or potential problem officers can be identified and redirected or retrained. The LASD is again a pioneer in attempting to do so and thus its experience contains valuable lessons for American law enforcement in general.

<sup>2</sup> We must emphasize again that neither we nor the LASD contends that use of force per se is undesirable or that every shooting is questionable. The relevant question always is the appropriateness and necessity for lethal or non-lethal force in the particular circumstances. The assumption behind putting someone on Performance Review is that the individual has engaged in actual misconduct or demonstrated a sizeable risk of potential misconduct. Individuals whose use of force has been wholly correct and justified and never disproportionate or gratuitous should be culled out before placement on Performance Review.

## **Risk Management**

Performance Review is one of a number of tools employed by the LASD to identify liability risk and attempt to manage it. Some tools at the Department's disposal are currently under-utilized. In our chapter on risk management, we conclude that the LASD does not make effective use of information developed in litigation to sharpen and augment internal administrative investigations of misconduct. As a result, the County has paid out millions of dollars in judgments and settlements in cases where no discipline has ever been imposed against the employees who caused the liability, as we note in our litigation chapter. The problem is not unique to Los Angeles County — the same predicament exists in the city of Los Angeles and in many jurisdictions throughout the United States.

In the case of the LASD, the predicament prior to the 1992 **Kolts Report** was largely as a result of pressure by lawyers on a compliant LASD to keep itself largely in the dark about litigation. As the Kolts recommendations took hold, the situation began to improve. But as we return to this topic ten years later, serious problems and impediments remain. As we will demonstrate, however, the impediments are not within the LASD. Sheriff Baca has advocated giving access to the litigation files to Internal Affairs and by the Office of Independent Review. Our chapter on risk management discusses these issues.

## **Interesting Experimentation**

In the course of our investigation for this Semiannual Report and the last one, we came across experiments in measuring and managing risk at the station and regional level that excited our interest and curiosity. Although we continue strongly to favor reinstatement of Department-wide accountability measures through the SCIF<sup>3</sup> process, we nonetheless have found some promising programs in place, particularly in Region I, which may have wider applicability for the

<sup>3</sup> SCIF stands for Sheriff's Critical Incident Forum. It used to be the case that captains were held to account in front of the Undersheriff and Assistant Sheriffs for their ability to manage use of force and other risks at their stations or units. SCIF has fallen into disuse on the Department level, and as good as the Regional efforts might be, they are not a substitute and do not convey the message that risk management is a top priority of the most senior executives.

entire Department. Region I is leading the Department in analysis and innovation. Under the direction of Chief William T. Sams, personnel within Field Operations Region I have carried forward proficiently the research and analysis of risk that formerly characterized the entire LASD. Our chapter on experimentation focuses on a recent force project undertaken in Region I, a study of claims and litigation from the same region, an experiment in station-level performance review at Region I's Temple Station, and a different experiment in station-level performance review at Region II's Century Station.

## **C a n i n e s**

In the main, the LASD's Canine Unit is a professional and polished group of handlers and supervisors, and it has been that way since the full implementation of the **Kolts** recommendations in the mid-1990's. The LASD's Canine Unit enjoys a national reputation, and its procedures and track record are frequently cited as models. Our last thorough review of the LASD's Canine Unit took place in connection with our June 2000 **Twelfth Semiannual Report**. There, we reported concern with a rise in the bite ratio for 1999 to 17 percent. It is therefore comforting to be able to report that the bite ratio dropped in 2000 to 12.5 percent and dropped again in 2001 to 11.9 percent. On the other hand, we have some concern that in 2002 through June, the rate has risen again to 16.7 percent. During the same time period, there has been some relaxing of former restrictions that had kept the bite ratio very low. We wanted to investigate whether the loosening of restrictions were leading to bites that could have been avoided or were unnecessary.

Our overall conclusion from our latest full-scale investigation is that the LASD's Canine Unit has, in general, continued to perform well, although we still see occasional bites which might have been avoided by use of less harmful alternatives. Because their sensory abilities are highly developed, police dogs give law enforcement the ability to search for and locate suspects in a manner less likely to imperil the officer. But dogs are tools for *search*, and, except in

the rarest circumstances, dogs are not tools for *seizure*. Other less harmful means for apprehension should be exhausted or futile before a canine is permitted to apprehend a suspect by biting. We will keep our eye on whether bites for the balance of the year are indicative that the pendulum has swung too far in terms of handler latitude and discretion. LASD management from the Division Chief to the Canine Unit's sergeants are convinced that is not the case and have strenuously and effectively so argued to us. Nothing would please us more than to have them proved correct by seeing the LASD once again matching the bite ratios typically in the low teens or below achieved at times in the 1996–2001 period.

### **Demographics**

From time to time, we publish charts showing the LASD's demographic breakdown. The charts can be found at the end of this Introduction.

### **The LASD's Response to Our 14th Report**

Finally, we want to touch upon the LASD's reaction to our last semiannual report. With regard to our report on the death of Kevin Evans, the Department produced a lengthy written response in which the LASD fully concurred with nearly all of our key recommendations, although with the caveat that a number of them carried a price tag that the Sheriff contended was beyond current means. When we met with the Department's executives, as we do on a formal or informal basis after each report is issued (as well as before), several of the Department's leaders voiced the concern that many of our recommendations are costly, especially with respect to jail medical and mental health recommendations. Although the LASD would like to implement most of our recommendations, it claims it does not have the money to do so. The executives complained that we do not lean on the Board of Supervisors to provide the LASD more money, which leaves the Sheriff's Department in a position where fingers continue to be pointed at it but the Department lacks the resources to address the problem.

It is neither our goal nor intention to put the LASD in a double bind. Our job is to suggest systemic solutions and reforms that will lower the risk of liability and enhance and strengthen community confidence and trust in law enforcement. Put more specifically, we seek to assess whether the LASD's activities — be they on the streets or in the jails — can be accomplished in a way that is both safe for officer and less harmful to suspects or inmates, thus reducing liability and the risk of erosion of public confidence. We do so without putting a price tag on each reform we propose. Our responsibilities are to the Board of Supervisors for whom we work and to whom we are accountable. It would be overreaching for us to suggest to the Board how to prioritize needs or to advocate for one County department's specific budget. By the same token, it is not our job to examine the LASD budget item-by-item to see if we agreed with how the Sheriff's Department spends its money. Both the Board and the Sheriff face hard choices. Sometimes the money is there; something it is not. We do our best to suggest change and reform, but it is the elected officials who have the heavier responsibility of making the difficult decisions of what can be funded.

**Los Angeles County Sheriff's Department Breakdown of Sworn Personnel by Sex, as of April 30, 2002**

<b>Class</b>	<b>Total</b>	<b>Male</b>	<b>%</b>	<b>Female</b>	<b>%</b>
Sheriff, U/C	1	1	100	0	0
Undersheriff U/C	1	1	100	0	0
Assistant Sheriff U/C	2	2	100	0	0
Div., Chief, Sheriff U/C	7	7	100	0	0
Commander	27	23	85.2	4	14.8
Captain	61	56	91.8	5	8.2
Lieutenant	312	264	84.6	48	15.4
Sergeant	1079	911	84.4	168	15.6
Deputy Sheriff IV	12	12	100	0	0
Deputy Sheriff	7432	6308	84.9	1124	15.1
Deputy Sheriff Trainee	221	156	70.6	65	29.4
<b>Totals:</b>	<b>9,155</b>	<b>7,741</b>		<b>1,414</b>	

**Los Angeles County Sheriff's Department Breakdown of Sworn Personnel  
by Rank and Ethnicity as of April 30, 2002**

<b>Caucasian</b>				<b>African-American</b>			
Class	Male	Female	%	Class	Male	Female	%
Sheriff, U/C	0	0	0	Sheriff, U/C	0	0	0
Undersheriff U/C	1	0	100	Undersheriff U/C	0	0	0
Assistant Sheriff U/C	2	0	100	Assistant Sheriff U/C	0	0	0
Div., Chief, Sheriff U/C	5	0	71.4	Div., Chief, Sheriff U/C	0	0	0
Commander	17	4	77.8	Commander	1	0	3.7
Captain	38	3	67.2	Captain	5	2	11.5
Lieutenant	209	35	78.2	Lieutenant	17	6	7.4
Sergeant	643	104	69.2	Sergeant	75	29	9.6
Deputy Sheriff IV	6	0	50	Deputy Sheriff IV	3	0	25
Deputy Sheriff	3,497	451	53.1	Deputy Sheriff	553	217	10.4
Deputy Sheriff Trainee	49	22	32.1	Deputy Sheriff Trainee	13	11	10.9
<b>Totals:</b>	<b>4,467</b>	<b>619</b>		<b>Totals:</b>	<b>667</b>	<b>265</b>	

<b>Latino</b>				<b>Native-American</b>			
Class	Male	Female	%	Class	Male	Female	%
Sheriff, U/C	1	0	100	Sheriff, U/C	0	0	0
Undersheriff U/C	0	0	0	Undersheriff U/C	0	0	0
Assistant Sheriff U/C	0	0	0	Assistant Sheriff U/C	0	0	0
Div., Chief, Sheriff U/C	1	0	14.3	Div., Chief, Sheriff U/C	0	0	0
Commander	4	0	14.8	Commander	0	0	0
Captain	10	0	16.4	Captain	0	0	0
Lieutenant	27	7	10.9	Lieutenant	0	0	0
Sergeant	166	31	18.3	Sergeant	2	0	0.2
Deputy Sheriff IV	3	0	25	Deputy Sheriff IV	0	0	0
Deputy Sheriff	1901	418	31.2	Deputy Sheriff	12	1	0.2
Deputy Sheriff Trainee	80	28	48.9	Deputy Sheriff Trainee	0	0	0
<b>Totals:</b>	<b>2,193</b>	<b>484</b>		<b>Totals:</b>	<b>14</b>	<b>1</b>	

<b>Asian</b>				<b>Filipino</b>			
Class	Male	Female	%	Class	Male	Female	%
Sheriff, U/C	0	0	0	Sheriff, U/C	0	0	0
Undersheriff U/C	0	0	0	Undersheriff U/C	0	0	0
Assistant Sheriff U/C	0	0	0	Assistant Sheriff U/C	0	0	0
Div., Chief, Sheriff U/C	1	0	14.3	Div., Chief, Sheriff U/C	0	0	0
Commander	1	0	3.7	Commander	0	0	0
Captain	3	0	4.9	Captain	0	0	0
Lieutenant	11	0	3.5	Lieutenant	0	0	0
Sergeant	24	4	2.6	Sergeant	1	0	0.1
Deputy Sheriff IV	0	0	0	Deputy Sheriff IV	0	0	0
Deputy Sheriff	264	27	3.9	Deputy Sheriff	81	10	1.3
Deputy Sheriff Trainee	14	2	7.2	Deputy Sheriff Trainee	0	2	0.9
<b>Totals:</b>	<b>318</b>	<b>33</b>		<b>Totals:</b>	<b>82</b>	<b>12</b>	



## **1. Another Look at Century Station**

The news from our ongoing review of the Century Station is mixed: The station has an energetic, thoughtful, and focused new top command staff. On the other hand, after a period of time in which officer-involved shootings at Century dropped significantly – in 1999, Century had one shooting; in 2000, Century had four shootings, both record lows – they have now rocketed back up to high levels: In 2001, there were twelve shootings. The pace of shootings in 2002 to date, projected to the end of the year, will match 2001. In addition, uses of non-lethal force also continue to rise. Whereas use of force per 100 arrests for all patrol stations increased slightly from 2000 to 2001 from 1.17 to 1.21, at Century the statistic jumped from 1.71 to 2.42, the highest rate per 100 arrests in the LASD.

Century had a shift in management almost exactly one year ago when Captain Eric Smith took over. Captain Smith and his Operations Lieutenant, Paul Denny, share many of our concerns and worries about Century's culture and performance. Whether and how they will be able to inculcate lasting change remains to be seen.

There is a daunting history of failure that precedes them. Indeed, for as long as we have been monitoring the LASD, our hopes about permanent improvement at Century have risen and been dashed in regular cycles as each new Captain comes in full of energy and ideas and eventually leaves with the view that the job required him to push the same stone up hill year after year, only to see it roll back down again. True, there have been short periods of apparent success: In 1999 and 2000, the LASD assigned its best and most-likely-to-be-promoted lieutenants to Century with the job of tightening supervision. It worked: for 17 months in a row, there were no on-duty shootings. So what did the Department do? It duly promoted the lieutenants to captains at other facilities, assigned new lieutenants, did not insist on maintaining the intensive focus on reducing shootings, and things quickly went back to the way they had always been at Century. The difference this time is that Captain

Smith is laying out a rather ambitious set of plans to achieve a long term, systemic resolution to the problem.

At base, we study Century so closely because it is a microcosm of American policing in inner city, crime-ridden, minority neighborhoods. It is a mini-Detroit, or DC, or Cincinnati. It is also small enough so that different theories about use of force and approaches to manage force can be tested. The stakes are quite high, not only for the LASD, but for American policing in general. The basic premise on which we operate is that the risk of excessive and unnecessary force, lethal and non-lethal alike, can be meaningfully reduced through conscientious work on police management's part. Our premise faces its hardest test in environments like Century where there is always a debate whether it is the crime-ridden atmosphere that breeds the necessity to use force more often and more lethally, or whether it is a combination of management failure and deputy culture that causes the numbers to soar. We return to Century again and again because we are convinced that management has not done enough and, when pressed, tends to be overly-defensive and self-justifying, at least in its public face.

With Captain Smith, things may be different. He appears willing to engage and grapple with the issues without inalterable preconceptions or hardened expectations of outcome. He has launched new initiatives to deal with the issues of force. We are anxious for him to succeed and wish him well.

This Chapter will first review the longstanding clash of perceptions between the LASD and us about what has been happening over the years at Century. We will then turn to Captain Smith's initiatives to deal with the difficult issues Century presents.

### *Interpreting Data from Century*

Over the past five years, since our **Seventh Semiannual Report** of April 1997, we have engaged the LASD in an intermittent but always spirited dialogue

about why Century deputies were involved in a disproportionate number of deputy-involved shootings. We intimated, although we have never reached a definitive conclusion, that the high number of shootings and uses of force might be associated with a permissive, “cowboy” culture at the station and repeated management failures to deal with it.

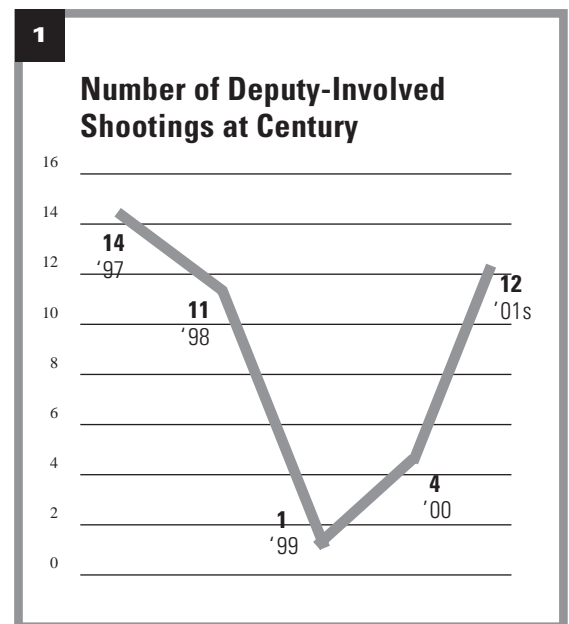
In response, the LASD issued its own “shooting study” in the summer of 1997. While conceding the disparity between Century and other stations within the Department (from 1994-96, Century averaged 12.7 deputy-involved shootings per year, compared to the departmental average of 7.5), the LASD argued that the disparity could be explained by the crime-ridden nature of Century’s service area which had higher rates of homicides, aggravated assaults, firearm seizures, and Part I crimes overall than the departmental average — a higher overall level of “ambient violence.” In essence, the Department intimated that ambient violence generated shooting by deputies, in defense of themselves and the citizenry.

The debate was continued in June 1998 when, in our **Ninth Semiannual Report**, we analyzed the Department’s 1997 shooting study and refuted the LASD claim that the high level of ambient violence explained the disproportionately high rate of deputy-involved shootings at Century. We pointed out that: (a) the Department appeared to be overstating the correlations between ambient violence and the deputy-involved shootings; and (b) the LAPD officers patrolling the area contiguous to the Century patrol area faced similar levels of ambient violence but had many fewer officer-involved shootings.<sup>1</sup>

<sup>1</sup> It has been suggested that the nearby LAPD station was involved in fewer shootings because of a difference in “policing style” between the Department and LAPD. To put in bluntly, it was suggested that Century deputies were simply much more active than their LAPD counterparts, making many more arrests and thus creating more opportunities to use their guns. As we noted in the **Ninth Semiannual Report**, however, while Century deputies did arrest more people than their LAPD counterparts, the difference in the number of officer-involved shootings was much greater than the difference in the number of arrests. It has also been suggested that deputies at Century may be more likely than their LAPD counterparts to use their guns because, unlike their LAPD counterparts, who patrol in two-officer cars, those Century deputies who patrol the city of Lynwood do so in single deputy cars (as per the contract between the city of Lynwood and the Department). However, the statistics do not seem to support this contention. For example, in 2001, all on-duty deputy-involved shootings at Century involved a deputy or deputies assigned to a two-deputy car.

We hoped that our disagreements with the LASD over Century had been mooted when, in our December 2000 **Thirteenth Semiannual Report**, we noted a precipitous drop in the number of deputy-involved shootings in 1999 and 2000. After averaging over 12 shootings per year from 1994-1998, Century had only one shooting in 1999 and four in 2000. Tellingly, there had been *17 months straight* with no on-duty deputy-involved shootings at Century. Interestingly, this dip in shootings was not accompanied by a similar dip in the crime rate or number of arrests.<sup>2</sup> Rather, the dramatic decline in shootings appeared to be correlated directly to increased supervision by the sergeants and lieutenants and an initiative to decrease the number of foot pursuits, a factor implicated in a large number of Century shootings. As heartening as was the drop in deputy-involved shootings, we were nonetheless also troubled by an upward trend in the overall use of force by Century deputies.

To whatever degree we rested comfortable in the hope that the problem of disproportionately high numbers of deputy-involved shootings had been solved, our comfort ended in October 2001 when in our **Fourteenth Semiannual Report** we noted with alarm that the number of deputy-involved shootings in 2001 had returned to the historical average. When displayed graphically, the years 1999 and 2000 appear to represent a kind of “shooting valley” at Century.<sup>3</sup> See Table 1.

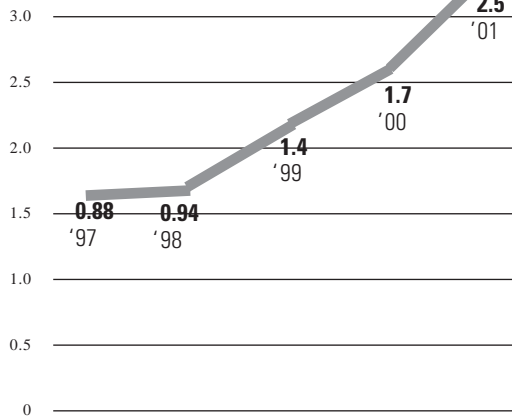


<sup>2</sup> There was some decline in the number of arrests, but, excluding a more pronounced decline in narcotics arrests, the decline in arrests appeared to be consistent with the decline in crime, and neither decline matched the dramatic decline in shootings. As for the decline in narcotics arrests, it was argued that this reflected increased scrutiny of probable cause.

<sup>3</sup> While we do not know the exact number of shootings that occurred in each of the years 1994-1996, we do know (from the Department’s 1997 shooting study) that the average number of shootings per year during that period was 12.7, which is consistent with the number of shootings in 1997 and 1998. As for 2002, there have been five deputy-involved shootings at Century as of June 1, 2002.

2

**Use of Force per 100 Arrests at Century**



The mystery of the “shooting valley” in 1999 and 2000 is heightened because, ironically, overall use of force did not decline during this period; rather, it increased fairly dramatically. See Table 2. The use of *significant* force likewise showed a steep increase in 1999-2000; indeed, the steepest increase in the use of significant force occurred between 1998 and 1999, at the same time that deputy-involved shootings were dropping so dramatically. See Table 3.

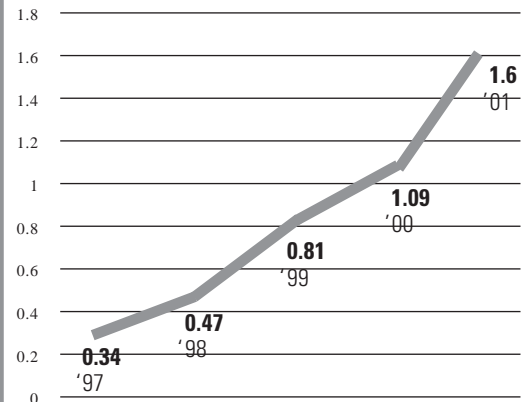
In the **Fourteenth Semiannual Report**,

we expressed our concern about both of these trends—the return to the historical average in the number of deputy-involved shootings and the steady increase in the overall use of force—and worried whether the LASD was paying sufficient attention.

In December 2001, the Department responded to the **Fourteenth Semiannual Report** with a study that echoed its earlier response to the **Seventh**.<sup>4</sup> Once again, the Department countered with its own set of stark statistics: in this case, primarily the number of deputies killed and wounded by gunfire and subjected to felonious assaults, as well as the number of gang homicides. Once again, whereas our numbers focused on the force used by the deputies, the Department’s numbers

3

**Use of Significant Force per 100 Arrests at Century**



<sup>4</sup> By saying that the Department’s response to the **Fourteenth Semiannual Report** echoed its response to the **Seventh**, we do not mean to imply that the latter response simply rehashed old arguments. Rather, the tone and methodology of the two responses were very similar. It is clear that a great deal of thought and effort went into both responses.

focused on the force used by the criminals, inferring that the former was (at least in part) explained by the latter. Put in another way, the Department once again issued a response that focused on factors outside the station, and outside the control of management.

The dialogue between us and the Department has been primarily an exchange of views about cause and effect — we tend to emphasize the degree of management control and the LASD emphasizes the danger of the environment in which Century deputies operate. At least, that is true of the *public* dialogue between us. Our private dialogue has been different and more earnest in tone, with the focus mainly on efforts by management at Century and in the Department as a whole to reduce force used by deputies at the station.

By making a distinction between the public and private dialogues, we do not mean to imply that the Department's public responses were disingenuous. The intent of this chapter is, in effect, to merge the private dialogue (about management) with the public dialogue (about cause and effect). In some ways, the Department's determination to focus on the ambient violence has served to obscure the positive management steps that it has taken in the past and is attempting to take now. But more importantly, the LASD's focus sets up invalid arguments suggesting that the intractability of violence by the criminal element in Century inexorably leaves the LASD powerless to control the amount of lethal and non-lethal force by deputies. Additionally, when faced with the stark numbers themselves, the LASD tends to retreat to a case-by-case justification for each shooting or use of force. The implication is that if all shootings are somehow justified as being within policy, the significance of the high numbers of shootings is correspondingly diminished.

Even as we concede that Century deputies work in a dangerous environment, we reject this approach emphatically: Merely because a particular shooting may not subject a deputy to criminal prosecution or discipline does not mean that the lethal force *had* to be used: It may well be that the suspect

could have been safely brought into custody without lethal force and without necessarily exposing the deputy in question to greater danger of death or injury. The danger faced in general by Century deputies may make effective management of lethal and non-lethal force more difficult, but it also makes it all the more critical.

### *The Importance of the Numbers*

The main criticism that the Department has leveled against our reliance on the shooting and force statistics is that we are “confusing correlation with causation.” We have disagreed and continue to disagree with this characterization. We have been careful to note that the relatively high of shootings and the increasing use of force do not in themselves tell us anything definitive about the propriety of the deputies’ performance in the field or the command staff’s performance at the station; rather, in our view, those numbers represent red flags that require attention and investigation by the Department.<sup>5</sup> We fully recognize that the change in the shooting numbers may in theory be the result of a random fluctuation, a change in the ambient violence in the area, a change in the management style at Century, a change in the personnel at Century, or a combination of these or other factors.

Our position was and is that it would be foolhardy to ignore these numbers, but that it would be equally foolhardy to rely solely on these numbers to pass judgment on the Department as a whole, on Century, and, in particular, the deputies at Century. Put in another way, the numbers are a good place to start, but a lousy place to stop. Our concern about the number of deputy-involved shootings and uses of force at Century is in part a concern about the Department’s public response to those numbers. By focusing so much on the ambient violence, something largely outside the Department’s control, the

<sup>5</sup> As noted above, even if each of the shootings was fully within policy and justified, it is still legitimate and critically important to ask if they could or should have been avoided. The LASD has its own colorful term for some of these kinds of shootings: “Lawful but awful.”

Department would seem to be providing itself with an easy excuse to avoid taking affirmative management steps to reduce the numbers, or, indeed, to even look at the numbers with a truly critical eye.

### *The Ambient Violence*

As noted above, the Department's response to the **Fourteenth Semiannual Report** focused on violence in the area, and, in particular, violence directed toward deputies.<sup>6</sup> These "ambient violence" numbers certainly paint a picture of Century as a dangerous place. Even though Century deputies represent only 8.6 percent<sup>7</sup> of all the deputies assigned to field patrol:

- 50 percent of all deputies killed by gunfire between 1991 and 2001 were assigned to Century.
- 11 percent of all deputies wounded or killed by gunfire between 1991 and 2001 were assigned to Century.
- Between January and June of 2001, 18.7 percent of all charges of felonious assaults on deputies involved Century deputies as well as 11.1 percent of all instances of charges of battery/resisting a peace officer involved Century deputies.<sup>8</sup>
- Between January and October 2001, Century had 21 percent of all gang related homicides.
- Between January and October of 2001, 16.4 percent of all canine searches for known felons or armed misdemeanants occurred at Century.

<sup>6</sup> The Department's response also looked at other factors, including gang activity in Lynwood, which showed the positive results of gang suppression activity by the Department. However, it should be noted that none of the deputy-involved shootings in 2001 occurred in the City of Lynwood, which would seem to run counter to the theory that gang-related violence in Lynwood contributed to the increase in deputy-involved shootings from 2000 to 2001. In addition to reviewing gang and gang suppression activity, the response also described an internal review of all of the 2001 shootings as well as other actions (e.g., firearm training) taken by management.

<sup>7</sup> This reflects staffing totals for 2001.

<sup>8</sup> We report instances in which these crimes were charged. We do not know the number of instances in which the suspect was actually prosecuted nor the number of instances in which the prosecution resulted in a conviction.



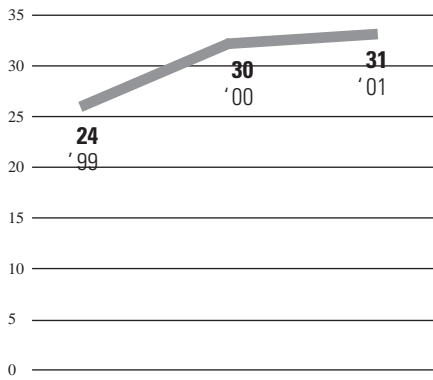
Added together, these numbers indisputably show that the area around Century has been and remains a dangerous place. However, these numbers do not really address the question of why the “shooting valley” occurred in 1999-2000 or why the overall use of force has increased steadily over the past five years. Some of the Department’s numbers — such as the number of deputies killed or wounded by gunfire in the past 10 years — show that Century has *always* been a dangerous place. Other numbers — such as the number of felonious assaults and batteries on deputies for the first six months of 2001— demonstrate that Century is a dangerous place *now*. But neither set of numbers is sufficient to reach a judgment about whether the level of danger at Century has fluctuated over the past five years in a way that might help explain the changes in the number of deputy-involved shootings or uses of force. The same limitation applies to the other numbers produced by the Department, such as the number of canine searches and gang-related homicides in the first 10 months of 2001.<sup>9</sup>

Given that many of the numbers produced by the Department touch directly on the sensitive issue of officer safety, we decided to take a closer look at other indicia of direct threats to deputies. First, we looked at arrests by Century deputies for alleged “interference with an officer” (California Penal Code Section 148). As shown in Table 5, such arrests have declined significantly from 1997-2001, and remained remarkably steady from 1998-2000.<sup>10</sup> Second, we looked at arrests by Century deputies for alleged “assaults on a peace officer” (California Penal Code Section 241). As shown in Table 6, these numbers have (fortunately) been relatively small and have shown a great deal of

<sup>9</sup> The number of gang-related homicides has increased over the last few years — there were 24 in 1999, 30 in 2000 and 31 in 2001— but this increase does not approach the magnitude of the increase in the use of force during the same period, nor does it track the “shooting valley.” See Table 4.

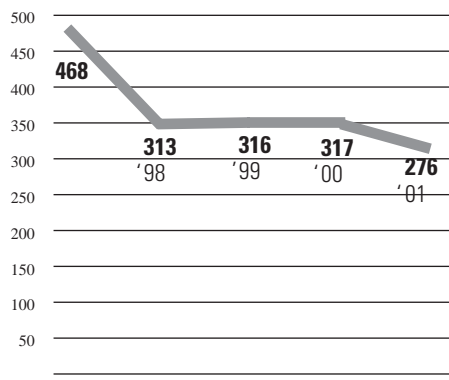
<sup>10</sup> Some in the LASD argue that a decline in charges of interference or other “contempt of cop” crimes relates more to deputies’ reluctance to endure scrutiny for bringing such charges than to a drop in instances where such a charge might be merited. Plaintiff’s attorneys and criminal defense attorneys, for example, tend to scrutinize “contempt of cop” charges by a particular officer to see if there is a pattern or practice of using those charges to obscure or defend against claims of police brutality. Accordingly, at least according to some, savvy officers now avoid making “contempt of cop” charges.

4



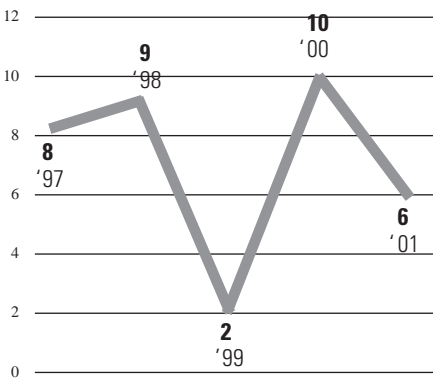
Gang Homicides

5



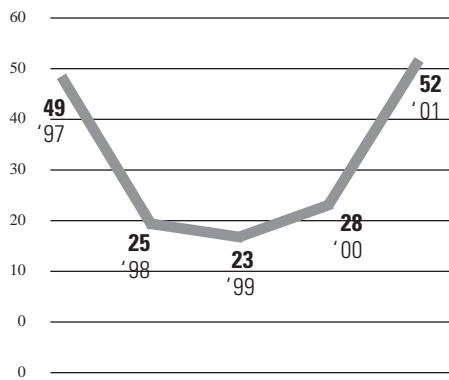
Arrests for Alleged Violations of Penal Code Section 148

6



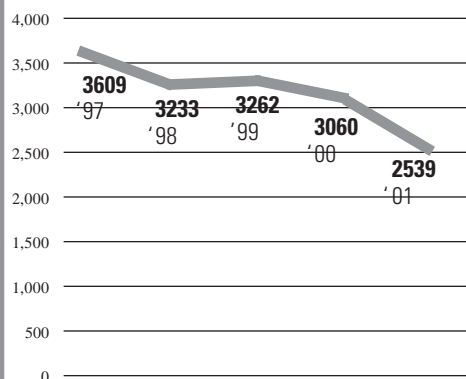
Arrests for Alleged Violations of Penal Code Section 241

7



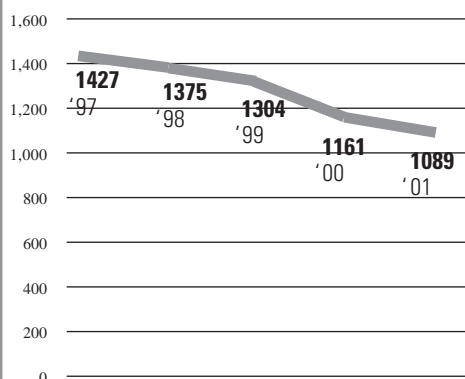
Arrests for Assaults with Deadly Force on a Police Officer

8 a



Homicides, Rapes, Robbery and Aggravated Assaults

8 b



Arrests for Homicide, Rape, Robbery and Aggravated Assaults

## LASD Force Statistics 2000-2001

<b>Department Wide*</b>	<b>2000</b>	<b>2001</b>
Force Incidents (Total)	2233	2190
Total Force/100 Arrests	2.31	2.31
Significant Force: Hospitalization/Death/100 Arrests	0.02	0.01
Significant Force: Visible Injury/100 Arrests	0.52	0.52
Significant Force: Complaint of Pain/100 Arrests	0.30	0.37
Significant Force: No Complaint of Pain/Injury/100 Arrests	0.31	0.35
Less Significant Force Incidents	0.45	0.43
OC Spray/100 Arrests	0.71	0.63

<b>Field Operation Regions (FOR)</b>	<b>2001</b>
Region I Force Incidents	349
Per 100 Arrests	1.19
Region II Force Incidents	584
Per 100 Arrests	1.85
Region III Force Incidents	353
Per 100 Arrests	.21
FOR Total Force Incidents	1286
Per 100 Arrests	1.43

<b>Field Operation Regions (FOR)</b>	<b>2001</b>
Regions I, II & III Significant Force	739
Per 100 Arrests	0.82

\*Includes all patrol stations and specialized units, including custody and court services.

### Force/100 Arrests All Patrol Stations 2000-2001

Station	2000	2001
Crescenta Valley	0.9	11.1
East LA	1.32	1.04
Lancaster	1.09	0.92
Lost Hills/Malibu	0.52	0.86
Palmdale	2.05	1.79
Santa Clarita	1	1.15
Temple	1.36	1.52
<b>Region I Totals</b>	<b>1.22</b>	<b>1.20 *</b>
Carson	1.61	1.33
Century	1.71	2.42
Compton	2.44	1.71
Lomita	2.06	1.5
Lennox	1.29	1.31
Marina del Rey	0.81	1.42
West Hollywood	2.36	2.19
<b>Region II Totals</b>	<b>1.59</b>	<b>1.87 *</b>
Avalon	0.96	2
Cerritos	0.73	1.2
Industry	1.34	1.16
Lakewood	1.55	1.35
Norwalk	0.85	1.16
Pico Rivera	0.96	0.97
San Dimas	0.77	1.17
Walnut	0.78	0.78
<b>Region III Totals</b>	<b>1.17</b>	<b>1.21 *</b>

Source: LASD/MIS/CARS - 06/19/02

\* We are unable to say why the LASD produced numbers here that vary somewhat from those shown on Table 8c. As we have noted in the past, the LASD should tighten its statistical practices.

### LASD Station Types of Shootings

	1996			1997		
	On Duty	Off Duty	Total	On Duty	Off Duty	Total
Hit <sup>1</sup>	22	3	25	33	2	35
Non-Hit <sup>2</sup>	15	4	19	17	3	20
Accidental Discharge <sup>3</sup>	24	2	26	7	1	8
Animal <sup>4</sup>	38	0	38	31	5	36
Warning Shots <sup>5</sup>	0	0	0	0	0	0
Tactical Shooting <sup>6</sup>	3	0	3	1	0	1
<b>Total</b>	<b>102</b>	<b>9</b>	<b>111</b>	<b>89</b>	<b>11</b>	<b>100</b>

	1998			1999		
	On Duty	Off Duty	Total	On Duty	Off Duty	Total
Hit	15	5	20	21	1	22
Non-Hit	15	0	15	8	0	8
Accidental Discharge	11	2	13	4	0	4
Animal	36	1	37	33	1	34
Warning Shots	0	0	0	1	0	1
Tactical Shooting	6	0	6	1	1	2
<b>Total</b>	<b>83</b>	<b>8</b>	<b>91</b>	<b>68</b>	<b>3</b>	<b>71</b>

	2000			2001		
	On Duty	Off Duty	Total	On Duty	Off Duty	Total
Hit	18	0	18	19	0	19
Non-Hit	15	0	15	11	3	14
Accidental Discharge	11	1	12	9	4	13
Animal	35	2	37	33	1	34
Warning Shots	2	0	2	0	0	0
Tactical Shooting	0	0	0	0	0	0
<b>Total</b>	<b>81</b>	<b>3</b>	<b>84</b>	<b>72</b>	<b>8</b>	<b>80</b>

- 1 Hit Shooting Incident:** An event consisting of one instance or related instances of shots (excluding stunbags) fired by a deputy(s) in which one or more deputies intentionally fire at and hit one or more people (including bystanders).
- 2 Non-Hit Shooting Incident:** An event consisting of one instance or related instances of shots (excluding stunbags) fired by a deputy(s) in which one or more deputies intentionally fire at a person(s), but hit no one.
- 3 Warning Shot Incident:** An event consisting of an instance of a deputy(s) intentionally firing a warning shoot(s), including instances in which someone is hit by the round. Note: If a deputy fires a warning shot and then decides to fire at a person, the incident is classified as either a hit or non hit shooting incident.
- 4 Animal Shooting Incident:** An event in which a deputy(s) intentionally fires at an animal to protect himself/herself or the public or for humanitarian reasons, including instances in which a person is hit by the round.
- 5 Accidental Discharge Incident:** An event in which a single deputy discharges a round accidentally, including instances in which someone is hit by the round. Note: If two deputies accidentally discharge rounds, each is considered a separate accidental discharge incident.
- 6 Shooting Incident—Other:** An event consisting of an instance or related instances of a deputy(s) intentionally firing a firearm but not at a person, excluding warning shots (e.g., car tire, street light, etc.) Note: If a deputy fires at an object and then decides to fire at a person, the incident is classified as either a hit or non hit shooting incident.

### LASD Hit Shootings by Station

	1997	1998	1999	2000	2001
<b>Number Of Incidents</b>	<b>35</b>	<b>20</b>	<b>22 *</b>	<b>18</b>	<b>19</b>
Altadena Station	NA	NA	0	1	0
Carson Station	1	0	2	1	1
Century Station	7	7	1	2	5
Century/Compton Transit Services	NA	NA	NA	0	1 **
Court Services Bureau	1	1	0	NA	NA
East Los Angeles Station	2	0	2	2	0
Industry Station	NA	NA	NA	0	1
Lakewood Station	2	2	2	0	2
Lancaster Station	7	2	0	1	0
Lennox Station	1	2	4	0	4
Mira Loma Facility	0	1	0	NA	NA
Miscellaneous Units	0	2	0	NA	NA
Narcotics Bureau	0	0	1	1	0
Norwalk Station	3	1	0	1	0
Palmdale Station	0	1	1	1	0
Safe Streets Bureau	1	1	0	NA	NA
Santa Clarita Valley Station	NA	NA	1	1	0
Special Enforcement Bureau	2	0	2	2	2
Temple Station	6	0	2	3	1
			<i>(1 off duty)</i>		
Walnut Station	1	0	0	0	1
West Hollywood Station	1	0	2	NA	NA
Number of Suspects Wounded	17	18	12	6	8 **
Number of Suspects Killed	20	11	10	12	12

\* In the Temple Station shooting (11-21-99), two suspects were wounded, in the SCV Station shooting (6-13-99), no suspects were killed or wounded but one deputy was hit by friendly fire.

\*\* In the Century Station shooting (2-18-01), two suspects were wounded

### LASD Non-Hit Shootings by Station

	1997	1998	1999	2000	2001
<b>Number Of Incidents</b>	<b>35</b>	<b>20</b>	<b>8</b>	<b>15</b>	<b>14</b>
Carson Station	1	0	1	2	0
Century Station	77	4	0	2	6 (1 off duty)
Century/Compton Transit Services	NA	NA	NA	2	1
East Los Angeles Station	0	3	3	1	1
Industry Station	1	2	NA	2	6
Lakewood Station	1	1	NA	2	0
Lancaster Station	1	0	NA	NA	NA
Lennox Station	4	2	1	0	1
Marina del Rey	NA	NA	NA	0	1
Men's Central Jail	1	0	NA	0	1
Narcotics Bureau	NA	NA	1		
Norwalk Station	0	1	1		
Palmdale Station	1	0	NA	0	1
Safe Streets Bureau	0	0	1	0	1
Santa Clarita Valley Station	NA	NA	NA	2	0
Special Enforcement Bureau	1	0	0	1	1
Temple Station	1	0	0	1	0
TRAP	NA	NA	NA	0	1 (1 off duty)
Twin Towers	NA	NA	NA	NA	NA
Walnut Station	0	1	NA	NA	NA
<b>Incidents Resulting in Force/Shooting Roll-Out</b>	<b>1997 126</b>	<b>1998 112</b>	<b>1999 86</b>	<b>2000 91</b>	<b>2001 87</b>

### LAPD Officer-Involved Shootings 1996-2001

Year	Total # of OISs	# of Hits	# of Suspects Injured	# of Suspects Killed
1996	122	54	27	27
1997	114	41	17	24
1998	98	23	10	13
1999	97	23	9	14
2000	79	33	22	14
2001	66	22	15	7
Year	Total # of Non Hits	# of Accidental Discharges	# of Animal Discharges	Other
1996	29	11	29	1
1997	23	11	35	4
1998	12	13	45	5
1999	16	16	42	1
2000	11	6	29	NA
2001	13	11	20	NA

variability.<sup>11</sup> Finally, we looked at arrests by Century deputies for “assault with a deadly weapon on police officers.”<sup>12</sup> As shown in Table 7, such arrests showed a significant spike in 2001 after holding relatively steady for the preceding three years.

While the assault with a deadly weapon numbers are not consistent with either the “shooting valley” in 1999-2000 or the steady increase in use of force from 1997-2001, we were very concerned about the spike in 2001, because it seems to suggest, at least at first blush, that the risk to Century deputies of facing *deadly* force has increased. Century recorded 52 such assaults in 2001; this represents about 24 percent of the total in the entire department and almost 58 percent more than the next highest station. But what we found is that the situation may be far less serious than first appeared.

The increase in 2001 occurred entirely in two subcategories — (i) assaults that involved a weapon *other* than a gun or a knife, and (ii) assaults with hands, feet, fists, etc. Put another way, arrests for assault with a deadly weapon on a deputy, when the deadly weapon *was* a gun or knife, did *not* show an increase in 2001. That deputies at Century are not facing more guns and knives provides some small dose of comfort. The issue whether officers are confronting more assaults merits further scrutiny, however. If the Department itself has not already looked at this issue, we strongly urge it to do so.

These numbers reinforce, at least to some degree, the frequent observation that Century deputies work in a dangerous environment. *But they also reinforce the view that something other than the dangerous environment is influencing the*

<sup>11</sup> With respect to arrests for both Penal Code 148 and 241, Century has had some of the highest totals within the Department: during the past five years, Century had the second highest number of arrests for PC 241 and the third highest number arrests for violations of PC 241. As noted before, we cannot state in how many instances the suspects were actually tried for on these allegations and, of those, how many convictions were obtained.

<sup>12</sup> We are using the nomenclature used by the Department itself. It is our understanding that these numbers include those assaults that meet the Uniform Crime Report definition of an “aggravated assault,” although this was not obvious to us from our own review. It is also our understanding from the Department that these numbers only include assaults against police officers, even though this too was not obvious from our own review. In any case, this category of arrest does include arrests for alleged violations of California Penal Code Section 245b (“assault with a deadly weapon against a peace officer”).



*deputies' use of force.* In Tables 4, 5, 6, 7 and 8a-8d, we display all of the various “ambient violence” trends together for comparison with the shooting and use of force trends shown in Tables 1-3.<sup>13</sup> Tables 9-12 put the Century Station in the wider context of the entire Department. Table 12 shows LAPD statistics on officer-involved shootings for comparative purposes.

Although we recognize that Tables 4-8 must be read with caution, it strongly suggests that none of the “ambient violence” trends closely tracks either the trend in deputy-involved shootings or the trend in force. Again, we do not mean to imply that the relatively high level of ambient violence is *irrelevant* to the degree to which Century deputies use force, lethal or otherwise. Rather, the comparison in Tables 4-8 strongly suggests that the ambient violence by itself would not appear to be a sufficient explanation for the fluctuations in the deputies’ use of force. We now turn to a discussion of another possible influence — management.

## *Management at Century Station*

### **Management in 1999**

As seen in the previous section, the “shooting valley” in 1999-2000 was not accompanied by an “ambient violence” valley. Nor was there any kind of dip in overall uses of force or a significant dip in deputy activity (e.g., arrests) during that time period.<sup>14</sup> The question thus arises — did *anything* occur in that time period that might help explain the “shooting valley?” **The Ninth Semiannual Report** hinted at one possible answer—the significant management changes and policy shifts that year at Century. In preparation for the **Fifteenth Semiannual Report**, we looked again at the management efforts

<sup>13</sup> In addition to the indicia of “ambient violence” discussed above, we have also included the number of crimes of violence (homicides, rapes, robberies, and aggravated assaults) and the number of arrests for those crimes.

<sup>14</sup> The number of Part I crime arrests did decrease during that time period, but not nearly to the same degree as the number of deputy-involved shootings.

at Century in 1999. We found that, among other things:

- In early 1999, there occurred an almost a complete changeover of the sergeants and lieutenants at Century, and the sergeants and lieutenants who were brought in were those who the Department believed could function well in a “fast” station such as Century;
- The new lieutenants took over the responsibility of handling citizen complaints, thus freeing the sergeants to spend more time in the field;
- The lieutenants themselves spent more in the field, particularly in responding to significant force incidents; and
- When the new command staff did change policy (e.g., the policy on foot pursuits), they attempted to do so as much through the use of positive reinforcement as through the use of discipline.<sup>15</sup>

Obviously, the fact that the “shooting valley” occurred in the midst of significant management efforts at Century does not mean that the latter caused the former, but in our conversations with various people within the Department, however, it is widely held that the leadership turnover at Century *did* reduce the number of deputy-involved shootings.<sup>16</sup> Interestingly, and perhaps more than coincidentally, the lieutenants who came to Century in the leadership turnover of 1999 were gone by the beginning of 2001, when the number of deputy-involved shootings began its return to the historical average.

We should point out that some of those who believed that the management changes in 1999 did impact the number of deputy-involved shootings nonetheless thought that management was wrong-headed. To be blunt, some assert that

<sup>15</sup> An area we wish to pursue is whether the policies discouraging foot pursuits have weakened in the last year, thereby perhaps contributing to the rise in shootings.

<sup>16</sup> Interestingly, the leadership turnover suggests that LASD executives thought more was going on at Century than a hopelessly violent environment. At the very least, the management changes strongly suggest that senior executives in the LASD must have believed that a turnover in leadership at the station would impact the unacceptably high level of shootings; in other words, the LASD apparently believed that the ambient violence around Century could not solely account for the number of shootings, and the LASD did not therefore abandon all efforts to manage risk through changes in leadership.

the new sergeants and lieutenants were “headhunters,” and the number of deputy-involved shootings went down because the deputies were afraid to use their guns for fear of losing their heads. We were not able to confirm that the deputies held this view, but the arrest numbers, and, more importantly, the non-lethal use of force numbers (which actually rose during this period), do not support the view that the deputies were “laying low” until the new management was replaced.<sup>17</sup>

## **Management Now**

As we noted in the **Fourteenth Semiannual Report**, Eric Smith became the Captain of Century in June 2001. When we did our investigation for that report, Captain Smith was in the process of reviewing the deputy-involved shootings to date at Century in 2001. That review was published in report form in February 2002. Captain Smith’s report (hereinafter “Century Force Review”)—which covered not only shootings but all uses of force, as well as the steps that Captain Smith is taking in response to the findings in the report—reflect one of many positive steps that Captain Smith has taken to better manage the risk at his station. We describe below many of the steps taken by Captain Smith.

### *The Use of Force Study*

The Century Force Review is a well written and thorough review of the use of both lethal and non-lethal force at Century which revealed that in 2001:

- 20 deputies (12 percent of the users of force) were involved in 104 (46 percent) of the force incidents;
- Out of these “top 20” deputies, seven, or 35 percent, were involved in seven or more force incidents. More specifically, there were nine deputies who were involved in five force incidents; four deputies in six force incidents; two

<sup>17</sup> Of course, there remains the possibility that the presence of the “head hunters” made the deputies gun-shy as opposed to force-shy, as the number of shootings decreased but uses of force increased.

deputies in seven force incidents; three deputies were involved in eight force incidents; one had 12 force incidents; and one had 13.

- 14 out of the “top 20” primarily worked two deputy cars;
- 46 Deputies with high uses of force tended to be paired with each other. For example, the deputy who was involved in 13 force incidents was paired with other deputies among the “top 20” in 11 of those incidents;
- There were eight deputies involved in ten deputy-involved shootings that occurred on-duty. Four of the eight deputies were involved in more than one shooting;<sup>18</sup>
- Three of the deputies involved in shootings were also among the “top 20” users of non-deadly force; and
- Two of the shootings were considered by management to be “mindset”<sup>19</sup> shootings—that is, a shooting where the deputy reported seeing the suspect go for his waistband or otherwise thought the subject was armed in circumstances where a gun was not recovered.

The management at Century attempted to correlate force incidents with shifts and time. Not surprisingly, most force occurs at night—38 percent of the force incidents occurred between 9 pm and 5 am, with 84 percent concentrated between 10 am and 2 am. Indeed, 70 percent of all force incidents occurred between 4 pm and 2 am.

These findings—and, in particular, the finding that a small number of deputies were responsible for a significant percentage of the force—are alarming and tend to undercut the “ambient violence” theory. We now turn to the administrative actions taken by Captain Smith with respect to these deputies.

<sup>18</sup> A given shooting may involve more than one deputy if more than one officer fired his gun.

<sup>19</sup> In a “mindset” shooting, the implication is that the deputy was somehow pre-conditioned by experience or fear to interpret ambiguous facts into a belief that he actually saw a weapon. As the LASD uses the term, it suggests that the deputy held that belief in good faith, regardless whether he was negligent or reckless in so concluding. Thus, a “mindset” shooting could, but does not necessarily, imply that the deputy coldly lied about seeing a weapon as a post hoc justification for the shooting.

## **Administrative Actions**

With respect to the “top 20” force users in 2001, Captain Smith has taken non-disciplinary, administrative actions, the most significant of which included the reassignment of a deputy to a “slower” shift (i.e., from a nighttime shift to a daytime shift) and the splitting up of partners who were involved together in multiple force incidents. According to Captain Smith, these actions were not punitive nor implied that the deputies had inappropriately using force. Rather, the actions were intended to remove the deputies from environments that seemed to correspond to their relatively high level of force. Captain Smith met with each of the deputies before taking any action to underscore the non-punitive nature of the action taken.

With respect to the “top 20” deputies, Captain Smith has met (or intends to meet) with each of them to discuss the incidents that caused them to be included on the “top 20” list. Moreover, the “top 20” deputies are not allowed to be partnered together, and Captain Smith (through the tracking system discussed below) continues to monitor these deputies, as well as other deputies who use relatively more force than their peers.

We offer our strong support to these administrative actions. They send a message to all of the deputies that Captain Smith is tracking their use of force and is willing to take steps to reduce the risk of such force.

## **Century’s Risk Management Database**

The command staff at Century has created a station database to track use of force and other risk management variables.<sup>20</sup> The Century command staff reports that this tracking system is essential to the day to day management of risk and has some advantages over the Department-wide database, the PPI, which

<sup>20</sup> Century Station’s database tracks uses of force; traffic collisions; vehicle and foot pursuits; citizen complaints; shots fired; and administrative investigations. Data on variables such as shift (time of day), location, type of service call, and involved deputies are entered into the system. The database at Century is an expansion of a similar one at Industry Station. By mandate of the Chief of Field Operations II (of which Century is a part), all of the other stations in that region are now using the force component of the tracking system at Century. It is our understanding that a few of the other stations in that region have voluntarily adopted other components of the tracking system.

also tracks use of force. Principally, the Century database provides more quickly updated data than does the PPI.

### **The Risk Management Sergeant**

The LASD has made use from time to time of the term “risk management sergeant.” In general, that sergeant’s primary responsibility became the handling of citizen’s complaints. Captain Smith wanted the sergeant so designated at Century to become more actively involved in managing risk, and thus he shifted some of the sergeant’s complaint responsibilities to others. We met with the current risk management sergeant, Sergeant Art Scott. As part of his duties, Sergeant Scott is responsible for monitoring risk management data and to enter the data into both the local and department-wide databases. He also receives, assigns, and investigates citizen complaints, providing recommendations on both the finding of the investigation and discipline.

Sergeant Scott also regularly prepares a monthly use of force report that includes the following:

- Total Force Incidents
- Total Significant Incidents
- Total Less Than Significant Incidents
- Top 10 percent of Individual Users of Force
- Total Shootings
- Individual Personnel Involved (shootings)
- Year to Date Force (comparison)
- Year to Date Shooting

This report is formatted as a comparative table in which the data fields are compared to the previous year (year to date) and the same month for the prior year. The risk management sergeant also compares current and previous (monthly) reports to identify repeated top users of force.

Moreover, Sergeant Scott reviews the watch commander’s log each day

prior to Captain Smith's review to supplement it with additional relevant information (e.g., a summary of the incident, and a notation if the involved deputy was one of the "top 20" users of force from 2001, one of the "top 22" deputies who generated the most complaints in 2001, or has had other similar incidents that year.)<sup>21</sup> Sergeant Scott's work is noteworthy. So is Captain Smith's decision to enhance and expand the duties of the risk management sergeant.

### *Use of Force Review Committee*

Captain Smith also expanded the size of the station-level Use of Force Review Committee, a group of lieutenants who review individual uses of force, primarily for their training potential. Captain Smith added the community relations lieutenant to a roster that already included both the training lieutenant and the lieutenant in charge of detectives.

The Force Review Committee at the station level does not duplicate the work or the mandate of the Department-wide Executive Force Review Committee made up of Commanders and thus does not pass on whether a given force incident violates law or policy or merits discipline. Rather, the Committee only looks at incidents in which the force appeared to have been justified, with an eye to determining whether the incident offers lessons on tactics or policy. Those lessons are discussed with both the involved deputies as well as their peers at roll-call trainings.

Significantly, the Committee will soon be adding additional new members — deputies. This is being done at the request of the deputies themselves. Nearly a dozen deputies have volunteered to become members of the Committee. The Committee intends to meet on a monthly basis with two or three deputies participating on a rotating basis.

<sup>21</sup> Century recently completed a study that found that 22 deputies accounted for about 40 percent of the complaints in 2001. The command staff intends to address this issue at a later time.

The Committee’s concern with risk management in general and use of force issues in particular was evident. Adding deputies to the Committee is a welcome initiative. We will follow its work, its deliberations, the frequency it meets, and the impact of its decisions and judgments.

## **Supervision and Management**

Captain Smith has taken other steps to manage use of force that merit mention here. First, like many other captains, he requires a sergeant to respond to all priority calls or calls that are likely to result in the use of force. We interviewed two field sergeants. Both agreed with this policy and think it has been effective. They estimate that, as a result of this policy, a sergeant has been on the scene in about 60 percent of all uses of force and, in many cases, specifically directed the force.<sup>22</sup> Having a sergeant on the scene when force is used allows the sergeant—as one of the field sergeants to whom we spoke stated—to “referee” the incident to ensure that the use of force is necessary, the level of force is minimal, the type of force is effective, and de-escalation occurs when appropriate.

With the sergeants in the field more often, they can better be held accountable for decisions whether to intervene and for their use of safe and effective tactics. We believe that this policy, albeit logistically challenging, increases supervisory and managerial accountability and is crucial to the successful management of risk at Century, especially in light of its high use of force in comparison to other stations. The command staff under Captain Smith is also developing performance standards for sergeants and lieutenants that will include risk management related activities. Captain Smith has also altered the sergeant schedule in an attempt to ensure more supervision and more consistency in supervision. Also, just as he has moved deputies between shifts to reduce risk, so too has he moved sergeants.

<sup>22</sup> Our discussions and ride-alongs with deputies confirmed the more frequent presence of sergeants in the field.



All in all, we are impressed with Captain Smith's efforts to manage risk at Century. We have one suggestion for the Captain to consider, and that is whether it might be better, if logistically feasible, to pair a given deputy with a given sergeant more consistently, both for purposes of mentoring as well as for consistency. Current deployment patterns mean that any particular deputy will be supervised by a number of different sergeants, and any particular sergeant will supervise a number of different deputies. Moreover, there is neither a formal process nor an informal practice that requires the various field sergeants to communicate with each other regarding a deputy's performance. In this way, management may unwittingly be forgoing an opportunity to immediately correct behavior and provide early intervention. This is a critical issue from a risk management perspective, as close attention in the field may identify troublesome trends and at-risk behavior well before statistics do.

A number of Captain Smith's innovations may have Department-wide applicability, and we recommend that the LASD follow them, just as we will do. In particular, we believe that the Department would be well-served to follow with care the success of Captain Smith's decisions regarding:

- The use of the full time risk management sergeant at the station-level;
- The adoption of station level incident tracking system that includes (as the system at Century now does) not only force incidents but such other high risk incidents as foot pursuits;
- The preparation of regular risk management reports, based on the station level incident tracking system;
- The formation of station-level committees composed of a broad spectrum of supervisors as well as deputies, to review not only uses of force but other incidents (again, such as foot pursuits) that are included in the station level incident tracking system;
- The development of regular roll-call training presentations based on "real-life" scenarios;

- The creation of a deputy coaching/mentoring program that assigns to a particular supervisor (perhaps the evaluating sergeant) the responsibility to mentor a particular deputy; and
- The creation of new performance measures that make lieutenants and sergeants more strictly accountable for managing risk at their stations.<sup>23</sup>

## *Conclusion*

This chapter began with a discussion about numbers and ended with a discussion about management. This is how it should be. As we said earlier, the numbers themselves serve as red flags. It is up to management to respond to those flags.

While we continue to be concerned about the numbers — the red flags are raised and waving — we are impressed by Captain’s Smith’s efforts to strengthen control of shootings and force at the Station. The leadership turnover in 1999 produced impressive results in terms of sharply reduced numbers of shootings, but those gains were short-lived and vanished when the lieutenants in question were promoted and went on to other assignments. In contrast, Captain Smith hopes to *institutionalize* changes in the Station’s culture and in its approach to risk management and accountability.

We intend to keep an eye on Century to see if Captain Smith’s efforts bear fruit. And we will do so knowing that measuring success (or failure) in this context will not be an easy task. We will, of course, keep a close eye on the number of deputy-involved shootings and the overall use of force.<sup>24</sup> It appears that Captain Smith will be doing the same. For better or worse, these are the numbers that represent the biggest risk to the Department, and therefore the

<sup>23</sup> Many of these station-level initiatives may have Department-wide applicability. We continue to stress, however, that station efforts are not a substitute for Department-wide risk management efforts, which we believe have been flagging in recent years.

<sup>24</sup> Through May, the year 2002 looked a lot like 2001: Use of force per 100 arrests for the period Jan-May 2001 was 1.9; for the same period in 2002, 2.0. Use of significant force per 100 arrests for Jan-May 2001 was 1.2; for the same period in 2002, 1.4.

success or failure of Captain's Smith efforts must be judged, at least in part, on the movement of these numbers. Captain Smith and his command staff appear to believe that their efforts will push these numbers downward. We hope that they are right.



## **2 . P e r f o r m a n c e R e v i e w**

The LASD was the first law enforcement agency in the country to adopt a computerized tracking system to compile and relate data on employee performance in a wide array of categories bearing upon liability risk. Called the Personnel Performance Index, or PPI, the system records data on citizen complaints, uses of force, shootings, internal investigations, lawsuits, civil claims, and discovery requests. “Performance Review” is the LASD’s non-punitive intervention to re-direct the careers of personnel whose behavior has demonstrated risks of poor service to the community, use of excessive force, or liability for the County. Most candidates for Performance Review are initially identified through the PPI.

Being on Performance Review means that the individual must take prescribed steps and demonstrate improvement in the deficient areas. For an individual who misuses force, the prescription might be retraining in use of force. For a rude and discourteous deputy, it might be a class to learn better communication skills or anger management. For an employee with a particularly stressful assignment, it might be a temporary or permanent reassignment. For a deputy with many civilian complaints, it might be to use a voice-activated tape recorder while interacting with members of the public.

A rotating group of LASD commanders serve on the Performance Review Committee (PRC) which, under the direction of the Chief of the Training Division, decides which employees should be profiled for inclusion in the program, go through the structured intervention known as being “on Performance Review,” and go off after successfully completing it. Employees determined by the PRC to merit being placed on Performance Review are monitored for a minimum of two years.

In this Chapter, we describe the results of our study of Performance Review. The effort and resources we committed reflect its importance to the LASD, the Board of Supervisors, and others involved in oversight and risk management in law enforcement. A tracking system reaches its full potential only when the

data within it can be used to reduce present or future risk by early intervention. The key questions, then, are whether the LASD

- (i) is using the correct criteria to identify at-risk employees and then appropriately distinguishing between employees who should be subject to structured intervention from those who should not, and
- (ii) is reducing liability risk through Performance Review.

Our research did not shed adequate light on the first question to permit a full answer. The best we can say at this point is that we have no reason to believe the criteria are incorrect and do not recommend that they be changed, at least for the time being. We are somewhat more affirmative regarding the second question. Our answer is yes, with reservations and caveats.

Another key question is whether the Performance Review process has been timely. The answer is a resounding no, except for a period of time at the beginning. We hasten to add that there are significant efforts under way to address this problem under the direction of Commander Bill McSweeney.

Part I of this Chapter sets forth the facts and figures on LASD personnel subject to Performance Review. Part II explains how the process works. Part III lists our concerns and reservations about Performance Review and considers objections to it raised by ALADS, the deputies' union. Part IV evaluates the success of Performance Review to date.

## *I. Facts and Figures*

Performance Review began in December 1995. The initial canvass of PPI entries and of captains' recommendations yielded about 1,000 names, all but 97 of which were eliminated because of the nature or age of the PPI entries. These 97 employees became the first Performance Review candidates, and 69

of them went on Performance Review.<sup>1</sup>

After the initial canvassing, the PRC has not affirmatively sought recommendations from command staff of candidates for Performance Review. The ability of command staff to make a nomination has remained, however, and has been used a handful of times in recent years.

Two more canvasses took place in 1996; thereafter, there was not another canvass for four years, until September 2000. The next one after that was November 2001. Most, if not all, of the 51 employees placed on Performance Review from July 15, 1997 to July 15, 2001, were identified from the initial three canvasses in 1996. The chart at right shows how many persons went on Performance Review by year.

Since 1996, the PRC has identified 1,213 employees with possible performance problems. As noted in the previous chart, the Department counts 235 as having been placed on or involved with Performance Review, including

**Performance  
Review Selection  
(by calendar year)  
1996-2002**

Year	Number Selected
1996	121 <sup>2</sup>
1997	40
1998	7
1999	17
2000	9
2001	24
2002 (thru 6-4)	17
<b>Total</b>	<b>235<sup>3</sup></b>

<sup>1</sup> The remaining 28 employees were nonetheless monitored, and their captains were obliged to prepare an annual update on the employee until the PRC determined otherwise. These 28 were told that they had not been put on Performance Review but were *not* told they were being monitored or about the annual updates. Currently, only two of the 28-both of whom have had significant gaps in their active duty status, either because of injury or having been discharged and then reinstated-remain subject to the annual updates.

The Department made a serious mistake with those 28 employees in sending them notices that told them that their performance had been reviewed and that they did not warrant Performance Review. In getting annual updates on those employees without informing them that it would do so, the Department misled those employees and created an aura of distrust about the Performance Review process that remains to this day. The Department's error-albeit corrected years ago-has provided those who oppose Performance Review with effective ammunition to blast the process. After reviewing the initial 97 employees, with the possible exception of one captain, the PRC has not ordered monitoring and annual updates for individuals who are considered for but not put on Performance Review.

<sup>2</sup> The 121 selected include the 28 individuals referred to in footnote 1. We include them because they are counted in the Department's statistics as having been on Performance Review and, in any real sense, were. The 121 also includes eight individuals who themselves were not on Performance Review but were included because their profiles disclosed management or supervisory deficiencies that needed to be corrected.

<sup>3</sup> The total also includes eight individuals who themselves were not on Performance Review but are included in the Department's statistics because their profiles disclosed management or supervisory deficiencies that needed to be corrected.

two individuals who have been placed on twice.<sup>4</sup> Of those 235, 68 are currently on Performance Review. The chart at right provides a breakdown of the 68.

One of the most compelling statistics generated by analyses done by the PRC is that more than half of the employees selected for Performance Review from 1996 through 2001 were hired between 1985 and 1989, suggesting that hiring standards were less stringent during that period. Anecdotal reports corroborate that conclusion.

## *II. How the Performance Review Process Works*

The PRC, comprised of commanders representing nine LASD divisions, usually meets monthly. It is currently chaired by Commander William J. McSweeney. Most meetings are conducted by the Chairperson and two other rotating commanders, although in light of increased volume, some meetings lately have included the Chairperson plus three commanders. Most issues are resolved by consensus, often after lively discussion.

### **Identification**

Approximately once a year, the Risk Management Bureau requests a PPI run for all LASD personnel—sworn or civilian, and of all ranks—against defined criteria<sup>5</sup>—criteria that have changed a number of times since 1996. The criteria

<b>Rank</b>	
Sergeant	1
Custody Assistant	3
Security Officer	1
Total	<b>68</b>
<b>Years of Service</b>	
10 or less	11
11 to 20	48
21 or more	9
Total	<b>68</b>
<b>Age</b>	
25 to 34	25
35 to 44	34
45 or older	9
Total	<b>68</b>
<b>Gender</b>	
Male	62
Female	6
Total	<b>68</b>
<b>Race/Ethnicity</b>	
White	49
Hispanic	9
Black	7
Asian/Pacific	3
Total	<b>68</b>

<sup>4</sup> The PRC has determined that an additional 51 employees merit the preparation of profiles—profiles that have not yet been prepared or considered by the PRC.

<sup>5</sup> The last PPI run for Performance Review purposes was on November 21, 2001, and the run before that was on September 25, 2000. The entire set of criteria is set forth at Appendix A hereto.



generating the most candidates for consideration in the 312 individuals identified in the latest run, November 2001, were:

- Six or more personnel complaints<sup>6</sup> in the last three years (159);
- Six or more more-significant uses of force in the last three years (68);
- Ten or more less-than-significant uses of force in the last three years (43);
- Two or more deputy involved shootings in the last three years (19).

The other four categories garnered only 23 identifications among them.<sup>7</sup> Because a number of personnel were identified in more than one category, the PPI criteria in November 2001 identified a total of 276 personnel.<sup>8</sup>

In addition to the annual PPI data runs, the Internal Affairs and Internal Criminal Investigations Bureaus notify PRC staff on a monthly basis of persons subject to serious discipline (a discharge that was overturned, a demotion, or a 20-day or longer suspension), or who have two or more criminal investigations in the past five years, or one founded investigation for a false statement in the same period. As of May 31, 2002, 319 individuals meeting these criteria were referred to the PRC.<sup>9</sup>

The third, and least used, source of candidates is referrals from captains and Department management. Since the early days of Performance Review in 1996, when referrals by command staff were one of the principal sources of candidates, only a handful of employees have been referred by command staff as candidates.

<sup>6</sup> In the LASD, personnel complaints are recorded as Service Comment Reports (SCR) and include both complaints and commendations.

<sup>7</sup> Three or more complaints involving improper detention, search and arrest (9); two or more complaints for dishonesty (7); two or more founded investigations involving certain behavior that resulted in a moderate or long-term suspension (7); and three or more preventable traffic collisions (0).

<sup>8</sup> Of the 276 candidates identified by the November 2001 PPI data run, 66 were excluded from further screening because they were: (i) already on Performance Review (16), (ii) already awaiting the completion of a profile (22), or (iii) had previously been identified as candidates, but had had no new incidents documented by the PPI in the preceding year (28). Thus, 210 of the 276 were processed further.

<sup>9</sup> In the published criteria, these categories are labeled “automatic” as these names are generated without a PPI run.

## **Screening**

The PRC then screens the candidates twice. In the first, the PRC solicits the views of the candidates' captains whether the candidates should be on Performance Review.<sup>10</sup> After considering the captains' views, the PRC does a second screening to select candidates for a detailed Employee Profile Report (often called a "Blue Book" or "profile").

## **Captains' Views**

Captains are asked to address candidates' work assignments and performance over the preceding three years, most particularly analyzing issues raised by the PPI reports.<sup>11</sup> The captains must produce copies of two of the candidates' performance evaluations, including the most recent. They are also asked for their recommendations—and their Chiefs' concurrences—whether the candidates warrant preparation of a Blue Book.<sup>12</sup> Once the recommendations are received—which can take anywhere from a few weeks to many months—the PRC, at its next meeting, considers whether to order Blue Books.

As displayed below, the recommendations of the captains overwhelmingly—by a margin of almost five to one—advocate that the employee not be profiled for Performance Review. During the nine meetings held from July 1, 2001 through June 4, 2002, the PRC considered 206 recommendations that

<sup>10</sup> The letter requesting the recommendations states: "The purpose of your review is to determine whether or not these employees could benefit from training, counseling, etc., in order to improve their decision making skills, communication skills, or performance in general. Where applicable, indicate the steps you are planning to take or the action you have already taken to assist the employees. The goal is to enhance the employees' performance, thereby reducing liability risks."

<sup>11</sup> Some of the views in the captain's submissions are complete and informative. Some are woefully lacking in critical information. We recommend that the PRC provide captains with a detailed model recommendation, making clear that the PRC expects the submitted recommendations to contain all the requested information—as laid out in the model—with sufficient detail for the Committee to make informed decisions. Recommendations that fail to provide sufficient information should be returned with directions as to what else needs to be provided. Particularly since the "bottom line" of the captain is so influential in the PRC's decision whether to order a profile, the Committee should make its decision with adequate information before it.

<sup>12</sup> While the form memorandum that is sent to the captains states at one point that their responses will be subject to PRC "review and approval," it inaccurately states at another point that their recommendations will be determinative. We recommend that this latter wording be changed to reflect actual practice and the decision-making authority of the PRC.

employees not be profiled and 43 that they should be. The results show that in the aggregate, the PRC accepts the captain’s view on the desirability of preparing a full performance profile nearly 90 percent of the time.<sup>13</sup>

<b>Captains’ Recommendations Against Preparing Profiles</b>			
Number	Accepted by PRC	Rejected by PRC	Percentage Accepted
206	181	25	88%
<b>Captains’ Recommendations Favoring Preparing Profiles</b>			
Number	Accepted by PRC	Rejected by PRC	Percentage Accepted
43	42	1	98%

**Profiles**

The responsibility for preparation of the profiles, or Blue Books, falls to one of the Risk Management Bureau’s sergeants. The number of available sergeants has varied greatly over the years — from a high of eight (for a brief period late in 2001) to a low of one. The paucity of available sergeants slows down the work of the PRC. Since February 2002 there are only three sergeants doing profiles, one permanently assigned to do so and two “on loan.”

Until early in 2002, the sergeants would collect all available performance documentation from the start of the employee’s career, including performance evaluations, commendations, time and attendance records, disciplinary records, motions for personnel information, as well as detailed documentation on risk-related incidents: shootings, uses of force, citizen complaints, lawsuits, civil claims and preventable traffic accidents. Currently, because of Commander McSweeney’s desire to reduce the backlog, the documentation is less all-encom-

<sup>13</sup> Not all captains are diligent in responding to the PRC’s requests for recommendations. As of April 2002, 45 recommendations were more than one year overdue. Twenty of these long-overdue recommendations were due from Twin Towers. Six units with at least three year-overdue reports were responsible for 87 percent of the delayed recommendations. The total of all recommendations that are being awaited from captains is currently 108, a number the PRC staff hopes to reduce to zero before the next PPI data run in the fall.

passing and more focused on the past five years of the employees' careers and on the specific issues that led to their being identified as candidates for Performance Review. The sergeants write a detailed cover memorandum summarizing the subject employees' performance.

### **PRC Meetings**

PRC meetings are attended by the PRC Chairperson, the two or three commanders selected on a rotational basis, staff from the Risk Management Bureau, the LASD Training Administrator, representatives from the Employee Relations and Advocacy Units, the captains (or their designees) of the employees whose profiles are on the agenda, and a representative of the Office of Independent Review. Division Chiefs may, but rarely do, attend. The sergeants present oral summaries of their profiles and answer Committee members' questions. Then the employees' captains (or occasionally a lieutenant or sergeant designee) state whether in their view the candidates should be placed on Performance Review. Occasionally, other personnel volunteer opinions or information, particularly if they have personal knowledge of the candidate. The PRC then discusses and decides the matter. If they decide that an employee should or should not be on Performance Review, Committee consideration is concluded. The PRC may also defer decision, usually for three or six months, to determine whether the employee's performance has improved sufficiently in those intervening months to moot the issue. Decision might also be deferred to obtain further information.

At the April 2002 meeting we attended, ten profiles were on the agenda. Having attended only one meeting, we do not represent it as typical. Indeed, those being considered were relatively atypical in that three of the ten individuals were sergeants. Of the ten, three were placed on Performance Review, six were not, and decision was deferred on one for six months to see if his interaction with the public continued to improve. One of the three placed on Performance Review had been recommended by his Division Chief, and the

employee's captain followed the lead of his Chief. The other two were multiple-problem employees, with low productivity. Their captains did not argue against placing them on Performance Review.

The captains of the seven who were not placed on Performance Review or were deferred argued against such placement. Many contended—to apparent great effect—that the questionable conduct had occurred in past years and that present behavior was unobjectionable. Often, the employee had been promoted or given a desirable assignment in the interim. Sometimes, his current assignment did not provide further opportunities for disproportionately high uses of force, discourtesy, or the like. Based upon the discussion, some of the seven would have been put on Performance Review had their cases been more timely presented, a negative consequence of the PRC backlog.

The most controversial case at the April meeting involved whether Sergeant A—who had been identified as a candidate for Performance Review three times, starting in 1996—should go on Performance Review for his activities when he was a deputy. His former captain, now a commander, argued strenuously for A, whom he had helped be promoted to sergeant.<sup>14</sup> Sergeant A's current captain took a low-key approach, and the PRC could not ferret out, despite a couple of questions, whether his taciturnity was substantive (because he had not supervised the sergeant for long and thus did not know him well), tactical (because no one could argue more forcefully than the former captain), or diplomatic (because he did not agree with, but did not want to oppose, the former captain).

Sergeant A, as a deputy, had 18 personnel complaints for discourtesy, improper detention, search or arrest, and improper tactics between 1993 and

<sup>14</sup> In June 2000 the former captain, who at that time was the captain supervising the not-yet-promoted sergeant, recommended that he be placed on Performance Review. This fact was never mentioned at the April, 2002 meeting. While prior recommendations are in the PRC files, they are not circulated to the Committee members making the Performance Review decision nor are they mentioned in the profiles summaries. We recommend that the conclusion of the recommendation and the name of the captain making it be included in the profile summary (possibly on the cover sheet). PRC members probably would have been interested to know that the same commander had changed his recommendation.

2000, plus one additional complaint in 1992 (subject matter unknown). He had two additional complaints for discourtesy, and improper detention, search, or arrest in 2000 that were classified as service complaints and thus not placed on his PPI. The complaints against A apparently ceased when he was moved out of street patrol to a deputy's position in the stationhouse.

Two people at the PRC meeting other than his former and current captains had had personal contact with Sergeant A before he was promoted to that rank in 2002. Both commented on his uncooperativeness and seriously negative attitude. In 1994 and 1996, A was involved in two shootings—one in which the suspect was killed, the other in which the suspect was wounded. He was involved in eight uses of force from 1993 through 1996, three of which precipitated a rollout team response (one involving the fracturing of a 58-year-old mentally disturbed woman's arm pulling her out of harm's way). He was the subject of four administrative investigations from 1992 to 1995, one of which resulted in a written reprimand, five civil claims for incidents between 1994 and 1999, and one lawsuit arising out of the 1996 shooting death, which resulted in a judgment for the defendants.

The central thrust of the former captain's arguments was that Sergeant A had been a problematic deputy who had reformed under his tutelage. In the process, he revealed at least one other significant problem incident that had not been discussed in the profile. He also laid many of Sergeant A's issues at the feet of two of A's former partners. Two of the PRC members were readily convinced, based principally on the lack of complaints since 2000. A third member was unconvinced. The fourth and ultimately pivotal PRC member decided against Performance Review, noting the potential anomaly of placing someone on Performance Review shortly after he had been promoted. Nonetheless, he expressed the opinion that Sergeant A suffered from "deep-rooted" negativity.

The following chart shows that over the past year the volume of profiles being considered by the PRC has increased while the percentage of candidates placed on Performance Review has declined.

<b>Performance Review Decisions</b>					
July, 2001 to June, 2002					
Meeting Date	Total Profiles	Placed on Perf Rev	Not on Perf Rev	Deferred	% on Perf Rev
July 18, 2001	4	1	3	0	25%
Aug. 28, 2001	4	4	0	0	100%
Sept. 27, 2001	5	3	2	0	60%
Oct. 30, 2001	4	4	0	0	100%
Dec. 12, 2001	4	2	1	1	50%
Feb. 14, 2002	8	1	5	2	13%
March 28, 2002	11	7	4	0	64%
April 30, 2002	10	3	6	1	30%
June 4, 2002	9	6	0	3	67%
<b>Totals</b>	<b>59</b>	<b>31</b>	<b>21</b>	<b>7</b>	<b>53%</b>

Commander McSweeney, under whose chairmanship of the PRC the percentage of placements dropped, hypothesized that they went down for two reasons:

- First, when considering a greater volume of cases, the comparative standard exercised by the PRC might have changed, so that only those who seemed particularly in need of Performance Review were selected for it.
- Second, Commander McSweeney believes that Performance Review should be used for those with poor character or those who are dangerous, but should not generally be used for those with poor work habits, poor skills, or unpleasant demeanor. The latter group, Commander McSweeney believes, should generally be handled by their assigned units.

Until recently, the Committee would discuss problems of supervision identified in the profiles, whether or not the employee was placed on Performance Review. With the recent expanded agendas, those discussions have been dropped.

If the PRC decides against Performance Review, the employee is informed in writing that he was considered but not put on it. For those put on it, PRC staff prepares a plan for intervention. The Chairperson assigns one of the other commanders sitting on the PRC that day to supervise the implementation of the intervention plan. The primary responsibility for executing the plan goes to the employee's captain who, along with the assigned commander, must meet with the employee within 30 days and report back on the meeting to the PRC in writing. The assigned commander must make periodic reports on the employee's performance, usually at six-month or one-year intervals. Plans often require specific training to correct deficiencies. Frequently, the captain assigns the employee a mentor.

When employees are put on Performance Review, they may review either their full profiles, or, if they prefer, just the summary of the profile. Any discussion of failings by their supervisors is not made available to employees. Employees may also read all the progress reports submitted to the PRC while they are on Performance Review.<sup>15</sup>

Although assigned commanders submit most updates relatively on time, seven employees on Performance Review had updates that were at least four months overdue as of April 2002 and one employee, who has been on Performance Review since 1997, had no update on file whatsoever. Another employee had an update that was almost two years overdue.

## **Removal**

Employees must be on Performance Review for at least two years before their captain may recommend removal with the approval of the relevant Chief and the concurrence of the employee's assigned commander. The recommendation is then calendared for determination by the PRC.

<sup>15</sup> The Department instituted these procedures for review in 1998, following complaints by the deputies' union that the previous failure to do so violated Government Code Section 3305 (which is part of California's Public Safety Officer Procedural Bill of Rights).



Recommendations for removals are fairly routinely approved. At the nine PRC meetings from July 2001 through June 4, 2002, the PRC acted on 36 recommendations for removal, and 34, or 94 percent, were approved. One removal came after the PRC, which had rejected removal upon first considering it, heard from the employee's captain, who urged reconsideration. The PRC then reversed itself. One of the two denials was because the deputy had been on Performance Review for only 15 months, rather than the required two years. Following removal, captains are reminded by memos that "no indication" that the employees were on Performance Review should be placed in their personnel records.<sup>16</sup>

### *III. Evaluation of Performance Review.*

We now set forth our concerns and reservations about Performance Review. Where applicable, we note where the Association for Los Angeles Deputy Sheriffs raised similar concerns. We then turn to a discussion of other points raised by ALADS and our response to them.

#### **Timeliness**

Our conclusion is that the LASD has not always conducted Performance Review in a timely and appropriate way. Current management of the Performance Review process is clearly aware of the problems and is attempting to correct them. Nonetheless, significant delays have undermined the Performance Review process. This is essentially what happened with Sergeant A in April 2002.

<sup>16</sup> Employees who are removed from Performance Review receive a memo from the Chairperson of the PRC, which states in part: "[T]he Performance Review Committee [has] determined...based on your current job performance history, and with the approval of your Bureau Commander, Chief and the Commander assigned to you, that you should be removed from the Performance Review process. You are to be congratulated for your effort in correcting the performance issues. You are a valuable member of the Sheriff's Department, and I hope that your current level of performance continues."

He had originally been identified as a Performance Review candidate six years earlier, in 1996. Had his case been timely considered, even the vehement advocacy of his former captain would not likely have convinced a majority of the PRC to keep him off Performance Review. There were, however, huge lapses of time—which clearly affected the decision-making of the Committee. Likewise, if so much time has elapsed that the deputy is promoted in the interim, there is an inherent conflict: The promotion sends a message that is inconsistent with putting the employee on Performance Review, and thus a person who should have been on earlier gets a pass because he happened to be promoted in the meantime.<sup>17</sup>

Since becoming Chairperson, Commander McSweeney has tried to reduce the PRC's backlog by ordering compressed profiles focusing narrowly on the most serious issues in the last five years (unless an earlier incident is directly relevant) rather than a comprehensive review of an employee's entire LASD history. In the short run, this innovation may be worth the risk of missing some significant information. In most instances, focusing upon the more relevant and more recent facts will meet the Committee's needs. Nonetheless, the longer profiles are a gold mine of information about when and how deputies get in trouble during their careers. They should be eventually reinstated in order to permit longitudinal studies of how and why deputies get off track. Commander McSweeney has directed that the compressed profiles be prioritized by seriousness. This is clearly sensible.

<sup>17</sup> Deputy B was cited by ALADS as an example of the inappropriateness and unfairness of placing someone on Performance Review in an untimely manner. Deputy B received two special assignments before being placed on Performance Review

In both, his previously problematic behavior ceased. It is indisputable that swifter action by the Performance Review process in this, and many other cases would have increased the effectiveness of the intervention. Indeed, the Deputy B's prior performance record —11 administrative investigations (with two suspensions and three written reprimands), 15 force incidents, six personnel complaints, two lawsuits, five civil claims and three discovery motions—clearly should have gotten the attention of the Department's risk managers much earlier, with the hope that earlier intervention would have prevented some of the later-occurring incidents.

The complaints that Deputy B was not promptly notified that he was placed on Performance Review are an example of the union not understanding when the employee is supposed to be notified and of the slowness of even the post-decision process. The reality is that this perception that employees are being monitored for a long time before they are formally notified is a direct and foreseeable consequence of the long delays in the selection process. Deputy B was originally identified as a candidate for Performance Review in 1996. His captains were asked for and provided recommendations on whether to place him on Performance Review in 1999, 2000 and 2001. Not surprisingly, Deputy B learned of

## **Resources**

Performance Review is not adequately funded and it will not be able to function appropriately unless it becomes better staffed. Even with Commander McSweeney's streamlining, the backlog of cases awaiting profiles has increased 31 percent in the past year (51 matters in June, 2002 versus 39 in June, 2001). PRC staff is down to two "on loan" sergeants and one permanently assigned. This is clearly inadequate.

The backlog in turn creates pressure to order as few profiles as possible to keep the backlog manageable. The PRC has already dropped much of its already limited focus on management issues.

The other pressing resource need is for a different type of staff talent: analysts capable of using the vast amount of PRC data to understand and control risk better; someone with a social science or statistical background to identify risk trends and how to attack them.

## **Failures of Management and Supervision**

A significant aspect of the theory behind Performance Review was that it was not only to examine deputy behavior: It was also set up to look at the acts of commission and omission by management that allowed the behavior to occur in the first place and, left unattended, rise to the level where the employee

some of that activity in or about June, 2000 and believed that he was on Performance Review, more than one year before the Committee voted on October 30, 2001 to place him on Performance Review. The assigned Commander was directed by a PRC memo dated November 6, 2001 to meet with Deputy B to advise him of the Committee's findings and concerns not later than December 6, 2001. For unknown reasons, that meeting did not occur until January 8, 2002, and thus was a little more than one month overdue. While not desirable, the delay was not occasioned by a desire to avoid informing the deputy. To the contrary, the PRC memo directed that he be informed not later than December 6 and the assigned Commander did not comply.

Deputy C, on the other hand, is an example of significant delay in advising an employee of his being placed on Performance Review but for idiosyncratic reasons. Deputy C was placed on Performance Review on August 10, 1999. Three days earlier he had been injured while on duty and remained off duty for nine months. He returned to limited duty for a couple of months and, one month after he returned to full duty, he was transferred to another station. Approximately three months later, his new captain informed him that he was on Performance Review. One month later, Deputy C met with his former captain, who believed (possibly from what Deputy C told him) that C had not been advised that he was on Performance Review. The former captain then also advised Deputy C that he was on Performance Review. The PRC should determine some way to track the return to duty of employees who are off duty for significant periods of time-so that they can begin or resume the Performance Review process in a timely fashion.

requires intervention. Sergeants, lieutenants, captains, and commanders were to be held to account. This part of Performance Review has never really gotten far off the ground. This has led to cynicism and resentment on the part of deputies who feel unfairly singled out as a group and that their supervisors are not held to the same standards. They are correct: There are at-risk supervisors and managers just as there are at-risk deputies. ALADS claims, with considerable justification, that often failures of performance by deputies are in fact failures of supervision. Abdication of supervisory responsibility creates liability just as much as an out of policy use of force.

We thus remain troubled that there is not a strong focus in Performance Review on how and why the actions, or failures to act, of supervisors contributed to the deputy's problems. To the extent that the performance of supervisors was considered until recently, the subjects considered were superficial, tending to deal with failures to fulfill ministerial duties, such as providing timely performance evaluations. There was no focused examination of the ways in which supervisors failed to manage the performance of the deputies or hold deputies properly accountable.

As noted above, the purpose of Performance Review is not only to redirect the behavior of deputies who pose risks but also to redirect supervisors and managers who are not doing their job. Sergeants, lieutenants, and even captains may be too close to the employees they supervise to effectively identify patterns of misconduct or, if they do identify them, to effectively investigate such misconduct. This is particularly acute for deputies making many felony arrests, thereby delivering the proactive law enforcement that all managers want. But when the same deputies use more force than is necessary, or are rude, some managers treat such transgressions as minor compared to the value of the arrests. Part of the function of Performance Review, however, is to reinforce that constitutional and respectful law enforcement goes hand-in-hand with effective, proactive law enforcement.

The most fundamental problem of many captains, lieutenants, and sergeants in this context lies in the unwillingness to exercise the supervisory function of managers.<sup>18</sup> Too often, recommendations and updates read as if they were written by union delegates or a lawyer for the employee. They often do nothing but advocate for the employee, rather than try to present a balanced and objective picture. Facts that present an employee in a poor light are frequently omitted. Occasionally, indisputable facts are outright misrepresented. Another pitfall is making the deputy's performance look better than it was.<sup>19</sup>

### **Cooperation by Captains**

Apart from the lack of objectivity and the lack of accuracy in their written materials sent to the PRC on behalf of employees in their commands, too many captains make clear to their lieutenants and sergeants, to employees in their commands who are on Performance Review, and even to the deputies' union that they are "on the side" of the deputies. Performance Review is something to be gotten around, or at best tolerated. (Fortunately, there are some captains who perceive the value of Performance Review and act accordingly. Based upon the available evidence, they are considerably more the exception than the rule.)

Although Performance Review was necessitated because many captains were not correcting the behavior of employees under their supervision, the

<sup>18</sup> Performance evaluations provide another example of this reluctance. Of the five rating categories the two lowest—"improvement needed" and "unsatisfactory"—are avoided no matter how egregious the circumstances. An example of how far supervisors will go to avoid the use of those ratings was provided in an evaluation attached to a recommendation that came before the PRC on April 30, 2002. Despite the fact that an administrative investigation had been begun nine months earlier to try to discharge or demote her for failure to satisfactorily perform her duties, Clerk D was rated "competent" in every category in her evaluation for a period that included the time that the Department was saying that she could not adequately perform her job. The almost universal reluctance to criticize employees in the evaluation process is one of the reasons that Performance Review is needed.

<sup>19</sup> In his December 4, 2000, update and recommendation for removal, a captain wrote: "Since August 19, 1999, Deputy ... [E] was involved in only one minor use of force ...." A contemporaneous copy of the PPI, however, shows that Deputy E was involved in four uses of force during this period: on October 3 and October 18, 1999, and March 8 and October 14, 2000. It is unknown whether the PRC was aware of these discrepancies. In any event, it ordered Deputy E removed from Performance Review.

Performance Review process relies upon these same captains, in part, to identify potential candidates for Performance Review, to concur with the assignment to Performance Review for employees identified by the PPI, and then to supervise and carry out the mandates of the PRC. It therefore may not be surprising that we found that many captains abdicated their supervisory responsibilities before and during Performance Review. Captains, in general, have not accepted Performance Review and side with their employees in many instances where they should not. Until the Department determines how to get captains to buy-in to Performance Review, the process will never achieve its potential.

Much of ALADS' impression of the ineffectiveness of management in implementing Performance Review comes from conversations with the captains. Since, as discussed above, many of the captains do not buy-in to the process and over-identify with their deputies, it is little wonder than the union has a poor opinion of the process. Not only are the captains often failing to support the process when dealing with the PRC, but they take the same stance when dealing with the employees who report to them and with ALADS. Some are so unsupportive of the process as to be described as "embarrassed" by it.

### **Quality of Follow-Up**

Assigned commanders submit most updates on employee performance relatively on time, but occasionally the follow-up slips entirely through the cracks. In the instance where no employee update has been submitted for the full four and one half years since the employee was placed on review, five different commanders have been assigned to the matter over the years, but the first four at least failed to ensure that an update was ever made. And the quality of timely updates leaves a lot to be desired in thoroughness and objectivity. Too often they read like a puff piece drafted by the employee himself, rather than a supervisor's objective appraisal of progress or failure.

ALADS also complains that even when deputies are notified that they are on Performance Review, they often are not told exactly why they were placed on

review, what the plan for corrective action is, or when they will be removed from the process. The latter complaint is certainly true, as no one knows when an employee is being placed on review when he will be taken off review—other than that it will be at least two years later. Because the meetings between the assigned commander, the captain and the employee are oral there is no way to conclusively determine how completely the process is described or how well explained the plans for corrective action are. One would suspect that certain commanders would handle the process more thoroughly and more thoughtfully than others.

### **Non-Punitive Use**

The question here is whether the LASD is using the PPI and Performance Review as advertised by management: Are they being used to save careers by non-punitively reshaping behavior, as management claims, or are they being used as punishment, as the deputies' union, ALADS, has asserted. To test this, we asked ALADS to give us any examples they had of punitive use of Performance Review. We promised that we would research any example. In response, the union provided two specific claims. The first involved a deputy who supposedly was blocked in his application for a bonus position because he was on Performance Review. In fact, Deputy F successfully applied for and had held the bonus position until he engaged in admitted behavior that led to his resignation from the bonus position.<sup>20</sup> Accordingly, we concluded that in this instance Performance Review was clearly not used punitively.

The second case involved a temporary PRC prohibition against Deputy G transferring from an assignment in custody to patrol, pending resolution of a fitness for duty evaluation. In addition, the deputy had filed a worker's compensation claim for psychological stress. In practice, although not by virtue of written policy, the pendency of the fitness for duty evaluation prevents a transfer because the transferee unit will not accept a deputy in these circum-

<sup>20</sup> Deputy F signed a performance log entry stating that he admitted his improper behavior. He also signed a memorandum resigning the position.

stances. The temporary freeze on transfer by the PRC might therefore reflect the pendency of the fitness for duty, rather than a use of Performance Review per se to block a transfer. It is an open question whether the PRC in this instance exceeded its authority by temporarily freezing the transfer. But even so, it is hard to characterize the PRC's actions as punitive, and, in the given circumstances, they were prudent.

### **The Integrity of the Process**

We became aware of one instance in which an employee was removed from Performance Review by order of a senior executive.<sup>21</sup> Sergeant H was removed from Performance Review on February 21, 2001. No reason was provided for the senior executive's order directing the removal.

In another instance, an employee was taken off Performance Review by a Chief who was not on the Performance Review Committee as part of a settlement agreement to an employee grievance.<sup>22</sup> The Chief overseeing Performance Review subsequently told all the other Chiefs not to grant similar removals from Performance Review in the future.

### **Union Concerns**

Speaking through its President, Executive Director, and one of its Field Representatives, ALADS says it supports the concept of Performance Review

<sup>21</sup> Employee H was placed on Performance Review on November 16, 2000. His profile indicated that he had been the subject of 21 administrative investigations, three of them Internal Criminal Investigations Bureau cases, 32 personnel complaints, seven discovery motions, and had been involved in seven reportable uses of force. Early in his career, H was discharged as a result of an initial founded investigation of a false arrest and fabrication of evidence that embarrassed the Department with negative media coverage. The discharge was subsequently overturned by the Civil Service Commission. At least five other administrative investigations—three involving suspensions—were initially determined to be founded, but two of those were overturned on appeal. One of the overturned founded findings arose out of facts that resulted in H's arrest for Assault Under the Color of Authority—a charge later dismissed. At the time he was placed on Performance Review, H had four pending administrative investigations. He also had a long series of personnel complaints that when examined together appear to present a pattern of heavy-handed and abusive law enforcement. It is also noteworthy that H accumulated complaints from 1996 to 2000 at approximately twice the rate of most of the deputies on the team he supervised.

<sup>22</sup> Deputy J was placed on Performance Review on November 15, 1999. His profile stated that he had been the subject of six administrative investigations, one informal complaint brought by another employee, one founded operational vehicle investigation, six personnel complaints, and had been involved in three uses of force. Most of the administrative investigations and the informal complaint by another employee involved one form or another of sexual



It nonetheless finds so many issues in the way it is administered that ALADS' support, in the end, seems more theoretical than actual. Among the union's prominent complaints concerning Performance Review are the criteria for identification and process for selection, the exclusion of the deputy from the selection process, the lack of timeliness in the selection process, lack of prompt notice to deputies when they are placed on review, the perceived punitive nature and consequences of Performance Review, the perception that deputies are held accountable for management's failures, the perception that Performance Review is biased in favor of women in the Department, and a general lack of fairness.

Roy L. Burns, President of ALADS, told us that Performance Review is appropriate for "individuals who are headed in the wrong direction and need mentoring." Bud Treece, Executive Director of ALADS, stated at the same meeting: "As a tool to save careers, Performance Review can be a useful tool. You don't have to wait for discipline to place someone on Performance Review." He added, "If a person is hardheaded, he may need Performance Review." He also explained that ALADS did not have a problem with Performance Review as "a tool," but did have a problem with "how it is applied." Marlyne Rinaldi, a Field Representative who handles many of ALADS' grievances, said in a different interview that she did "not object to the idea of the process, but that the way that it is done is ineffective and a

harassment. Two of the administrative investigations that were determined to be founded in whole or in part involved 21-year-old and 18-year-old female ride-alongs. The first ride-along was taken by J to an adult movie theater on one occasion and a nude dance bar on another. Deputy J then lied to investigators about those activities and tried to obstruct the investigation by visiting a witness without authorization. The second ride-along was subjected to a lengthy conversation about sexual conduct. Another founded administrative investigation involved the separate stopping of two young female motorists and subjecting them to similar sexual innuendo. Another founded administrative investigation involved intervening in a civil dispute on behalf of a friend of a friend and threatening the party on the other side of the matter. Deputy J was suspended in 1995 for 15 days (reduced from 30 days) for the investigation involving the 21-year-old ride-along, and in 1997 for a combined 30 days (reduced from discharge) for the incidents involving the 18-year-old ride-along, the two female motorists, and the intervention in the civil dispute.

As part of the appeal that resulted in reducing the discharge to a 30-day suspension, Deputy J entered into an 18-month settlement agreement that would effectuate his previously submitted, undated resignation letter if he became the subject of a founded sexual harassment complaint. Less than nine months later a fellow employee brought a sexual harassment complaint against Deputy J which was closed after involvement by the Ombudsman/Career Resources Center. After being placed upon Performance Review, Deputy J grieved that placement on the ground that it was "punitive" and in violation of the 1997 settlement agreement that allowed him to avoid discharge.

detriment.” All three union officials were vocal in criticizing virtually every aspect of the manner in which Performance Review is actually used by LASD.

In a written memorandum ALADS sent us, it summed up its criticism of Performance Review, and its prescriptions for improvement, as follows: *“Because the process has been sloppily implemented in the majority of cases and because the Deputy population does not have a clear understanding, and the Department has not been honest with them, it will continue to be perceived as a negative “black mark” on their record.*

*This system, if it must exist, can be vastly improved by:*

- *Establishing fair, reasonable criteria.*
- *Promptly, efficiently, effectively implementing the process.*
- *Holding management accountable for their omissions.*
- *Stop using this as punishment.*
- *Allow the involved Deputy to be involved in the Committee Meeting.”*

In response to inquiries concerning the possible benefit to employees from having their performance improved, the union responded in the same memorandum:

*“To determine if this process “saves” any careers of a deputy, the Department would have to review and interview the affected Deputy to determine what, if any, impact this process had on their behavior. In most instances, the lack of understanding and [the] belief that the process is negative and punitive, diminishes the effect the Department is trying to achieve. No Deputy has advised this Association that they thought it was a good plan and/or got them on the right track, whatever that might be.”*

To the extent that we have not addressed them previously in this Chapter, we turn now to detailed consideration of ALADS’ complaints about Performance Review and the examples concerning certain deputies that they drew to our attention. We will also comment on our conclusions concerning the validity of some of these specific complaints.

## **Criteria for Identification**

Some of the union's complaints about Performance Review stemmed from an incomplete knowledge about the Performance Review process. When we first met with union officials, they complained that there were "no articulated standards" for the identification of a deputy as a candidate for Performance Review. At that meeting we provided the union with a copy of the current criteria for identifying candidates, attached hereto as Appendix A. Union officials informed us that they had never previously seen the list of criteria, and had been unaware of what they were.

Once advised of those criteria, the union took the position that they were "absurd on their face" in significant part because the criteria rely upon incidents where the resolution of the underlying citizen's complaint was other than "founded." The union also objected to the fact that an employee whom the Department has discharged, but who was subsequently reinstated, would become a candidate for Performance Review based upon those circumstances. The union considered that action by the LASD to be punishment of the employee for appealing the discharge.

Our view is that the union is overly committed to keep its members from being placed on Performance Review. The LASD, in our judgment, is using prudent risk management techniques in considering all negative performance indicators and incidents, regardless of the Department's resolution of those incidents at the time. One of the principles of risk management is that patterns are telling, even if the facts of particular incidents that make up that pattern are not always established to the level that discipline can be imposed. For instance, a number of apparently credible allegations against a specific deputy—by complainants who have no apparent knowledge of each other—of being punched while handcuffed would merit intervention, even if each specific allegation, taken in isolation, had been deemed "unresolved." ALADS conflates Performance Review with the disciplinary process. Although it is inappropriate

to impose discipline for an unproven allegation, it may be appropriate, even prudent, to rely upon an unproven allegation to identify risk.

### **Selection Process**

The issues that ALADS raised concerning the selection process generally resulted either from its lack of agreement with or lack of understanding of the criteria. The union cited the case of Deputy K who was placed on Performance Review because he incurred approximately one dozen personnel complaints in one year. Later, most of the allegations were determined to be unfounded, but Deputy K remained on Performance Review. As stated above, one of the differences between risk management and discipline is that the former does not need to have every allegation proven for a risk manager to see a problematic pattern and take appropriate preventive action. The union may disagree with the entire concept of risk management, but most observers would conclude that it would be irresponsible for police managers not to take some precautionary steps concerning a law enforcement officer who had generated a number of complaints in one year that was both disproportionate to number of complaints generated by his fellow deputies and also quite large by any objective measure.

The union further objected to an unnamed deputy being placed on Performance Review for getting in a fight with another deputy. Suffice it to say that in many civilian employment situations, the employee found at fault for attacking another employee would be discharged and possibly prosecuted. Performance Review seems quite a measured response to such misconduct.

ALADS also alleges that some deputies are selected for Performance Review based upon their reputations rather than their performance. This complaint assumes, of course, that the deputy in question's reputation was not based upon the facts of his performance—an assumption that is theoretically possible but unlikely in as process—heavy an enterprise as Performance Review. The union provided no examples to support this allegation.

Further misperception stemmed from the union's lack of understanding

that a person who had been removed from Performance Review could again be identified by the criteria or be found to merit Performance Review for a second or third time. If an employee's behavior creates significant risk, the Department has a responsibility to respond to and attempt to lessen that identified risk. The fact that the employee in question had previously been found to engage in risk-prone activity is more, rather than less, of a reason for the Department to take action.

### **Deputy Involvement in the Selection Process**

ALADS advocates that deputies be allowed to be involved in the PRC meeting. While the union does not spell out its proposal, such involvement would inevitably create an adversarial proceeding that would be counter-productive to the Department's duty to manage risk. The Department has a responsibility to respond when employees are at risk of using excessive force or otherwise treating the public badly. A response such a Performance Review is not only a management prerogative, but a management responsibility. It is hard to see how that responsibility would be more effectively fulfilled by turning this corrective process into an adversarial one.

### **Performance Review as Punishment**

This complaint reflects the general perception of the union and many of its members that Performance Review is punishment for past conduct. There is no disputing that a LASD employee gets selected for Performance Review based upon less than optimum behavior. Performance Review is not a reward; it is an intervention to help mitigate risk and change behavior patterns. While most people do not enjoy being criticized, some see it as an opportunity to improve. Others resent it and deal with their resentment by trying to make those leveling the criticism wrong.

In a union-management context, it is little surprise that the union hears mainly, or even exclusively, from those who refuse to accept the criticism, no matter how well-intentioned and how effectively presented. A rare union,

which saw its responsibility to its members and to the community in an expansive and creative way, would try to help its members take constructive criticism constructively. But most unions take the position that their members are right no matter what. Thus, ALADS, while supporting the concept of Performance Review in the abstract, has apparently never seen LASD do anything positive in the process (or at least nothing it will admit). One is compelled to conclude, therefore, that the general criticism of Performance Review is more about the centrifugal forces that pull management and unions apart than it is about Performance Review as a process.

### **Discrimination in Selection**

Ms. Rinaldi alleged that the Performance Review selection process engaged in discrimination in favor of two groups: supervisors and women. With respect to supervisors, our review suggests that that criticism may be valid. The resolution of the PRC's discussion of Sergeant A at the April 30, 2002 meeting was overtly influenced by the fact that he had been promoted. The one person for whom senior management circumvented the process to remove from Performance Review was a sergeant. The handling of the case of the one captain to be profiled was hardly typical. Nonetheless, the types of interactions with the public that lead to candidacy for Performance Review are considerably more the province of line staff than supervisory staff. One would thus expect a predominance of persons on Performance Review to be deputies, as in fact is the case.

With respect to women, nine have been placed on Performance Review (one at the June 4, 2002 meeting) and six are currently under PRC supervision. We have not seen any evidence of efforts to avoid placing women on Performance Review.

## *IV. Conclusions and Recommendations*

We focus next on whether Performance Review, even with the flaws described above, has been a success. The difficulties we have described herein concerning the timeliness and execution of Performance Review cloud the picture and make a

definitive judgment difficult. A well-conceived process poorly executed may yield the same results as a flawed process well-executed. That being said, we conclude that Performance Review has been a success, at least in the sense that it is associated with reduction of risk. Finally, we list our recommendations for improvement.

Performance Review is a success if the appropriate test is whether the specific employees placed on Performance Review generate fewer high risk incidents during and after their time on Performance Review than they did in the three years prior to their placement on Performance Review.<sup>23</sup> The number of shootings, uses of force, citizen complaints, and administrative investigations for those employees is highest in the three years before Performance Review, drops significantly during the minimum two-year period in which the deputy is on Performance Review, and drops again, in all categories except for administrative investigations, in the period after the employee is off of Performance Review.<sup>24</sup> This is good news, but it nonetheless is only a partial answer and thus we need to set forth our reservations and caveats about our own conclusions.

We do not know for certain how many of the employees on Performance Review were temporarily or permanently reassigned to duties where they were less likely to use force or generate citizen complaints. If that number is high, then the decreases we note appear more dramatic than they really are because the pool likely to engage in such behavior is smaller at the beginning than at the end.<sup>25</sup>

<sup>23</sup> We reached these conclusions by taking a sample of 33 employees who went through Performance Review. The results of our test and our methodology are set forth at Appendix B hereto.

<sup>24</sup> We must emphasize that neither we nor the LASD contends that use of force per se is undesirable or that every shooting is questionable. The relevant question always is the appropriateness and necessity for lethal or non-lethal force in the particular circumstances. The assumption behind putting someone on Performance Review is that individual has engaged in actual misconduct or demonstrated a sizeable risk of potential misconduct. Individuals whose use of force has been frequent, but wholly correct and justified, should be culled out before placement on Performance Review.

<sup>25</sup> From a risk management perspective, keeping people who are placed on Performance Review out of risk-generating assignments makes sense. But it should not be lost that from a rehabilitative perspective, such individuals signify the system's failures. Ideally, an individual in a risk-generating assignment who goes on Performance Review should be retrained or redirected so that he might return to a risk-generating assignment but perform far better than he did before Performance Review.

In order to refine the analysis, we would need to set up a control group of officers on Performance Review who remained on the force and were not reassigned to less risk-prone duties to see what happened to them. It would also be useful to look at another control group of employees who met the initial criteria, but were not put on Performance Review, to see if their subsequent history showed that they engaged in more high risk behavior or less. And there is at least one additional test we would want to undertake: studying a group of employees whose conduct led to a key incident resulting in a substantial settlement or judgment, or termination or substantial discipline, to determine if the criteria used for Performance Review could have, or should have, identified them as candidates for Performance Review *before* the key incident. Accordingly, the best we can currently say is that Performance Review is associated with reduction of liability risk but not necessarily the cause of it.

Of the 165 individuals who were placed on Performance Review and were subsequently removed, 11 percent, or 18 individuals, were removed because they left the Department. Ten retired, six were discharged, one resigned, and one left for reasons that are unclear. Sixteen of the 18 departures occurred within 13 months of their initial placement on Performance Review and all 18 occurred within 20 months. The records we reviewed suggest that several of the retirements came about as a result of settlement agreements with the LASD and thus were in some sense forced or early retirements.<sup>26</sup> If we are correct, then it seems likely that there was an overlap between these individuals who were placed on Performance Review and individuals who were otherwise in serious difficulty with the Department. If so, then it is permissible to infer that Performance Review is identifying and capturing persons who pose significant liability risk. Whether they leave the LASD because of being put on Performance Review, or because they had other serious problems, or both, is beyond our capacity to say.

<sup>26</sup> Because our review was largely limited to the records of the Performance Review Committee, we cannot state specifically the number of retirements that were forced. We infer that there were several from suggestions or allusions to settlement agreements in the Performance Review documentation we looked at.



Performance Review is a valuable part of LASD's risk management strategy. Even with a modest investment of resources, it helps limit the risks to the citizenry and treasury of Los Angeles County and to the reputation of the Department. There are multiple ways, however, that the impact of the process can be enhanced. We recommend some of those ways:

1. Expand the resources and staff assigned to assist the Performance Review process.
2. Eliminate the backlog of profiles and produce subsequent profiles within two months of the PRC determining that they are needed.
3. Figure out ways for captains to buy-in to and support the Performance Review process-something that many, if not most, currently do not.
4. Hold captains, lieutenants, and sergeants more accountable for the behavior, misconduct, and poor service rendered by employees within their commands.
5. Re-order the priorities of the PRC so that management accountability is equal in importance to identification and monitoring of risk-prone performance of line staff.
6. Ensure that the monitoring of and follow-up with employees on Performance Review is credible, conscientious, and serves to have a structural effect on employees' poor performance.
7. Prevent any attempts to interfere in the functioning of the Performance Review process by senior management.

*Performance Review Committee Criteria for  
Identifying Potential Candidates*

**Automatic Candidates:**

- Any employee who the department has discharged, but the court or civil service ordered reinstatement
- Any employee who has received a demotion as part of a disciplinary process\*
- Any employee who has received a 20-day or more suspension\*
- Any employee who has been the subject of 2 or more **ICIB** investigations in the last 5 years
- Any employee who has been the subject of 1 founded investigation involving **false** statements in the last 5 years

\*Based on the proposed discipline in the intent letter.

**In The Last Three Years:**

- Any employee who has received 3 or more complaints involving **improper detention, search and arrest**
- Any employee who has received **2** or more complaints for **dishonesty**
- Any employee who has received **6** or more **significant** uses of force
- Any employee who has received **10** or more **less than significant** uses of force
- Any employee who has received **6** or more SCR **complaints**
- Any employee who has received **2** or more **founded** investigations involving:
  - Unnecessary use of force**
  - Use of firearms**
  - Alcohol use**

**Obedience to laws (insubordination)**

**Incompetence/performance to standards**

**Sexual harassment**

Which resulted in a recommendation for **moderate or long-term suspension**

- Any employee who has been involved in **2** or more **deputy involved shootings**
- Any employee who has been involved in **3 preventable** traffic collisions

Note: This criteria is dated May, 2001, and may be subject to modification.

## A P P E N D I X B

We have analyzed the tracked behavior of a sample of those who have completed Performance Review and determined that the process does have the desired effect on behavior, as set forth in the Table below. The rate (per month) of employee-involved shootings, reportable uses of force, personnel complaints and administrative investigations drops dramatically from the three-year period before departmental employees were placed on Performance Review to the period during which they were on Performance Review. The rate in all four PPI categories except administrative investigations continued to drop dramatically from the period during which employees were on Performance Review to the period after they had been removed from Performance Review.

<b>Rate per month of PPI Activity</b>			
Activity	3 Years Before PR	During PR	After PR
Employee-Involved Shootings	.50 n=18	.07 n=3	0 n=0
Reportable Uses of Force	7.11 n=256	3.00 n=122	.98 n=16
Personnel Complaints	3.86 n=139	2.09 n=85	.74 n=12
Administrative Investigations	1.92 n=69	.59 n=24	.80 n=13

With respect to employee-involved shootings, the incidence per month fell 86 percent from the three-year period before Performance Review to the period of Performance Review. And then for the period after Performance Review, it fell to zero.

With respect to reportable uses of force, the incidence per month fell 58 percent from before Performance Review to the period of Performance Review. And the rate fell 67 percent for the after-Performance Review period as compared to the during-Performance Review period.

With respect to personnel complaints the incidence per month fell 46 percent from the “before” period to the “during” period. The rate fell a further 65 percent from the “during” period to the “after” period.

Finally, with respect to administrative investigations the incidence per month fell 69 percent from the “before” period to the “during” period. But the rate reversed direction and rose 36 percent between the “during” period and the “after” period. Nevertheless, the “after” rate is still 58 percent lower than the “before” rate.

While there certainly are other variables at work in this chart—chief among them the redeployment of many of these 33 individuals, at various times after they had been placed on Performance Review, to assignments where they were less likely to be involved in these types of PPI activity—the declines are so dramatic that it is easy to conclude that the intervention is having the desired effect of reducing the rate at which all four PPI categories of activity are occurring. And to the extent that transfers, shift changes and other new assignments are responsible, in part, for these precipitous drops in the incidence of problem activities, the Department can justifiably claim credit for having taken actions that reduced the rates of shootings, uses of force, complaints and administrative investigations.

## **Methodology**

As of April 16, 2002, 165 LASD employees had been removed from Performance Review. Without purporting to conduct a scientific study we did not have the resources to do, we chose every fifth employee from an alphabetized list of the 165 employees removed from Performance Review, obtaining a sample of 34, or 21 percent, of those 165 cases. One of the 34 cases was not useful for these purposes because it involved an individual who is listed as having been on Performance Review because of the identification of management issues, but who was never actually placed on review. The sample was thus reduced to 33,

or 20 percent, of the 165 cases.<sup>27</sup>

The Sheriff's Department had provided us with PPIs, current to April 16, 2002, for those 33 individuals. We counted the number of employee-involved shootings, reportable uses of force, personnel complaints and administrative investigations (including operational vehicle investigations) for each of the 33 sample members for the following three time periods: (1) for the three years immediately preceding the date the sample member was placed on Performance Review; (2) for the period of time that the sample member was on Performance Review; and (3) from the date that the sample member was removed from Performance Review until April 16, 2002.

We then totaled the numbers for each of the three time periods for each of the four PPI categories. We divided each of those totals for the three time periods by the mean number of months that sample members had spent in each of those time periods. For the three-year period immediately preceding Performance Review, the mean length of time was the uniform 36 months that applied to all 33 sample members. The mean time those 33 individuals spent while on Performance Review was 40.73 months.<sup>28</sup> For the 26 members who did not leave Performance Review because they left the LASD, the mean time spent between removal and April 16, 2002 was 16.27 months.<sup>29</sup> We thus obtained a rate or incidence per month that allowed us to determine the relative frequency of these four types of PPI activity over different-length time periods.

<sup>27</sup> At the time they were placed on Performance Review all 33 of the sample members were deputies. By 2002 six had been promoted to Sergeant and at least three were detectives. Thus nine of 26, or 35 percent, of those who remained with LASD had advanced within the Department. This belies the concern that some have expressed that being placed on Performance Review has negative effects on an employee's career.

<sup>28</sup> Four of the 33—all of whom were discharged or retired—spent between nine and 12 months on Performance Review before they left the Department. The remaining 29 were relatively evenly distributed between 25 and 64 months. The median time on Performance Review was 31 months.

<sup>29</sup> For the post-Performance Review portion of the analysis only, we eliminated the seven sample members who left Performance Review because they left the Department. The 26 sample members who remained with the Department were removed from Performance Review between two and 32 months before April 16, 2002. We verified that all 26 were still with the Department as of April 16, 2002. The shorter and longer portions of the two to 32-month range were fairly equally represented, but only three sample members fell within the 10 to 20-month portion of the range. The median of 15 months was not far different than the mean of 16.27 months.

### **3 . L i t i g a t i o n**

This Chapter set forth our mid-year summary of LASD litigation for the six-month period July 1-December 31, 2001. The LASD tracks litigation on a fiscal year basis which runs from July 1 to June 30. Hence, we will shortly have in hand the results from fiscal year 2001-02 which we will report on fully in our next semiannual report.

For the six-month period under review here, the LASD received 130 new lawsuits of which 32 alleged excessive force by LASD personnel as the primary cause of action. The total docket of cases as of December 31 was 425, essentially the same as the previous total of 422 on June 30, 2001. The total amount paid in settlements and judgments for both lawsuits and claims in the period under review was \$4,001,110.91 of which approximately half, or \$2.076 million, related to excessive force.

Three cases in particular were of interest because of the disparity between the amount of the settlement and its rationale, on one hand, and the lack of any disciplinary action against the personnel who actions gave rise to the liability. Two of the three cases are included in the \$4 million referred to above. The third case, *Hunter*, will be included in fiscal 2002-03 statistics.

#### **Forsyth v. County of Los Angeles**

On September 29, 1997, a deputy from the Lakewood Station detained Mr. Forsyth as he was leaving a Wells Fargo Bank in Bellflower at one in the afternoon. Mr. Forsyth apparently matched the description provided by bank employees of a suspected check forger. Mr. Forsyth alleged that as the deputy was performing a pat-down search for weapons, he tried to explain to the deputy that he had recently had surgery on his right ankle and therefore could not spread his feet any farther apart, as the deputy was apparently asking that he do. Mr. Forsyth then claimed that the deputy refused to listen and kicked the inside of his ankles to spread his feet further apart. His medical records had objective findings of bruising on the inside of his previously injured right ankle

as well as a substantial reduction in range of motion in that ankle. His treating physicians testified that the findings were consistent with blunt force trauma of the type Mr. Forsyth alleged had occurred. A number of witnesses were prepared to testify that they spoke to Mr. Forsyth immediately afterwards and that he complained of being kicked on his right ankle, although none of them actually witnessed the event. The deputy denied using force on Mr. Forsyth. The injuries to Mr. Forsyth were such that he no longer can work as a truck driver and cannot stand for long periods of time or walk any extended distances. The County's lawyers believed that a jury could conclude that Mr. Forsyth was a victim of unreasonable force and recommended a settlement of \$500,000, calculating overall potential exposure at \$1 million. In addition to the settlement, the County also paid approximately \$200,000 in attorney's fees and \$15,000 in costs.

What we found particularly interesting about the case was the Corrective Action Report filed by the LASD in connection with the settlement. Therein, the Board was told that because the deputy had denied using force, there were conflicting accounts of the event and therefore the LASD could not substantiate whether the deputy committed any policy violations. Hence the deputy would not be subject to discipline. It is ironic and somewhat puzzling that the County's lawyers and the Board of Supervisors can judge the risk of loss to be sufficiently great to believe it to be in the best interests of the County to settle for \$500,000 and incur \$200,000 in attorney's fees but the LASD, on the other hand, is paralyzed from taking any disciplinary action against the deputy because it cannot figure out who to believe, the deputy or Mr. Forsyth.

The LASD enjoys the privilege to investigate and discipline its own employees. In several jurisdictions across the country, law enforcement agencies have lost that privilege because the community and civic leadership concluded that the agencies could not do so objectively and fairly because they bent over backwards to protect their own. The power to investigate misconduct



was given to a civilian review board or similar structure. Without saying that the LASD necessarily was wrong or biased because it could not decide whether Mr. Forsyth or the deputy was telling the truth, we nonetheless believe that the disparity in results between what happened in the litigation and what did not happen by way of discipline fuels the fire of those who would strip the Sheriff of the privilege of investigating and disciplining his own employees.

### **Ross v. County of Los Angeles**

In this case, two deputies from the Lennox Station pulled a car over at 11 pm on a January night in 2000. The driver, Carl Ross, and his passenger, Miriam Vickers, engaged in a verbal altercation which degenerated into a physical confrontation during which both Mr. Ross and Ms. Vickers received flashlight blows and applications of pepper spray. Ross was then arrested for battery on a police officer, a charge that the Deputy DA decided to dismiss because of the unlikelihood of being able to obtain a conviction. There were six independent witnesses who aligned themselves with the plaintiffs' version of the incident.

Ross sued for use of excessive force and violation of his civil rights. The County settled for \$387,300 and expended some \$60,000 in attorney's fees and costs. County counsel noted that the credibility of the deputies' version of the events "may become an issue" as a result of the six independent witnesses who aligned themselves with the plaintiff's version of the incident.

In its Corrective Action Plan, the LASD took note of the six independent witnesses and concluded that a jury was likely to render a verdict adverse to the County. Nonetheless, an internal investigation at the unit level concluded that the "use of force by the deputies was reasonable under the circumstances and within Department policy." Again, without necessarily saying that the LASD's internal investigation was flawed or biased, we note that the disparity in result between the settlement and the internal investigation will cause some to lose faith in the credibility and integrity of internal LASD investigations.

### **Candice Hunter, et al. v. County of Los Angeles**

At approximately midnight on March 12, 1998, two patrol deputies observed Mr. Hunter carrying a brown paper bag and decided to see whether he was drinking in public. As they approached him in the patrol car, one of the deputies fired a round at Mr. Hunter through the car's windshield. The deputy later contended that he thought Mr. Hunter might be trying to pull a gun from his waistband. The same deputy then fired another round his open driver's window as Mr. Hunter began to run. The passenger deputy pursued Mr. Hunter on foot, firing seven rounds, one of which struck the femoral artery in the back of Mr. Hunter's arm, causing massive blood loss and death four days later. County Counsel cited a number of reasons why it was wise to settle the case, including (i) that Mr. Hunter was shot in the back of his arm, facing away from the deputy and thus inferentially was not an immediate threat to the deputy who was firing at him; (ii) the firing of the shot through the windshield was questionable; and (iii) the deputies' story about Mr. Hunter possibly having a gun raised a number of issues that were hard to explain, including how Mr. Hunter could have tossed a gun with his left hand while still holding onto a paper bag in the same hand. Although a gun, a paper bag, and a bottle inside the paper bag were all recovered later, none had fingerprints, thereby raising the possibility that a jury might believe they had been planted. Accordingly, the case settled for \$1.097 million.

The Corrective Action plan noted that the Internal Affairs investigation concluded with a Departmental finding that the deputies had acted within LASD policy and practice when they used deadly force and that the LASD policies on the use of firearms and force were sufficient. Therefore, discipline was not imposed on either deputy. We did not specifically review the Internal Affairs investigation and thus have no view as to its thoroughness and objectivity. We wonder, however, if outside observers will have difficulty, as did we, squaring the reasoning and rationale for the settlement with the absence of discipline.

The existence of the Office of Independent Review should lessen the number of instances in which the results of litigation and the results of internal investigations point in such different directions. That will require a better feedback mechanism between litigation and the LASD's internal investigatory and disciplinary processes, a subject we address in greater detail in the next Chapter.



## 4 . Risk Management

The LASD does not make effective use of information developed in litigation to sharpen and augment internal administrative investigations of misconduct. As a result, the County has paid out millions of dollars in judgments and settlements in cases where no discipline is ever imposed against the employees causing the liability. The problem is not unique to Los Angeles County. The same predicament exists within the city of Los Angeles and in many jurisdictions throughout the United States. It is often not the fault of the law enforcement agency in question, and, in the case of the LASD, Sheriff Baca advocates opening up the County litigation files for risk management purposes. At the time of the 1992 **Kolts Report**, the predicament was largely a result of pressure by defense counsel on a compliant LASD to keep itself largely in the dark about litigation. As the Kolts recommendations took hold, the situation began to improve. But as we return to this topic ten years later, serious problems and impediments remain, most of them not of the Department's making, as this Chapter will demonstrate.

### *The Kolts Report*

In the **Kolts Report** of July 1992, we stated in Chapter 12 that “Sheriff Block has made clear to his Department that if it ever comes to a choice between imposing discipline on an erring officer or declining to do so out of fear of the consequences on litigation, the LASD is to choose to impose discipline.” At the time, the Sheriff's bright line stance was progressive and unprecedented. The more common position of law enforcement, heavily influenced by pressure from the lawyers who defend the police in court, was that it was folly to create a record in disciplinary proceedings that would serve as a roadmap for plaintiffs' lawyers in a subsequent or contemporaneous lawsuit. The **Kolts Report** disagreed with the commonly held view, noting what had been the adverse consequences of suppressing information within the LASD:

*“As a result, out of concern about a paper record, the LASD would often*

*delay administrative investigations of misconduct until litigation arising from that misconduct was over. By that time, the deputy in question may either have gotten into more trouble or the event may have receded so far into the past that discipline was no longer feasible or meaningful. This practice also had the unintended consequence of making it more difficult to defend litigation. Because there was no timely investigation, valuable testimony, names of witnesses, and evidence were at times forgotten or misplaced by the time the matter came to trial, perhaps forcing cases to settle that otherwise had meritorious defenses.”*

*If discipline is accomplished out in the open with speed, fairness, and integrity, the public perception that the police cannot police themselves will fade. If, on the other hand, a department suppresses bad facts about its officers, fails to investigate, and declines to impose discipline for fear of giving ammunition to plaintiffs, the reluctance of the police to police themselves creates a strong incentive for civilian oversight.”* **Kolts Report**, p. 193. (emphasis supplied).

The **Kolts Report** then considered internal conflicts within the LASD that had impeded implementation of Sheriff Block’s policy that pending litigation not distort or delay administrative investigations arising from the same incident.

First, we noted that “people who investigate possible misconduct can be the same people charged with developing evidence to defend the LASD in litigation arising from that misconduct.” *Id.* We were referring to LASD employees who assisted the lawyers in defense of a lawsuit and who, at the same time, had a duty to report misconduct or bad facts they unearthed to their superiors. It is difficult to play that dual role of defending to the hilt the plaintiff’s claims in a lawsuit, including the need to cast ambiguous facts in a favorable light, and, at the same time, report the same facts internally in a cold and objective way for purposes of discipline. Second, we noted that lawyers who defend the LASD often play similarly contrasting roles or are in the position to give possibly conflicting advice: We wondered whether lawyers “representing the LASD can strongly advocate terminating an officer for misconduct knowing at the same time that

the fact of termination may increase the exposure of the County in litigation arising from that misconduct.” *Id.* at 194.

Third, we adverted to the conflict that arises when the same lawyers agree to represent both the LASD and a deputy and then subsequently obtain information from the deputy indicating that he had engaged in conduct punishable by the LASD. We asked whether the lawyers ethically could or should keep that information from the LASD or continue to represent both the LASD and the deputy in question.

These tensions in 1992 between discipline and litigation continue in 2002. Despite Sheriff Baca’s efforts to encourage greater sharing of information between defense counsel, on one hand, and the Office of Independent Review and Internal Affairs, on the other hand, the pendulum seems to be swinging once again to the point where defense of the lawsuit at hand is blocking the flow of information for use in pending or contemplated administrative investigations and discipline.

Our views on this subject remain the same as we stated in **Kolts**. In the long run, the failure by the LASD to take the lessons learned from litigation and use them to correct behavior and internal policy will be more costly to the County than the short-term impact on the docket of cases: “If the Department is doing its job of increasing the integrity of its investigations and imposing discipline more widely and uniformly, there may be a rise in litigation over past misconduct and related judgments and settlements. It will take patience and statesmanship to recognize that the rise is a temporary phenomenon, a momentary unwelcome side effect of movement in the right direction.” *Id.* at 195.

At the time we wrote those words ten years ago, we underestimated the degree to which defense counsel are entrenched in a position shaped by a different, but understandable, perspective. For a given lawyer defending the LASD in a lawsuit, it is prejudicial to the case, and perhaps ultimately to the

lawyer's career, if the employee whose conduct is at issue is the subject of a thorough internal investigation and found guilty of administrative misconduct. The evidence developed administratively may become available to the plaintiff in the lawsuit, thereby increasing the County's exposure and making a settlement more costly. For lawyers concerned about their individual track record in litigation and their perceived effectiveness at minimizing judgments and settlements, there is an understandable tendency in these circumstances to want to keep the administrative investigation at bay or on ice so that the negative evidence is not developed. If each lawyer defending the County follows the essentially same strategy, then invariably the short-term litigation tactics trump a long-term risk management strategy.

What might make sense to a given lawyer defending a specific case does not make sense, however, for the County as a whole. In order to limit exposure in the long run, there needs to be immediate feedback between litigation and internal disciplinary and policy making functions. LASD employees who cost the County millions in liability are: (i) at best, faithfully following ill-conceived policy, procedures, or tactics, or (ii) in the middle case, are poorly trained or cannot function as they were trained to do, or (iii) at worst, engage in negligent, reckless, or intentional misconduct. Each lawsuit must be studied to determine the causes of liability or exposure. If policy must be changed, so be it. If employees must be retrained, so be it. But if they cannot be retrained or have engaged in negligent misconduct, then they should be disciplined. If that does not work, they should be reassigned to a position where they no longer pose the risk of misconduct (and not, as in some current Roman Catholic Church cases, simply shuffled around). If that is not feasible, they should be fired. But if they engaged in reckless or intentional misconduct, then they should be fired and possibly prosecuted if the facts merit and can be proven beyond a reasonable doubt.

To follow this strategy requires a decisionmaker to focus on the management



of risk in the long run and perhaps in the interim accept some losses. In the main, that is the natural perspective of the Board of Supervisors, which engaged us to help implement a long-term risk management strategy for the LASD and report publicly on its successes and failures. It is not the easiest perspective, however, for the given lawyer defending the specific case who often is at the same time counsel to the County and the Board as well, and who may feel the thrust of conflicting demands. At the same time, the lawyer and the LASD may feel themselves chastised for a costly settlement and simultaneously taken to task for not imposing discipline. While we appreciate and sympathize with the “damned if you do, damned if you don’t” position in which the LASD and defense counsel are occasionally thrust, that empathy does not extend so far as to justify forsaking a long-term risk management strategy.

### *The Kolts Recommendations to Manage Risk*

The thrust of the **Kolts Report** and its recommendations was to cause the LASD to do a better job of managing the risk of police misconduct. As to the communication of information about deputy performance, the heart of the **Kolts** recommendations was to create new pathways and unclog old channels, so that information bearing upon serious misconduct went directly and expeditiously to Internal Affairs, where it would be evaluated and used to further full and expeditious investigations. Equally importantly, the **Kolts** recommendations consciously were fashioned to create multiple, new, and even redundant sources of information. It is useful to review the different ways that **Kolts** intended that information should flow to Internal Affairs in order to appreciate how problematic it would be if feedback developed during the course of litigation was impeded or diverted.

**Kolts** first focused on the process for receipt and investigation of citizen’s complaints. The recommendations were intended to eliminate filters and screens that had previously kept adverse information about deputy performance

from the Department. The removal of impediments meant that the Department was then faced with a larger number and a more varied mix of complaints. More unrefined and possibly unreliable information and allegations made its way in, to the consternation of rank-and-file officers, who worried that they would be slandered by disgruntled individuals out to cause problems for cops. The increase in the number of complaints received also frustrated sergeants and lieutenants, who now had to investigate not only the serious and well-grounded complaint, but also the frivolous one as well.

As these **Kolts** recommendations were implemented, the Department and the Kolts team engaged in some fine-tuning to deal with the legitimate concerns and fears of rank-and-file officers and first and second level supervisors. The Department, with our assistance, created different rules and investigative tracks for relatively minor complaints, such as rudeness or discourtesy. Other rules were crafted for more serious complaints, such as excessive force or discriminatory law enforcement. Wholly different treatment was fashioned for complaints whose gravamen was service provided by the Department rather than performance by employees, such as a complaint about a speeding ticket grounded in an argument that the speed limit in question was too low.

Whereas minor complaints about performance or service would continue to be investigated at the station level, more serious complaints of force would be referred to Internal Affairs (IA), which would either keep the investigation or remand it to the station. The Kolts team reasoned that IA was likely to be more objective about complaints than supervisors at the station who would be put in the uncomfortable position of investigating officers they worked with every day.<sup>1</sup>

<sup>1</sup> The initial **Kolts** proposal was that every use of force would automatically be investigated by Internal Affairs. Because of LASD concerns about the size of the IA caseload if IA were to investigate every force allegation, Judge Kolts and the Sheriff, in the Joint Statement of January 1993, negotiated a compromise wherein all force cases above a defined threshold would be referred to Internal Affairs for a preliminary review. If any further investigation was warranted, it would automatically be performed by IA unless the Chief of the Professional Standards and Training Division directed otherwise. We have not recently examined whether these rules are still being enforced as they should, although we intend to do so for a future report. We note further, as explained later in this Chapter, that if any use of force generated any level of injury and was the subject of a citizen's complaint, an administrative claim, or a lawsuit, it would be investigated by Internal Affairs.

Categories for resolution of citizen complaints were modified so that the clearly frivolous and baseless complaint could be investigated more rapidly and disposed of by exonerating the employee in question. The net of these efforts was to give IA a wider array of complaints and allegations of misconduct to consider and act upon.

Whereas overhaul of the citizen's complaint procedures was designed to remove filters and impediments to information getting to the Department, and in particular to Internal Affairs, other **Kolts** recommendations sought to create new sources of information about deputy conduct and performance. Thus, for the first time, the Department required deputies to report to supervisors every time they used force above a certain minimal threshold. Supervisors then were obliged to evaluate the propriety of the force employed, and their conclusions were then reviewed up the chain of command.

If the force employed was of a kind likely to cause serious injury or be controversial or risky, the procedures for testing its propriety were more rigorous. New rules required supervisors to prepare thorough force review packages on mid-level applications of force. Even riskier and more serious uses of force—firearms, baton blows to the head—triggered an IA roll-out to the scene and an immediate preliminary Internal Affairs investigation. The Kolts team intended that these newly-created sources of information about use of force would serve dual purposes: (i) to identify misconduct at an early stage so that timely administrative proceedings could be had; and (ii) to create, over time, a rich trove of data for risk management and the formulation of improved training materials, as well as new strategic and tactical procedures and options.

Other **Kolts** recommendations were calculated to create feedback loops to transfer information that otherwise would not get communicated. For example, the lawyers who defended the County had detailed information about litigation involving the Sheriff's Department, including the identity of LASD employees who were repeatedly the subject of lawsuits. That information, however, did not make its way systematically to the Department and was not used for risk

management purposes. **Kolts** therefore recommended that the information be regularly provided to the LASD and tracked in an early warning system and thereby become available to IA, among others.

Still other **Kolts** recommendations were calculated to give the LASD greater responsibility for oversight of litigation and greater accountability for using it for internal risk management and investigative purposes.<sup>2</sup> The same force incident that gave rise to a citizen's complaint might also give rise to a claim, a lawsuit, an IA rollout, a determination by a Commander's Panel on use of force, an administrative inquiry, and possibly even a criminal investigation. Each of the foregoing would give the Department an independent opportunity to bring facts about a particular incident to light, albeit at different times and at different stages of various proceedings and from different perspectives.

Ultimately, **Kolts** envisioned that Internal Affairs would become the clearinghouse and repository of all the information about a given incident of possible police misconduct or risk. The Joint Statement of January 1993 between the Sheriff and Judge Kolts reflected the centrality of IA's role and envisioned that IA would be the primary investigative engine on all allegations that the force employed was wrongful:

*“If at any later time there is a citizen's complaint, an administrative claim, or a lawsuit arising out of any injurious force incident . . . such investigation will normally be performed by the Internal Affairs Bureau.”*

The **Kolts** recommendations and the Joint Statement then further contemplated that the LASD would consolidate under one Chief a set of related functions bearing on risk so that information could be consolidated and analyzed, and then dispersed, efficiently and purposefully. Hence, the Division called “Professional Standards and Training Division,” or PSTD, was formed as a specific vehicle for implementation of the **Kolts** recommendations.

<sup>2</sup> There remain some lapses in getting information about who has been sued into the system. Currently, even if an individual is named in a lawsuit, his name is not entered into the PPI tracking system until he is actually served. We are uncertain whether *Doe* defendants, when named or when later served, get into the PPI litigation module.

PSTD was the hub in a carefully constructed hub-and-spoke system. For the first time, IA, the Internal Criminal Investigations Bureau, the Risk Management Bureau (including its Civil Litigation unit), and the Training Academy all reported to a single Chief. Loops were set up so that each of the bureaus and units could interact and bring its particular viewpoint and expertise to bear. A key element in this plan was to bring information developed in pending litigation into PSTD at an early stage. It is useful to explain why so much importance was placed on information developed in litigation.

Often, with regard to an instance or allegation of police misconduct, it is litigation that produces the fullest record. Until a matter gets to court, all other ways of looking at and making judgments about an incident—the citizen’s complaint, the claim, the force review, the administrative investigation—are substantially, if not in effect entirely, internal to the LASD.<sup>3</sup> As a given within the LASD, or any other large bureaucracy for that matter, inertia weighs heavily on the side of disposing of a matter quickly and moving on; otherwise, time and resources and effort will have to be expended. Without suggesting that bias necessarily creeps in, we nonetheless recognize that objectivity is harder to achieve and repeat, case after case, in a closed environment where information is evaluated only by LASD personnel themselves.<sup>4</sup>

Litigation, on the other hand, introduces new players with very different motivations. There is a strong incentive, certainly on the part of the plaintiff, to dig deeply and generate more detailed and critical information. The civil discovery process, including the taking of depositions and the production of

<sup>3</sup> The creation of the Office of Independent Review, or OIR, was premised in part on providing an additional perspective on the investigation and resolution of the complaint, claim, or administrative proceeding.

<sup>4</sup> Recognizing this, the **Kolts** recommendations also envisioned that other sets of eyes and ears from outside the LASD would be useful at an earlier stage. Hence, the recommendations for an ombudsman were made so that a citizen who was aggrieved with the disposition of a complaint might have recourse to an independent and neutral individual empowered to facilitate a more thorough and objective internal LASD investigation, if warranted. The first ombudsman, Rudy De Leon, recently retired and has been replaced by Robert Taylor, formerly a senior executive in the LAPD. The same reasoning would later apply with respect to our strong support of the concept of the Office of Independent Review or OIR.

documents, provides even more opportunity for factual development. Cross-examination, heralded as the greatest engine for ascertaining the truth yet devised, is available in deposition as well as trial settings. If information exists, litigation is the likeliest vehicle to ferret it out.

Accordingly, the **Kolts** recommendations placed particular importance on uncluttered and rapid feedback of information from pending and concluded litigation to the Department for at least two purposes: first, to better calibrate exposure and inform decisions whether to settle cases or take them to trial, and second, to give fresh information to IA for pending or contemplated internal investigations.

### *Better Informed Decisions About Litigation*

As to the first purpose, the **Kolts** recommendations were calculated to make the LASD more responsible and accountable for litigation. Instead of grumbling from the outside about lawyers and professing ignorance or an inability to control how much litigation was costing, the LASD would be brought on the inside and given increased (although not sole) responsibility to select counsel, to oversee and manage litigation, to weigh in on tactical decisions, to track litigation costs, and to bear the burden of justification to the Board of Supervisors and the tax-payers of Los Angeles County. A few years ago, the LASD took its role in helping to select outside counsel seriously. It looked at the track record of some 27 law firms that were then providing services to the County and pared the list down to six law firms that were performing best, according to a former manager who supervised the unit. The LASD continued to track their performance in terms of the skill and efficiency they brought to bear on the litigation assigned them.<sup>5</sup>

<sup>5</sup> The LASD list of approved counsel has since expanded, and there are those in the LASD who see the additions to the list in the last couple of years as more reflective of personal and political relationships than litigation skill. Those same persons believe that the result has been costlier settlements and less efficient representation.

In Los Angeles County, the Board of Supervisors must approve all significant settlements. Money to pay for them comes from the County's coffers or from funds put up by the contract cities.<sup>6</sup>

### *Better Information for Investigatory Purposes*

As to the second goal, the **Kolts** recommendations sought to require the LASD, and in particular its Internal Affairs and Risk Management Bureaus, to affirmatively receive, consider, and act upon information developed in litigation. The roles played by the two bureaus, as envisioned by **Kolts**, differed in emphasis and perspective. Since each of the two bureaus reported to the same Chief under the PSTD model, that Chief would be able to appreciate, learn from, and formulate policy based upon both perspectives.

As **Kolts** and the LASD at the time saw it, it fell to Risk Management to perform two distinct functions: (i) use the information developed in litigation so that the LASD could better oversee lawsuits and participate in the tactical and strategic issues raised by the litigation, and (ii) use the information so that risk managers could better determine if corrective action, changes of policy, new tactical or strategic options, different procedures, or new or different training should be implemented to lower future risk and exposure from similar incidents.

<sup>6</sup> Some have argued that the only way to give an incentive to the LASD to be serious about employee misconduct is to make the LASD pay for it directly out funds it has on hand that were allocated for other purposes – in LASD parlance, “take it out of hide.” Although we have always acknowledged the force of such arguments, we have also had reservations about the practical and political consequences of leaving the Board and the LASD open to possible criticism that public safety was allowed to deteriorate because funds earmarked for law enforcement were diverted to pay plaintiffs. Hence, the recommendations we have made were fashioned to heighten the Department's accountability for judgments and settlements without necessarily saddling the Department with the entire burden. The shared responsibility of the LASD with the Board of Supervisors is, of course, not problem-free. Those who are cynical point out that it encourages finger pointing and blame-shifting whenever a large settlement is up for consideration: the Board blames the Sheriff for creating liability, the Sheriff blames the lawyers for an inadequate defense, and the lawyers then have to convince the Board how good a job they did settling for a sum that would have been even higher had they not brought their skills to bear before the jury was exposed to how really bad the facts were. The more optimistic and positive way to look at it is that there is a useful discussion in which the Board and the LASD explore corrective action and hopefully come to a mutual understanding of how to avoid future incidents that create similar liability risks.

It fell to Internal Affairs to take the information developed in litigation also for at least two different purposes: (i) to provide additional evidence, witnesses, and documentation to support or refute allegations in pending IA investigations, and (ii) to get notice of possible misconduct that had theretofore not come to light or led to the opening of an administrative investigation.

The tensions and conflicts alluded to earlier between defending the LASD in litigation and prosecuting misconduct internally prevented both Risk Management and IA from being able to fully implement what **Kolts** envisioned. Our present concern is that the situation has begun to deteriorate from the level of implementation previously achieved.

In particular, we are worried about possible pocketing of information developed in litigation that reflects negatively on deputy performance and which should be considered in an already pending Internal Affairs investigation or cause IA to open a new one. In the normal course, as outlined above, information from counsel to the LASD should flow with equal speed and efficiency into two streams. The first stream, which involves the relaying of information from the lawyers to members of the LASD's Civil Litigation Unit, has at times flowed reasonably well, then at times has been abruptly shut down, and most recently has been turned back on. At the very minimum, selected pieces of information bearing negatively on deputy performance or a more general message that the "facts are bad" gets communicated so that LASD executives and the Board of Supervisors can understand, accept, and ultimately support counsel's recommendation to settle a case.

But the second stream, involving the relay of information directly or indirectly from the lawyers to Internal Affairs, does not appear to flow at all. Whether it ever did is questionable.

In addition to the different perspective of defense counsel, there are additional, understandable—though not entirely convincing—reasons why communication of negative information to IA might put lawyers between an



ethical rock and a moral hard place. If the same lawyer jointly represents the deputy and the County, and *the lawyer fails to obtain advance written consent from both clients to waive the conflicts that might arise at a later time*, ethical problems could arise. More specifically, a lawyer has an ethical obligation to explain to each client that information learned from one cannot be shielded from the other. In other words, what the lawyer learns from the deputy can be communicated to the County and the LASD without limitation as to use and vice-versa. The client's acknowledgment that he or she understands that specific risk and nonetheless consents to joint representation should be in writing.

Moreover, a lawyer cannot simultaneously and ethically represent two clients if the interests of one client run counter to the interest of another. For that reason, the California Rules of Professional Conduct require that an attorney "obtain each client's **informed written consent** before accepting representation of more than one client in a matter in which the interests of potentially conflict." *Zador Corporation v. C.K. Kwan*, 31 Cal.App.4th 1285, 1295; 37 Cal.Rptr.2d 754, 759 (1995)(emphasis supplied); California Rules of Professional Conduct, Rule 3-310(C)(1).<sup>7</sup>

Efforts to forge a stronger link so that information gleaned from the lawyer representing both the County and the deputy is regularly passed on to IA have, to date, been strongly rebuffed by counsel, in part on the grounds that any other result would be unsatisfactory because deputies would thereafter always demand separate representation and refuse to speak when asked questions by the LASD or the County's lawyers. Separate representation, so the argument

<sup>7</sup> It is therefore common and accepted best practice for lawyers to require each client jointly represented to sign a "conflicts letter." The letter spells out in detail the advantages and disadvantages of joint representation and contains a knowing, informed waiver by each client of rights or privileges each might have if separately represented. For example, in *Zador*, both clients were told that "multiple representation... involves significant risks. First, multiple representation may result in divided or at least shared attorney-client loyalties...[I]t is possible that issues may arise as to which our representation of you may be materially limited by our representation of the Co-Defendants... Moreover, pursuant to this 'Joint Counsel' arrangement, anything you disclose to us may be disclosed to any of the other jointly represented clients." *Zador*, supra, 31 Cal.App.4th at 1289,90; 37 Cal.Rptr.2d at 756.

goes, could lead to greater expense,<sup>8</sup> greater formality, and, in theory, would deprive the Department and County of important information bearing on the extent of liability and exposure.

The argument is unpersuasive because, among other things, it fails to account for the LASD's power to compel the deputy to talk. There is no question that the Department has the legal authority to compel the employee to talk upon pain of losing his job. But it is not an easy path to take. There could be adverse consequences down the line. First, the compelled statement might complicate any possible criminal prosecution of the officer at a later time: For Fifth Amendment purposes, the prosecutor may not use the compelled statement or any leads derived from it as evidence to convict the deputy. Second, if the compelled statement contains admissions of wrongdoing on the deputy's part, or if the deputy is found to have made false or misleading statements in earlier reports or disclosures to the Department, the deputy's usefulness as a witness in future criminal cases may be diminished because the negative information about the deputy, bearing on his credibility and honesty, might have to be disclosed to counsel for the criminal defendant. Additionally, if the Department were to find that the deputy indeed made false and misleading statements, but continued to employ the deputy, the founded investigation might have to be disclosed to the plaintiff in future civil litigation involving the deputy's conduct. Finally, there is no guarantee that the deputy will relate the same facts in a compelled statement that he might more willingly entrust to his personal lawyer.

On balance, even with these potential risks, we believe a fundamental change in the rules of the game is justified. We see no persuasive reason, either practical or theoretical, why a given employee should not be required to provide a written

<sup>8</sup> We say that separate representation "could" lead to greater expense because it is not necessarily the case that the County has to pay for separate counsel. Once a potential conflict is explained to the employee, the employee may waive the conflict and accept representation by the County's lawyer or refuse to waive it and get separate representation at the employee's own expense. *City of Huntington Beach v. Peterson Law Firm*, 95 Cal.App.4th 562 (2002).

waiver of conflicts and the attorney-client privilege in exchange for free representation by the County. Nor are we persuaded that the County would necessarily have to pay for a lawyer for the employee if the waiver were not forthcoming and separate counsel were demanded. Nor do we believe that the risks outweigh the benefits in compelling a statement from the employee in the event the employee insists on separate counsel and then refuses to talk to the LASD or the County's lawyers. But that is certainly not how it works today.

As a result of all the factors described in this chapter to date, the odds are stacked against Internal Affairs receiving information from pending litigation in a timely fashion to use for administrative investigations.<sup>9</sup> Nor, for that matter, does Internal Affairs aggressively seek it out. Neither is Internal Affairs held responsible or accountable for ferreting it out by insisting, as the Joint Statement of 1993 contemplated, that Internal Affairs must normally do the job of investigating the validity of claims and lawsuits filed against the County for conduct of LASD employees.<sup>10</sup>

Even though the Sheriff himself has encouraged the sharing of information, the breakup of the Professional Standards and Training Division (PSTD) in the last three years has made the Sheriff's goal somewhat more difficult to achieve. We are not saying that PSTD ever functioned perfectly, and we certainly are not trying to draw an invidious comparison between Sheriffs Block and Baca. But as noted earlier, the theory behind the creation of the Division was to put under one Chief all the functions that bore upon risk management and discipline. The functions have now been separated.

<sup>9</sup> The Office of Independent Review has been frustrated in its own efforts to get the information either for its own purposes or in aid of its responsibilities to Internal Affairs or to the Board of Supervisors.

<sup>10</sup> It is difficult to get Internal Affairs in the LASD, or in other law enforcement agencies for that matter, to be active rather than reactive. First, the existing caseload may be sufficiently heavy so as to discourage efforts to find even more to do. Second, IA may have inadequate resources to do it in any event. Third, IA is already unpopular and demonized in the rank-and-file, and an aggressive, proactive IA would be seen as even a greater threat. It takes strong backing and commitment from the top of the law enforcement agency to move internal affairs bureaus into more self-initiated investigatory activity.

Internal Affairs has been detached and reports directly to the Undersheriff. For a number of reasons, including budgetary considerations, the Risk Management Bureau has been degraded and gradually stripped of personnel. Its role has been redefined so that it currently functions more like clerks and paralegals for County lawyers than as an independent, freestanding unit affirmatively tasked with identifying and managing risk. The Civil Litigation Unit, which comprises the lion's share of the remaining Risk Management Bureau, perhaps because of the close working relationship with County Counsel, tends to have a defense-oriented view of litigation and in this sense does not function effectively in a wider risk management role. Corrective action plans, which the Board has required in connection with large settlements, have become sterile and rote: a bureaucratic hurdle to get over rather than an occasion for serious policy reform or imposition of discipline.

The bottom line, at least from our perspective, is that litigation, which is the vehicle most likely to produce dependable, undistorted information through the adversarial process,<sup>11</sup> is not in the loop. We see this as unfortunate and as an impediment to an effective risk management strategy.<sup>12</sup> Again, we emphasize that the principal problem is that the flow of information from litigation to

<sup>11</sup> We are not saying that plaintiffs are always truthful and that litigation always produces fair and objective results. To be clear, we do at base believe that the adversarial process, in which each side admittedly competes for advantage and presents the facts in a one-sided way to put their respective clients in a favorable light, nonetheless, at the end of the day, produces results that come closest to revealing truth as judges and juries weigh evidence and arguments. For reasons stated earlier, inertia, a tendency to be protective of one's own, and conflicting loyalties tend to make internal investigations a shade or two less likely to reveal truth. It is for these reasons, among others, that there is a need for independent review, as currently provided in the LASD by the OIR, the Office of Independent Review.

<sup>12</sup> Although a public entity like the County is a very different animal from a private corporation, it is worth noting how nonsensical the County's situation is from the perspective of lawyers who represent companies in private practice. A central role of counsel in a private company is to immediately bring developments in litigation to the attention of senior management so that senior management knows its exposure and risk. A company wants to know right away if it is dealing with a "bad apple" or has a policy or practice that is creating unnecessary risk. Indeed, an unwillingness or reluctance to ferret out the information might expose senior management or the company to punitive damages in the future. A lawyer who counseled a client not to conduct a full and thorough internal investigation would soon lose that client. From the risk management perspective of a private company, the situation where the Civil Litigation Unit does not automatically share bad facts with IA, and where the transfer of such information is frustrated by the County lawyers, seems strange indeed, particularly if the LASD consents to keep itself willfully ignorant. The view that "if you don't know, the plaintiff can't find out" is not only wrong, but dangerous for the LASD and the County.

Internal Affairs, which even under PSTD did not flow well, continues to be clogged, despite the Sheriff's best efforts. The breakup of PSTD means that if the information ever really starts to flow, structures put in place to use it most efficiently and in all the right places will not be there to receive it.

It also means that the Board of Supervisors will continue to experience the frustration that arises when the Board is called upon to approve a hefty settlement and learns that the deputies who were responsible were never investigated or, if they were, that the investigations were half-hearted, biased, or did not lead to significant discipline.

That in turn puts more pressure on Internal Affairs and the Office of Independent Review to produce more thorough and fair investigations in the first instance, although with only a fraction of the relevant information available to them if they cannot have access to the litigation.<sup>13</sup> Much of what **Kolts** is all about is intended to bring greater rigor and integrity to internal investigations. We think, however, that it ties one hand behind IA's back when it and the OIR are not allowed to be in the loop on information developed in litigation, despite Sheriff Baca's desire to the contrary. Similarly, the continuing downgrading of PSTD, with its former functions being splintered and reassigned, has been a negative development. Thoughtfully constructed links of data, responsibility, and accountability have been severed, without, we believe, a full appreciation of the adverse consequences on risk management.

This, in turn, brings us back full circle to the quotes from the **Kolts Report** at the start of this chapter. Whether it ever really happened in fact (as contrasted to an expression of an ideal) in 1993, the LASD committed that the integrity, forcefulness, and timeliness of the internal disciplinary process would not be undermined by concerns about its impact upon litigation. PSTD was structured to help bring that about.

<sup>13</sup> The OIR is taking concrete steps currently to improve the LASD's investigations of claims and lawsuits. We give strong encouragement and support to the OIR in its efforts to do so. OIR is currently reviewing complaints in newly-filed lawsuits and will soon begin to review claims.

This is not to imply that Sheriff Baca and his senior executives have a different view or are any less committed. The Sheriff's backing of the OIR and its right of access to information about litigation is reflective of a commitment to the integrity of internal investigations and the disciplinary process.

Nonetheless, for reasons of budget, or because the LASD faces more compelling and different challenges, or feels it needs to focus more directly elsewhere, risk management, as such, has degraded. Here, we are not talking merely of the stripping of the Risk Management Unit itself of personnel and responsibility. We are talking more generally about the LASD's commitment to accountability and affirmative management of the risk of misconduct.

This is not good for the County. If the management of the risk of police misconduct is less rigorous, potential exposure rises, and the eventual liability will cost the taxpayers dearly; not a happy prospect in an era where tax revenues and other sources of income to fund for basic County services are uncertain and tight. Even more importantly, perhaps, is that a failure effectively to manage the risk means that there will be more unnecessary and controversial incidents that abrade the relationships between the LASD and the communities it serves. The abrasion in turn undermines community policing efforts and the establishment of trust and cooperation with the police, unleashing anger and resentment or, as we saw in Cincinnati last year, even worse consequences.

The impetus for the **Kolts Report** in the first place was four controversial shootings of minorities in the summer of 1991, their potential to generate civil unrest, and an alarming rise over the previous few years in the cost of judgments and settlements. The civil unrest in Los Angeles in April 1992 following the Rodney King verdicts occurred in the middle of the Kolts investigation. They underscored our view that police misconduct, if unaddressed, quickly corrodes public trust and can instill resentments and anger that not only impedes law enforcement, because people refuse to cooperate or give information to the police, but also puts the men and women in the front lines of law enforcement

at greater risk of death or injury. We are concerned that the affirmative management of the risk of employee misconduct and internal accountability for doing so are no longer as highly important in the LASD.<sup>14</sup> And to the extent that the LASD could benefit from OIR's greater access to litigation files, the Sheriff's desires to bring that about have been frustrated.

This conclusion, however, is not in any way intended to denigrate or dismiss good faith efforts by various chiefs, commanders, and captains to learn about and take affirmative steps to manage the risk of employee misconduct. Throughout this Report, we have cited examples of such with approval, including the efforts of the Chief and Commanders in Region I, the ongoing efforts at the Temple Station, and ongoing attempts by the Captain at Century Station to understand the use of force generally and officer-involved shootings in particular.

Nonetheless, by devolving responsibility downward, by stripping important units of staff and resources, by dismantling PSTD and redistributing its functions and perhaps unintentionally disrupting carefully planned internal communication networks, and by emphasizing other goals and programs, the senior management in the LASD has sent messages about the relative importance of accountability for affirmatively managing potential misconduct and dealing with actual misconduct. When the performance review process is effectively shut down for nearly two years and has a substantial backlog even with truncated and incomplete reviews, as we demonstrate in our chapter on that subject, the message about the relative unimportance of performance review is not lost.

Likewise, when it takes the LASD weeks to construct reports that used to be available instantaneously on use of force, it says a lot about the relative unimportance of that data to Department executives currently. When we and

<sup>14</sup> As is always the case, everything is relative. Even though the LASD is marching backwards, it is nonetheless still at a level of sophistication with respect to risk management that few other law enforcement agencies can claim. But the LASD has been and should be again better in this area than it is today, and the stakes are high indeed — and not only in terms of money.

OIR are the only ones seemingly asking probing questions about deputies involved in multiple shootings such that the data on the topic needs to be unpacked, cleaned up, and unscrambled for a couple of weeks before we can get an answer, there has obviously been a message sent about how important it is to have the answer at one's fingertips.

The Board created our job as Special Counsel to monitor implementation of the risk management strategy and to let the Board know whether it was effective. We would therefore be remiss in our duty to the Board if we failed to share our current concern that risk management within the LASD, as a whole, has slackened and is not as effective or rigorous as it once was or again should be. Similarly, we would be remiss if we failed to share our concerns that the County is paying millions of dollars in judgments and settlements in cases where no discipline is ever imposed against the employees causing the liability.



## 5 . The Canine Unit

In the main, the LASD's Canine Unit is a professional and polished group of handlers and supervisors. It has become so steadily over the last twelve years, particularly in connection with the efforts of Chief Ken Bayless, Commanders Cavanaugh and Kramer, and Captain Mike Bauer and the implementation of the Kolts recommendations began in the mid-1990's. The LASD's Canine Unit enjoys a national reputation, and its procedures and track record are frequently cited as models. Our last thorough review of the LASD's Canine Unit took place in connection with our June 2000 **Twelfth Semiannual Report**. There, we reported concern with a rise in the bite ratio for 1999 to 17 percent.<sup>1</sup> It is therefore comforting to be able to report that the bite ratio dropped in 2000 to 12.5 percent and dropped again in 2001 to 11.9 percent. On the other hand, we have some concern that in 2002 through June, the rate has risen again to 16.7 percent— 13 bites out of 78 apprehensions or finds. We hasten to point out, however, that our concerns are at the margins—the question being whether in any given year a relatively small number of bites could have been avoided or were unnecessary.

Over the last couple of years, there has been some greater experimentation and loosening of tight restrictions that were placed on the Canine Unit through the latter half of the 1990's in response to alarming numbers of bites and associated liability in the late 1980's and early 1990's. As Table One shows, the number of bites per year slowly declined from 1991 to 1995, drifting downward from 58 bites in 1991 to 31 bites in 1995. So too did the bite ratio, from 27 percent in 1991 to 20 percent in 1995. Deployments, also, declined,

<sup>1</sup> The "bite ratio" is the number of apprehensions accomplished by means of a dog bite divided by the number of apprehensions (both with and without a bite) by the canine team. In order to get a true and accurate bite ratio, it is necessary that apprehensions be defined with care. Police agencies that wish to create a false impression that the bite ratio is low sometimes accomplish this by inflating the number of apprehensions in which they claim a canine was used. To count as an apprehension, the dog should be actively deployed and have played a clear and well-documented role in the capture of the suspect. The mere presence of a canine at the site of an arrest should not count. Nor should an instance where a leashed dog merely performs a tracking search. On the other hand, it should count as an apprehension for purposes of calculating the bite ratio when a leashed or unleashed dog locates a suspect and holds him at bay, bites, or otherwise actively assists the officers to bring the suspect under control. If a suspect is confronted with a leashed dog and advised to give himself up or else the dog will be released, and the suspect then promptly gives up, we count the event as an apprehension. On the other hand, if the warning is given but the suspect is later arrested independent of the warning and the presence of the dog, the event should not count.

## Canine Statistics

Year	Deployments	Finds	Bites	Ratio	Ethnicity	
1991	1228	213	58	27%	African-American	23
					Latino	24
					Anglo	9
					Other	2
1992	1030	225	51	22%	African-American	13
					Latino	30
					Anglo	6
					Other	2
1993	940	179	42	23%	African-American	22
					Latino	13
					Anglo	6
					Other	1
1994	921	183	45	24%	African-American	19
					Latino	18
					Anglo	7
					Other	1
1995	840	151	31	20%	African-American	14
					Latino	12
					Anglo	3
					Other	2
1996	708	121	15	12%	African-American	5
					Latino	9
					Anglo	0
					Other	1
1997	734	115	10	8.7%	African-American	3
					Latino	6
					Anglo	1
					Other	0
1998	626	84	7	8.3%	African-American	1
					Latino	5
					Anglo	1
					Other	0
1999	539	88	15	17%	African-American	7
					Latino	8
					Anglo	0
					Other	0
2000	569	152	19	12.5%	African-American	6
					Latino	10
					Anglo	2
					Other	1
2001	680	185	22	11.9%	African-American	8
					Latino	10
					Anglo	2
					Other	2

from a high in 1991 or 1228 to 840 in 1995.

The dramatic change, however, came in 1996. Deployments dropped to 708, the number of bites plummeted to 15, and the bite ratio dropped to 12 percent. In the following years, 1997 and 1998, the steep declines continued, reaching a low of 7 bites and an 8.3 bite ratio in 1998.

The dramatic drops in bites and the bite ratio can be traced to a narrowed deployment policy that discouraged or banned searches likely to lead to controversial bites. For example, because of elevated risks of biting joy-riding juveniles, deployment of canines on auto theft suspects was banned, eliminating about 25 percent of canine deployments based upon historical patterns. In addition, handlers were strongly advised to keep in visual contact with the dog. Management required that the handlers report the distance of the dog from the handler at the point of apprehension, and there was implied, if not explicit, criticism of instances where the dog was farther from the handler than was necessary for officer safety or tactical considerations.

Management required that handlers report the length of time the dog held the bite, and if the suspect gave a different estimate, that too was put in the report. The captain and lieutenant focused attention on individual handlers whose dogs generated a higher percentage of bites than others, and handlers who had generated controversy, high bite ratios, or repeated litigation were encouraged to move elsewhere in the LASD or were subject to more rigorous scrutiny. New handlers were brought to the Unit, and a sustained effort to inculcate the new norms and culture was mounted.

In 1999, as the Baca administration in the LASD took over, this panoply of tight restrictions on the Canine Unit received fresh scrutiny, although in the main strong oversight and focused attention on handler performance has remained. Much of the pressure to ease deployment restrictions came from the handlers themselves, and, as a result, they regained authority in April 1999 to search again for suspects wanted for auto theft, albeit with restrictions that had not existed previously to reduce the risk that juveniles would be bit.

More recently, the management's attitudes about searches have shifted a nuance or two. Whereas three years ago handlers apparently felt a palpable risk of being second-guessed or subject to criticism for how a search was performed, today handlers apparently believe that their exercise of discretion about how to search will be afforded a greater presumption of correctness by management. Similarly, wider latitude and a fuller presumption of appropriateness are afforded to the exercise of handler discretion about keeping the dog in sight and judging the best distance to maintain between the handler and the dog. Although by no means exempt from meaningful scrutiny, handlers are currently afforded, or at least perceive themselves to be afforded, more respect.

In addition, over the last year or so, there has been some redefining of exactly what the LASD training methodology or technique should be called. A few years ago, there was no doubt that if asked, management of the LASD Canine Unit would say that it mandated a "guard and bark" technique. Today, the operating philosophy is called "handler control" and the Unit's lieutenant uses the term "handler control" and "find and bite" and "guard and bark" essentially interchangeably. Because of the importance of the distinction between "find and bite" and "guard and bark,"<sup>2</sup> and because "guard and bark" has been adopted as the recommended national standard by the International Association of Chiefs of Police (IACP), the most authoritative policy-making body in contemporary policing, and further because a number of federal consent decrees and settlement agreements require "guard and bark," it is useful to focus on this issue in greater detail.

### *"Guard and Bark" versus "Find and Bite"*

The principal supplier and trainer of police dogs for the LASD and a number of other police agencies is David Reaver at Adlerhorst Kennels in Riverside, California. Reaver trains the dogs in "guard and bark" and claims

<sup>2</sup> "Guard and bark" and "find and bark" and the "revere" method are synonymous.

that properly employed, a handler can control if and when a dog bites nine out of ten times. The essential difference between “find and bite” and “guard and bark” is that under the latter technique, the dog can be trained to refrain from biting a suspect after the dog has shown it is aware of the suspect’s presence. A dog demonstrates that it has perceived the presence of a living being by “alerting”—either by barking or through other movement or behavior understood by its handler. At that point, under a “guard and bark” methodology, the handler of a well-trained dog can recall the dog before it bites, or order it to stand guard, or order it to bite. But even a well-trained dog standing guard will bite if the suspect makes a gesture the dog interprets as threatening, moves suddenly, or tries to flee. Because many suspects, confronted with a police dog, attempt to ward off the dog or move, the distinction between “find and bite” and “guard and bark” collapses and the end result under either methodology is a bite.

Because the distinction is essentially meaningless in those cases, some handlers or trainers tend to downplay the significance of the label of “guard and bark” and “find and bite” and focus greater attention on handler control or training. Essentially, they argue that what is critical is the degree of control the handler exercises over the dog and whether it is the dog or the handler that makes the decision if and when the dog will bite. If David Reaver is correct that the handler of a well-trained dog can achieve a 90 percent success rate in exercising such control, then perhaps it makes sense to think of “find and bite” and “guard and bark” not as a bright line distinction between two radically different methodologies but rather as a continuum of handler control.<sup>3</sup> In other words, a law enforcement agency that does not put emphasis in training or practice on strict handler control of the dog to restrain it from avoidable or unnecessary bites will be seen at the “find and bite” end of the spectrum.

<sup>3</sup> Although handlers do not dispute the Reaver claim that the handler can control when and if the dog bites 90 percent of the time, they point out that those rates are achieved in training exercises at the kennel and cannot necessarily be translated to actual experience in the field.

Conversely, a law enforcement agency that insists that handlers exert maximum control of a dog between an alert and a bite will be seen at the “guard and bark” end of the spectrum. In this sense, “guard and bark” becomes analogous to strict control of both handler and dog in an effort to minimize bites. Understood in this way, the LASD policy is a correct one, even if it fuzzes things over a bit by calling its methodology “handler control.” By the same token, federal consent decrees and settlement agreements that require “guard and bark” are also correct.

As applied to the LASD, we frankly preferred the clarity of “guard and bark” as descriptive of the Department’s training philosophy. Equally frankly, what we care about more than what the LASD calls its training method is that to the greatest extent possible, handlers control the dog after it alerts and recall the dog, not allowing it to bite, in every instance where it is possible and safe for the handler to do so. Bites rigorously must be kept to a minimum. Use of a police dog is a technique for finding suspects and should not be used to apprehend a suspect until all other less harmful alternatives have been exhausted or would prove futile.

We care about how the dog bites and what the bite looks like. A single, clean bite on an arm or leg, without rakes or tearing and without the necessity for sutures, is an indication of good handler control properly exercised. Conversely, multiple bites on other parts of the body, raking, tearing, and the need for surgery or sutures may imply poor handler control, carelessness, or, even worse, handler intent or acquiescence that the dog punish and harm the suspect.

We further care that the LASD only use dogs that prove themselves amenable to that training and control. At \$6000 or more per animal, it is not a trivial decision to take a poorly performing dog out of service that is not susceptible to retraining or remedial education, even if the dog can be “traded in” on a new one. It takes sophisticated managers, particularly

sergeants, to make the fine judgment whether it is the dog or the handler that is the problem when the dog bites too often. Hence the importance of tracking performance of individual handlers and dogs and the differences in bite ratios achieved. But even if a given agency is at the far end of the spectrum in terms of tight handler and dog control, there still may be unnecessary or unacceptable bites depending on the law enforcement agency's deployment policy.

### *Deployment Policies*

A department with a wide-open deployment policy, which uses police dogs relatively indiscriminately and does not draw fine distinctions between searches for different suspects, will have many more deployments and a higher bite ratio than does a department with a narrowly tailored deployment policy that only allows searches, for example, for suspects in violent felonies or for armed misdemeanants. Accordingly, to make a considered judgment about any given canine program, it is not enough to test the degree to which handler and dog control is required and achieved. One also has to make a judgment as to deployment policy.

A good example of the foregoing is the LASD's struggle over how to deal with auto theft suspects. A wide-open deployment policy that allows for off-leash canine searches of everyone who bails from a stolen car, driver and passenger alike, runs a greater risk of accidental bites of third-parties and bites of juveniles than does a deployment policy that only allows for searches for drivers who appear to be older than 18. Even less risky is a policy that bans searches for auto theft suspects altogether. Similarly, a department might make distinctions between searches in schools, where there is a distinct possibility that a break-in involves a juvenile, and the search might best be on-leash, and a search of a dark warehouse after a burglar alarm has sounded, where the suspect is more likely to be a professional criminal, where an off-leash search may be justified by the circumstances.

The current LASD deployment policy, which limits searches to serious felons and armed misdemeanants, although appropriately tight, nonetheless still allows for discretion as to which felonies are truly serious and which are not. The flexibility in this instance has both an advantage and a disadvantage: It is helpful in that it allows managers to widen or narrow the scope of actual deployments without rewriting policy each time; it has a disadvantage in that it puts searches presumptively in policy when in fact managers would prefer that they not be made.

### *Less Harmful Alternatives*

Finally, a judgment needs to be made whether the canine unit in question has an adequate array of less harmful alternatives to dogs at its disposal and that management mandates their use when appropriate. The LASD, for example, has authorized the Canine Unit to use Clear-Out, a combination of OC spray and tear gas in a form that can be hand-held and sprayed or tossed grenade-like. Clear-Out can be used in attics, crawl spaces, and beneath houses in situations where the alternative is release of the dog. Although a blast of Clear-Out is by no means pleasant, and it might temporarily contaminate the premises where it is used, it is less likely to produce injuries requiring medical attention than a dog bite. Like OC Spray, it can quickly be washed away from a suspect's face and eyes. We concluded from our review of canine bites that there was at least one recent bite that could have, and probably should have been avoided by use of Clear-Out instead of sending a dog into a crawl space beneath a house, although the matter could be argued both ways.

The LASD is also presently experimenting with a videocamera attached to a pole that can be introduced in attics where the alternative is either to have deputies stick their heads in the attic with flashlights or put in a dog. Again, the interests both of officer safety and of reducing risk of dog bites to suspects are served by such a device. In England, dogs are on occasion equipped with video



cameras, and that may be an idea worth pursuing. In the past, we have advocated greater use in the field of shock collars to control dogs. We continue to do so.

Another alternative to use of the dogs by LASD canine handlers is the “flashbang,” a flash sound diversionary device. If a suspect can be startled out of hiding by a loud bang and a burst of light, then he can be safely taken into custody without sending in a dog to flush or drag him out. Greater use of the flashbang as an alternative either to sending in a dog or using Clear-Out may be advisable. The Canine Unit would also like night vision devices like those used in the armed services to assist in night searches where the alternative is total reliance on the dog. We lend our support and encouragement to all these efforts to utilize technological advances to create a reasonable array of possible alternatives to release of the dog, and we acknowledge Captain Sid Heal’s interest and expertise in such technology.

To summarize, then, our view is that a paradigm canine program:

1. emphasizes handler control so that opportunities are maximized that the handler can control if, when, and for how long a dog bites;
2. insists that handler discretion be exercised to avoid a bite where feasible without unnecessarily exposing the officer to heightened risk;
3. has a narrowly tailored, carefully constructed deployment policy;
4. tracks and carefully analyzes deployments, finds, bites, and bite ratios in general and by handler;
5. carefully analyzes all bites to determine if the bites are within policy and in addition could have been avoided by alternative strategies or tactics; and
6. has a full array of additional non-lethal options at the disposal of the canine unit.

The LASD has generally scored high in each of these areas and, as noted previously, has attained a national reputation for a well-managed canine program. It is nonetheless the case that at the margins, we continue to see a few avoidable and unnecessary bites. We also suspend judgment about the

relaxation of the deployment policy and attitudes toward searches and have a “wait and see” attitude toward them.

We reviewed each of the 22 bites in 2001 and the 13 bites through early June for 2002. In the main, we saw good reporting, analysis, and consideration given each bite. Although we had the usual quibbles and discomfort with the occasional lack of neutrality in tone and a tendency to take the handler’s version of facts at face value, we cannot say that the internal reviews were fatally infected with bias or were invariably result-oriented. To put things a bit more positively, we generally liked what we saw.

As noted before, that is not to say that there weren’t bites that we might have held out of policy or unnecessary or resulting from questionable tactics. We confronted the canine unit with each of those. Even if we did not always come to agree with the rebuttal put forward by management, we respected the degree to which management was open to us.

Indeed, throughout our review, the three sergeants in the canine unit and the lieutenant were available to answer questions and were cooperative and helpful as well as thoughtful and challenging. We had lively but not heated discussions, some disagreements, and some differences in perspective or approach. Although quick to put a positive spin on things and defend their handlers, the sergeants engaged in a way that engendered trust and confidence. In particular, they were willing to think out loud alongside us. Again, we liked what we saw.

Our concerns have to do with how correctly to interpret that thus far in 2002, there have been more bites and, if trends continue for the rest of the year, a higher bite ratio than in each of the last several years. At this point, we have not jumped to a conclusion that the deployment policy is too lax or that there are too many long-distance, off-leash searches or that handlers have become too aggressive or are “getting away” with deployments and bites that they would not have a couple of years ago.

We will continue to test there is a changed commitment by the LASD in

general or the leadership of the canine unit in particular to keeping the overall bite ratio low and committing to a “guard and bark” approach. This in turn raises an interesting and difficult question.

Is there a bite ratio or number of bites that per se is too high and ipso facto means a given canine program is poorly managed? Conversely, is there a number of bites that per se are so few that it means officer safety is being compromised for the sake of a low bite ratio? Should it matter to us that the bite ratio in 2002 may approach 20 percent even if in the main the bites are within policy?

Our answer is that it should, and if it does stay at near 17 percent or go higher in 2002, we will conclude that the pendulum has swung back too far. Our reasoning is grounded in the LASD’s past performance, which tells us clearly that the number of bites and the bite ratio is capable of significant control by management. We know, for example, that the LASD can really put the squeeze on if necessary and get the bite ratio down to 8 percent, as it did in 1997 and 1998. We also know that before full implementation of **Kolts**, the bite ratio was in the high 20’s, and before that, it may have even been as high as 50 percent. We also know that the LASD can relatively consistently keep bite ratios in the 12 percent range without demonstrable increases in injuries to handlers or a rise in the crime rate. Assuming that the bites themselves are within policy and not otherwise troublesome, all other things being equal, consistent bite ratios in the eight to 12 percent range should be achievable as a routine matter

Our overall conclusions from our latest full-scale investigation, therefore, are that from approximately 1996 to date, the LASD’s Canine Unit has performed well. We will keep our eye on whether bites for the balance of the year are indicative that the pendulum has swung too far in terms of handler latitude and discretion. LASD management from the Division Chief to the Canine Unit’s sergeants are convinced that is not the case and have strenuously and effectively so argued to us. Nothing would please us more than to have them proved correct by seeing the

LASD once again matching the bite ratios of 12 percent and below achieved in the 1996-2001 period.

## 6. Interesting Experiments

In the course of our investigation for this Semiannual Report and the last one, we came across experiments in measuring and managing risk at the station and regional level that excited our interest and curiosity. There are some very promising programs in place, particularly in Region I, which may have wider applicability for the entire Department. We will now describe some of these efforts. Without question, Region I is leading the Department in analysis and innovation.

### *Experiments in Region I*

#### **Force Project**

Under the direction of Chief William Sams, personnel within Field Operations Region I have carried forward in a thorough and proficient way the research and analysis of risk that formerly characterized the entire LASD in connection with the Sheriff's Critical Incident Forum, or SCIF. Field Operations Region I is the largest of the three field operations regions, covering much of the northern part of Los Angeles County. The stations in Region I include, in descending order of population served, Santa Clarita, Temple, East Los Angeles, Palmdale, Lancaster, Malibu/Los Hills, Altadena, and Crescenta Valley. Region I serves a population of 1.025 million, or approximately 38 percent of the LASD's service area population.<sup>1</sup>

The Force Project was commissioned to study use of force patterns within stations in the Region during the first six months of 2001. Some of the highlights of the study are as follows:

- Does the shift worked have an impact on force? Yes. Almost twice as many deputies (214 incidents) use force on the PM shift than on the day shift (120) or the Early Morning Shift (103).

<sup>1</sup> Region III, which serves the middle and eastern parts of the County, accounts for 37 percent of the LASD service area population, or 1 million people. Region II, serving 661,000 people in the southern part of the County, is the smallest of the three Field Operations Regions.

- Does the time a deputy has served in a patrol assignment correlate with use of force? Yes. Use of force decreased directly with the number of years on patrol: 68 percent of deputies who use force have less than five years in patrol. Of the 410 deputies who used force, 278 had five years on patrol or less; 73 had six to ten years; 42 had 11 to 15 years; 14 had 16 to 20 years, and 3 had more than 21 years.
- Also interestingly, 41 percent of the force incidents involved two deputies while 36 percent only involved one deputy.
- Of suspects upon whom force was used, three variables tended to correlate positively: Whether the suspect was on parole or probation; whether the suspect was under the influence of alcohol and drugs, and whether the suspect had a criminal history. Other variables that were considered, but did not appear to correlate, were: the race of the suspect, whether the suspect was mentally ill, and whether the suspect was a gang member.

The Force Project also looked at variations between stations in Region I in terms of force per 100 arrests, distinguishing between significant force and other uses of force. The Project additionally compared the three Field Operations Regions to each other.

We concluded that the Force Project was an excellent product from a variety of perspectives: first, the right questions were asked and interesting results were obtained; second, the study was done carefully and thoughtfully; three, it was self-initiated activity in Region I without either prodding or significant support from above; and fourth, it contained useful insights and observations.

### *Civil Claims and Lawsuits Project*

Equally interesting was a Field Operations Region I study of civil claims and lawsuits arising in Region I during 2000 and 2001. The study noted a rise in the number of claims and lawsuits in 2001 and attempted to analyze why.

In so doing, the study correlated claims and lawsuits with in-service training needs and considered the possible effectiveness of comprehensive force review panels and station traffic review committees which are under development in Region I. We again thought the work product was excellent and worthy of emulation in other Regions and for the Department as a whole.

### *Performance Review at Temple Station*

In approximately 1996, the captain at Temple Station saw a need for station management to know the personnel in the station in greater depth, and, in so doing, to deal with problem performance patterns proactively by way of focused training and mentoring. His goal, as is the goal of Performance Review generally, was to exhaust non-punitive means to change behavior before resulting to the formal disciplinary process. The Captain observed the Performance Review process the Department was developing and realized that the same analytical tools could be used more quickly and more effectively on the unit level. Finally, he was interested in trying to lessen the stigma many had attached to the PPI and to demonstrate that that tracking system could be used to obtain improved performance in a non-disciplinary mode.

At first on a monthly basis, and then quarterly, the Captain looked for increases in the categories tracked by the PPI and identified employees with greater than average increases in use of force and personnel complaints for further examination. The PPI information was supplemented by other information from both inside the Department and from the community. The Captain was uncertain what disproportionate numbers of PPI entries might mean, and he wanted his lieutenants to look at all the circumstances involved, to get to know the deputies better, and particularly to determine whether there were patterns that could be corrected by better training and better use of tactics. For instance, would increased calls for backup lessen the likelihood of having to use force in certain types of situations? The Captain recognized that the

station-level reviews that he was conducting made him better informed, and thus a better manager of that command.

The captain of Temple Station has changed twice since 1996, but each of the successors to the originator of the unit-level review has continued the system. At present, the Captain and the Operations Lieutenant look at a printout of all employees at the station once or twice a year. They chart increases in the PPI categories over the past year by comparing printouts of current and past activity. Looking at the printouts side by side, they calculate and pencil in the increases of the past year, and then identify the increases that seem disproportionate. When disproportionate increases are identified, a lieutenant looks at the facts of the incidents involved to ensure that judgments are made based upon the facts of the incidents, not on the mere numerical disparities.

The station usually has three or four reviews of specific individuals proceeding at a time. Some are initial, cursory reviews of staff that have recently transferred to the station. Occasionally the review leads to a recommendation for a departmental Performance Review profile when an employee being looked at on a unit-level review is also identified in the departmental screening process. But more typically, the station will recommend against departmental Performance Review upon the ground that the station is already addressing the employee's performance issues. Those recommendations — to allow the review to take place at the unit level — are generally followed.

Deputies are advised by the lieutenants that they are under review and, likewise, are informed of the results of the review. The goal is to avoid risk by providing direction and feedback. An additional hope is that the employees involved will recognize the value of improving their performance. While training, mentoring, and conversations with the Captain and lieutenants are typical interventions, one deputy with a history of preventable accidents additionally had the Captain ride along with him to try to improve his driving habits.<sup>2</sup>

<sup>2</sup> Such attention to a performance issue from the Captain of a station would likely not only focus the involved deputy on the problem area, but would also communicate management concern to all those assigned to that station.



Temple Station's 209 sworn personnel are significantly underrepresented (on a proportional basis) among the 68 employees currently on Performance Review department-wide. The proactive unit-level reviews that have been conducted there for the past six years undoubtedly have made Department-level Performance Review less necessary for this station.

### *Experiment in Region II*

Station-level Performance Review is also taking place in a somewhat different form at the Century Station in Region II.

#### **Century Station Performance Review**

Century Station management used PPI data to conduct a focused review of the uses of force and of deputy-involved shootings for the year 2001 at Century Station. Century's written report, entitled "Use of Force Analysis," grew out of preparation for a Sheriff's Critical Issues Forum (SCIF) in July 2001. The use of force study is described in greater detail in our Chapter on the Century Station. While the report looked at station-wide statistics and trends, much of it focused on the station's 20 most frequent users of force for the calendar year. The analysis also documented the times and locations of uses of force and connected that data to the data on the individual users of force.

The report found that while the 20 individuals involved in five or more uses of force constituted only 12 percent of the users of force, they were involved in 46 percent of the force incidents. One deputy was involved in 13 uses of force, another 12, and 18 were involved in five to eight uses of force. In analyzing not only the number of uses of force, but the locations and shifts involved, the report was able to make determinations such as that only three deputies were involved in 45 percent of the uses of force in Lynwood on the early morning shift. Tellingly, most force incidents involving the 20 most frequent users of force involved at least one other deputy from among those 20 most frequent

users of force. Thus, the identity of one's partner was shown to be a potentially significant risk factor.

Based upon the analysis, the Century Captain reassigned partners so that none of the 20 highest users of force were paired together. Likewise, assignment to the evening and early morning shifts was associated with a higher risk of using force. As a result some of those who had most frequently used force were reassigned to other shifts or moved from regular patrol. Regardless of changes in assignment, the Captain met or planned to meet with all 20 of those identified as being among the most frequent users of force. Some of the Captain's interventions took place a number of months before the end of 2001. In all those instances where the Captain intervened with the high users of force during the course of 2001, the deputy's uses of force after that intervention decreased as compared to the period preceding the intervention.

The analysis of the use of force patterns also led to a rearrangement of sergeants' schedules so that more sergeants were in the field on every shift every day. The schedule adjustment also meant that sergeants generally worked only one particular shift, making them more familiar with the deputies they were supervising and more familiar to the lieutenants responsible for those shifts. Because the rearrangement of schedules reduced the sergeants' regular days off per week from three to two, the change must have been rather unpopular with the sergeants. The Captain, however, determined that the data showing the incidences of uses of force justified such an unpopular change. He also directed the lieutenants and sergeants to use the results of the analysis to inform and improve their supervisory practices.

A similar, but briefer, analysis was conducted on the deputy-involved shootings at Century. Of the ten shootings in 2001, eight involved seven deputies. Six of those deputies were reassigned to duties that significantly diminished the likelihood that they would become involved in a violent confrontation.

## *Conclusion*

The examples described above demonstrate that useful and interesting experimentation is taking place in the Department at the station and regional level. We focused in particular on Region I because leadership there has been consistently active in devising studies and undertaking experiments. That is not to say that healthy experimentation is not taking place in Regions II or III, and we trust that the leadership in those Field Operations areas will not feel slighted by our Region I focus. At the same time as we give our strong support to efforts at the regional level, we note the relative absence of similar analytical work at the Department-wide level. As good as the efforts at the regional level are—and they are very good indeed—there remains an unfulfilled need for similar excellent analytical work at the Department-wide level.



*In Memorium*  
**Judge James G. Kolts**

Respectful and effective policing, as pioneered and practiced in the last ten years, first in Los Angeles, and then spreading to the nation as a whole, rests on the twin pillars of Warren Christopher and Judge James G. Kolts. Our loss of Jim Kolts, who passed away last winter, is as great as his influence on American policing was profound. A national consensus emerged in the last decade about best police practice, and the bedrock principles — fighting crime effectively, treating all members of the community respectfully, and dealing with police misconduct sternly — were articulated first and best by Warren Christopher and Jim Kolts in their respective reports on misconduct in the LAPD and Sheriff’s Department. The Kolts recommendations became the national standard for contemporary police management. Picked up by the US Department of Justice and embedded in each settlement agreement and consent decree, from Pittsburgh, to New Jersey, to LA, to Washington DC, are the commonsense rules of contemporary police management advocated by Jim Kolts:

- require that police officers report all use of force and make sure that supervisors critically review whether the force was appropriate or avoidable;
- demand that citizen’s complaints be thoroughly and fairly investigated;
- deal earnestly and mete out appropriate consequences to discourtesy, rudeness, discriminatory conduct, excessive force, and corruption by police officers;

- Track officer performance in an early warning system to identify officers at risk of corruption or excessive force;
- impose strict accountability and responsibility all the way up the chain of command for managing the risk of police misconduct;
- implement community-based, problem-solving models of policing;
- and most importantly, create and strengthen mechanisms for ongoing civilian monitoring and oversight, through models such as the LAPD Inspector General, and LA County’s Special Counsel and Office of Independent Review.

Jim Kolts brought sensible, uncontroversial management practices to policing, a field long bereft. Without ideological or political axes to grind, Kolts did what no one else had seemingly been able to do: Impose simple notions of accountability and effectiveness on law enforcement. Under the guidance of the Board of Supervisors and Jim Kolts, the Sheriff’s Department took a cooperative tack, becoming the national model, under Sheriffs Block and Baca, for contemporary policing. The Kolts agenda for the Sheriff’s Department has become the national agenda for police reform. Jim Kolts prided himself on “calling them as he saw them,” and his calls for accountability and his clear-sighted vision for policing made him a giant figure on the landscape of American policing.