



# **Report of the Citizens' Commission on Jail Violence**

**September 2012**

**<http://ccjv.lacounty.gov>**



September 28, 2012

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

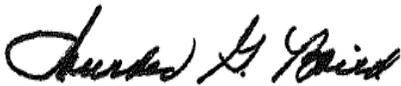
We are pleased to submit this Report of the Citizens' Commission on Jail Violence for your consideration. This Report is the culmination of many months of investigation and public hearings regarding allegations of excessive use of force in the Los Angeles County jails.

As you know, the Board of Supervisors formed our Commission last October with a mandate "to conduct a review of the nature, depth and cause of the problem of inappropriate deputy use of force in the jails, and to recommend corrective action as necessary." In the ensuing months, we have endeavored to conduct as thorough an investigation as possible with the assistance of pro bono attorneys from some of the most respected law firms in Los Angeles, as well as staff, interns, and volunteers under the leadership of the Executive Director.

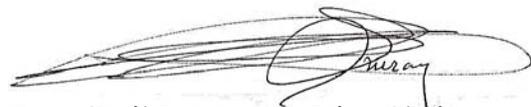
Throughout our process, Commission staff spoke with a wide array of individuals and reviewed thousands of documents. We appreciate those individuals who were willing to share their candid perspectives and recognize that it has not been easy for many of them. We also thank the Sheriff and his staff for their cooperation throughout this investigation.

It has been an honor for each of us to serve on the Commission. We believe that our diverse perspectives -- as well as the careful analysis and comprehensive review conducted by our staff -- have resulted in a thoughtful, objective and thorough Report. We also believe that our recommendations, if implemented, can bring about lasting and meaningful changes within the Los Angeles County jails. We urge the Board and the Sheriff to adopt our recommendations with all deliberate speed and further urge the Board to establish a mechanism periodically to assess progress in implementing our recommendations.

Very truly yours,



Hon. Lourdes G. Baird, Chair



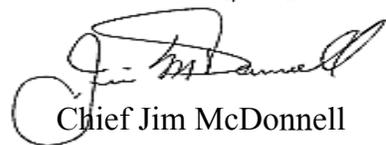
Rev. Cecil L. Murray, Vice Chair



Hon. Robert C. Bonner



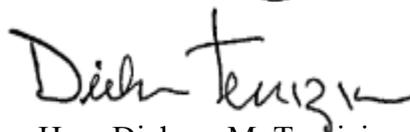
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# Citizens' Commission on Jail Violence

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# Citizens' Commission on Jail Violence

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## GLOSSARY OF TERMS

ACLU	American Civil Liberties Union
ADP	Average Daily Inmate Population
ALADS	Association for Los Angeles Deputy Sheriffs
BIU	Background Investigation Unit
CARS	Command Accountability Reporting System
CCJV	Citizens' Commission on Jail Violence
CDCR	California Department of Corrections and Rehabilitation
CFRC	Custody Force Review Committee
CFRT	Custody Force Response Team
CMTF	Commander Management Task Force
CRIPA	Civil Rights of Institutionalized Persons Act
DOJ	United States Department of Justice
EFRC	Executive Force Review Committee
EPC	Executive Planning Committee
ERCOM	Los Angeles County Employees' Relations Committee
FAST	Facility Automated Statistical Tracking
IAB	Internal Affairs Bureau
ICIB	Internal Criminal Investigations Bureau
IRC	Inmate Reception Center
JMET	Jail Mental Health Evaluation Team
LASD	Los Angeles Sheriff's Department
LJN	Large Jail Network
MCJ	Men's Central Jail
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPP	Manual of Policy and Procedure
OIG	Office of Inspector General
OIR	Office of Independent Review
POST	Peace Officer Standards and Training
PPI	Personnel Performance Index
PPOA	Professional Peace Officers Association
SCIF	Sheriff's Critical Incident Forum



## **CHAPTER ONE INTRODUCTION**

There has been a persistent pattern of unreasonable force in the Los Angeles County jails that dates back many years. Notwithstanding a litany of reports and recommendations to address the problem of violence in the County jails issued by multiple bodies over more than two decades, it was only recently that the Los Angeles County Sheriff's Department ("LASD" or the "Department") began to implement changes that significantly reduced the level of force used by Deputy Sheriffs in the jails. Both the responsibility for, and the solutions to, the problem of excessive force in the County jails lies with the Department's leadership. Significantly, the Department failed to identify, monitor and address force problems until the Sheriff began to take action last year in the wake of a series of scathing reports, the glare of adverse publicity, actions by the County Board of Supervisors (the "Board") including creating the Citizens' Commission on Jail Violence (the "Commission" or "CCJV"), and a series of public hearings by both the Commission and the Board.

As a result of the recent attention of the Sheriff and the reforms he instituted, the number of force incidents, and in particular Significant Force incidents, in the jails has dropped dramatically. Yet even with these recent reductions, troubling indicia of a force problem remain. Whether recent force reductions will be sustained over time when public attention recedes, and whether the entire Department is truly committed to the Sheriff's stated vision for the jails and the implementation of these reforms, remains to be seen.

The Department provides a myriad of services and is a very complex organization with 17,000 sworn and non-sworn civilian employees.<sup>1</sup> It patrols the unincorporated areas of one of the largest counties in the United States with a population of over 9.8 million<sup>2</sup>, provides police services to over 40 cities in Los Angeles County plus unincorporated areas, operates the Los Angeles Regional Crime Laboratory, provides security for the courts throughout the County, and

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<sup>1</sup> As of December 31, 2010, there were 18,747 budgeted positions, but only 16,989 total personnel. [http://file.lacounty.gov/lasd/cms1\\_171991.pdf](http://file.lacounty.gov/lasd/cms1_171991.pdf).

<sup>2</sup> Los Angeles County 2011 Population Estimate of 9,889,056 per U.S. Census Data. <http://quickfacts.census.gov/qfd/states/06/06037.html>.

runs the largest jail system in the country. The jail system includes eight geographically distant facilities that house some of the most dangerous and violent inmates and rival gang members in the nation. In addition to operating the jails, the Department transports prisoners to and from the courts and runs the Custody facilities in the courts.

The Los Angeles County jail system has been plagued by many problems over the years, from overcrowded and substandard jail conditions to allegations that deputies used excessive or unnecessary force on inmates and facilitated inmate on inmate violence. These problems have been the subject of numerous reports, starting with the Kolts Report in 1992, and detailed in periodic reports by Special Counsel Merrick Bobb and the Office of Independent Review (“OIR”). Last fall, the American Civil Liberties Union (the “ACLU”) issued a scathing report entitled “Cruel and Unusual Punishment: How a Savage Gang of Deputies Control LA County Jails” detailing mounting concerns with violence in the jails. It was soon followed by a critical report from OIR, stating in no uncertain terms that “deputies sometimes use unnecessary force against inmates in the jails, to either exact punishment or to retaliate for something the inmate is perceived to have done” and expressed concern that “the times in which deputies ‘get away’ with using excessive force may be on the rise.”<sup>3</sup> At the same time, the *Los Angeles Times* published a series of articles recounting allegations of excessive force, a “code of silence” among Custody deputies, deputy misconduct in the jails, and the existence of an on-going federal criminal investigation into abuses in the jails.

With a bright spotlight placed squarely on the Department and its jails, the Sheriff created a Commander Management Task Force (“CMTF” or the “Task Force”) last fall to “[t]ransform the culture of our custody facilities into a safe and secure learning environment for staff and inmates, and provide a level of service and professionalism consistent with our Core Values.” At the same time, the Board of Supervisors created this Commission with a mandate “to conduct a review of the nature, depth and cause of the problem of inappropriate deputy use of force in the jails, and to recommend corrective action as necessary.” The Board also directed the Commission to “hold[] this Board and the Sheriff accountable for their speedy and effective implementation” of necessary reforms.

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<sup>3</sup> “Violence in the Los Angeles County Jails: A Report on Investigations and Outcomes” (October 2011) (“OIR 2011 Violence in the Jails Report”), p. 2.

It is important to note that the Commission is not charged with investigating force incidents identified by the ACLU or others to determine whether deputies used unnecessary or excessive force in specific cases; indeed, the Commission lacks the necessary authority and resources to do so. Instead, that responsibility lies with the Department itself and with investigatory bodies including federal authorities and the Los Angeles County District Attorney (in cases where there are allegations of criminal conduct).

Without subpoena power or the power to compel testimony, the Commission relied upon the cooperation of the Department and the Sheriff, and the willingness of current and former members of the Department, percipient witness, and inmates to talk voluntarily to the Commission staff and, in some limited cases, to testify publicly. The Commission staff also consulted with numerous experts and heads of correctional facilities in California and throughout the nation. Some current and former members of the Department, including some high-ranking former members, declined to speak to Commission staff, and most of them were unwilling to testify publicly. In some instances, these individuals indicated that their reluctance stemmed from fear of retaliation by high level Department officials, although it should be noted that the Sheriff personally encouraged Department personnel to talk to Commission staff.

The Commission recognizes that there are concerns about the credibility of inmates, just as in some cases the credibility of deputies involved in a force incident may also be at issue. As such, this report does not rest on the credibility of any one witness, but is based upon the totality of the information provided to the Commission, the corroboration of that information, and the common themes and patterns that emerged.

#### **A. The Nature of the Problem**

As detailed in this Report, the problem of excessive and unnecessary force in the Los Angeles County jails was the result of many factors, beginning most fundamentally with a failure of leadership in the Department. Simply stated, the Sheriff did not pay enough attention to the jails until external events forced him to do so. Further, his senior leaders failed to monitor conditions in the jails and elevate use of force issues so that they received the necessary attention by the Sheriff, and the Undersheriff engaged in conduct that undermined supervision of aggressive deputies and promoted an environment of lax and untimely discipline of deputy

misconduct. With multiple command layers between the jails and the Sheriff, there was no one in the Department who was responsible *and* accountable to the Sheriff for addressing the force problems in the jails. Nor was there an experienced, professional corrections leader in place to capably run the County's vast and challenging jail system.

Through the formation of the CMTF last fall, the Sheriff has been personally engaged in efforts to reform the jails, and the Department has now taken a number of steps to address the use of force problems, including promulgating long-overdue Force Prevention and Anti-Retaliation policies and enhancing (at least for the time being) supervision in the jails. As a result, the Department has been able to dramatically reduce the number of force incidents throughout the jails while, at the same time, reducing the number of inmate assaults on deputies. These statistics reinforce the testimony of current and former Department personnel, inmates, jail chaplains and monitors that much of the force used by deputies prior to the formation of the CMTF and over a series of years was unnecessary, excessive, and in violation of the Department's policies. As Special Counsel Merrick Bobb observed in testimony before the Commission earlier this year, when "the word went out [from the Sheriff that]... 'I want to see those numbers down'" the deputies "responded" and force incidents dropped significantly.

Notwithstanding the recent reforms, the Commission does not believe that the problem of excessive use of force in the jails has been "fixed." Some of the high level leaders who allowed force problems to continue unabated have not been held accountable, thereby sending a troubling message to a Department in need of a clear directive that accountability is expected and will be enforced at *all* levels. Ultimately, true reform of the jails will depend upon the committed leadership and engagement of the Sheriff and the Department's senior leaders, as well as institutionalized structural reforms within the Department and strong independent oversight.

From what the Commission has observed, reform will not be easy. The Sheriff himself has recognized that reform will require the Department to "transform [its] culture [.]"<sup>4</sup> Over the years, there has been a mindset among some deputies that reflects a lack of respect for inmates, views force as the preferred option to control inmates, and bristles at supervision. Management has contributed to this mindset by sending the wrong signals, in both its words and deeds, by

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<sup>4</sup> Commander Management Task Force Six Status Update of Jail Reform ("CMTF Six Month Report"), p. 2.

failing to address long-standing problems and to reinforce respect for the Department's Core Values, and by failing in some cases to ensure prompt and appropriate consequences for misbehavior. Further, the Commission is troubled by the recent report of the Association for Los Angeles Deputy Sheriffs ("ALADS"), which indicates that deputies feel, as a result of the Sheriff's recent reforms, that they have "lost control" of the jails.<sup>5</sup> The implicit suggestion that these deputies believe they must use force to show inmates who is "running the jails" reflects a cultural mindset that can impede meaningful and lasting reform.<sup>6</sup>

This troubling culture in Custody, which has produced both on duty and off duty aggressive misconduct, is exacerbated by the Department's training, staffing, supervision, and discipline policies. The Department staffs the jails with brand new deputies who are trained for Patrol assignments, have inadequate Custody training, have little desire to be in Custody, and remain in the jails far too long as their Patrol training and skills diminish before they ever receive a Patrol assignment. The Department's Custody training is woefully inadequate, and long initial tenures in the jails for new deputies after extensive Patrol training in the Academy make little sense. Compounding the problems, most supervisors are brand new Sergeants and Lieutenants while some of the deputies they supervise have been in Custody assignments for upwards of five to seven years. The result is that senior deputies who may be disdainful of supervision can exercise undue influence over new deputies.

Another set of concerns stems from the Department's disciplinary system. The Department's discipline procedures and policies are inadequate to ensure swift and certain punishment for the improper use of force and dishonesty. The disciplinary system is complex, multi-layered and disjointed, and there have been well-documented lapses in processing use of force packages, and failures to take the necessary steps to ensure that the disciplinary system timely addresses these problems. Further, Department leaders have undermined the investigative and discipline systems by inappropriate comments and conduct and the Commission has seen evidence suggesting that acts of dishonesty are not always subject to the "zero tolerance" philosophy articulated by the Sheriff.

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<sup>5</sup> ALADS Custody Division Working Group (Draft) Report, dated July 19, 2012 ("ALADS Report"), p. 10.

<sup>6</sup> *Id.*

## **B. Moving Forward**

In order to have lasting reform in the jails, the Department needs to be re-structured to ensure accountability for the operation of the jails. There should be a new Assistant Sheriff for the Custody Division who is a professional and experienced corrections leader, reports directly to the Sheriff, and is directly accountable for jail operations.

The Commission considered whether the responsibility for operating the County's jails should be taken away from the Sheriff altogether, but rejected this alternative approach for two reasons: (1) it would take legislation that would require time to pass (assuming passage could be achieved); and more importantly (2) it would diffuse accountability for operating the jails. If the jails are taken away from the Sheriff, the first questions that need to be answered would be: how is the head of the new Custody Division going to be selected and to whom is that person going to report? Unless the head of the Custody Division is to be elected, which would politicize a position that requires extensive professional experience, he or she would have to be selected by the Board of Supervisors. That person would thus be accountable to five Supervisors, who need a majority vote to act and are likely to have different views on the operation of the jails, instead of reporting to a single elected County Sheriff.

As the Sheriff noted in his testimony, he is accountable to the voters who can choose not to re-elect him if they are not satisfied with how he is doing his job, including running the jails. The Commission believes that accountability is an absolute necessity and the best system would be for the Sheriff to appoint an experienced corrections expert to be accountable directly and singularly to him for running the jails while he is, in turn, accountable to the voters.

The Commission recommends that the Department adopt a "dual track" system whereby Deputy Sheriffs are recruited and trained for careers in Custody assignments with opportunities for promotions from within the Custody Division. The Commission also recommends increased use of Custody Assistants, who are less expensive than deputies and trained for Custody assignments. Establishing a stand-alone Custody Division within the Sheriff's Department under the leadership of an experienced corrections expert would expedite the necessary cultural reforms, develop a skilled workforce committed to the distinct corrections profession, and ensure that the recent reductions in use of force are sustained and ongoing problems are remediated.

The Department's disciplinary system needs to be simplified. All cases involving injuries to inmates should be investigated by trained Internal Affairs investigators (or the Internal Criminal Investigations Bureau if there are allegations of criminal conduct) in a newly created Investigations Division under the leadership of a Chief, and all but the most serious cases should be determined by Unit Commanders with oversight by their Commanders and Chiefs. Penalties for excessive use of force and dishonesty should be enhanced. There should also be a newly created Internal Audits and Inspection Division under a Chief to ensure that there is compliance with the Department's policies and procedures governing the Custody Division.

Finally, the existing oversight entities -- Special Counsel, OIR, and the Ombudsman -- should be absorbed and consolidated into a single Office of Inspector General reporting to the Board of Supervisors with responsibility for providing independent oversight of the Department, including its jail operations and discipline system; conducting its own investigations in a limited number of particularly sensitive cases; monitoring jail conditions and inmate grievances; and reviewing the Department's internal audits and inspections.

The Commission considered whether the Office of Inspector General should be under an independent civilian commission, but concluded that this was not necessary as long as the Board of Supervisors remains engaged in oversight of the jails. Unlike the Board of Police Commissioners for the City of Los Angeles, which is empowered under the Los Angeles City Charter to oversee the Los Angeles Police Department, a civilian commission would not have any legal authority over the Sheriff's Department absent enabling legislation. In the City of Los Angeles, the elected Mayor appoints the Police Commissioners and also selects the Chief of Police. In the County, the Sheriff is the elected public official ultimately responsible for the Department and the jails. The Board of Supervisors, in turn, can exercise oversight through its control of the Department's budget, by receiving the reports of the Inspector General, and by requiring the Sheriff and the head of the Custody Division to address in public hearings the status of recommended reforms, trends in use of force, and other pertinent aspects of the operation of the jails. The Commission believes that a fully empowered and integrated Office of Inspector General reporting to an engaged Board of Supervisors can provide the necessary independent oversight of the Department to ensure that it implements meaningful and lasting reforms.

While much has been accomplished by the Sheriff's Department in the last year, more remains to be done to ensure that needed reforms are implemented and the reduction in force incidents continues on into the future. The Department and the Board find themselves at a moment of immense challenges, but also have a real opportunity to move forward in a constructive and positive manner. This will require an ongoing commitment by the Sheriff, new and accountable leadership over Custody, empowered independent oversight and ongoing engagement by the Board.

Finally, we note that there are three issues related to the operations of the jails that have been raised, but that we do not address elsewhere in this Report. First, what should be done with Men's Central Jail ("MCJ")? Virtually everyone we spoke to during our investigation, including jail monitors, outside experts, Deputy Sheriffs, advocates, and Department leadership, expressed the view that MCJ should be "torn down." The Commission agrees with this view; MCJ is an antiquated, dungeon-like facility that exacerbates force problems in the jails, makes supervision challenging, and increases the likelihood that some deputies will be tempted to engage in aggressive behavior and use force as a first response rather than a last option. But the Commission also agrees that tearing down MCJ and building a new jail will not solve the longstanding problems of excessive force that have arisen most visibly at MCJ, but that also cut across the other jail facilities. These problems will continue to plague the Department absent the necessary leadership, accountability, supervision, training, personnel, discipline, culture, and oversight changes discussed in this Report.

Second, should the County fund the installation of more cameras in the jails? The Commission agrees with the recent observation of OIR that cameras are "an invaluable tool for objective accounting and insight," and that it "is unfortunate that it took years of discussion and delay before they were installed and operational at MCJ."<sup>7</sup> Cameras serve as a deterrent to the use of unnecessary and excessive force, enhance the reliability of the investigation of these incidents, and facilitate supervisors' ability to proactively spot check and identify personnel problems in need of correction. The Commission also agrees that the Department should complete the installation of additional cameras in Twin Towers and the Inmate Reception Center

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<sup>7</sup> Office of Independent Review Tenth Annual Report, September 2012 ("OIR Tenth Annual Report"), p. 6.

with alacrity, and that the Board of Supervisors should provide funding for the installation of additional cameras at the other facilities. Videotapes should also be periodically reviewed by supervisors to spot-check the conduct of deputies. Even with these tools, however, cameras are not a cure all and cannot saturate every corridor and corner of the jails.

Third, should the Department work with the Court to expedite the release on bond of pre-trial detainees charged with minor, non-violent crimes? It is open to debate whether there is a direct correlation between the number of force incidents in the jails and the number of these inmates, who are less likely to be dangerous than inmates charged with violent crimes. Historically, the greatest number of force incidents have taken place, for example, on the floors in MCJ that house the most dangerous and violent inmates or in the areas of the jail housing mentally ill inmates. In any event, reducing the inmate population will give the Department greater flexibility in housing inmates and improve the ratio of Department personnel to inmates. Experts agree that this will give Custody personnel greater control over the jails, enable them to spend more time monitoring the most problematic inmates, and make it less likely that they will use force to ensure compliance with their directives.

### **C. The Commission's Process and Methodology**

The Commission was formed in October of last year and was fully staffed with its seven members, Executive Director and General Counsel at the beginning of this year. Since its inception, the Commission has met thirteen times; six of those meetings included testimony by 29 witnesses. Some of those individuals -- and in particular current and former Department personnel -- testified with full knowledge that their remarks would not be well received by their current and former colleagues. Indeed, one witness described his appearance and testimony before the Commission as "the hardest thing I've ever done in my life" and another witness stated that, while he was testifying voluntarily, "I did not ask to participate in these proceedings. It pains me to be here." The Commission is deeply indebted to these and other individuals who shared their insights with us.

In the course of its investigation into the nature and depth of the Department's use of force, the Commission relied on several key sources of data and information. Over the past nine months, the Commission staff, which included dozens of pro bono attorneys in nine of the most

respected law firms in Los Angeles, along with staff and volunteers under the Executive Director's Office, spent thousands of hours interviewing over 150 individuals. These witnesses included over 60 current and former LASD personnel throughout the chain of command -- including Deputy Sheriffs, Sergeants, Lieutenants, Captains, Commanders and other high-ranking LASD officials. In addition, Commission staff interviewed percipient witnesses, including current and former inmates, jail clergy, and jail monitors, as well as family members of alleged victims of excessive force. Further, the staff interviewed numerous use of force experts and high ranking corrections personnel from around the nation -- including nearly two dozen jail leaders from various systems around the nation -- to better understand the implementation of the industry's best corrections practices. Commissioners and Commission staff toured MCJ, the Inmate Reception Center ("IRC"), Twin Towers and the Pitchess Detention Center, and Commission staff visited jail facilities outside of Los Angeles County and spoke with over a dozen leaders from California jails.

The Commission received over 35,000 pages of documentary evidence, including LASD internal documents and policies; investigative reports; redacted personnel records; reports from the Office of Independent Review, Special Counsel Merrick Bobb, and the ACLU; and witness statements and deposition transcripts. The Department gave us full cooperation and was responsive to all our requests, although challenges from ALADS limited our access to personnel and disciplinary records and required a time consuming process of redaction of deputy names from these records. While this information was invaluable, the Commission had no ability to compel production of information and had only limited access to internal communications among LASD personnel.

Finally, LASD maintains substantial statistical data on various aspects of the jail system, including use of force incidents. Pursuant to specific requests, LASD provided to the Commission extensive -- but in some instances conflicting -- statistical information regarding use of force trends and incidents within the jail system, which the staff analyzed as part of its investigation. In conjunction with this review, the staff interviewed key LASD personnel to understand these statistics as well as the systems the Department utilizes to track use of force.

The Commission conducted its investigation with the recognition that statistical, anecdotal and documentary evidence have limitations and each can only tell one part of any story. The totality of the evidence, however, provides a credible picture of the excessive force problem in the Los Angeles County jail system that has not been addressed adequately by the Department's leaders, policies and systems.



## CHAPTER TWO A HISTORY OF RECOMMENDED REFORMS

### Introduction

The Citizens' Commission on Jail Violence is not the first body to investigate the issue of excessive force in Los Angeles County jails and recommend reforms in the operation of the Department's Custody Division. For nearly two decades, respected oversight groups, experts, and advocates have identified a broad range of troubling issues that go to the core of the Department's culture, management and operation of its jails. Some of these recommendations have cycled through numerous reports, often with nearly identical language, the same factual predicate, and at times increasing levels of frustration.

The failure to address aggressive deputy behavior within the jails has been a recurring theme in many of these reports. Over *twenty years* ago concerns about these issues were raised by the Kolts Report, which found "deeply disturbing evidence of excessive force and lax discipline."<sup>1</sup> Yet the Department continues to find itself plagued by the same force and discipline concerns and a problematic culture that resulted in excessive force in the County jails over many years.

It is particularly troubling that suggested changes in personnel, culture, management, and discipline in the ensuing two decades have met with little response from the Department. Indeed, had these changes been implemented, even in part, the County might well have avoided years of litigation costs, injured inmates, and adversely impacted deputy careers.

At a fundamental level, the failure to heed recommendations made -- and advanced repeatedly over time -- is a failure of leadership in the Department. As the Sheriff has acknowledged, it was *his* responsibility to ensure that reforms recommended by these oversight and advocacy groups were implemented and that problems of excessive force in the County jails were addressed. Yet, his response has been insufficient.

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<sup>1</sup> "Los Angeles County Sheriff's Department: Report by Special Counsel James G. Kolts and Staff," July 1992 ("Kolts Report"), p. 1.

## Findings

### **1. Both Special Counsel and OIR have recommended numerous reforms aimed at addressing excessive force in the jails that have not been implemented.**

For nearly two decades, civilian oversight bodies have advanced a long list of recommendations aimed at addressing issues, including excessive force, in the County jails. The Office of Special Counsel, created in 1993 in the wake of the Kolts Report, and the Office of Independent Review (“OIR”), created in 2001 at the suggestion of Sheriff Baca, both monitor LASD and issue reports to the Board of Supervisors with detailed findings and recommendations. While each body operates under a different mandate and has a slightly different focus (as discussed in the Oversight Chapter), their work is complementary. A common thread that unites these bodies and their reports is the lack of meaningful or timely action by the Department in response to many of their proposed reforms.

#### **a. Background: Kolts, Special Counsel and OIR**

In December 1991, prompted by an increase in the number of officer-involved shootings, civil unrest in response to these events, and rising litigation costs in police misconduct cases, the Los Angeles County Board of Supervisors appointed retired Judge James Kolts to serve as Special Counsel to the Board and conduct an investigation into allegations of misconduct within LASD, including "excessive force, the community sensitivity of deputies, and the Department's citizen complaint procedure."<sup>2</sup> Judge Kolts appointed Merrick J. Bobb to serve as General Counsel of the investigation.

The Kolts Report was issued in July 1992 and included a wide array of recommendations addressing problems arising from LASD practices, including recruitment, training, hiring, discipline, culture and complaints. Notably, the report questioned the Department’s commitment to addressing and remedying use of force concerns: “The LASD has not been able to solve its own problems of excessive force in the past and has not reformed itself with adequate thoroughness and speed.”<sup>3</sup>

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<sup>2</sup> Kolts Report, p. 1.

<sup>3</sup> *Id.*

The Board of Supervisors accepted the Kolts Report and agreed that the Sheriff should implement its recommendations, but was cognizant of the need for ongoing civilian oversight to ensure appropriate monitoring of Department misconduct. In particular, “there was criticism that the report had not recommended a civilian review board which would take over the LASD's power to investigate and discipline police misconduct.”<sup>4</sup> As a result, the Board of Supervisors appointed Merrick Bobb to serve as Special Counsel and track the Department’s implementation of the recommendations set forth in the Kolts Report. His role has shifted over time to include Department-wide issues and policies.

Over nearly two decades, Special Counsel has issued 31 Semiannual Reports, over half of which have contained substantial discussion of issues and concerns in County jails -- ranging from excessive use of force to the suitability of Custody as a first assignment for new deputies. Threaded through these many reports are upwards of 100 detailed recommendations regarding the hiring, training, disciplining, placement and supervision of deputies in the jails, as well as recommendations concerning the treatment of inmates and use of force policies. Many of Special Counsel’s recommendations have gone unheeded and others have languished for more than a decade before the Department responded.

In 2000, at the urging of Sheriff Baca, the Board of Supervisors authorized the creation of the Office of Independent Review to critically evaluate the Department’s internal investigations. OIR’s mission is to “provide legal advice to ensure that allegations of officer misconduct involving LASD are investigated in thorough, fair, and effective ways.”<sup>5</sup>

While OIR’s primary focus is on the adequacy and thoroughness of individual investigations, OIR has issued annual reports over the years discussing specific issues and concerns within the Department, including challenges and problems it has observed within the jails. Unlike Special Counsel, OIR’s reports and recommendations tend to be more case-specific and not primarily focused on systemic problems or reforms. Even with that focus, OIR has identified a host of areas in need of reform, many of which relate to Custody operations. In recent years OIR’s Custody-related concerns have become more forceful and have been accompanied by broader suggestions for reform. These recommendations echo many of the

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<sup>4</sup> Special Counsel Eleventh Semiannual (October 1999), p. 1.

<sup>5</sup> OIR website, <http://laoir.com/mission.html>, as of 8/8/2012.

themes addressed by Special Counsel and similarly have gone unaddressed by the Department for a period of years.

**b. The Recommended Reforms**

**(i) Staffing of the Jails**

One of the most troubling concerns raised in the Kolts Report and referenced repeatedly by Special Counsel -- and until very recently largely ignored by the Department -- relates to the nature and assignment of personnel to staff the jails. These reports reflect concerns spanning twenty years in regard to both the wisdom of placing new deputies in Custody and the protracted length of Custody assignments.

Dating back to the Kolts Report, questions were raised regarding the “thesis that the custody assignment is an appropriate placement for a young deputy so early in his or her career.”<sup>6</sup> Shortly thereafter, in 1994, Special Counsel criticized the Department’s failure to address this issue: “The Department promised it would look at options to at least expedite the custody rotation. We have seen none, and the length of the custody rotation continues to grow longer; estimates now put it at six years.”<sup>7</sup> In urging the Department to shorten the length of time that deputies spend in Custody, Special Counsel proposed an assignment of no more than 18 months to two years.<sup>8</sup> This recommendation failed to generate any Department response, and one year later Special Counsel noted: “In the last six months, our concern about the jails has deepened, and the length of time young deputies spend in custody rotations continues to grow.”<sup>9</sup> The following year, he reiterated anew:

Stagnation in the Department makes the rotation through custody a long one. It does the deputy and the Department no good to have deputies in custody jobs for so long. Almost all of the troublesome cases we have seen recently seem to come from jail settings where deputies have been callous or lash out in anger.... But the question must be asked whether the long custody rotations unacceptably raise the risk that more deputies will lose control at one time or another and simply not keep uppermost in mind that inmates

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<sup>6</sup> Kolts Report, p. 237.

<sup>7</sup> Special Counsel 2nd Semiannual Report (April 1994), p. 3.

<sup>8</sup> *Id.*, pp. 2-3.

<sup>9</sup> Special Counsel 4th Semiannual Report (June 1995), p. 4.

are humans, not fish. We thus continue strongly to advocate that deputies interested in a patrol career be rotated out of custody assignments earlier and that greater use be made of deputies willing to make the jails their career.<sup>10</sup>

In his recent 2012 Report, Special Counsel underscored once again both the seriousness of these concerns and their interrelationship with violence in the jails: “the forced jail assignment undercuts morale and may also breed abusive behavior on the part of deputies unable or unwilling to exercise reasonable restraint and self control.”<sup>11</sup>

Both Kolts and Special Counsel have suggested other reforms aimed at addressing Custody staffing issues and concerns. They urged the Department to consider a dual-track system whereby only those deputies wishing to pursue a career in Custody are assigned to the jails and deputies seeking a career in Patrol bypass Custody altogether and go directly to Patrol. This notion was raised over 20 years ago by Kolts. In 2005, Special Counsel resurrected this concept as a “promising alternative” to address plummeting deputy morale stemming from prolonged Custody assignments. He explained:

A system with two classifications of deputies would have a number of benefits. Deputies who want to work in custody would be able to make a career of that decision, and deputies who want to work on the streets could do so after spending little or no time in the jails, depending on inmate population and staffing levels.<sup>12</sup>

Only recently have these recommendations garnered any response from the Department and even now they remain simply ideas under consideration, as opposed to reforms the Department has committed to implementing.

### **(ii) Deputy Rotations**

Both Kolts and Special Counsel have recommended that deputies rotate within, *and between*, facilities to avoid stagnation, increase deputies' exposure to a wider range of job assignments, and guard against the proliferation of troubling deputy cliques. Kolts suggested that each deputy work in minimum, medium and maximum security facilities, thus guaranteeing

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<sup>10</sup> Special Counsel 5th Semiannual Report (February 1996), pp. 9-10.

<sup>11</sup> Special Counsel 31st Semiannual Report (May 2012), p. 11.

<sup>12</sup> Special Counsel 20th Semiannual Report (August 2005), pp. 31-32.

that young, impressionable deputies are exposed to a variety of facilities and inmates.<sup>13</sup> Special Counsel has reiterated this recommendation in ongoing conversations with LASD. More recently -- and in the wake of concerns regarding aggressive deputy behavior -- Special Counsel stressed the importance of rotations not simply within facilities but also among different jails: "Stagnant assignments within the jail create opportunities for cliques to form and subcultures to develop."<sup>14</sup>

While moving deputies to distant facilities would be more difficult, Department managers have noted that rotations could be implemented among the proximate MCJ, Twin Towers, Inmate Reception Center, and Century Regional Detention Facility jails. These facilities are very different in feel, physical layout and type of inmate and could offer a wide breadth and diversity of experience to new deputies. Yet the Department has not opted to implement this reform. Moreover, while the Department implemented in recent years a policy of deputy rotations among floors at Men's Central Jail, that reform is being undercut by *ad hoc* decisions to exempt entire sections of the jail from the rotations.

### **(iii) Disciplinary Transfers to Custody**

OIR has raised concerns about the Department's past practice of using Custody as an assignment for disciplinary transfers, which necessarily impacts the nature and quality of Custody personnel.

In a report issued in 2009, OIR noted the troubling use of Custody as a place where the Department transferred personnel based on disciplinary concerns. That report noted:

[W]e have always cautioned against forced transfers as a way of dealing with a particularly problematic employee by making him or her someone else's problem. The disciplinary transfer to custody is a particularly dangerous form of this practice for deputies who should be discharged, as it brings senior deputies embittered by the disciplinary process in close, direct contact with newly-hired deputies.... Rather than allowing such contamination of newer deputies

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<sup>13</sup> Kolts Report, p. 245.

<sup>14</sup> Special Counsel 31st Semiannual Report (May 2012), p. 10.

by the embittered transgressing deputy, the Department would be better served by terminating such an employee.<sup>15</sup>

While Department leaders now insist that this practice is no longer in place, there is no written articulation of policies forbidding this practice from arising in the future.

#### **(iv) Problematic Use of Force and Inadequate Force Investigations**

Both OIR and Special Counsel have identified various problems over the years in regard to force practices, investigations, and policies in the jails. They have also proposed various reforms intended to address these concerns.

As early as 1994 (in his Fourth Semiannual Report), Special Counsel observed that there were “many investigations wherein deputies respond to talkative or uncooperative inmates with a slap to the face or a shove to the wall.”<sup>16</sup> Three years later, Special Counsel noted that “[t]his trend has continued.”<sup>17</sup>

In February 2003, Special Counsel expressed specific concerns over the large number of force incidents that involved deputies’ use of flashlights as impact weapons.<sup>18</sup> He recommended that the Department stop teaching deputies to use flashlights as impact weapons and urged LASD to develop lighter and safer flashlights. Four years later, in December 2007, Special Counsel again raised the issue, this time with a more insistent and frustrated tone: “By and large, our concerns about the disproportionate and inappropriate use of flashlights as impact weapons seem to have fallen on deaf ears at LASD. The Department continues to train its personnel to use flashlights as an impact weapon.”<sup>19</sup>

The Department’s response to these recommendations was that ALADS was opposed to a change in policy. It was not until the Sheriff’s March 13, 2012, report to the Board of Supervisors -- some nine years after Special Counsel first raised the issue -- that the Sheriff finally agreed to make a change in policy to reduce the size and weight of flashlights in

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<sup>15</sup> OIR Seventh Annual Report (April 2009), pp. 26-27.

<sup>16</sup> Special Counsel 4th Semiannual Report (June 1995), p.25.

<sup>17</sup> Special Counsel 7th Semiannual Report (April 1997), p. 47.

<sup>18</sup> Special Counsel 16th Semiannual Report (February 2003), pp. 61-66.

<sup>19</sup> Special Counsel 24th Semiannual Report (December 2007), p. 37.

Custody.<sup>20</sup> On May 23, 2012, the Department finally memorialized this new policy in the Custody Division Manual, effective September 1, 2012.

Beginning in 2003, OIR began to voice concerns about the quality of use of force investigations in the jails "and the legitimacy of the findings that emerged from them."<sup>21</sup> Since that time, numerous recommendations have been made by OIR and Special Counsel to ensure that the investigations are fair, thorough and robust.

In 2003, OIR noted that its examination of force investigations had revealed the use of leading questions, a failure to give credence to an inmate's account of the events and a failure to account for physical signs of injury. OIR determined that a "significant issue is a lack of training for supervisors at the jail facilities regarding how to conduct objective and thorough force investigations."<sup>22</sup> Eight years later, in 2011, OIR reiterated these concerns and again recommended that "[u]nit level investigators should receive ongoing training in conducting force interviews of inmates and witnesses."<sup>23</sup> OIR also recommended that any force investigation determine whether supervisory deficiencies may have played a role in the event.<sup>24</sup>

In its most recent 2012 report, OIR echoed these concerns. Noting that it has "regularly" discussed these investigatory deficiencies during supervisory training, OIR observed that these problems nonetheless continue to arise:

[W]hen we periodically reviewed force packages during the course of our work, we continued to note problems, including a failure to identify all relevant witnesses, deputy reports that apparently were copied and pasted from another deputy's report, biased interviews of inmates, interviews of inmates conducted at inappropriate times, and a failure to gather complete medical information regarding an inmate's injuries.<sup>25</sup>

#### **(v) Discipline Deficiencies**

Kolts, OIR and Special Counsel have all criticized the adequacy of Department discipline

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<sup>20</sup> Sheriff's "Status of Recommendations Report to the Board of Supervisors" (March 13, 2012), p. 2.

<sup>21</sup> OIR Second Annual Report (October 2003), p. 15.

<sup>22</sup> *Id.*, p. 16.

<sup>23</sup> OIR 2011 Violence in the Jails Report, p. 23.

<sup>24</sup> *Id.*, p. 24.

<sup>25</sup> OIR Tenth Annual Report (September 2012), p. 18.

and noted in particular that the Department needs to impose stricter discipline on those deputies who fail to recall an incident and/or who misrepresent a force incident in the course of a unit level inquiry or investigation. Judge Kolts noted that “at times, deputies in custody are taught to adhere to a code of silence.”<sup>26</sup> Kolts recommended strict enforcement, punishment and monitoring of these instances of dishonesty.

In 2003, OIR similarly recommended that misrepresentation of a force event be considered "a separate violation above and beyond the use of force itself and to formally charge the employee in question with false statements whenever appropriate."<sup>27</sup> Six years later, in 2009, Special Counsel raised the same concern and recommended that the Department consistently evaluate employee performance for patterns of "substandard candor."<sup>28</sup> Special Counsel also urged the Department to monitor closely those officers who are charged with allegations of "false statements" or "use of force" to ensure that the allegations are not associated with a larger trend of substandard performance.<sup>29</sup>

Both bodies have also noted concerns with the Department’s failure to vigorously scrutinize or adequately punish off duty misconduct. Those concerns played out in a 2010 Christmas party fight among Custody deputies. OIR thereafter observed “[o]ne way in which the disciplinary system can help the department maintain vigilance over the development of young deputies and jail culture is to scrutinize off-duty misconduct.”<sup>30</sup>

OIR also has been troubled by the ability of Captains to modify and reduce discipline at the end of the disciplinary procedure. OIR has also expressed concerns about LASD’s failure to consult with them before reducing proposed discipline or holding penalties in abeyance, noting: “Too many times we have been chagrined to learn that a Department executive has modified a disciplinary decision without engaging in dialogue from us.”<sup>31</sup> This concern has yet to be addressed and OIR recently urged the creation of new Department policies memorializing OIR’s

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<sup>26</sup> Kolts Reports, p. 244.

<sup>27</sup> OIR Second Annual Report (October 2003), p. 47.

<sup>28</sup> Special Counsel 27th Semiannual Report (August 2009), p. 35.

<sup>29</sup> *Id.*, p. 36.

<sup>30</sup> OIR 2011 Violence in the Jails Report, p. 3.

<sup>31</sup> OIR Fourth Annual Report (October 2005), pp. iv, 19.

input and role in the Department's disciplinary process.<sup>32</sup>

#### (vi) Inadequate Tracking of Inmate Complaints

Both OIR and Special Counsel have identified deficiencies in the way inmate complaints are tracked. In 2004, OIR stated that it had "worked with Custody Division officials to promote improved tracking of inmate complaints of deputy misconduct."<sup>33</sup> OIR reported that the Department agreed to connect inmate complaints with the accused deputy "so that a deputy who is the subject of numerous complaints can come to the attention of supervisors as a potential 'red flag.'"<sup>34</sup> Five years later, however, Special Counsel raised the identical issue and made the same recommendation, noting that no actual progress had been made. Special Counsel underscored the importance of capturing inmate complaints within the Personal Performance Index ("PPI") database saying:

The sheer number of complaints from inmates, regardless of the complaint's merits or the ultimate administrative outcome, might provide crucial insights into patterns of superior or substandard performance among a population of new officers who might be particularly receptive to behavioral intervention, retraining, or mentoring.<sup>35</sup>

Three years later, in its May 2012 Report, Special Counsel expressed frustration and concern that it was, yet again, revisiting the same recommendation: "We have repeatedly recommended that inmate complaints against personnel be included in the PPI and reiterate that recommendation now, particularly in view of rising concern about alleged misconduct at the Los Angeles County Jail."<sup>36</sup>

In its most recent report, OIR has also expressed frustration with the pace of the Department's actions in this area, noting that "[f]or at least the past eight years, OIR has recognized that the failure to track inmate complaints by deputy creates a problematic gap in the Department's ability to monitor deputies' performance and hold them accountable when

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<sup>32</sup> OIR Tenth Annual Report (September 2012), p. 19, fn. 8.

<sup>33</sup> OIR Third Annual Report (October 2004), p. 12.

<sup>34</sup> *Id.*

<sup>35</sup> Special Counsel 27th Semiannual Report (August 2009), p. 42.

<sup>36</sup> Special Counsel 31st Semiannual Report (May 2012), p. 49.

necessary.”<sup>37</sup> Noting its longstanding recommendation on this issue -- and the Department’s promised response -- dating back to 2004, OIR observed: “[t]he Department obviously did not fulfill its 2004 representation to us, and this failure has now presented a problem for the Department in litigation that is finally being rectified.”<sup>38</sup>

### **(vii) Improvements In and Use of PPI**

Special Counsel has repeatedly identified the need to improve various aspects of PPI.<sup>39</sup> In 2003, Special Counsel observed that the reports and data sent to PPI were often error-ridden, inconsistent and delayed.<sup>40</sup>

Special Counsel has also noted that supervisors fail to make effective use of PPI, perhaps due to a lack of knowledge regarding PPI’s capabilities and/or an unwillingness to utilize it. In 2003, Special Counsel bluntly stated: “Use of the PPI for risk management has fallen. It is symptomatic of a trend that we have noted over the past four years of a reduced commitment and interest in the proactive identification and reduction of risk. We deplore it.”<sup>41</sup>

The Commission’s investigation suggests that this problem may persist. For example, one high ranking official acknowledged that when a problem employee was administratively transferred to his facility, he failed to check the employee’s profile in PPI to determine the nature of the employee’s performance problems. He stated that it would have been a good idea, but that it was not mandatory. He was therefore unaware that the deputy had been involved in an off-duty fight for which he received a suspension. That deputy was later demoted due to subsequent misconduct.

Special Counsel has also identified the need to update and expand PPI. In 2003, Special Counsel recommended that performance indicators be updated to include a broader range of behaviors. In a report issued six years later, he noted that while PPI was state of the art when it was created, no updates had been made in the intervening twenty years. As a result, Special Counsel recommended anew that more data be collected and new fields added -- including

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<sup>37</sup> OIR Tenth Annual Report (September 2012), p. 40.

<sup>38</sup> *Id.*

<sup>39</sup> Special Counsel 31st Semiannual Report (May 2012), pp. 15-34; Special Counsel 27th Semiannual Report (August 2009), pp. 4, 11-12.

<sup>40</sup> Special Counsel 16th Semiannual Report (February 2003), p. 2.

<sup>41</sup> *Id.*, p. 59.

performance indicators he had previously recommended -- to maximize and modernize PPI's usefulness as an early warning alert system.<sup>42</sup>

The many issues identified above reflect a history of missed opportunities -- recommendations made by Kolts, Special Counsel and OIR over a period of years that the Department has either ignored or addressed only belatedly. Had these thoughtful and detailed suggestions been implemented, they could have reduced force problems in the County's jails.

## **2. The ACLU has also raised repeated concerns about mistreatment of inmates by deputies in County jails.**

The ACLU has issued reports and pursued litigation raising concerns about jail conditions generally, as well as abusive behavior by deputies directed at inmates, that certainly should have alerted the Department's leadership to these problems several years ago. Their recommendations have gone largely unaddressed over the ensuing years.

### **a. Background**

The ACLU has issued a series of reports over the past few years recounting "the escalating pattern of deputy violence in the jails."<sup>43</sup> In annual and interim reports issued from 2008 through 2011, the ACLU detailed conditions inside the jails and allegations of abuse of inmates by deputies. In a report authored in 2009 by a correctional mental health expert, the ACLU also identified specific concerns in regard to mistreatment of inmates with mental illness. As discussed herein, many of the issues raised in these reports reflect unresolved challenges that the Department continues to grapple with.

### **b. ACLU Reports on Men's Central Jail**

In May 2010, the ACLU issued a highly critical report recounting in detail an array of troubling incidents of physical abuse by deputies of inmates at Men's Central Jail in 2009. The report described a "pervasive pattern of violence" observed in MCJ over those years.<sup>44</sup> It identified inadequate training, ineffective management, overcrowding, and a troubling culture in

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<sup>42</sup> Special Counsel 27th Semiannual Report (August 2009), p. 11.

<sup>43</sup> ACLU Release, "A Sheriff with his Head in the Sand" (September 12, 2012), <http://www.aclu.org/blog/prisoners-rights/sheriff-his-head-sand>.

<sup>44</sup> ACLU "2010 Interim Report on Conditions Inside Los Angeles County Jail" (September 2010), p. 3.

the jails<sup>45</sup> as causes underlying what it described as “an apparent culture of violence and fear, including ... the use of excessive force by deputies.”<sup>46</sup> The ACLU specifically recommended reforms including: enhancing deputy use of communication and negotiation skills; reducing the use of non-lethal weapons, restraints, and physical force whenever possible; enhancing deputy training and supervision to better “distinguish between those situations that require physical force and those that do not;” and equipping deputies with more skills and tools to understand when force is necessary through a “use of force hierarchy” that describes the kind and degree of force appropriate under different situations as well as de-escalation techniques to prevent force.<sup>47</sup>

Many of these same concerns were reiterated in the ACLU’s September 2010 Interim Report on Conditions inside Los Angeles County Jail, in which the ACLU opined that “the violence has continued unabated.”<sup>48</sup> The ACLU described “a pattern of excessive force by deputies” and “retaliation by Sheriff’s Department employees against prisoners for communicating to the ACLU and other prisoners’ advocates.”<sup>49</sup> The report asserted that inmates are “the target of unprovoked attacks by deputies, with multiple deputies often joining in the beatings.”<sup>50</sup> The report summarized statements from former prisoners detailing their accounts of being beaten by deputies, as well as allegations that “deputies intentionally place prisoners in danger of violence at the hands of fellow prisoners by opening cell doors to allow members of opposite gangs to attack one another and by encouraging prisoners to beat up other prisoners to keep them in line.”<sup>51</sup>

One year later, in September 2011, the ACLU issued an even more detailed and scathing account of alleged abuse by deputies of inmates, noting that “to be an inmate in the Los Angeles County jails is to fear deputy attacks.”<sup>52</sup> That report stressed the significance of the wide array of witnesses -- including civilians -- who had come forward to report observed abuse of inmates, noting that “[t]heir experiences suggest that the culture of deputy violence in the jails has become so hardened and pervasive that deputies feel emboldened to carry out their attacks even

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<sup>45</sup> ACLU “Annual Report on Conditions Inside Men’s Central Jail 2008 – 2009” (May 2010), p. 9.

<sup>46</sup> *Id.* p. 1.

<sup>47</sup> ACLU 2008 - 2009 Annual Report, pp. 21-22.

<sup>48</sup> *Id.*, p. 3.

<sup>49</sup> *Id.*, p. 2.

<sup>50</sup> *Id.*, p. 3.

<sup>51</sup> *Id.*, p. 6.

<sup>52</sup> ACLU 2010 Interim Report, p. 1.

in non-secluded areas.”<sup>53</sup> While this report contained no specific recommended reforms, it did question the commitment of LASD leadership to tackling these longstanding concerns and reducing violence in the jails.

**c. The Kupers Mental Health Report**

In 2009, the ACLU released a report authored by Dr. Terry Kupers, a nationally-recognized expert on mental health issues in correctional facilities.<sup>54</sup> The report documented what Dr. Kupers described as “toxic” conditions inside MCJ, where massive overcrowding, idleness, and a shortage of mental health treatment resources led to violence among inmates and abuse by deputies.<sup>55</sup> Dr. Kupers specifically stated “[t]here are many reports of abuse by custody staff, and independent reports from many prisoners that the abuse is disproportionately directed at prisoners suffering from mental illness.”<sup>56</sup> The ACLU submitted the report to Sheriff Baca in 2008, and elected to release it publicly the following year, after months of negotiations with the Department failed to produce any meaningful changes to address the concerns that Dr. Kupers identified.<sup>57</sup>

Based on his findings, Dr. Kupers made several specific recommendations for improving conditions at MCJ, many of which overlap with recommendations made by other bodies that have examined conditions in the jails. Notably, Dr. Kupers’ recommendations go beyond addressing the overcrowded conditions in the jails and the treatment of mentally-ill inmates.<sup>58</sup> In addition to enhanced training for Custody staff and more robust monitoring, Dr. Kupers emphasized the importance of taking “all effective steps to halt custodial abuse.”<sup>59</sup> These included “zero tolerance [for such abuse] from the top, education for prisoners about their rights and the grievance process, training and support to encourage staff to report abuse by other staff, a

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<sup>53</sup> *Id.*, p. 11.

<sup>54</sup> ACLU Release, “ACLU Releases Expert’s Report on Nightmarish Conditions at Men’s Central Jail in Los Angeles” (4/14/2009), <http://www.aclu.org/prisoners-rights/aclu-releases-experts-report-nightmarish-conditions-mens-central-jail-los-angeles>.

<sup>55</sup> Letter enclosing Report on Mental Health Issues at Los Angeles Jail by Dr. Terry Kupers (July 7, 2008), pp. 6-10, 40-46.

<sup>56</sup> *Id.*, p. 45.

<sup>57</sup> ACLU Release, “ACLU Releases Expert’s Report on Nightmarish Conditions at Men’s Central Jail in Los Angeles” (4/14/2009), <http://www.aclu.org/prisoners-rights/aclu-releases-experts-report-nightmarish-conditions-mens-central-jail-los-angeles>.

<sup>58</sup> Letter enclosing Report on Mental Health Issues at Los Angeles Jail by Terry Kupers, (July 7, 2008), pp. 45-50.

<sup>59</sup> *Id.*, p. 49.

confidential complaint system that fosters prisoner trust and action, and prompt and thorough investigation with appropriate consequences for offending staff.”<sup>60</sup>

**3. The Department of Justice similarly expressed concerns regarding treatment of mentally ill inmates and inadequate training in handling this population.**

Well before Dr. Kupers prepared his report, the United States Department of Justice (“DOJ”) investigated allegations that conditions at MCJ violated inmates’ constitutional rights pursuant to the Civil Rights of Institutionalized Persons Act (“CRIPA”). In a harsh critique of Department personnel and practices, 16 years ago DOJ found that “inmates who are mentally ill or housed in mental health housing are subject to an unacceptably high risk of physical abuse and other mistreatment at the hands of other inmates and custody staff. Moreover, the Jail does not adequately investigate allegations of abuse against its inmates.”<sup>61</sup> DOJ also identified inadequacies in training as one of the underlying concerns: “excessive use of force and physical mistreatment of inmates with mental illnesses may be in part the result of inadequate training.”<sup>62</sup>

In an attempt to remedy these violations, DOJ and Los Angeles County reached a Memorandum of Agreement (“MOA”). The MOA, signed by Sheriff Baca on behalf of LASD, required “mandatory orientation and continuing competency based in-service training for correctional staff in the identification and custodial care of mentally ill inmates.”<sup>63</sup> Additionally, the MOA stated, “Staff shall not be permitted to physically, verbally, or mentally abuse inmates with mental illness. Allegations of abuse of mentally ill inmates or inmates in mental health housing shall be promptly and thoroughly investigated and staff members found to have abused inmates shall be appropriately disciplined.”<sup>64</sup>

The MOA had the potential to be a significant step forward in addressing the needs of mentally ill inmates and held the promise of improved conditions during their confinement. Yet eight years later, in sworn deposition testimony, Sheriff Baca said that he had never seen this agreement, was unaware of any DOJ findings regarding mistreatment of mentally ill inmates in the County jails, and had no knowledge of the MOA or the DOJ findings letter underlying the

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<sup>60</sup> *Id.*, p. 49.

<sup>61</sup> DOJ Letter to Los Angeles County re CRIPA Investigation of Mental Health Services in the Los Angeles County Jail (September 5, 1997), p 17.

<sup>62</sup> *Id.*, p 18.

<sup>63</sup> Memorandum of Agreement “Regarding Mental Health Services at the Los Angeles County Jail,” p. 6.

<sup>64</sup> *Id.*, p.7.

MOA that he had signed.<sup>65</sup> The Sheriff explained that he does not “personally involve [him]self with the specifics of activities that are going on,” but rather relies on his staff.<sup>66</sup>

Equally troubling is the ongoing and still unresolved nature of the challenges at issue in the DOJ agreement -- the need to adequately train deputies to nonviolently interact with inmates who suffer from serious mental illnesses. In July 2012 -- fifteen years after the MOA -- ALADS released a report acknowledging that deputies “are not mental health professionals trained to manage mentally ill inmates” and that “changes need to be made to ensure [deputies] are better able to manage an incident, avoid use of force, and remain safe in the workplace.”<sup>67</sup> ALADS proposed a series of recommendations to “overhaul the policies and procedures” including increased training from “mental health workers on how to manage mentally ill inmates.”<sup>68</sup> They urged the addition of “in-service trainings for deputies and supervisors centered on officer safety, management of mentally ill inmates, and other issues that relate to force.”<sup>69</sup>

Department data, as well as witnesses interviewed by the Commission, confirm that these issues remain unresolved. The data reflect that over 30% of the use of force incidents in Custody involved inmates who have a mental history. Moreover, as noted by ALADS, training in regard to the unique needs and challenges of this population continues to be deficient.

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<sup>65</sup> Deposition in *Baca v. Gavira* (2005), pp. 65-67, 70, 256.

<sup>66</sup> *Id.*, p. 74.

<sup>67</sup> ALADS Report, p. 13.

<sup>68</sup> *Id.*, pp. 14-15.

<sup>69</sup> *Id.*, p. 15.

## **CHAPTER THREE USE OF FORCE**

### **Introduction**

Statements and testimony from inmates, current and former Sheriff's Department personnel, jail chaplains and monitors, as well as the Sheriff's Department's own records, demonstrate that there has been a persistent pattern of unnecessary and excessive use of force in the Los Angeles County jails. In October 2011, the Office of Independent Review captured the essence of the problem in a report on "Violence in the Los Angeles County Jails," stating that "it cannot be denied that deputies sometimes use unnecessary force against inmates in the jails, either to exact punishment or to retaliate against something the inmate is perceived to have done." The OIR Report referenced mounting concerns about inmate mistreatment and opined, "[o]ne troubling aspect of our initial review of the recent ACLU report is that the times in which deputies 'get away' with using excessive force may be on the rise."

Most of the force in the last five years has been Significant Force or force that was not directed or supervised. In addition, multiple witnesses, both inmates and non-inmates, described numerous instances in which LASD personnel used force when no threat was present, used force disproportionate to the threat posed, used force after the threat had ended, or enabled inmates to assault other inmates.

Although the Department has taken steps to remediate this problem since public scrutiny intensified in the fall of 2011 -- efforts that have resulted in a significant drop in the number of reported use of force incidents -- use of excessive force remains a concern. This conclusion is supported by anecdotal evidence, as well as available statistical evidence, which shows that, as recently as last year, the majority of force incidents, including many involving Significant Force, were not in response to inmate assaults. It is likely that the force used in a number of these incidents was, at the very least, unnecessary.

The Commission based some of its analysis on data provided by the Sheriff's Department, but the Department's force records are not entirely reliable and likely underreport the use of force. The reliability of the tracking systems is undermined by disparities between the two main Department databases tracking force, which has led to inconsistent reporting of the

number of use of force incidents. In addition, even when incidents are reported, there have been lags of months or even years before key information is entered into the Department's tracking databases, which means the information is not always current. Furthermore, the system designed to assess employee performance does not track inmate complaints by deputy name, thereby diminishing the ability to identify and correlate patterns of misconduct by employee.

More troubling are the data and witness accounts considered by the Commission showing that the existing systems underreport the use of force. Specifically, this evidence indicates that LASD personnel who use or witness force, and inmates who are the recipients of force, may not report all force incidents. This underreporting suggests that the nature and extent of the use of force in the jails are likely greater than the statistics demonstrate.

The Department's Use of Force Policy is also problematic. There is no single, comprehensive Use of Force Policy that is readily identifiable, available in one place, or easy to understand. Remarkably, until last November, the Department did not have a force prevention policy directing LASD personnel that force should be used only as "a last resort" and that, if necessary, they should only use the least amount of force that is "objectively reasonable" to maintain safety in the jails. Even now, the existing policies do not reflect an overall philosophy of preventing and limiting force, and are based upon a force options chart that is confusing and does not reflect the well-established "objectively reasonable" standard articulated by the United States Supreme Court.

Moreover, notwithstanding the volume of force incidents and the number of inmate complaints of which the Department is aware, the Department rarely finds a use of force to be "unreasonable." That track record casts doubt on whether the Department is correctly and consistently applying its stated policy that "unnecessary force" is "unreasonable."

### **Findings**

#### **1. LASD personnel have used force against inmates when the force was disproportionate to the threat posed or there was no threat at all.**

Under LASD policy, deputies are prohibited from using force that is "unnecessary or excessive given the circumstances." According to Men's Central Jail policies, "[a]ggressive or hostile inmates who are confined within their cell . . . and do not pose an immediate threat to

staff personnel or other inmates shall not be removed from their location. The floor or area sergeant shall be promptly notified.”

Despite these policies, the Commission heard a number of accounts from inmates and non-inmate witnesses describing the use of force when an inmate posed no threat either because the inmate was restrained or confined to a cell. In particular, the Commission was told about several instances where LASD personnel used unnecessary force against restrained or confined inmates who had behaved in a lewd or disrespectful (but non-violent) way. In one instance, an inmate was grabbed by the throat, pushed into a glass window and thrown onto the ground for smirking at deputies. Another inmate was taken to an isolated recreation area and beaten with a flashlight for insulting a deputy. In another incident, a deputy who thought an inmate mumbled had something disrespectful repeatedly punched the inmate in the head and did not stop even though his Sergeant yelled at him to cease. Although lewd and disrespectful behavior by inmates is unacceptable, LASD’s own policies forbid the use of force to impose discipline on inmates to remediate such behavior.

Witnesses also told the Commission that LASD personnel have used force against an inmate simply because the inmate questioned a particular action or deputy decision. One inmate stated that he was beaten for asking why he had been denied showers. Another inmate told the Commission that when he asked why he was being moved from his cell, the deputy handcuffed him, strip-searched him in the hallway, and began punching the back of the inmate’s head. Although the inmate was still handcuffed and wearing only boxers, seven more deputies and a Custody Assistant ran towards the scene and joined in a beating that lasted approximately five more minutes until a Sergeant arrived.

Witnesses also recounted the use of excessive force to ensure compliance with a deputy’s order, even though no threat was present. In one incident the Commission heard about, a non-inmate witness saw an inmate walking towards an area of the jail with a deputy shouting, “Stop! Stop!” The inmate did not obey the order and continued to walk. The non-inmate witness saw the deputy walk up to the inmate and smash his head into the wall. The inmate then fell to the floor and the deputy began kicking the inmate. Other deputies joined the altercation as well.

The Commission also learned that large groups of deputies have rushed towards the location of a force incident to join the use of force against an inmate who no longer posed a threat. While the involvement of additional deputies should be expected to lessen the threat posed by a single inmate, the Commission has been told that the involvement of numerous deputies prolongs and intensifies the use of force, frequently leading to the use of excessive force. One deputy describing an incident involving two handcuffed and waist-chained inmates on the 3000 floor of MCJ explained: “When force happens, the whole world rolls. Especially if a deputy’s involved . . . Like everybody from our floor responded. I believe 2000 [floor deputies] responded. So there was – I couldn’t even tell you how many deputies were up there.” In another instance, an inmate on the 3000 floor of MCJ in February 2011 saw an inmate charged with attempted murder of a police officer being dragged out of the shower area by a group of deputies. The deputies took the inmate up the cell row where the inmate witness could not see what was happening. However, the inmate said that he heard what “sounded like a stampede,” which he believes was the rush of deputies to the scene. When the deputies returned with the other inmate, he was covered with boot prints all over his chest and back. One of the deputies said to the inmate, “Bet you won’t [expletive] with cops anymore, will you?”

The Commission also was told of incidents in which the force used may have been initially justified based on aggressive behavior by the inmate, but the deputy either used an amount of force disproportionate to the threat posed or continued to use force after the threat had been neutralized. For example, in July 2007, a deputy encountered an inmate who had left in the middle of a church service at MCJ. When the inmate clenched his fists and slowly began swinging his body back and forth, the deputy immediately kicked the inmate. Another deputy yanked the inmate to the ground and the inmate was punched repeatedly in the face and the body. A third deputy arrived and put the inmate in an arm lock and a fourth deputy pepper sprayed the inmate. When the inmate allegedly grabbed a deputy’s leg, one deputy punched the inmate five times in the ribs and another deputy repeatedly struck the inmate with his flashlight until the inmate released his grip. The inmate was treated for a bloody nose, facial swelling, and a bruised arm.

A video of another incident in April 2011 shows that an inmate, who allegedly had a shank hidden in his anus and refused to be X-rayed, was taken to a different part of the jail and

handcuffed. A deputy said something to the inmate and, in contravention of orders, un-cuffed the inmate, who swung at the deputy. Three or four deputies responded, beat the inmate while he was lying on the floor, and then dragged him to a back room where they repeatedly used a Taser on him.

The Commission recognizes that some of these incidents were disputed by deputies and that inmates are not always reliable witnesses. Nevertheless, the number of incidents the Commission learned about from a wide range of sources -- including non-inmate witnesses, Department records, and OIR -- and the consistent fact patterns among many of these incidents are disturbing and cannot be ignored.

**2. The drop in use of force incidents following public scrutiny of LASD corroborates the anecdotal evidence of a historical use of force problem.**

LASD provided the Commission with the number of Custody Division use of force incidents recorded in the Department's internal tracking systems from 2002 through June 30, 2012. While this data and other information analyzed by the Commission reflect troubling trends regarding the use of force in the jails (see discussion below), there has been a marked drop in use of force incidents that coincides with increased public scrutiny of LASD practices and deputy conduct in the jails. This recent drop-off in use of force indicates that LASD has the ability to reduce force when it makes a commitment to do so and that the higher system-wide levels of force in prior years were unnecessary and excessive.

The Department statistics for January 1, 2006 through June 30, 2012, classify force incidents as either "Significant Force" or "Less Significant Force." Although the Commission has concerns about the reliability of LASD's data (see discussion in finding 10 below), it nonetheless reflects a dramatic reduction in Less Significant Force incidents from 582 incidents in 2006 to 163 incidents in 2011 (a 72% reduction). The reduction in Significant Force during this same time frame is much less dramatic; Significant Force incidents went from 588 in 2006 to 418 in 2011 (a 29% reduction).

This reduction, however, must be considered in the context of the reduction in the inmate population during these same years. While the daily population within the jail system is continually in flux, LASD has provided the Commission with the Average Daily Inmate

Population (“ADP”) for each year from 2007 through 2011. This information reflects that while the absolute number of use of force incidents decreased from 2007 through 2011, the ADP for the same time period fell from 19,961 to 16,696, a drop of 16%. Other data provided by the Department states that the ADP in 2011 was 15,013, which means the decrease in ADP between 2007 and 2011 was as much as 25%. As these figures reflect, the reduction in Significant Force in Los Angeles County jails during the period 2006 through 2011 is only slightly greater than the reduction in the inmate population. In 2012, however, there have been only 121 Significant Force incidents through June 30, or 242 on an annualized basis, even with an increased inmate population. This is a 59% reduction in Significant Force incidents from 2006 and a 42% reduction from 2011. Thus, starting in the fall of 2011, the number of Significant Force incidents began to drop dramatically.

There are two notable observations that flow from LASD data. First, there was a dramatic increase in Significant Force incidents from 2008 to 2009, 611 incidents in 2008 to 761 incidents in 2009, the majority of which occurred at MCJ (171 to 258) and the Twin Towers facility (150 to 208). In 2008 and 2009, there were 13 force incidents in MCJ involving inmate fractures, which was more than the combined number of fractures from August 2002 through the end of 2007.<sup>1</sup> Tellingly, after Commander Robert Olmsted directed Lieutenant Mark McCorkle to conduct an analysis of over 150 “force events” at MCJ and directed Lieutenant Steve Smith to identify deputies with high use of force in late 2009, Significant Force was reduced (to 494 in the next year), with most of the decrease in MCJ (258 to 116) and Twin Towers (208 to 149).

Second, the most dramatic reductions in force have occurred since the formation of the Commander Management Task Force by the Sheriff and the appointment of this Commission by the Board of Supervisors last fall. Around that same time, the ACLU of Southern California released a report on jail violence in LASD facilities and the *Los Angeles Times* published a series of articles bringing allegations of abuse to light. The public scrutiny and the Commander Management Task Force’s actions created an environment in which the Department began to make changes to reduce its use of force, with an emphasis on reducing Significant Force.

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<sup>1</sup> This data is based on information from LASD’s Personnel Performance Index (“PPI”). Data from LASD’s Facility Automated Statistical Tracking (“FAST”) system states that there were 0 fractures in 2008 and 2009. As discussed below, there are non-trivial differences between FAST and PPI data on use of force incidents.

The recent reductions in force incidents are reflected in the chart below. Notwithstanding an increase in the inmate population, the average number of all force incidents per month from October 2011 through June 30, 2012 is 38, as compared to 84 from 2006 through December 2010, which is when a Christmas party fight among deputies from MCJ occurred at the Quiet Cannon restaurant,<sup>2</sup> and 53 for the first nine months of 2011 (before the CMTF was created). Similarly, the average number of Significant Force incidents per month since October 2011 is 20, as compared to 51 for the five years from 2006 to 2010, and 41 for the first nine months of 2011.

**USE OF FORCE STATISTICS SUMMARY**

<b>ALL FORCE INCIDENTS MONTHLY AVERAGES 2006-2012</b>			
<b>Date Range</b>	<b>Jan 2006 – Dec 2010</b>	<b>Jan 2011 – Sept 2011<sup>3</sup></b>	<b>Oct 2011 – June 2012</b>
<b>Number of Months</b>	60	9	9
<b>Total Number of Force Incidents</b>	5049	478	344
<b>Average Number of Force Incidents per Month</b>	<b>84</b>	<b>53</b>	<b>38</b>

<b>SIGNIFICANT FORCE INCIDENTS MONTHLY AVERAGES 2006-2012</b>			
<b>Date Range</b>	<b>Jan 2006 – Dec 2010</b>	<b>Jan 2011 – Sept 2011</b>	<b>Oct 2011 – June 2012</b>
<b>Number of Months</b>	60	9	9
<b>Total Number of Significant Force Incidents</b>	3057	368	179
<b>Average Number of Significant Force Incidents per Month</b>	<b>51</b>	<b>41</b>	<b>20</b>

<sup>2</sup> The Sheriff has been quoted as saying that he learned about force problems in the jails at the time of this 2010 fight.

<sup>3</sup> The 2011-12 force data is from a letter from the Department to the County Board of Supervisors dated July 10, 2012. We note there are some minor discrepancies between the data in the letter and the other data from the Department, but we do not believe they are material to the analysis.

As can be seen from the data, there has been a dramatic decline in use of force incidents following public scrutiny as well as changes instituted by the Sheriff. While this is commendable, the data also indicates that the force used in the past need not have occurred. LASD's recent ability to markedly decrease the number of force incidents through changes in practice, policy and personnel shows that many force incidents in the past could have been avoided and were thus unnecessary and, under the Department's use of force policies, "unreasonable." (See discussion in finding 6 below.)

Although force incidents have fallen in number, this does not signal that the problem has been resolved. Nor does the decline suggest that the many other problems associated with use of force -- including the failure of jail staff to report force incidents, the tactics used leading up to force incidents, inadequate first line supervisors and training, and lax discipline imposed on jail staff who use force excessively -- have been addressed. To the contrary, other information and statistics on use of force, as discussed below, suggest that use of force remains a serious problem in Los Angeles County jails and that force may revert back to previous levels once the spotlight is off this issue.

### **3. The majority of force used in Los Angeles County jails has been Significant Force.**

During the period of the Commission's review, the Department defined "Significant Force" as involving any of the following factors:

- The inmate suffers an injury resulting from use of force;
- The inmate complains of pain or injury resulting from use of force;
- There is an indication or allegation of LASD misconduct in the application of force; or
- There is an application of force greater than a Department-approved control hold, come-along, or take down.<sup>4</sup>

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<sup>4</sup> According to OIR's Tenth Annual Report, in the future the Department will have three categories of force: (1) force that meets the criteria for an IAB roll-out, which involves the most serious injuries and significant force; (2) force where there is no identifiable injury whether or not there is a complaint of pain; and (3) all other force.

A force incident involved “Less Significant” force when there is no injury, complaint of pain or any indication of misconduct, and the incident is limited to any of the following:

- Searching and handcuffing techniques resisted by the suspect;
- Department-approved control holds, come-along, or take down; or
- Use of Oleoresin Capsicum spray, Freeze +P or Deep Freeze aerosols, or Oleoresin Capsicum powder from a Pepperball projectile when the suspect is not struck by a Pepperball projectile.

From 2006 through 2011, Significant Force constituted a clear majority of the force used by Department personnel. During this period, 62% of the use of force incidents involved Significant Force and 38% involved Less Significant Force. Moreover, the percentage of Significant Force increased during this period. In 2006, Significant Force constituted 50% of all incidents; in 2011, the proportion of Significant Force rose to 72%. Notably, 81% of all force incidents at MCJ in 2011 involved Significant Force. This high proportion of Significant Force incidents relative to Less Significant Force incidents strongly suggests that LASD personnel may not have been using the least amount of force necessary to combat the threat of harm or are not reporting this lesser use of force.

The percentage of Significant Force incidents has decreased recently since the formation of the Commander Management Task Force and the appointment of this Commission. In October 2011, there was a large decrease in the number of Significant Force incidents, and November 2011 was the first month in which the number of Less Significant Force incidents was higher than Significant Force Incidents. In the first six months of 2012, Significant Force comprised 53% of all force incidents, in contrast to 2011, when Significant Force was 72% of all force incidents. Again, this data suggests that when LASD pays attention to these issues, improved practices can be achieved.

#### **4. Most force in Los Angeles County Jails is non-directed and unsupervised.**

Directed Force is force carried out at the direction of a supervisor. Conversely, non-directed force involves no direction from a supervisor and, as such, is less guided or planned. Unsupervised force is force in the absence of a supervisor. Eighty-four percent of all force incidents in Los Angeles County jails from 2007 through 2011 were non-directed. In the same

period, for 73% of all use of force incidents, no supervisor was present when the incident occurred (which may have been due, in part, to the insufficient number of supervisors). In 2011, 78% of the force was nondirected and 66% of the force was unsupervised.

That nearly all LASD force is non-directed, and the vast majority is unsupervised, indicates that often force is the result of on-the-spot decision making instead of planned and/or supervised action. This is problematic because, as discussed below, the evidence shows that 57% of the force situations in 2011 did not arise from inmate assaultive conduct and, therefore, time should have been on the side of the deputies to call a supervisor before using force.

#### **5. Most force incidents in 2011 were not in response to inmate assaults.**

The Department provided information on inmate behavior leading to use of force incidents, including whether the inmate was engaged in “inmate assaultive behavior.” These statistics similarly reflect troubling patterns in regard to the circumstances underlying force incidents.

LASD’s policies draw a distinction between types of inmate behavior, classifying inmate conduct as: (1) cooperative; (2) resistive; (3) assaultive/high-risk; and (4) life-threatening/serious bodily injury. LASD defines assaultive/high-risk behavior as follows:

An unlawful threat or unsuccessful attempt to do physical harm to another, causing a present fear of immediate harm; a violent physical attack; a situation in which the totality of articulated facts causes a reasonable officer to form the opinion that a significant credible threat of violence exists. The assaultive individual has crossed the line of resistance and is threatening an assault, attempting an assault, or physically assaulting the Department personnel or citizen. This category also deals with high-risk situations. In this category, the likelihood of injury is obvious due to deliberate assaultive actions or other significant threatened actions. These actions (or threatened actions) are so obvious as to make a reasonable person realize that they must do something to defend themselves, or others.

In contrast, LASD describes resistive conduct this way:

Resistive behavior involves physical or verbal resistance to lawful orders/actions. There are two categories of resistance: passive and active. If the resistance is passive, the individual has refused to follow orders given by the Deputy. If the resistance is active, they may display a number of actions such as running away, flailing their arms, or pulling away. Physical/active resistance can also include the individual assuming an aggressive posture or stance, running away, physically resisting efforts to be secured/handcuffed/controlled, or obscene gestures directed toward lawful presence or requests. An individual's verbal/non-verbal physical actions can be interpreted to mean that they will not comply with orders or requests made and will resist, not allowing control to be exerted over him/her. The suspect is not specifically "attacking" and does not fully intend to assault or batter.

According to LASD's data, in 2011, there were 581 use of force incidents in the jails. Of these, 250 or 43% involved either (1) an inmate vs. inmate assault or (2) an inmate vs. staff assault. The LASD documents containing this information did not specifically define "assault," but it appears that these incidents fall within the Department's definitions of "assaultive/high-risk" or "life threatening/serious bodily injury" inmate behavior, which encompass situations in which an inmate assaults another person. While LASD's documents did not provide specific details as to what types of behaviors were involved in these remaining 331 incidents, it appears likely that, under LASD's definitions of inmate behavior, the inmates must have been "resistive," as no force should be used if the inmate is cooperative and any assaultive or high-risk conduct is likely included in the incidents classified as an inmate vs. inmate assault or an inmate vs. staff assault. Thus, the remaining 57% of the use of force incidents in 2011 did *not* involve inmate assaultive activity. Put differently, in nearly three out of five force incidents, LASD personnel used force against an inmate who was *not* engaged in an assault and who may have done nothing more than passively disobey an instruction.

Of even greater concern is the level of force used to respond to these incidents of non-assaultive behavior. In 2011, there were a total of 418 Significant Force incidents and a total of 250 force incidents that involved inmate assaultive behavior on either another inmate or a deputy. Even assuming that Significant Force was used to respond to *all* of these assaults, there would still be 168 Significant Force incidents that did not involve inmate assaultive behavior.

Stated otherwise, Department personnel used Significant Force on at least 168 occasions (and probably more) to respond to, at most, resistive behavior.

These figures lead to disturbing conclusions about the quantity of force employed and tactics leading to force incidents. They show that deputies frequently use force against inmates who are not attacking anyone and are simply uncooperative or passively resistant. Moreover, that 57% of the force incidents in 2011 were directed against non-assaultive inmates suggests that deputy tactics and skills for interacting with inmates are poor and too often result in the use of force.

An internal Department memorandum prepared by Lieutenant Mark McCorkle in September 2009 at Commander Olmsted's request raised these exact concerns. The memorandum, which was based upon an examination of more than 150 MCJ force packages, noted that "[w]hile in many instances the use of force was reasonable and justified, the events leading up to the incident were not." In other words, even if force was justified to overcome resistance or respond to an assault, the use of force was still problematic because LASD personnel could have used other tactics to avoid altogether the circumstances that eventually resulted in violence. That same memorandum identified poor deputy communication skills as a possible precipitator of force, noting that "the manner in which deputies speak to inmates may play a role in inciting assaults," and questioned whether some force events could have "been mitigated by contacting a supervisor regarding a hostile or uncooperative inmate." These observations, when coupled with the data reflecting that most force in 2011 was used against inmates who were not attacking anyone, suggest that many deputies and Custody Assistants lack the skills, training, or judgment required to handle inmates in a safe and responsible manner. They further confirm that too often force has been used as a first response, rather than as a last resort.

**6. LASD imposed discipline for unreasonable force violations in less than 1% of force incidents from 2006 to 2011.**

The Commission obtained information on the number of times the Department has imposed discipline after determining that allegations of "unreasonable" use of force incidents were "founded" and out of policy. During the period from 2006 through 2011, *only 36 out of a total of 5,630 use of force incidents* in LASD jail facilities were deemed to be unreasonable.

Thus, according to LASD data, only 0.6% of use of force incidents involved unreasonable force in violation of LASD policy. A use of force expert who testified before the Commission noted that this percentage is exceedingly low.

That the Department found that less than 1% of LASD use of force incidents in the jails involved unreasonable force suggests that the Department is not correctly applying its own policies in assessing force incidents. The Department Custody Manual provides that “[u]nreasonable force is that force that is unnecessary or excessive given the circumstances presented to Department members at the time the force is applied. Unreasonable force is prohibited. The use of unreasonable force will subject Department members to discipline and/or prosecution.” The substantial reduction of force after public scrutiny suggests that much of the force that was used prior to October 2011 could have been avoided, and was therefore unnecessary and in violation of Department policy.

LASD internal evaluations of force reflect deficiencies in LASD’s investigation system that may account for these very low out-of-policy findings. In the memorandum by Lieutenant McCorkle referenced above, he found numerous examples of policy violations or lack of familiarity with policy requirements. Moreover, he noted that events were “dramatized to justify outcome,” and “[v]ery few of the [use of force] packages identified potential policy violations and none were found that recommended any type of disciplinary action.” In 2010, Captain Greg Johnson circulated his own analysis of a smaller number of use of force reports from MCJ. His memorandum noted several other concerns, including the fact that many of the force reports omitted important facts or lacked sufficient data. These memoranda, when compared with the Department’s determination that 99.4% of its force incidents are “reasonable,” paint a picture of an inadequate investigatory and disciplinary system.

## **7. Deputies have enabled inmates to use force against other inmates.**

Numerous witnesses reported that deputies enabled inmates to attack other rival inmates by opening the doors to several cells at once, which inmates refer to as “racking the gates.” The Commission was also told about deputies who allowed “enforcer” inmates to attack other inmates the deputies wanted “regulated.” And the Commission heard the testimony of a former inmate who described an incident in which two groups of inmates appeared poised to fight in a

dorm in MCJ. Rather than trying to defuse the situation, deputies who were present simply watched the entire episode and speculated as to which inmate was going to be the first to swing.

In addition, the Commission heard about deputies who have placed inmates in dangerous situations. K-10 inmates are high-security “keep-away” inmates, including alleged rapists and child molesters. Witnesses told the Commission that deputies would place these K-10 inmates in the general population and announce their crimes to the other inmates. These allegations have been corroborated by recently installed video cameras, which captured a deputy improperly escorting a high-security inmate together with general population inmates. The Commission has also learned of allegations that deputies intentionally placed an inmate in harm’s way by putting him in the same cell with a rival gang member or with an inmate known to be violent or a sexual predator.

Corroborating these accounts is information provided to the Commission by the County indicating that the County has paid \$9.47 million to settle lawsuits alleging that deputies intentionally or negligently enabled inmates to assault other inmates. This figure is out of a total of \$25,640,144 in settlement payments and litigation costs arising from claims by inmates of improper force -- whether by inmates or by deputies – while in the Department’s custody.<sup>5</sup>

#### **8. Deputies have used humiliation as a tool to harass inmates.**

Witnesses told the Commission that deputies intentionally humiliate inmates. Inmate witnesses recounted the following incidents, among others: One inmate said he was forced to strip naked and walk in a general population module because a Sergeant mistakenly thought that he was stealing mail. Another inmate reported that he was strip-searched by a deputy who placed his flashlight half an inch into the inmate’s rectum.

Jonny Johnson testified that he was beaten in October 2009 simply for telling deputies to stop verbally abusing a mentally-challenged inmate. Johnson stated that deputies took him to an isolated area, pushed his head against the wall and hit him repeatedly in the ribs and the chest. Johnson was then forced to hand out bedding and linens to other inmates and say to each inmate, “I’m a faggot. The deputies are the bomb.”

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<sup>5</sup> Of this amount, \$4.575 million was paid for assaults on inmates by deputies in holding cells in a Station and two courthouses.

A retired LASD Lieutenant described similarly abusive conduct to Commission staff. He explained that in recent years deputies were more likely to force inmates to face the wall and strip-search them in front of everyone to embarrass them for minor infractions. A former inmate at the Pitchess facility told the Commission that he was subjected to seven consecutive strip searches because deputies were mad about a riot that had recently occurred on the inmate's floor. When the inmate finally protested, he was handcuffed and left naked in the shower area for six hours until a Sergeant finally arrived on the floor.

Strip searches under any circumstances can cause inmate humiliation and anxiety. For these reasons, other large jails -- including those in Cook County and New York -- have put in place body scanner machinery that can substantially reduce (and even largely eliminate) the need for strip searches.

**9. Use of heavy flashlights as impact weapons leads to unnecessary injuries.**

Until recently, LASD provided its deputies with long, heavy metal flashlights for illumination. These flashlights are filled with lead batteries, are not well-balanced and have sharp edges. Thus, if a deputy strikes an inmate with the flashlight, the inmate can sustain serious injuries.

The Sheriff has recently instituted, effective September 1, 2012, a policy change prohibiting the use of the heavy metal flashlights. This recent change represents an important step forward for reducing unnecessary inmate injuries.

**10. LASD's statistics on use of force are not reliable.**

Like all statistical information, the conclusions that can be drawn from the data are only as reliable as the data itself. Unfortunately, there are numerous indicia that the statistical data provided by LASD may not be completely reliable. For example, the number of unreasonable force incidents identified by LASD and discussed above is in conflict with OIR summaries of Department actions. In its October 2011 Report, OIR reported on 12 specific use of force incidents at County jails that resulted in discipline for the staff involved.<sup>6</sup> According to the OIR report, the 12 incidents (from as far back as October 2009) involved 19 employees who used

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<sup>6</sup> OIR 2012 Report, pp. 13-22.

force and 10 discharges.<sup>7</sup> This conflicts with the data provided to the Commission by the Department, which shows only four discharges in all of 2009, 2010 and 2011. This inconsistency reinforces concerns with the reliability of LASD data.

Further, there is a concern with the data because of the evidence of underreporting of use of force incidents (see discussion in finding 11 below), which leads to a distorted picture of the true nature and extent of the excessive use of force problem. In addition to underreporting, LASD's inadequate data tracking systems create a separate basis for questioning the reliability of the force statistics.

LASD principally uses two data systems to track issues relating to use of force: the Personnel Performance Index system ("PPI") and Facilities Automated Statistical Tracking system ("FAST"). Both systems track use of force, albeit in different ways.

FAST is an "event-driven" system that is used by LASD management for statistical purposes to track information on a variety of topics, including inmate service complaints, medical issues and force incidents. LASD management uses FAST to identify and analyze trends in use of force incidents and generate statistical reports on where and how force occurs.

In contrast, PPI is a "personnel-driven" system that is used to organize information relating to LASD staff performance. PPI allows a user to pull up electronically scanned versions of use of force documents completed in connection with a force incident involving a specific employee. LASD uses PPI to analyze deputy performance on an individual basis.

A number of problems with these systems suggest that LASD statistics on force incidents are not totally reliable. First, there is no interaction between the PPI and FAST databases. As a result, one cannot look up a force incident in FAST and directly access the corresponding information in PPI. This has led to inconsistent use of force data between the two databases. At times the differences appear relatively small, but in other cases, the disparities appear considerable. For example:

- According to FAST, MCJ had 1,578 force incidents from 2006 through 2010. According to PPI, MCJ had 1,608 force incidents over the same time period.

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<sup>7</sup> *Id.*

- According to FAST, there were 116 Significant Force incidents in MCJ in 2010. According to PPI, there were 100 such incidents that year, a difference of 16%.
- FAST data states that 102 Less Significant Force incidents occurred at MCJ in 2008, while PPI puts the number at 126, a difference of 26%.
- PPI data states that there were 15 force incidents in which MCJ inmates suffered bone fractures in 2008, 2009 and 2010. FAST data states that there were 0 fractures at MCJ during these years.
- PPI data states that 1,681 staff members (1,514 deputies and 167 Custody Assistants) used force in 2011 across all LASD jails. FAST states that 1,618 staff members used force -- 154 Custody Assistants (8% lower than PPI) and 1,464 deputies (3% lower than PPI).

Further, it is likely that information on force incidents is not entered into the data systems consistently. The process for data entry into FAST begins with a statistical tracking form, which is filled in by a Sergeant and Watch Commander after a force incident occurs in their facility. The form includes details on the incident along a variety of metrics, including location, injuries and force techniques used. A statistical coordinator at the unit then enters the information on that form into FAST. There is no manual that LASD personnel use when entering the information on a tracking form into FAST. Because of this, LASD personnel acknowledged that there is no guarantee that information about force incidents is being entered consistently.

For all these reasons, the picture painted by the statistics may not be reliable. Indeed, LASD employees with expertise on FAST and PPI indicated that the Department's data systems are in need of replacement or at a minimum a significant update or overhaul. For example, LASD personnel explained that FAST is currently antiquated due to a lack of support over the years and LASD would like to gather more information than FAST can handle.

Aside from inconsistent data and inadequate systems, another deficiency in these systems is that they do not track inmate grievances about force incidents by employee. Several experts consulted in connection with the Commission's investigation noted that tracking inmate grievances on use of force issues is essential to understanding the level of force in a jail facility and also serves as an "early warning system" that can identify problematic behavior and assist with efforts to remediate inappropriate use of force. Tracking is used for this exact purpose in many other corrections systems.

The problem with LASD's approach to tracking inmate use of force grievances is two-fold. First, PPI does not track inmate complaints *at all*. Thus, the Department's computer system used by supervisors and others to monitor employee performance does not reflect these complaints. This inhibits the ability to maintain a meaningful and complete early warning system.

Second, while FAST tracks inmate grievances in general, it does not provide LASD management with useful or timely analysis of use of force grievances. For example, historically the information on inmate grievances in FAST has only been retrievable by inmate name and *not* by *deputy* name. Thus, LASD has not been able to use FAST to find out how many complaints have been filed against particular deputies. In addition, FAST has data on the total number of complaints, but it does not separate those complaints into the various categories of inmate grievances, such as medical complaints, force complaints and facility complaints. As a result, FAST has not produced statistical trend analysis on use of force grievances that management can use to determine which facilities or staff are connected to excessive force complaints.

The Sheriff recently testified before the Commission that the Department is in the process of implementing changes that will enable inmate complaints to be retrieved in FAST by deputy name pursuant to a Custody Division Directive issued on July 25, 2012 (two days before the Sheriff's testimony). This information, however, still will not be available in PPI, which tracks personnel issues and concerns, and the data about grievances in FAST does not always provide meaningful information specifically relating to use of force.

It is important to note that despite the inadequacies of PPI and FAST, the Department was not stripped of the ability to identify use of force concerns and problematic employees. At a fundamental level, the use of force problem in the jails is a problem of identifying and then disciplining personnel who use inappropriate force. Notwithstanding some reliability issues, the Department has extensive data relating to force issues that is available to LASD management. For example, LASD provided to the Commission reports that identify which areas in the individual jails have the highest levels of force. The Department also produced reports identifying the number of force incidents that occurred in the specific shifts in each part of the specific jail facilities. PPI allows LASD to track which employees are using force more

frequently than others. Thus, the Department had sufficient data over time to identify the personnel who are using unjustified and/or excessive force.

#### **11. Evidence suggests that the use of force is underreported.**

In addition to the problems with LASD's databases and statistics discussed above, there are several reasons to question whether all force incidents in Los Angeles County jails are reflected in the Department's data and records. Numerous witnesses interviewed by Commission staff indicated that not all force incidents are reported by LASD personnel who used force or by inmates against whom force was used.

The most disturbing examples of a systemic breakdown occurred at MCJ in 2010 when LASD Lieutenant Michael Bornman analyzed approximately 100 unprocessed and incomplete use of force reports spanning several years that had not been entered into the Department's data tracking systems. As Bornman acknowledged in testimony before the Commission (discussed in greater detail in the Discipline Chapter), dozens of use of force cases were deemed unfounded years after the fact to simply close cases that had missing files, no witness statements, missing video tapes, and incomplete information upon which to assess deputy performance. Bornman's account reinforces concerns about the accuracy and reliability of LASD's reporting and tracking of force incidents. As recently stated by OIR, "the fact that internal deadlines are breached as often as they are honored calls into question how effectively the Department is managing and tracking its work in these important areas."<sup>8</sup>

Use of force incidents may also be underreported because witnesses fear that LASD personnel will retaliate against them for reporting an incident. Notably, LASD first articulated the concept of an anti-retaliation policy last fall, and finally included a specific policy in its Manual addressing anti-retaliation earlier this year. That the Manual did not previously incorporate an anti-retaliation policy is an indication that LASD was not sufficiently focused on this problem.

The Commission was told of retaliation or threats of retaliation by deputies against inmates who file (or try to file) a complaint following a force incident. Retaliation is reported to have taken several forms, including violent and nonviolent actions.

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<sup>8</sup> OIR Tenth Annual Report (September 2012), p. 31.

For example, an inmate stated that he was returning to his cell after visiting his girlfriend, who had just complained to supervisors at MCJ about the way the inmate was being treated. The inmate was stopped in the hallway by approximately 12 deputies. According to the inmate, each deputy was wearing black weight-lifting gloves. When the inmate complied with a deputy's instruction to face the wall, he was immediately attacked from behind. One deputy deployed his Taser, causing the inmate to fall face-first to the floor unconscious. As the inmate drifted in and out of consciousness, he curled into a fetal position as the deputies continued to assault him with punches, kicks, and flashlight strikes. One deputy wrapped the inmate's shirt around his neck and choked him. Another deputy wiped the blood off of the inmate's face and then immediately pepper-sprayed him in the face. When the inmate was finally taken to medical care, he was diagnosed with a chipped tooth, broken nose, broken ribs and rhabdomyolysis, a condition in which muscle trauma causes disintegrated muscle tissue to be released into the bloodstream. He was hospitalized for 11 days.

The Commission also heard about incidents in which inmates were placed in disciplinary segregation immediately after deputies used excessive force against them. Placement in disciplinary segregation makes it very difficult for the inmate to report the incident to others and, furthermore, serves as a reminder to inmates of what actions can be taken by deputies against inmates who divulge deputy misconduct. At times, inmates have been charged with assaulting an officer following an excessive force incident, which can deter other inmates from filing complaints about excessive force. In recent months, at least one inmate successfully defended against such charges at trial, arguing that charges of assault were falsely brought in order to cover for excessive use of force by deputies.

Non-inmate witnesses also expressed a concern about retaliation and threatening conduct by deputies. An observer witness indicated that he was intentionally locked inside jail rows for extended periods of time by deputies. A non-inmate female witness indicated a male deputy threatened to "pat her down" before letting her enter his module. Another non-inmate witness said that the deputies used the names "rat" and "mother[expletive]" to refer to the witness following a force incident. Another non-inmate witness stated the deputies made several threatening comments, gave the witness dirty looks, and stared at the witness in an unsettling manner during future encounters.

Even deputies who report misconduct have been the subject of retaliation. The Commission learned of one case where a deputy who had witnessed a use of force incident that eventually led to another deputy's termination received threats about being a "rat." In another incident, a 2000 floor deputy asked that he be allowed to drop a claim of hazing and harassment because he was "worried about the consequences" and feared things would worsen if he pursued his claim.

Another contributing factor to the underreporting problem is the inmate complaint process (see discussion in the Discipline Chapter). First, some inmates need to ask a deputy for a complaint form. Witnesses told the Commission that deputies at times ignore an inmate's request for those forms. Second, even if the deputy obliges, in some instances the inmate must ask the deputy to put the form into the locked complaint box. Thus, inmates are forced to trust a complaint process that, at times, requires the participation of the very same deputies against whom the complaints are being made.

For example, an inmate on the 1700 module of Men's Central Jail attempted to file a complaint in December 2011. The inmate asked a deputy to put his complaint form in the locked complaint box that only a Sergeant could access. The deputy put the complaint form on top of the complaint box instead. This antagonized the inmate, who loudly complained that the complaint form needed to be put inside the box so that only the Sergeant could read the form. Later, when the inmate was waiting in line to get his haircut, the same deputy pulled him out of line and put him back in his cell because the inmate was purportedly "verbally aggressive" to the deputies.

For all of these reasons, our investigation suggests that the number of use of force incidents is likely underreported in the Los Angeles County jails and that the extent of the problem is larger than the existing data reflect.

The evidence of underreporting also raises the possibility that the dramatic decrease in Less Significant Force stems, at least in part, from a decrease in the reporting of that force. As noted above, over a six-year period ending in 2011, Significant Force was reduced from 588 to 418, which is a 29 % reduction and consistent with the reduction in the ADP referenced above. Because these incidents involved injuries and complaints of pain, they are more likely to attract

attention or generate paperwork such as hospital forms and medical records and, accordingly, more likely to be reported. During the same time period, however, Less Significant Force was reduced from 582 to 163, which is a 72% reduction and significantly higher than the reduction in the ADP. It is also higher than the reduction in Significant Force, even though under a “Force Prevention Policy” one would expect Custody personnel to use Less Significant Force in lieu of Significant Force where possible. Although there may be other explanations, we question whether some of this reduction was the result of deputies failing to report Less Significant Force, which is less noticeable and easier to conceal.

**12. LASD does not have a comprehensive, integrated and understandable Use of Force Policy, nor does it ensure that deputies understand its policies.**

The Commission reviewed the Department’s Manual and Policy of Procedures (the “Manual”), consulted with numerous force and corrections experts, and reviewed model use of force policies. While the Department is in the process of revising its force policy, these changes remain a work in progress. As such, the Commission has identified below concerns with the Department’s current policies so that these issues can be factored into the Department’s ongoing process of policy revisions.

According to experts, sound and clear use of force policies -- as well as accountability in regard to those policies -- are integral to addressing excessive use of force problems. Notably, some experts who have been involved in successfully turning around jails with a use of force problem have stated that one of the first things they did was draft a strong use of force policy that reflects in clear and concise language the overall philosophy and principles that govern use of force. They emphasized a culture of fidelity to those policies above all else.

Experts stated that, to be effective, the use of force policy must be a comprehensive and easy-to-understand guide on what to do when confronted with a use of force scenario. Deputies and Custody Assistants must know and understand: (1) the force they are authorized to use and (2) what they are required to report. Experts advocate use of force policies that contain all the use of force provisions in one document, beginning with higher-level principles, such as expected outcomes, and then funneling down to specific situations involving force and force reporting and investigation. The United States Immigrations and Custom Enforcement Detention Use of Force Policy and the California Department of Corrections and Rehabilitation Adult

Custody and Security Use of Force Policy (the “CDCR Policy”) are examples of such policies. These policies are comprehensive, covering all relevant issues involving the use of force, force reporting and investigations. The clear and coherent structure of the policies also means that the more detailed provisions reflect the higher principles.

By contrast, LASD provisions on the use of force are neither comprehensive nor easy to understand. There is no single, comprehensive, and organized policy, and the various provisions do not reflect unified higher-level principles governing all policies related to the use of force. Use of force provisions are scattered in seemingly random chapters and subsections in the Manual, as well as in unit directives, facility memoranda and other written orders. A deputy or supervisor would need to spend hours even to locate -- let alone read and understand -- the various provisions relating to the use of force scattered throughout the thousands of pages in the Manual. For example, the force reporting provisions follow a provision concerning rent control laws and are located hundreds of pages after policies describing when force is appropriate.

Even if the Department’s use of force provisions were combined into a single document, this document would be incomplete and difficult to understand. LASD provisions concerning the use of force do not acknowledge that special populations in the jails, including the mentally ill, pregnant inmates, or special needs inmates, may require special techniques or consideration. Experts acknowledge the importance of developing particular rules for these populations, especially for inmates suffering from mental health issues who are often involved in use of force incidents.

LASD use of force provisions also have no organization or cohesion. Higher-level principles are scattered throughout LASD provisions on the use of force, and there is no clear order or structure communicating how each provision relates to the rest of the policies. New provisions such as those on force prevention and anti-retaliation have been added in seemingly random locations, and their guiding principles have not been incorporated into existing, and sometimes even contradictory, older provisions. Significantly, the Situational Use of Force Options Chart, which appears to be a key document governing deputy behavior in possible use of force encounters, is not even located in the Manual.

LASD generally acknowledges the importance of employees understanding the policy by requiring that supervisors shall: (1) “see that employees in their Unit are aware of the existence of the Department Manual of Policy and Procedures and the location within the Unit where a copy or copies are available for their use;” (2) “see that new employees read and understand the Policy and Ethics chapter;” and (3) post revisions to the unit bulletin board. LASD also requires its employees to “be familiar with and conform to, the policies and procedures of the Department manual.” Yet, because of the problems described above relating to the lack of coherence and structure, LASD employees would find it extremely difficult to read and understand the policies that govern their exercise of force.

**13. LASD did not have a policy that set forth basic force avoidance principles prior to November 2011.**

Last fall, following the public spotlight on LASD’s use of force and the formation of the Commander Management Task Force as well as this Commission, the Sheriff personally drafted a “Force Prevention Policy.” The final policy, set forth in the LASD Custody Manual 3-02/035.00 (Rev. 3/19/12), provides in pertinent part as follows:

Department members shall only use that level of force which is objectively reasonable to uphold safety in the jails and should be used as a last resort.

\* \* \*

When force must be used, deputies and staff shall endeavor to use restraint techniques when possible, and use only that level of force required for the situation, consistent with the Department’s Situational Use of Force Options Chart.

It is notable that LASD did not have a policy incorporating these basic and fundamental principles until the Sheriff drafted it late last year. When asked why the Department did not have this policy before then, the Sheriff could only respond that it was a “great question.” Experts consulted by the Commission noted that these are fundamental principles that corrections departments have had in place for many years. The Commission believes that the failure of LASD’s policy to articulate these basic use of force principles until very recently sent the wrong message to deputies and Custody Assistants regarding the propriety of excessive use of force in the jails.

The Sheriff's decision to add a force prevention provision represents a step forward for the Department. Nonetheless, such a provision by itself is not sufficient unless it is fully integrated into an overall coherent use of force policy. Due to the organization of LASD's policies, the current Force Prevention Policy is not located with any other provision concerning the use of force in the Custody Manual.

Further, the principles set forth in the Force Prevention Policy are not reflected in the Situational Use of Force Options Chart, which is referenced in the Force Prevention Policy. The Chart does not tell deputies and Custody Assistants that they should only use force as a last resort and then only use the minimum force necessary. Instead, it directs them to choose from a set of force options based on which category the inmate's behavior fits into. This structure breeds confusion and provides a mixed message to deputies regarding how to evaluate the appropriate use of force in any given encounter.

**14. The Situational Use of Force Options Chart is not an adequate or well-founded use of force guide.**

The Situational Use of Force Options Chart (the "Chart") is the primary guide for deputies and supervisors regarding how to exercise force. Other than the Chart, the Department's provisions on the use of force provide little specific guidance on when and how much force is appropriate.

The Chart divides inmate's actions and behavior into four separate categories: (1) cooperative; (2) resistive; (3) assaultive/high risk; and (4) life-threatening/serious bodily injury. The deputy determines which category the inmate's actions and behavior fall into based on his or her perception of the incident and analysis of the facts. The deputy's perception of the incident is influenced by a number of factors, including: "the deputy's understanding of State and Federal laws [and] Departmental policies," the deputy's "training," the deputy's "size, strength, personal fitness level, self-defense capabilities, and self-confidence . . .," the deputy's "[p]rior experience," "[a]ny and all factors . . . which influence the deputy's perception of the incident . . ." and "[f]actors regarding the suspect such as: mindset, physical fitness, weapons, comparative size, level of intoxication, number of suspects, training of suspect, perceived suspect self-defense capabilities . . ." These are virtually all subjective metrics, and do not reference the constitutional standard of "objective reasonableness."

Once the deputy determines the category of an inmate's actions and behavior, the Chart lists the available options. For resistive behavior, the Chart allows "control holds," "firm grip," "defensive tactics" such as "takedown," "intermediate weapons control techniques" such as controlling the inmate "by the use of an impact weapon in a restraint capacity," and "chemical agents."

Many experts reject this type of rigid use of force matrix as unhelpful and problematic. The Chart does not accurately or realistically reflect the quickly changing nature of a deputy-inmate confrontation. The lines between cooperative and resistant or resistant and assaultive behavior are blurry, and deputies and supervisors likely have a difficult time determining which category the inmate's conduct fits within during each moment of a fast-moving use of force encounter. Because a rigid force matrix does not accurately capture the nuances of a use of force incident, experts warn that deputies may try after the fact to fit their actions within the proper box based on the force that was used, and thereby falsely characterize the incident, instead of attempting to use force that was objectively reasonable under the circumstances and then honestly articulating the level of force that was used and the basis for that use of force.

The Chart is also problematic because it includes no mention of avoiding or minimizing the use of force and instead implies that the deputy may use any of the options in the applicable category that he or she subjectively believes to be appropriate. By prescribing options based on the inmate's category, the Chart appears to allow and perhaps even call for uses of force that may be unnecessary. For example, a deputy following the Chart in dealing with a resistive inmate may elect not to attempt verbal communication or call a supervisor before exercising force, even if the situation would be better addressed by one or both of those options.

**15. LASD policies concerning the reporting of force are confusing and fail to clearly articulate the timeline and process for reporting.**

Ambiguities and omissions in use of force reporting requirements -- including failing to require written reports within any defined time period, failing to include precautions to ensure untainted reports based on independent witness accounts, and failing to require statements by all participants in and witnesses to the force -- diminish the integrity and reliability of the reporting process. (Problems that relate to the investigatory process will be discussed in the Discipline Chapter.) These concerns are manifest in the current LASD policies in a host of ways.

First, although Department members are required to verbally report a use of force incident, the provisions do not clearly indicate when a Department member is required to write a use of force report. Instead, the reporting provision states “[w]henever an incident involving reportable force requires a first report, all details regarding the use of force shall be included in the report,” but it fails to make clear when a “first report” must be prepared.

Second, the provisions do not clearly require all Department witnesses to the force incident to write a written report. Experts agree that *all* personnel involved in a use of force incident and *all* personnel who witnessed a use of force incident should be required to write a use of force report. Requiring a use of force report from Department participants and all witnesses ensures that there is proper documentation of the use of force incident, improves the accuracy of reporting, and allows proper review.

Third, the provisions do not prohibit personnel involved in a force incident from collaborating with each other in the preparation of use of force reports. When multiple deputies involved in a force incident speak with each other before providing their statements or writing their reports, they can taint each other’s recollections of the incident. Other agencies’ use of force policies, such as the CDCR Policy, specifically prohibit personnel from such collaboration.

Fourth, the provisions are unclear as to the timing of and supervisorial involvement in reporting requirements. There is a lack of clarity as to when -- or if -- a supervisor must complete a “Supervisor’s Report” on use of force, or how these requirements play out when other teams outside the unit engage.

Experts stress the importance of prompt reporting of all use of force incidents, and many corrections leaders described the need for a clear policy requiring completion of force reports before the end of the shift when force was used. Yet these requirements are absent from LASD policies. Failing to require timely reporting and review leads to inaccurate reporting and an environment of lax attention to these issues.

## Recommendations

### **3.1 LASD should promulgate a comprehensive and easy-to-understand Use of Force Policy in a single document.**

For LASD personnel to be able to act in accordance with the Department's Use of Force Policy, the policy must be comprehensive, readily accessible, and easy to read. There should be a single document that sets forth in clear and consistent language in the policy manual:

(1) overall principles governing the use of force; (2) specific and clear provisions providing guidance regarding the use of force; (3) a list of the weapons that LASD personnel are and are not authorized to carry; and (4) requirements and specific time limits for reporting force incidents.

### **3.2 LASD personnel should be required to formally acknowledge, in writing, that they have read and understand the Department's Use of Force Policy.**

### **3.3 All LASD Custody personnel should be provided training on a new comprehensive and easy to understand Use of Force Policy and how it applies in Custody.**

The Department's Use of Force Policy is only as effective as the understanding of the policy by Department personnel. The Department should provide personnel with dedicated training on a new comprehensive and easy to understand Use of Force Policy. This training should emphasize the importance of complying with the policy, include specific training on how the policy applies in the Custody setting, and should make clear that if any other training conflicts with the policy, the force policy controls.

### **3.4 The Department's Use of Force Policy should reflect a commitment to the principles of the Force Prevention Policy and prohibit inmate retaliation or harassment.**

According to OIR's Tenth Annual Report, "the new section containing force-related policies" in the Department's newly revised Manual of Policy and Procedures "begins with a statement echoing the values expressed in the Force Prevention Policy." In addition to incorporating the provisions of the Force Prevention Policy providing that LASD personnel use force "as a last resort" and then only use the minimum amount of force necessary under the circumstances, the policy should also incorporate the provisions of the Anti-Retaliation Policy that force cannot be used to retaliate against inmates for any reason, to discipline inmates for misconduct by inmates, or to harass or intimidate inmates.

**3.5 LASD’s Use of Force Policy should be based upon the objectively reasonable standard rather than the Situational Use of Force Options Chart.**

The Department’s Situational Use of Force Options Chart is ill-suited to the dynamic and rapidly changing nature of deputy-inmate interactions and confrontations, and it does not reflect the principles of the Force Prevention Policy. Instead of attempting to justify a specific type of force based upon specific inmate behavior, the Department’s Use of Force Policy should be predicated upon the constitutional standard of what an objectively reasonable law enforcement officer would do under the circumstances. This will require LASD personnel to articulate the reasons for their use of force, which will be judged by an objectively reasonable standard that takes into account the totality of the circumstances under which the force was used.

**3.6 The Use of Force Policy should articulate a strong preference for planned, supervised, and directed force.**

LASD should distinguish between reactive and planned force and make clear in its policy the Department’s preference for planned, supervised, and directed force.

**3.7 The Use of Force Policy should account for special needs populations in the jails.**

Specific instructions for special populations within the jail, such as inmates with special needs, may provide deputies with the tools to avoid use of force encounters and will better protect deputies and inmates. For example, the Use of Force policy should state that, if a situation arises involving a special needs inmate, the appropriate medical or mental health staff should be consulted, whenever possible, prior to the planned use of force. For mentally ill patients, this could possibly avoid an unnecessary confrontation and use of force.

**3.8 PPI and FAST should be replaced with a single, reliable, and comprehensive data tracking system.**

PPI and FAST are antiquated and cumbersome systems that should be replaced or overhauled. The replacement or updated system would provide a single data tracking system for both statistical analysis and for monitoring employee performance. This would eliminate a source of inconsistent data on use of force.

Procedures and rules for data entry for use of force tracking systems should be uniform so that data and force incidents are entered and classified consistently.

The Commission is well aware that the creation of an upgraded and improved tracking system requires a substantial investment of resources and time and urges the Board of Supervisors to provide the necessary funds for such an upgrade. The Commission believes, however, that interim steps to enhance reliability and reporting can and should be instituted by the Department.

**3.9 Inmate grievances should be tracked in PPI by the names of LASD personnel.**

Inmate grievances must be tracked by the names of LASD personnel to identify deputies who may not have the interpersonal skills to deal with inmates in a Custody setting, identify deputies who have used force on too many occasions, and comply with the Department's obligations in responding to *Pitchess* motions for deputy-specific information. The recent change to FAST is intended to enable the Department to comply with its obligations in connections with *Pitchess* motions. This change does not, however, provide a comprehensive way to track potentially concerning information in a single integrated personnel system. Until the Department overhauls the FAST and PPI systems, the Commission recommends that the information be captured in PPI as well as FAST so that LASD supervisors will only have to query the PPI database to obtain all relevant information for personnel under their supervision.

**3.10 LASD should analyze inmate grievances regarding use of force incidents.**

Analyzing inmate force grievances is essential to understanding the level of force in Custody facilities. LASD should analyze inmate grievances to assess whether individual deputies may be using unnecessary or excessive force and whether there may be use of force problems in particular facilities or particular areas of the jails.

**3.11 Statistical data regarding use of force incidents needs to be vigilantly tracked and analyzed in real time by the highest levels of LASD management.**

**3.12 The Board of Supervisors should provide funding so that the Department can purchase additional body scanners.**

Body scanner machinery can substantially reduce (and even largely eliminate) the need for strip searches, which have been a significant source of tension in the jails. While this equipment is expensive, the Commission supports ongoing efforts by LASD to invest in the

purchase of body scanners for its jails and thereby reduce the need for strip searches, and urges the Board of Supervisors to appropriate the funds necessary to purchase the additional scanners.



## CHAPTER FOUR MANAGEMENT

### Introduction

The excessive force over a period of years in Los Angeles County jails -- and in particular Men's Central Jail -- was due, in no small part, to significant failures of the senior leadership in the Sheriff's Department. Both Sheriff Baca and Undersheriff Tanaka have, in different ways, enabled or failed to remediate overly aggressive deputy behavior as well as lax and untimely discipline of deputy misconduct in the jails for far too long. It is the Commission's view that absent strong, engaged and informed leadership over Custody -- and a more direct line of authority and accountability emanating from the Sheriff -- the Department is unlikely to achieve a lasting reduction in excessive force within its jails.

The Sheriff has claimed that he "did not know" of the problems in the jails until last fall, when the ACLU issued its report on jail violence and the *Los Angeles Times* published a high-profile series of critical articles. Yet these problems are nothing new. Issues with the jails have been detailed for decades in reports by Judge Kolts, Special Counsel, and OIR.

The Sheriff has faulted his senior staff for failing to keep him fully informed about these matters and, without absolving him of responsibility, the Commission concurs. The Department's chain of command -- from the Chief of Custody Operations to the Assistant Sheriff for Custody to the Undersheriff -- failed to address the use of excessive and unnecessary force by Department personnel even though the Captain of MCJ raised concerns about deputy misconduct as early as 2006, a Commander overseeing MCJ from 2009 to 2010 warned of similar problems, and there were internal reports and data identifying troubling trends and a sharp increase in Significant Force in 2009. These lapses allowed problems to continue for years.

Management's failure to address these problems has led the Sheriff to lose confidence in his senior leadership's ability to address the problem of excessive force. This lack of confidence is reflected by the Sheriff's decision to form the Commander Management Task Force -- a body that circumvents those charged with responsibility for overseeing Custody operations -- to carry out his directives and implement his reforms. He has also relieved the Undersheriff and the two

Assistant Sheriffs of responsibility for deciding the appropriate discipline in the most serious cases of deputy misconduct. And yet the Sheriff has failed to hold Department leaders accountable for their actions or the excessive force in the jails that occurred between 2005 and 2010, when those leaders had responsibility for oversight of the Department's Custody operations.

The Sheriff's proposed long term solution to the communication breakdowns and failures among his top leadership, as reflected in his submission to the Commission, is to seek \$10 million in permanent funding from the Board of Supervisors for the Task Force to "continue inspections" throughout the entire Department, including Custody operations. The Commission agrees that the Department needs -- and the Board should fund as necessary -- a separate internal audit and inspections division. Our concern, however, is that to the extent the Sheriff uses the Task Force to continue to manage Custody operations and implement his directives, it would institutionalize a second and parallel chain of command over Custody and result in increased confusion, diffuse accountability and further opportunities for miscommunication. More fundamentally, it would do nothing to address the need for a capable, experienced and strong leader to oversee Custody with direct reporting responsibility to the Sheriff.

The troubling role of Undersheriff Tanaka cannot be ignored. Not only did he fail to identify and correct problems in the jails, he exacerbated them. The Commission learned about his ill-advised statements and decisions from a wide array of witnesses and sources. Over the course of several years, the Undersheriff encouraged deputies to push the legal boundaries of law enforcement activities and created an environment that discouraged accountability for misconduct. His repeated statements that deputies should work in an undefined "grey" area contributed to a perception by some deputies that they could use excessive force in the jails and that their aggressive behavior would not result in discipline. The Undersheriff also made numerous statements disparaging the Internal Affairs Bureau ("IAB") and the disciplinary process -- remarks that undermined the authority of IAB and the ability of Department supervisors to control or remediate inappropriate deputy behavior.

Undersheriff Tanaka specifically derailed efforts to address excessive force in MCJ when he vetoed a job rotation plan in 2006. After the plan was announced, he held a meeting with

deputies without the knowledge or presence of supervisors, and in a subsequent meeting berated supervisors who attempted to hold deputies accountable for their conduct. These actions undermined the authority of supervisors, resulted in a breakdown in the chain of command, and perpetuated an environment of aggressive deputy conduct. Ultimately, this set the stage for a sharp increase in the number of force incidents later in 2006 and for the reemergence of use of force problems later on.

Additional leadership and management problems at MCJ contributed to the problems of excessive force. The Captain of MCJ from 2008 to 2010 refused to adhere to the chain of command or report force problems to his Commander. He also failed to monitor the completion of use of force packages and personnel reports, and encouraged aggressive behavior by deputies.

The Commission heard repeated and consistent accounts of leadership failings in the Department over a period of years. Thus, it is not surprising that supervisors struggled to control deputy insubordination, inappropriate treatment of inmates, and aggressive conduct both on and off duty by deputies working in Custody.

### **Findings**

#### **1. The Sheriff failed to monitor and control the use of force in Los Angeles County jails.**

The Sheriff has stated that he only recently became aware of the use of force problems in the jails generally and MCJ in particular. He told the *Los Angeles Times* last October, “I wasn’t ignoring the jails. I just didn’t know. People can say, ‘What the hell kind of leader is that?’ The truth is I should have known. So now I know.”<sup>1</sup>

The Sheriff’s assertions that he was unaware of problems in the jails is remarkable given that a variety of problems in the jails were recounted repeatedly by the Kolts Report, Special Counsel, OIR, and the ACLU. Each of these entities made multiple recommendations over decades, some of which went unheeded or were ignored.

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<sup>1</sup>*Los Angeles Times*, “Baca Says He Was Out of Touch with County’s Jails,” October 16, 2011, <http://articles.latimes.com/2011/oct/16/local/la-me-baca-jails-20111016>.

Although Sheriff Baca has admitted that he was aware of problems with the excessive use of force in the jails following the December 2010 fight among deputies at the Quiet Cannon restaurant, it was not until almost a year later, in the fall of 2011 -- after the latest ACLU report, the *Los Angeles Times* articles on jail violence, more vigorous oversight by the Board of Supervisors, and a court decision that the Sheriff could be held personally liable for problems in the jails -- that he became engaged in overseeing the jails. Before these public events shined an unflattering light on the Department, the Sheriff failed to heed multiple warnings, ask probing questions, implement recommended reforms, or apparently review available data that disclosed the extent of the problem of excessive force in the jails.

If a chief executive officer in private business had remained in the dark or ignored problems plaguing one of the company's primary services for years, that company's board of directors likely would not have hesitated to replace the CEO. Dismissal is not an option, of course, when talking about an elected public official. But the Commission was disturbed by the Sheriff's "don't elect me" response to a question about how he should be held accountable for the troubling history of the jails under his watch. His statement seemingly reflects a lack of genuine concern about and acknowledgement of the severity of the problem.

**2. LASD senior management failed to investigate the excessive use of force problems at MCJ.**

The Sheriff has criticized his management staff for failing to inform him of problems in MCJ and "insulat[ing] him from 'bad news.'" In that vein, he recently told the Board of Supervisors that "a particular Assistant Sheriff knew all the issues that were exposed in the newspapers, and that individual got involved with it, and tried to resolve it, didn't resolve it my way, and this is my point about not knowing." But he also has acknowledged that it was *his* responsibility to ensure that he had the information he needed to monitor conditions in the jails. Without absolving the Sheriff of responsibility, the Commission agrees that the Department's senior leaders failed to identify, investigate or address the problems in the jails.

Undersheriff Paul Tanaka, who served as the Assistant Sheriff in charge of Custody between 2005 and 2007 and had oversight responsibility for the jails, repeatedly claimed that no one ever told him about problems of excessive force in the jails before last fall, and that he had

been “caught by surprise to the extent the problem existed.” In recent testimony before the Commission, Tanaka maintained that he was unable to recall any criticisms or concerns about the jails that had been raised by his subordinates, or detailed in numerous OIR and Special Counsel reports, LASD memoranda and media accounts. He professed a lack of knowledge of force problems at MCJ, even in the face of sworn deposition testimony by former MCJ Captain John Clark that Clark proposed a plan to rotate deputies among floors at that facility to address concerns stemming from problem deputies and excessive force. Tanaka insisted that when Clark identified the existence of “problem” deputies, Tanaka never sought to determine the nature or cause of these problems. Tanaka did, however, acknowledge to the Commission that if he had been more diligent about monitoring excessive force when he was Assistant Sheriff for Custody, the Department would not be grappling with the issue today.

The lack of knowledge expressed by Tanaka reflects a high ranking Department official who was out of touch with, or ignored, pervasive problems in a jail system that was directly or indirectly under his command.

These leadership failures were not limited to Tanaka. The Assistant Sheriff for Custody from 2007 through 2010, Marvin Cavanaugh, and the Chief of Custody Operations through 2012, Dennis Burns, also failed to alert the Sheriff to excessive use of force in Custody that occurred under their watch. The Sheriff has advised the Commission that Cavanaugh “opted to not become involved” in what the Sheriff now describes as a failure by MCJ Captain Dan Cruz to follow the directives of his Commander from 2009 to 2010. Although Chief Burns and Assistant Sheriff Cavanaugh were aware a considerable spike in the use of Significant Force at MCJ in early 2010, it does not appear that either of them brought this fact to the attention of the Sheriff.

Former Commander Robert Olmsted has testified that he alerted Chief Burns, Assistant Sheriff Cavanaugh, and Undersheriff Tanaka (who was then the Assistant Sheriff for Patrol) to the problem of excessive force at MCJ, but that each ignored his concerns. Olmsted was so concerned by the rising use of force at MCJ that he directed two Lieutenants from outside of MCJ to conduct independent reviews of force packages and deputies who had used force on a

large number of occasions.<sup>2</sup> Although Tanaka and Cavanaugh both acknowledge meeting with Commander Olmsted to discuss issues at MCJ, they each contend that Olmsted never mentioned the excessive force issues about which he was so concerned. That these officials would be unaware of their own subordinate's concerns about the increasing use of force at MCJ -- concerns that were confirmed by internal Department memoranda and force trend data -- is troubling.

The failure by Department leaders to alert the Sheriff to the rising number of force incidents at MCJ is consistent with a reported tendency of some senior managers to insulate the Sheriff from bad news. The Sheriff has admitted that this is a problem. Weekly Executive Planning Committee ("EPC") meetings -- typically attended by the Sheriff, Undersheriff, Assistant Sheriffs and Division Chiefs -- give senior managers an opportunity to brief the Sheriff on important issues throughout the Department. Before the Sheriff arrives for the EPC meeting, there are "pre-meetings" at which, until at least last year, the Undersheriff and Assistant Sheriffs decided what would and would not be discussed with the Sheriff. Some individuals who have attended the meetings have told the Commission that they observed a hesitance to bring bad news to the Sheriff, and both the Sheriff and the Undersheriff testified that they do not recall a single discussion at any EPC meeting of excessive force in the jails or of the reports commissioned by Commander Olmsted.

These managers cannot, alone, be blamed for their silence. A leader who does not want to hear about problems will not be told of them by those who work under him, and this appears to be the case here. Rather than encouraging staff to inform him of force issues and insisting that actions be taken, the Sheriff has stated that he remained ignorant of these concerns until public events forced them to his attention.

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<sup>2</sup> Those analyses revealed an array of concerns, including that there were 42 deputies with more than 10 force incidents over a two year period of time.

**3. LASD management has known about and failed to address the longstanding problem of deputy cliques.**

As discussed in the Culture Chapter, the Department's leaders have been aware of the problem of deputy cliques for years. Until recently, the focus was primarily on the Patrol side. One of the earliest known cliques was the Lynwood Vikings, which later morphed into the Regulators based out of Century Station. The Sheriff was aware of the Regulators dating back at least to 2004, when then Undersheriff William Stonich wrote a memorandum to the Sheriff detailing the activities of the group and recounting an unhealthy climate at the Station that included refusals by deputies to talk with IAB investigators and allegations of in-house extortion.

In October 2007, Commander Willie Miller drafted another detailed memorandum to Sheriff Baca regarding the existence and activities of the Regulators. Commander Miller informed the Sheriff that the Regulators' philosophy is to "run the Station as a subculture faction...[and] not respect rank."

There was a similar problem with deputy cliques at MCJ that, based on documents reviewed by the Commission, were known to management in the Department as far back as 2004, if not earlier. These problems became more severe as deputies started spending many years in their positions, becoming bolder and less responsive to supervision. Captain Clark attempted a number of methods to combat the formation of cliques, including counseling and training. When these efforts failed, he developed the rotation plan that was vetoed by Tanaka at the behest of MCJ deputies.

It was not until after Captain Cruz was transferred from MCJ in December 2010 that MCJ finally instituted a rotation policy to deal with deputy cliques. By this time, the problem of deputy cliques had already erupted during the infamous 2010 Christmas Party brawl in which deputies from the 3000 floor of MCJ were involved in a fight with other deputies at the Quiet Cannon restaurant. Six of these deputies were later terminated. This time there was no deputies-only meeting or executive veto of the rotation policy.

**4. The Undersheriff has made statements and engaged in conduct that are inconsistent with the Department's Core Values and that have undermined the authority of IAB and supervisors to address deputy misconduct.**

Numerous witnesses and experts have stressed the need for Department leadership to articulate their expectations from deputies and supervisors with regards to the use of force. A clear and consistent message that deputies are expected to operate within the law and that excessive use of force will not be tolerated is integral to the establishment of an ethical, well-functioning jail culture and force policy. But senior LASD leaders have not always conveyed this message.

Undersheriff Tanaka has made a number of statements that the Commission finds deeply troubling because they convey the wrong messages to Department personnel about the nature of their work and the Department's willingness to hold them accountable for misconduct.

For years, the Undersheriff has given speeches throughout the Department encouraging deputies to "work in the grey area." His comments have been interpreted by law enforcement personnel -- both within LASD and in other agencies -- as meaning that deputies should engage in activities that are on the border of right and wrong or that they should bend the rules and go over the line as long as they do not get caught. These messages directly contravene the Core Values the Sheriff seeks to promote within the Department.

The Undersheriff has provided varying explanations for what he meant by working "in the grey." As the Undersheriff acknowledged in his testimony before the Commission, he had explained in an interview with Commission staff that the "grey area" merely referred to the area between the law and what is morally right, which he described as the "level playing field." In advance of his testimony before the Commission, the Undersheriff sent a Department-wide email offering a different interpretation of "working in the grey area." In that email, he cast the term "grey area" as the discretionary authority given to a law enforcement officer to decide, for example, whether or not to issue a traffic ticket to a speeding motorist.

Sheriff Baca acknowledged in his testimony that there is no "grey area" in law enforcement. Even Undersheriff Tanaka, in his Department-wide email, acknowledges that "the term 'grey area' can be easily misinterpreted by those that choose to do so." Yet it took years for

him to clarify his message, and he did so only on the eve of his testimony before the Commission.

Undersheriff Tanaka has made other troubling statements encouraging deputies to be aggressive. In a memorandum to the Chief of Region III, the Captain of Century Station documented a talk that then-Assistant Sheriff Tanaka gave at the Station in June 2007, at a time when the Station was in the throes of dealing with a group of deputies who called themselves the “Regulators.” At the meeting, Tanaka reportedly instructed the deputies to “function right on the edge of the line” and “be very aggressive in their approach to dealing with gang members.” He has neither disputed nor provided an explanation for these comments.

At the same Century Station meeting, according to the Captain’s memorandum, Tanaka also made comments that undermined the credibility of IAB and the authority of supervisors to hold deputies accountable for misconduct. The memorandum reflects that he told personnel at the Station that supervisors should not “be so hasty in putting ‘cases’ on deputies” when allegations of deputy misconduct arise. He cautioned that he “would be checking to see which Captains were putting the most cases on deputies and he would be putting a case on them.”<sup>3</sup> These remarks were made at a time when problematic deputies had been administratively transferred to address a troubling “subculture” at the Station.

These incidents closely parallel Tanaka’s intervention and undermining of leadership at MCJ in 2006. Several witnesses told the Commission about a meeting Tanaka held with supervisors at MCJ in 2006 after he had vetoed the Captain’s proposal to rotate deputies among jobs to address the problems of excessive force and deputy cliques. The witnesses reported that Tanaka called supervisors who tried to maintain discipline at MCJ “dinosaurs,” and told them that they needed to “coddle” the deputies and leave them alone.<sup>4</sup> At one point in the meeting, he berated a supervisor for purportedly referring to the deputies as “gang members” and harshly shut down the Captain’s attempt to respond to his criticisms.

While Tanaka claimed to have little recollection of the precise details of either this meeting or an earlier deputy-only meeting, his statements and tone had a strong impact on those

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<sup>3</sup> Undersheriff Tanaka testified before the Commission that he did not recall making these statements.

<sup>4</sup> Although Undersheriff Tanaka denies that he used the term “coddle,” he recalled the “dinosaur” reference.

in attendance and reportedly gained notoriety in other parts of the Department. One Lieutenant described the meeting as “one of the most uncomfortable experiences” in his life. Another supervisor who testified before the Commission took Tanaka’s comments as an abdication of the Department’s duty to supervise its deputies: “I felt like I might as well take my stripes off because how were we going to supervise deputy personnel.”

Undersheriff Tanaka also has undermined the credibility of IAB on more than one occasion. The Commission heard about a meeting in 2009 with a member of IAB when Tanaka stated that he “hates” IAB. According to the testimony of Captain Patrick Maxwell, the Undersheriff made similar statements at a meeting at Norwalk Station, where he opined: “we have 45 [IAB investigators]. In my opinion, that’s 44 [expletive deleted] too many.” And as reflected in the memorandum prepared by the Century Station Captain, Tanaka told deputies there that he “didn’t like Internal Affairs Bureau and the way they worked.”

Despite these accounts, the Undersheriff denies that he dislikes IAB and maintains that he is simply critical of its process, which he believes can take too long and leaves a cloud over the heads of those under investigation. He also believes that IAB has mistreated certain individuals under investigation. He has, however, been unable to explain why he found it necessary to publicly criticize IAB during talks with deputies at various Stations rather than addressing these concerns with IAB leadership directly.

##### **5. Several key Department leaders ignored deputy aggression and discouraged discipline at Men’s Central Jail.**

Several witnesses described incidents that exemplify a lax attitude toward deputy aggression and discipline at MCJ. As noted above, witnesses recounted the meeting in early 2006 where Tanaka told supervisors that they needed to “coddle” the deputies and to generally “stay out of the way” of the deputies and let them “do their thing.” Dan Cruz, who was the Captain of MCJ from 2008 through 2010, told others that Tanaka gave him direct orders to “take care of the deputies” even though Tanaka was no longer the Assistant Sheriff for Custody. Accordingly, Cruz encouraged then-Lieutenant Bornman to “not spend too much time” investigating deputy misconduct and allegations of excessive use of force. Such messages were not limited to private communications. In a speech at a Christmas party in 2009, Cruz jokingly

reminded deputies not to hit inmates in the face, presumably to avoid visible injuries. That the Captain was openly making jokes about inmate abuse reflects a troubling nonchalance toward a serious problem.

One noteworthy example of Cruz's attitude toward deputy misconduct and discipline involved an incident caught on video where several deputies severely beat an inmate while the inmate was lying on the ground. After viewing the video, which captured an excessive use of force in violation of Department policy -- including one deputy inflicting "knee drops onto the [inmate's] upper torso, head/neck area" while the inmate was face down on the ground -- Cruz remarked that he saw "nothing wrong" with the deputies' conduct and the force used. Notwithstanding Cruz's observations, these deputies were eventually disciplined, and one deputy was terminated, for this incident.

Even when force incidents were investigated, they were not necessarily escalated to the proper levels of review. In 2010, OIR reviewed a number of MCJ force packages and found that several force incidents reviewed at the unit level should have been escalated to a higher level of review based on severe injuries to the inmate such as broken bones or other triggering factors. OIR also found it troubling that most of the unit level reviews determined that the force used was within policy and that virtually no force incidents were escalated to IAB for administrative review.

In 2009, a county official responsible for jail oversight met with Captain Cruz to inform him that, based on a close review of MCJ force packets, deputies on the 3000 floor were involved in an unusually high number of force incidents. Captain Cruz agreed to look into transferring the deputies to other assignments, but weeks later he had not done so.

This lax attitude towards deputy aggression and discipline extended to off-duty incidents. On one occasion, a number of off-duty MCJ deputies were involved in a bar fight with civilians. One deputy punched a woman in the face, and another allegedly pulled out his gun. During the administrative investigation, Captain Cruz told Lieutenant Bornman "don't look too hard." And when it was brought to Cruz's attention that the one-year statute of limitations on administrative investigations was about to expire, Cruz responded: "Oh, well, if it drops dead, it drops dead,"

reflecting a lack of concern that the deputies might go unpunished. Ultimately, Bornman pursued the matter and the deputies involved were disciplined.

After Cruz replaced Olmsted as the Captain of MCJ in April 2008, the incidents of use of Significant Force increased dramatically until the fall of 2009.<sup>5</sup> In addition, the number of fractures went from three during Olmsted's 15-month tenure to 13 in Cruz's first 21 months as Captain of MCJ. The increase in force incidents was concentrated on the old side of the jail, with the biggest jumps on the 3000 and 4000 floors.

Senior management was aware of the problems with Captain Cruz's management, but they took no action. On several occasions, Commander Olmsted went directly to Chief Burns to point out that Cruz had found use of force incidents "in policy" when they clearly were not. Bornman similarly brought to Burns' attention the multitude of late reports, missing force records and files and other delinquent paperwork and system breakdowns he had observed. Olmsted testified that Burns' response to his concerns was that one Commander "can't change the culture" at MCJ and that Olmsted should simply "let Cruz fail."

When it became clear that Burns was unable or unwilling to address these issues, Olmsted approached Burns' superior, Assistant Sheriff for Custody Cavanaugh. Olmsted testified that he presented Cavanaugh with a large stack of documents reflecting morale issues, force concerns (including a spike in the number of inmates with broken bones as a result of force incidents) and Cruz's noncompliance with Olmsted's orders. According to Olmsted, Cavanaugh responded that he was powerless to make changes absent the support of Tanaka, who was then Assistant Sheriff for Patrol. Cavanaugh disputes this account; he has told Commission staff that Olmsted generally discussed his disagreements with Cruz without specifying the nature of those disagreements.

Olmsted met with Tanaka a week later to discuss his concerns about excessive force at MCJ. As noted above, Tanaka claims that Olmsted never mentioned the problems of excessive force in MCJ -- the very issue at the heart of Olmsted's concerns, the subject of memoranda

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<sup>5</sup> Use of force incidents at MCJ had decreased from 367 in 2006 to 273 in 2007 under Olmsted. Force was down significantly on the 2000, 3000, and 4000 floors, areas that typically generate high numbers of force incidents. In fact, force decreased in every area of the jail except the hospital floor. Significant Force incidents jumped from 171 in 2008 to 258 in 2009, more than offsetting a decrease in Less Significant Force from 102 to 72.

prepared by high level jail supervisors, and the impetus for the meeting. Olmsted disputes Tanaka's testimony, and claims that Tanaka acknowledged in a subsequent meeting that there were problems with Cruz's leadership. Yet according to Olmsted, Tanaka's solution was to have Olmsted mentor Cruz with the help of a new Operations Lieutenant whom Tanaka had selected for MCJ.

This plan did not succeed. Cruz did not form a mentoring relationship with Olmsted and instead resented Olmsted's hands-on management style. In his testimony before the Commission, Sheriff Baca noted that Cruz' dysfunctional relationship with Olmsted, which was known to the Assistant Sheriffs, was a key source of problems at MCJ. Moreover, the Sheriff testified that Cruz was "relieved" based on his failure to heed Olmsted's directives. Even in the face of all of these repeated problems and concerns, Tanaka, during his testimony before the Commission, described Cruz as a "good" and "acceptable" MCJ Captain.

This inaction by high-level Department leadership is particularly troubling. Indeed, as one expert opined, "all a leader has to do is remain silent in the face of misconduct and you've become complicit in what happens next."

## **6. There was a break-down in the chain of command at Men's Central Jail.**

LASD management, and in particular then Assistant Sheriff Tanaka, encouraged deputies in the jails to undercut the chain of command, thereby weakening supervisory authority. Based on their interactions with Tanaka, many deputies believed that they could circumvent the chain of command at MCJ without any repercussions. As a result, there was a perception among some deputies that they did not answer to their direct supervisors and that, if they answered to anyone at all, it was to Tanaka. Not surprisingly, supervisors felt that their authority was undermined, making it difficult for them to dispense discipline and hold subordinates accountable.

The starkest example of this problem stems from the events in February 2006 at MCJ. At the time, Captain Clark proposed to rotate deputies among job assignments within the jail to address a number of problems including the excessive use of force. The Commission was told that Captain Clark cleared the rotation plan with his Commander, the Chief of Custody Operations, and Employee Relations, and that it was also approved by then-Assistant Sheriff

Tanaka. Tanaka, however, claims to have been unaware of either the proposal or its approval by various Department leaders.

After the rotation program was announced, MCJ deputies organized an email campaign to take their complaints directly to Tanaka, circumventing the Chief of Custody Operations, Captain Clark, and his Commander. Several hundred deputies sent identical emails to then Assistant Sheriff Tanaka that began: “When you recently met with us, you stated that if we had any problems with the management of Men’s Central, we should contact you. Sir, we have a problem.” The email went on to criticize the plan for forcing deputies at MCJ to “change work locations approximately every two months” and for moving deputies from “a particular floor.”

In response, then-Assistant Sheriff Tanaka held a deputies-only meeting to address complaints about the rotation policy. Prior to the meeting, Tanaka did not speak with Captain Clark about the rotation policy or even inform him of the meeting. Nor did he request a copy of the proposed policy or otherwise seek to ascertain the details of, or rationale for, the proposed rotations.

Commission staff have not uncovered any written memorandum documenting what was discussed at the deputies-only meeting, but after it occurred, Tanaka met with Captain Clark and ordered him to revoke the new policy. Tanaka maintains that he vetoed the policy because he believed that it entailed rotating deputies “among shifts,” which would have been a disruptive way of dealing with what he understood to be a few “problem” deputies. Notably, the deputy emails made no mention of a rotation of *shifts*, which would have been more disruptive of schedules and would certainly have been referenced in their complaints had it been proposed. In fact, Captain Clark’s memorandum announcing the policy explicitly stated that all personnel “will remain on your assigned shift.”

After Tanaka vetoed the rotation plan, he appears to have had another meeting with deputies that further undermined the chain of command. At this meeting, the only supervisors present were three Lieutenants who had been hand-picked by Tanaka to work in MCJ to provide “leadership” while Clark was still the Captain of MCJ. Judging from when these Lieutenants were assigned to MCJ, this meeting apparently took place a few months after Tanaka vetoed the

rotation plan. The implication was that these three supervisors were “[Tanaka’s] guys,” and had a more direct pipeline to higher management than other supervisors. Indeed, Commission staff were told that another supervisor was asked to leave this meeting and that only Tanaka’s hand-picked Lieutenants were allowed to remain. Tanaka also met with the supervisors at MCJ after he vetoed the rotation plan and told them to “stay out of the way” of the deputies.

Tanaka’s actions undercut the chain of command and undermined the authority of jail management to supervise line deputies. This was particularly problematic at MCJ because of its large number of young Sergeants and Lieutenants, many of whom were in their first supervisory position with the Department and were supervising deputies who had worked in Custody far longer than their supervisors (see discussion in the Personnel Chapter). The deputies, well aware of this discrepancy, often believe that they are the ones in control of the jail and that they do not need to take instructions from newer, less experienced supervisors about how to do their jobs.

Worse, some supervisors in the jails work in Custody because of their poor performance in Patrol assignments. The Department has in the past moved individuals whom they believe are not performing well to Custody, sometimes as punishment and sometimes to keep them out of the public eye. As a result, the jails have been a place for inexperienced and ineffective supervisors, creating an environment where new deputies look to senior deputies rather than supervisors for their role models or mentoring. It is not surprising, then, that the deputies ignore their direct supervisors or undercut the chain of command by appealing to senior management.

Circumventing the chain of command was not unique to deputies at MCJ. Captain Cruz told Lieutenant Bornman that he did not report to his direct supervisors, Commander Olmsted and Chief Burns, but rather to Tanaka. According to one witness, Cruz had an alarm installed on a side entrance to MCJ so that Olmsted could not enter the jail unannounced. And the Sheriff in his testimony before the Commission indicated that he “relieved Cruz of command [because] I was not going to have a captain tell a commander he ain’t going to do something.” In sum, there was a significant breakdown in the chain of command at MCJ that undermined the efforts of supervisors to hold deputies accountable and of managers to implement reforms to address the problems of excessive force.

**7. The Sheriff has failed to hold senior management accountable for the excessive use of force in Los Angeles County jails.**

The Sheriff has acknowledged that there was a serious problem with the excessive use of force in the jails and he has criticized his subordinates for failing to alert him to these problems. He has acknowledged that Undersheriff Tanaka should have told him about the mass emails from deputies that Tanaka described as “a sign of distress” at MCJ in February 2006, and has testified that “there is no grey area in the Sheriff’s Department from my perspective.” He has also acknowledged that Assistant Sheriff Cavanaugh abdicated his responsibilities “in a certain way” when he failed to address the conflict between Commander Olmsted and Captain Cruz.

While the Sheriff has acknowledged these errors, he has taken no action to hold any of his senior managers accountable. Although the problems of excessive force in Los Angeles County jails clouded the tenures of Tanaka, Cavanaugh, and Burns, none of these individuals has been demoted or, to the Commission’s knowledge, disciplined in any way.

The Sheriff’s explanation to the Commission is that he alone is accountable and it is his responsibility to fix the problems. As the Sheriff correctly observed, ultimately he is accountable to the voters of Los Angeles County who, as he said, can decide not to re-elect him if they are dissatisfied with his performance. But what is troubling about the Sheriff’s testimony is the message that it sends to the rest of the Department. Undoubtedly, the Sheriff expects deputies and their supervisors to do their jobs, and they should be held accountable if they do not do so in an ethical, skilled and lawful manner. Yet, notwithstanding the acknowledged failings by senior management, Tanaka remains as Undersheriff, Cavanaugh remains as Assistant Sheriff for Patrol, and Burns was allowed to serve out his tenure and retire as Chief of Custody Operations six months after the Sheriff formed the CMTF. These decisions are admittedly within the Sheriff’s sole prerogative. But the Commission is deeply concerned by the message conveyed to the entire Department when senior managers are not held accountable, especially at a time when Custody personnel are in need of strong leadership and a clear directive that accountability, exemplary behavior, and consequences for misconduct are to be taken seriously by all parts of the Department.

**8. The Sheriff's recent decisions reflect a lack of confidence in senior management's ability to address excessive use of force problems.**

In response to the concerns regarding excessive force in the jails raised by the ACLU and the *Los Angeles Times*, the Sheriff created the CMTF to “cut through the bureaucracy,” to reduce violence in the jails by changing the deputy culture, and to implement reforms and new training for jail staff. In response to the most serious issue facing the Department -- excessive force in the jails -- the Sheriff decided that he could not rely on his existing chain of command to solve the problems and implement reforms.

The CMTF is comprised of five Commanders, eight Lieutenants, and eight Sergeants, along with assistants and support staff. The CMTF exists outside the normal chain of command that supervises the jails. It does not include, or report to, the Undersheriff, the Assistant Sheriff for Custody or the Chief of the Custody Division. Instead, it reports directly to the Sheriff. Its very existence reflects the Sheriff's lack of confidence in his senior management and his conclusion that the best way to improve the flow of information and implement reform is to circumvent the existing management structure. The Sheriff holds regular weekly meetings with the CMTF, which the Undersheriff generally does not attend. The Assistant Sheriff for Custody and the Chief of Custody Operations are usually present, although their attendance is more for informational than operational purposes since the Sheriff relies on the CMTF, not the chain of command, to carry out his directives.

Although the CMTF has helped improve the flow of information to the Sheriff and implement important reforms, its structure threatens to perpetuate management gaps and further blur the lines of communication and responsibility. Indeed, one expert hired by the Sheriff to revise the Department's use of force policies noted that while he repeatedly interacted with the CMTF, he never met or spoke with the Chief of Custody Operations even though his work directly impacted the Custody Division.

Recently, the Sheriff advised the Commission that he intends to seek \$10 million permanent in funding for the CMTF “to continue inspections in [the] Custody Division and throughout the entire Department.” If this proposal is funded, the CMTF would, to an extent, be superimposed over the existing organizational chart, meaning that the Custody Division would

have two sets of managers. This proposal would create a confusing and potentially dysfunctional organizational structure.

Further evidence that the Sheriff has lost confidence in his senior management stems from his changes to the oversight of disciplinary decisions over the past year. In recent months, the Sheriff has shifted the reporting responsibilities of IAB and Internal Criminal Investigations Bureau (“ICIB”). Whereas these bureaus previously reported to the Undersheriff, they now report directly to the Sheriff.

Similarly, the Sheriff modified the process for review of discipline in the Department after a recent incident in which a LASD supervisor threatened to run over a colleague with his car, and later pulled a gun on the individual. The Case Review Committee -- composed at the time of the Undersheriff and the two Assistant Sheriffs -- reduced the recommended discipline from demotion to a 15-day suspension. When the Sheriff learned of the more lenient discipline, he disbanded the Committee and replaced it with three Commanders who report directly to him. This is yet another decision that reflects the Sheriff’s lack of confidence in the Undersheriff and high-level Department leadership.

#### **9. The Sheriff’s recent personal engagement has reduced force incidents in Los Angeles County jails.**

Beginning in October 2011, the Sheriff became personally engaged in addressing the problem of excessive force in the jails. He formed the CMTF to “identify and address deficiencies throughout the jail system” and later expanded it “to inspect and review all aspects of policy, supervision, and training.” He also drafted a Force Prevention Policy that makes clear that deputies should use force only as a last resort and then only the minimum amount of force necessary.

As a result of the Sheriff’s personal involvement, and as discussed in more detail in the Use of Force Chapter of this Report, the number of force incidents -- and in particular Significant Force -- dropped dramatically. Special Counsel Merrick Bobb summarized the importance of the Sheriff’s involvement when he told the Commission last January that when “word went out” that the Sheriff wants “to see those numbers down,” the Custody Division responded with a substantial reduction in the number of force incidents. The Sheriff’s attention has been an

important factor in reducing force incidents. Unfortunately, it comes after a long hiatus during which problems of excessive use of force went unaddressed.

**10. The Assistant Sheriff for Custody Division is responsible for managing other divisions only minimally related to Custody operations and is not an experienced corrections leader.**

The Department, which comprises some 18,000 employees, has ten divisions, but only two Assistant Sheriffs. One of the Assistant Sheriffs, Marvin Cavanaugh, oversees the three Field Operations Patrol Regions, the Detective Division and the Homeland Security Division. The other Assistant Sheriff, Cecil Rhambo, oversees the Custody Division, the Court Services Division, the Technical Services Division and the Leadership & Training Division.

The other three divisions under Assistant Sheriff Rhambo's supervision are substantial in size and distinct in nature from the Custody Division. The Court Services Division employs more than 1,100 sworn members and over 500 civilians. It is tasked with providing security and support services to 48 courthouses in Los Angeles County. The Technical Services Division provides technical support services and management of the Department's communications, vehicle fleet, data and information systems, records, criminal justice database, federal excess property acquisition, scientific services, investigations, crime analysis and criminal statistics reporting. Finally, the Leadership & Training Division is responsible for the training of all Department employees, both sworn and civilian, beginning with the academy and continuing throughout their careers.

All of this is *in addition to* the Assistant Sheriff's responsibilities for overseeing eight separate jail facilities, which now house more than 15,000 inmates, and which, together, make up the largest jail system in the nation. The Department itself has acknowledged the "complexity" of this command.

The Assistant Sheriff has too many areas of responsibility to be able to devote the time and energy necessary to provide effective oversight of the Custody Division. Moreover, this position is not now and has not historically been filled by a leader with expertise and training in corrections oversight and management. Indeed, without questioning Assistant Sheriff Rhambo's abilities, we note that he was promoted from the position of Chief of Region II under Patrol and

had not served in Custody for at least 14 years at the time that he became the Assistant Sheriff for Custody. While Los Angeles has one of the most complex and challenging corrections systems in the nation, its leadership lacks the specialization, training or professional expertise seen in other corrections systems heads.

**11. Despite having succeeded in holding LASD Captains accountable for the performance of their Stations, the “Sheriff’s Critical Incident Forum” has been downgraded and de-emphasized.**

More than a decade ago, senior Department managers, concerned with what they perceived as a tendency at the Department to blame only deputies or Sergeants for performance shortcomings, created an accountability structure called the Sheriff’s Critical Incident Forum (“SCIF”). SCIF was modeled after “Computer Statistics” or “CompStat,” a crime-control system developed by the New York Police Department (“NYPD”), and was meant to focus accountability at the Captain level. Under CompStat, NYPD’s Deputy Police Commissioner used crime data and statistics to question his Captains about the level of crime in their precincts and demanded that they devise an action plan for reducing crime rates. The system was notable because the Captains were “called out” before their peers and held directly accountable for their Stations’ performance. Many cities have adopted a system comparable to CompStat, including Los Angeles, Boston, Philadelphia, Baltimore, Miami, New Orleans and Newark.

At LASD, the idea for SCIF originated as part of the Department’s response to the Kolts Report. It was implemented on the Patrol side with the hope of replicating CompStat’s success in improving police managers’ accountability for the performance of their Stations.

At its height, SCIF was a monthly meeting of Captains, Commanders, Chiefs, and top executives in the Department’s Patrol Division, at which the Captains were held accountable for their performances in reducing crime, balancing the budget, and managing civil rights issues such as deputy use of force and citizens’ complaints. The executives who ran SCIF used monthly management reports such as the Command Accountability Reporting System (“CARS”) report to compare the Captains’ performance to their own past performance and that of their peers. The CARS report is a compilation of data and statistics on all relevant risk categories including use of force, citizens’ complaints and lawsuits.

During SCIF meetings, the Captains took the podium and fielded probing questions about their Stations. For example, if a Station had an unusually high number of use of force incidents as a percentage of arrests in a given month, the Captain might be required to account for the anomaly and present a plan for reducing the number. Captains were required to review relevant data in advance of the meeting so that they were fully knowledgeable about the issues facing their Stations and could therefore answer the questions posed.

SCIF was implemented only on the Patrol side due to budget and time constraints, not efficacy. The three areas in which a Captain's performance was measured -- crime, budget, and civil rights -- are equally salient in the jail setting. Crimes such as drug use, riots, and rapes occur in jails, jail Captains are responsible for managing the budgets of their facilities, and civil rights issues such as use of force and other grievances are relevant in the jail settings.

Despite promoting greater accountability, SCIF proved to be unpopular. Some Captains felt that management went out of their way to embarrass them in meetings and some resented being told how to run their Stations and the amount of time they were required to invest in the process. After Baca was elected as Sheriff in 1998, he opted to de-emphasize SCIF and instead encouraged Chiefs to conduct "mini-SCIFs" on a regional basis. SCIF was downgraded both in scope and frequency and the CARS reports have fell into disuse. The role or responsibility of jail Captains, and Lieutenants for incidents involving use of force in the jails was rarely, if ever, scrutinized by senior Department managers -- the very concern that animated SCIF originally. Last week the Department initiated SCIF meetings in Custody.

**12. There is a perception that promotions in LASD are based upon loyalty, not merit.**

The Commission heard from many Department members who believe that promotions and assignments are based on loyalty to the Undersheriff rather than merit. Part of this perception stems from the Undersheriff's central role in the process. In the past, Division Chiefs, with input from their Captains, were primarily responsible for recommending personnel for promotions. These recommendations were highly regarded and usually served as the basis for the Sheriff's decisions on whom to promote.

The Commission was told that the promotions process began shifting away from the Division Chiefs, to the Undersheriff and Assistant Sheriffs, when Tanaka became an Assistant Sheriff. Rather than holding a meeting with the Division Chiefs to solicit their input and discuss candidates for promotion, the Undersheriff and Assistant Sheriffs now simply submit a list of Department employees to the Sheriff for promotion. Sheriff Baca acknowledged the change, but maintains that it was necessary to prevent leaks about upcoming promotions, which he believes came from the Chiefs. Regardless of the reason, this has contributed to the perception among some in the Department that talented people have been overlooked for promotions due to their failure to curry favor with the Undersheriff.

There is also a widely held belief that senior executives, including Undersheriff Tanaka, have invited select members of the Department to meet at Department Headquarters to smoke cigars in what some refer to as a “cigar club.” The perception is that invitees are members of an inner circle with access to key leaders within the Department. Both Sheriff Baca and Undersheriff Tanaka deny the existence of a selective “club,” but there remains a troubling perception among deputies of selectivity and elitism that perpetuated the belief that patronage and favoritism matter more than merit.

Dan Cruz’s rise through the ranks feeds into the perception that loyalty and a connection to the Undersheriff matters in the Department. Before becoming the Captain of MCJ, Cruz was a Lieutenant at Lennox Station. When a new Chief took over Region II, he observed that Cruz was 18 months behind on his paperwork and gave Cruz several months to get up to date. When Cruz failed to do so, he was transferred out of Lennox Station. Cruz was picked up by then Assistant Sheriff Tanaka and placed in the Administrative Services Division, which was under Tanaka’s supervision.

Tanaka thereafter transferred Cruz in early 2007 to the position of Operations Lieutenant at MCJ under then Captain Olmsted, who accepted him, albeit unenthusiastically. The Commission was told that Tanaka later supported Cruz’s promotion to Captain of MCJ, even though the Chief of Region II and the Chief of the Custody Operations Division suggested another candidate. Against their wishes, Cruz was ultimately given the position. Tanaka maintains that Cruz’s direct supervisor, Olmsted, recommended him for the promotion. Olmsted

denies this account; he says that he told Tanaka that Cruz was unqualified to assume the challenging position of running MCJ. Further, according to Olmsted, Tanaka still wanted to promote Cruz to Commander notwithstanding the spike in Significant Force incidents and the incomplete paperwork that Lieutenant Bornman found (including the very type of investigative reviews that Cruz had failed to address at Lennox Station) when Bornman was assigned to MCJ in 2009.

Some witnesses have more bluntly described an environment where, in their view, the Undersheriff can make or break an individual's career. Indeed, several witnesses were reluctant to answer questions or testify publicly in regard to matters that could be viewed as critical of Tanaka due to his perceived clout. Whether or not these accounts are based on reality, the pervasiveness of these attitudes alone is cause for concern.

**13. Campaign contributions accepted by Tanaka from many Department employees furthered perceptions of patronage and favoritism in promotion and assignment decisions.**

Adding to the perceptions of favoritism are the campaign contributions received by the Undersheriff, who in addition to his law enforcement duties has been an elected official in the City of Gardena since 1998. While neither California law nor Department policy prohibits candidates from accepting contributions from employees they supervise, numerous current and former employees expressed concern that the practice has resulted in a perception of favoritism to contributors and undermined Department morale. These concerns were focused almost exclusively on the Undersheriff.

To examine this issue in greater detail, Commission staff reviewed the campaign finance reports the Undersheriff has filed with the City of Gardena. Those records show that 336 Department employees contributed to the Undersheriff's campaigns over the past 13 years.<sup>6</sup> The reports, which cover four elections, show that Department employees contributed a total of approximately \$108,311 to the Undersheriff's campaigns from 1998 to 2011. While the average contribution was only \$187, some contributions were considerably larger. A subset of 43

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<sup>6</sup> While there were 336 unique contributors, some of these individuals contributed multiple times, for a total of 577 individual LASD contributions.

Department employees contributed approximately \$38,150 (or 35% of the total contributions from the Department).

Among current employees,<sup>7</sup> six of the Department's 11 division chiefs (or 54.5%) have contributed to the Undersheriff's campaigns; 19 of the 31 area Commanders and assistant division (non-sworn) directors (or 61.3%) contributed to his campaigns; and 38 of the 76 Captains and directors (or 50%) contributed. In addition, several Department employees received reimbursements from the Undersheriff's campaign funds for expenditures related to his campaign. For example, employees have been reimbursed for telephone bills, block party expenses and other, unspecified campaign expenditures.

There is a perception among rank-and-file employees that contributing to Tanaka's campaigns is important to promotional and assignment decisions. That perception is not limited to low level employees. Former Commander Olmsted acknowledged that he too believes that deputies have been promoted because of such favoritism. Similarly, Captain Maxwell testified that a Department employee contacted him at his home on a Sunday evening to solicit a contribution for the Undersheriff's campaign and told him that employees of his rank were "expected" to contribute \$250. Other witnesses who were interviewed described being solicited to contribute to various Tanaka campaigns and some even suggested that solicitations occurred during work hours and at Department locales. Moreover, some observed that the Undersheriff was running unopposed in a few of these races and that numerous LASD contributors did not live in the City of Gardena or have a vested interest in Tanaka's races.

Concerns were expressed by employees at almost every level of the Department. Some disagreed with the perception of favoritism and felt that contributions did not influence assignments and promotions, but they still expressed concern that the perception itself was harmful to morale and discipline. Even employees who did not contribute felt pressure to attend campaign events in order to have "face time" with the Undersheriff.

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<sup>7</sup> This information is based on the most recent Administrative Roster, dated 12/20/11. This Administrative Roster lists employees for the ranks of Sheriff through Captain. As it was dated 12/20/11, the chart does not show the consolidation of Correctional Services with the Custody Division. As such, these Divisions were treated separately in our analysis.

While some of these concerns were expressed by former employees who may have been passed over for promotions, similar concerns were repeated by current employees, including those who have themselves received promotions. The issue has also been raised by the Professional Peace Officers Association (“PPOA”). PPOA’s President testified before the Commission that the acceptance of campaign contributions has undermined the perception of a merit-based promotional system within the Department.

While witness’ concerns about campaign contributions were aimed at Undersheriff Tanaka’s mayoral campaign, Tanaka is not the only individual in the Department to have accepted contributions. Both the Sheriff and Assistant Sheriff Rhambo have accepted contributions for their respective campaigns.<sup>8</sup>

The Sheriff received at least \$97,850 in contributions to his campaign committee from Department contributors between 1999 and 2011.<sup>9</sup> Whereas Department contributors made up approximately 7% of the total contributors to the Sheriff’s committee, Department contributors made up approximately 30% of the Undersheriff’s contributors.

**14. The Department has no formal policy governing the acceptance of campaign contributions.**

LASD has no formal policy governing the acceptance of contributions from employees in the Department generally, or from employees whom the candidate supervises directly or indirectly. The Sheriff has advised the Commission that he is in the process of establishing a policy to govern campaign contributions from one employee to another.

**15. The Department’s operational staffing model fails to account for jail facility size.**

The Department assigns management staff to jails and Stations with no regard to the size of the facility or unit or the number of personnel assigned to that locale. For example, a facility is typically managed by one Captain and a set number of Lieutenants and Sergeants; there is no

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<sup>8</sup> In 2005, Assistant Sheriff Rhambo ran unsuccessfully for mayor of Compton, California. Commission staff did not conduct an in-depth quantitative analysis of his campaign contributions.

<sup>9</sup> The Commission only reviewed Sheriff Baca’s campaign committee, Friends of Lee Baca. Sheriff Baca has several other committees, including Lee Baca’s Attorney Fee Fund and Officeholder Account.

adjustment made for the number of deputies assigned to that facility or Station or other attributes that might impact operational staffing needs.

OIR recently underscored these concerns, noting that “whether the unit involved is a station with 50 deputies or a jail unit with multiple times that number of assigned personnel, the operational staffing is virtually unchanged.” OIR recommended that the Department “reconsider its operational staffing model so that proportionally more operational resources can be dedicated to the larger units.”

#### **16. The Department has no Audit and Inspections unit.**

The Department does not have an audit and inspections unit to help ensure compliance with the Department’s policies and standards and enable problem areas to be spotted early and brought to the attention of top managers. American Bar Association Standards for the Treatment of Prisoners -- a highly regarded roadmap for the fair, humane and efficient management of jails and prisons -- recommends that correctional agencies establish internal accountability mechanisms including an internal audit unit responsible for conducting regular performance auditing and monitoring compliance with established performance indicators, standards, policies, and other internal controls.

### **Recommendations**

#### **4.1 The Sheriff must be personally engaged in oversight of the jails.**

The Sheriff’s lack of engagement and failure to monitor the significant spike in force incidents as well as the troubling events at MCJ contributed to the crisis the Department has faced over the past few years. His personal engagement in Custody issues in recent months has had a positive impact on the use of force in the jails; it is vitally important that the Sheriff remain personally involved in the oversight of the jails.

That the Sheriff has numerous other responsibilities is no excuse. Indeed, one of the two primary functions of the Department is overseeing the County jail system. He has already demonstrated that he can oversee reforms in the jail by creating the CMTF and meeting with it weekly. Even after the CMTF moves into other areas or is dissolved, the Sheriff must personally meet with jail leadership and hold them accountable for the management of this critical aspect of

Department operations. He must also continue to demonstrate his commitment to sustained change.

#### **4.2 The Sheriff must hold his high level managers accountable for failing to address use of force problems in the jails.**

The Sheriff must hold accountable those whose actions have allowed excessive force problems to persist and who shielded him from key information over a period of years. A terrible message -- one directly at odds with any notion of accountability -- is conveyed to the rest of the Department when there are no consequences to senior Department leaders who oversaw the jails when incidents of force were on the rise and a host of related problems occurred.

Of particular concern is the role of Undersheriff Tanaka and his negative impact on accountability and ethical conduct within the Custody Division, which cannot be ignored. While the Sheriff notes that “much attention” has been placed on Tanaka, he states he has “yet to be presented with any evidence of misconduct” on the part of his Undersheriff. The Sheriff misses the point. Holding people in management positions accountable does not require a showing of misconduct. That a particular manager is not getting the job done or has not competently executed against the Sheriff’s directives or expectations is, or certainly should be, more than sufficient to remove and re-assign that person.

As significantly, the Sheriff’s statement be reconciled with the information, documents and witness accounts that this Commission has received and reviewed over the course of its investigation and the undisputed statements that the Undersheriff has made that are inconsistent with the Department’s Core Values.

#### **4.3 The Undersheriff should have no responsibility for Custody operations or the disciplinary system.**

The Commission believes that true reform of Los Angeles County’s jails cannot take place if the Undersheriff continues to have any role, direct or indirect, in overseeing LASD’s Custody operations or the disciplinary process, including IAB and ICIB. Although Tanaka’s future at the Department is beyond the Commission’s mandate, the Commission believes that the

Sheriff should consider whether the Undersheriff should have any operational role or be in the chain of command over any part of the Department.

**4.4 The Department should create a new Assistant Sheriff for Custody position whose sole responsibility would be the management and oversight of the jails.**

No matter how well the current Assistant Sheriff for Custody performs his or her duties, the existing management structure all but guarantees that only a fraction of his or her time will be focused on improving the operations of the jails. To shake free of those limits, the Department should create, and the Board of Supervisors should approve any needed funding for, a third Assistant Sheriff position to focus exclusively on jail operations. Alternatively, the Department should create an equivalent non-sworn position that would allow the Sheriff to appoint the most qualified person to head the Custody Operations Division regardless whether that person is a sworn peace officer.<sup>10</sup>

Creating a high-level executive position responsible solely for jail operations will focus Department management on issues specific to the jails and promote accountability. As one former head of corrections explained, the existence of a high-level executive position, with focused responsibility for jail management, would ensure that an engaged and capable leader takes ownership over the jails and assumes responsibility for addressing the problems that arise in them.

Some jurisdictions have vested the management of their correctional facilities in agencies that are entirely separate from their law enforcement agencies. Experts have noted that there is little reward for jail reforms and, therefore, problems in jails tend to be of secondary importance for law enforcement officials who are more focused on Patrol operations. For these reasons, one option suggested by experts is for Los Angeles to create a separate Department of Corrections under the leadership of a Commissioner or Chief appointed by the Board of Supervisors. The Commission recognizes, however, that this change would require statutory reform, would not be swiftly implemented, and would diffuse accountability. Moreover, this is not the only successful

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<sup>10</sup> The Los Angeles County Charter contemplates the appointment of a third Assistant Sheriff who is not a sworn deputy. Section 33 of Article 9 of the County Charter, amended by voter initiative in 2002, provides that the office of the Sheriff may consist of “three Assistant Sheriffs, one of whom may be non-sworn and may be appointed from outside the office of the Sheriff”.

model for jail management. Other municipalities that combine law enforcement and corrections have seen successful management of and turnaround in their jails. The common thread in these situations is the existence of a single experienced and capable high-level official with an individual focus on, and responsibility and accountability for, jail operations.

**4.5 The Sheriff should appoint as the new Assistant Sheriff over Custody an individual with experience in managing a large corrections facility or running a corrections department.**

The last three Assistant Sheriffs for Custody all came from the Patrol side of the Sheriff's Department, and none had any recent experience in the jails. Their expertise and experience was in Patrol, not Custody. As a number of experts have observed, there are significant differences in the skills and expertise required for Patrol and for Custody. The Commission believes that the Sheriff should conduct a nationwide search and appoint an individual with experience in managing a large corrections facility or running a corrections department to be the new Assistant Sheriff for Custody or the non-sworn equivalent of that position.

**4.6 The Assistant Sheriff for Custody should report directly to the Sheriff.**

It is clear that the Department needs to streamline its lines of reporting and communication to the Sheriff. Problems in past years have resulted, in part, from too many layers of review and too many managers who must be consulted before information reaches the Sheriff. The Sheriff should be directly engaged with his Assistant Sheriffs and there should be no filtering or censorship of information and problems -- whether good or bad -- before they reach the Sheriff's desk.

To ensure that the Sheriff is kept current on developments in the jails and that his reforms are implemented, the new Assistant Sheriff for Custody should report directly to the Sheriff and meet with him weekly. The Undersheriff should not be in the chain of command; this will help flatten the reporting structure, enhance the accountability of the new head of the Custody Division to the Sheriff, facilitate the Sheriff's oversight of Custody operations, and remove the filtering process that accounts, in part, for the Sheriff not knowing of "bad news," while at the same time reducing the Undersheriff's influence over Custody operations.

Although it is beyond the Commission's mandate, it would make sense for the same reasons for the other two Assistant Sheriffs to report directly to the Sheriff. The Sheriff should also be supported by a Chief of Staff who would not be in the chain of command, but would be responsible for ensuring that the Sheriff has the information he needs to run the Department and that his directives are carried out. This structure would eliminate the need for the position of Undersheriff and have the added benefit of making the creation of a third Assistant Sheriff position revenue neutral.

#### **4.7 The Commander Management Task Force should not be a permanent part of Custody management.**

The Commission acknowledges that the CMTF has enabled the Sheriff to implement needed reforms in Los Angeles County jails and that force incidents have declined dramatically since it was formed. It is unclear what role the Sheriff proposes for the Commander Management Task Force going forward and whether the Sheriff contemplates that the Task Force will do more than conduct inspections (either directly for the Sheriff or as part of an Audit and Inspections Division). The Commission does not believe that the Task Force should have a permanent responsibility for the oversight of the jails. Leaving the Task Force in place for more than planned and unplanned inspections would effectively add another layer to an already complex organizational structure, result in confusing lines of authority and make it more difficult to hold senior managers such as the Assistant Sheriff and Chief of Custody Operations accountable for the oversight of the jails. Rather, the Sheriff should appoint an experienced Custody expert to serve as the Assistant Sheriff for Custody and hold that person responsible and accountable for running the jails, implementing the Sheriff's vision and any additional reforms, reducing violence and force incidents and holding deputies and supervisors accountable for their actions.

#### **4.8 The Sheriff must regularly and vigilantly monitor the Department's use of force in the jails.**

The Sheriff has acknowledged a breakdown in reporting significant uses of force to him and he has filled that gap with the Commander Management Task Force. The Sheriff needs a permanent solution to this problem. The Commission recommends that the new Assistant Sheriff for Custody and the Chief of Custody Operations meet weekly with the Sheriff and

provide reports on jail operations, including weekly use of force statistics, the implementation of the Sheriff's reforms, the status of use of force reviews and disciplinary matters. Periodic reporting should also be made to the Board of Supervisors (see the Oversight Chapter).

The Department should also use data and high level management review of trend lines to hold supervisors more accountable. A detailed review of data with jail supervisors on a routine basis will result in an in-depth understanding and ownership at all supervisory levels of force trends, patterns and other jail issues. Indeed, as numerous experts have noted, leaders manage best what they measure.

#### **4.9 The Department should implement SCIF on the Custody side to improve the accountability of jail supervisors.**

SCIF proved successful in improving supervisor accountability when it was actively used on the Patrol side. Thus, it is an excellent model to use in Custody as well. The concerns that were raised when the Department originally ran SCIF can easily be addressed by placing a stronger emphasis on constructive feedback, mutual respect, and development of leadership skills. The Commission is aware that the Department has reinstated this process in Custody and applauds those efforts. Creating a monthly or bi-monthly forum at which Captains are responsible for reporting to senior managers on problematic trends and issues at their facilities -- and how they intend to address those trends and issues in the months ahead -- would serve as a powerful tool to increase accountability and ensure better communication between the Sheriff and his senior leadership.

#### **4.10 Senior management needs to be more visible and engaged in Custody.**

In addition to frequent review of Custody data and management meetings, senior management (including the Sheriff) should visit the jails and walk through the facilities, both announced and unannounced, on a regular basis and, at a minimum, several times a year. The physical on-site presence of the Sheriff and Assistant Sheriff overseeing Custody is a vital mechanism for meeting with Department personnel and inmates and gaining a first-hand sense of the mood, morale and environment in each jail facility. It also sends an important message that this aspect of the Department's work is valued.

#### **4.11 Management staff should be assigned and allocated based on the unique size and needs of each facility.**

The current LASD model for allocating administrative staff -- which makes no adjustments for larger facilities or units within the Department -- makes little sense. In particular, it fails to account for the greater challenges and larger staffing needs at a large jail facility such as MCJ. The number of prisoners, deputies, and sheer physical size of MCJ create a need for an enhanced management staff to ensure that force packages and other operational needs are handled in an expeditious and thorough manner. Indeed, past problems with delays in processing force packages underscore this concern. The Commission recommends that the Department account for these issues in its allocation of management resources and move away from the current “one size fits all” approach to its management staffing model. Doing so would provide for increased staffing in some facilities and decreased staffing in others.

#### **4.12 LASD should create an internal Audit and Inspections Division.**

The Commission recommends that the Department create an internal Audit and Inspections Division (either Department-wide or Custody-specific) to conduct regularly planned audits, monitor policy compliance, and engage in both periodic and unannounced inspections of the jails. It is our understanding that aspects of this existed within LASD in the past. For Custody, these audits and inspections should be developed by the Chief in charge of the internal Audit and Inspections Division in consultation with the Assistant Sheriff for Custody and the Chief of Custody Operations. The internal Audit and Inspections Chief would provide reports on the results of the audits and inspections to the Assistant Sheriffs as well as the Sheriff. The Commission does not recommend that the CMTF fill this void or become a permanent fixture within the Department; instead, the inspections of Custody should be conducted through a newly created internal Audit and Inspections Division.

#### **4.13 The Department should have a formal policy to address campaign contributions.**

The Department should adopt a formal policy that (1) either (a) prohibits any employee from accepting campaign contributions from another employee he or she supervises (directly or indirectly) in the Department or (b) prohibits any employee who accepts such a campaign contribution from participating in any decision that concerns the promotion, assignment or

discipline of the contributing employee (or the contributing employee's spouse) for a set period of years; (2) prohibits any Department employee from accepting anything of value from a campaign committee for a candidate who is also a Department employee; (3) prohibits any Department employee from soliciting campaign contributions from another Department employee while on duty; (4) prohibits any Department employee from utilizing any Department resources to solicit campaign contributions; and (5) prohibits any Department employee from requesting another employee to solicit campaign contributions on his or her behalf from any other employee.

**4.14 LASD should participate in collaborations such as the Large Jail Network that would enable it to learn about best practices and approaches in other systems.**

The Large Jail Network ("LJN") brings together leaders of jails with over 1,000 inmates and provides them with the opportunity to meet and discuss present day issues and challenges. It also welcomes them to the "safe space" of a confidential electronic listserv where ideas, problems and new thinking are shared on an ongoing basis. A number of corrections leaders have underscored the benefits of this network and described it as one of the most valuable tools at their disposal for sharing best practices and engaging in dialogue with heads of large corrections institutions grappling with common challenges. While many of the largest jails in the nation participate in this network -- including leadership from Cook County, Miami, San Diego and elsewhere -- LASD has been noticeably absent for several years.

The Department should participate in the LJN and take full advantage of a valuable mechanism for learning about best practices and thinking in other systems. Other jails throughout the state and country have faced similar excessive force issues and have developed strategies for dealing with such problems through networking with other jail leaders.



## **CHAPTER FIVE CULTURE**

### **Introduction**

Although most of the Deputy Sheriffs assigned to Los Angeles County jails are hard-working and dedicated professionals, there are some who do not share the Department's Core Values and who have contributed disproportionately to the use of force problems that have plagued the jails over time. These deputies are reflective of a disturbing mindset that promotes a lack of respect for inmates, an aggressive view that force is best used early and often to control the inmate population, and a disdain for those supervisors who have endeavored to enforce contrary principles. The existence of these negative influences has created a troubling culture in Custody that resulted in the excessive use of force in the jails.

Over the years, some deputies have viewed force as a way to signal their authority over inmates and to establish "who is running the jails," rather than as a last resort in response to problematic inmate behavior. These deputies have adopted a confrontational approach in their interactions with inmates, thereby heightening disrespect among deputies and inmates and increasing tensions in the jails. Management, in turn, has sent the wrong message by failing to address excessive force and a deputy culture resistant to supervision.

Against this backdrop, new deputies have not received adequate training on ethical decision making or how to de-escalate force, nor have deputies learned -- or seen by management's example -- that reporting misconduct is an important and expected part of their duties. The Department also has failed to address with appropriate rigor the "code of silence" that is an inherent concern among law enforcement agencies. It rarely finds or meaningfully punishes dishonesty and failure to report force incidents, and it takes months (or even years) to address deputy misbehavior. Moreover, for years management has known about and condoned deputy cliques and their destructive subcultures that have undermined the Core Values articulated by the Sheriff. These factors have contributed to force problems in the jails as well as numerous off-duty force incidents involving deputies.

The Sheriff has acknowledged the important role that the Department's culture has played in contributing to the use of excessive force in the Los Angeles County jails and the need

to change that culture to achieve a lasting reduction in levels of force. The “Sheriff’s Department Strategy For Jail Reform,” announced when he formed the Commander Management Task Force last fall, seeks to “[t]ransform the culture of [the Department’s] custody facilities into a safe and secure learning environment for staff and inmates, and provide a level of service and professionalism consistent with our ‘Core Values.’”<sup>1</sup>

The Sheriff’s approach is consistent with the views of experts that the widespread use of excessive force is both indicative of, and often precipitated by, a problematic organizational culture. As one jail head who was able to improve a troubled jail aptly observed: “Without a unified effort to change culture, an organization is only addressing the symptoms of [force] problems and not the root cause.” Yet a lasting transformation of the culture in Custody will not be easy. It will require capable and committed supervisors; strong and clear communication of policies and Core Values; timely and strict enforcement action evidencing zero tolerance for misconduct and dishonesty; and engaged and visible leadership in regard to these issues at the highest level of the Department.

Although some positive reforms have been achieved through the Commander Management Task Force, the recent Custody Division Working Group Report issued by the Association for Los Angeles Deputy Sheriffs (ALADS) suggests that a troubling mindset in Custody remains in place. In responding to what it described as a “perceived problem” of excessive force in the jails, the ALADS Report reflects a fundamentally different view about the nature of existing concerns and how to fix them. According to ALADS, the reforms the Sheriff has implemented -- including a Force Prevention Policy, an Anti-retaliation Policy, Town Hall meetings with inmates, enhanced supervision and Education Based Incarceration programs -- have caused deputies to “feel that they have largely ‘lost control’ of the jails, with a sense that ‘inmates are running the jails.’” The implicit suggestion of the ALADS Report -- more force and inmate discipline to show inmates who is “running the jails” -- underscores the ongoing cultural challenges the Department faces in addressing its use of force issues in a meaningful and lasting way.

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<sup>1</sup> The Core Values of LASD are: leadership, honor, respect, integrity, wisdom, common sense, fairness and courage.

## Findings

### **1. Force too often has been viewed as a means to control the inmate population and establish deputy authority in the jails.**

For a number of years, force has been viewed by some Custody deputies as a means to control the inmate population rather than a last resort response to assaultive or resistant behavior. This mindset -- and “force first” approach -- was described by past and current Department personnel interviewed by the Commission. Witnesses also recounted instances of unprovoked use of force by Custody deputies or use of force well beyond what was needed to neutralize a dangerous situation. In short, there was a dissonance between the Core Values articulated by the Sheriff and the attitudes of these deputies.

In testimony before the Commission, retired Commander Robert Olmsted noted that when he assumed his position as Captain of MCJ he observed “a ton of force. Off duty. On duty. I don’t even know where to start.” Commander Olmsted’s account of his early days as a Captain at MCJ in 2007 is particularly telling: he found three deputies on both the 2000 and 3000 floors with broken hands as a result of hitting or trying to hit an inmate (in the latter case a deputy missed the inmate and slammed his fist into a wall). Olmsted quickly realized the need to educate Custody deputies about alternative and nonaggressive ways to subdue a hostile inmate. The mindset Olmsted discovered among the deputies was that force was necessary to assert authority and show inmates who was in charge of the jails, with inadequate consideration of alternative ways to manage a situation or de-escalate tension. Further, even if the use of force by a deputy was appropriate to respond to a recalcitrant or aggressive inmate, deputy reactions were often disproportionate and excessive.

This force-first mindset was still evident two years later. In the fall of 2009, following a spike in Significant Force at MCJ, Lieutenant Smith reported to then Commander Olmsted that there were six deputies who had more than 20 uses of force in a five year period ending in 2008 (and only one of these deputies was hired before 2005) and 42 deputies who had 10 or more uses of force in the 24 months ending in November 2009, almost all of which occurred on the 2000, 3000 and 4000 floors of MCJ.

This mindset is reflected, most recently, in the ALADS Report presented to the Commission. Based upon a survey of Custody deputies, ALADS concluded that these deputies

believe they have lost their ability to control inmates, whom they assert are now “running the jails.” This concern emanates from their perception that, as a result of the Sheriff’s recent reforms, they have lost the ability to use force as a means to address inmate misbehavior.

That deputies would resort to force in the first instance is perhaps not surprising given the absence until very recently of any Departmental guidance that force should be a last resort and not a preferred option. Pursuant to the Force Prevention Policy announced by the Sheriff in November 2011, deputies are now directed to try first to de-escalate incidents with verbal communications, to reach out to supervisors for assistance in seeking compliance from disruptive inmates, and to be more proactive in planning for interactions that may lead to force with the goal of preventing the use of force whenever possible.

Current and former LASD personnel suggest a number of reasons why deputies often prematurely turn to force. As one former supervisor noted, deputies are often afraid to talk to inmates or are ill-equipped to use words to de-escalate a tense situation. In assessing over 150 force incidents at MCJ, Lieutenant McCorkle similarly noted that “there are tacit issues that may reflect why certain deputies have a higher number of significant force events, such as the ability to communicate appropriately with inmates.” Fear also may have been a factor in the use of force by more inexperienced deputies, who would rather throw the first punch than risk assault by an inmate. Group dynamics further contributed to the use of force. As Commander Parra explained in his testimony before the Commission, when a deputy calls for more deputies, the resulting show of force may escalate the situation, exacerbate tensions, and increase the likelihood of use of force (including by deputies who arrive on the scene with no understanding of the preexisting dynamic). Finally, among impressionable new deputies, there was a mindset that being aggressive was valued by some in the Department.

In sum, tolerance for excessive force used by at least some deputies in Custody has the danger of leading to what one expert cautioned can become “abuses of force ... so ‘normalized’ that deputies can no longer perceive them as abusive.” This can perpetuate a damaging culture that can ultimately affect even those deputies in Custody who do not subscribe to these views and are intent on doing the right thing.

## **2. The Department condoned a deputy-versus-inmate culture.**

Although the Core Values articulated by the Sheriff require deputies to perform their duties “with respect for the dignity of all people,” this value was not embraced by all Custody deputies. The lack of respect by deputies toward inmates is a significant component of the Department’s culture that contributed to the use of excessive force in the jails. Some deputies went as far as encouraging inmate-on-inmate fighting as a means of control or retaliation stemming from a lack of respect for the inmate population. Outside witnesses including clergy and ACLU observers in the jails testified that some deputies were disrespectful and abusive towards inmates in order to exert authority.

Fostering an “us versus them” culture creates an atmosphere that contributes to excessive use of force. As noted in the most recent report of the Commander Management Task Force: “Interaction between inmates and staff are critically important since the jail culture for inmates is so heavily centered on respect.”

The lack of respect for inmates manifested itself in a number of ways. For example, a common thread that appears to have led to excessive force stemmed from disrespectful communication between deputies and inmates, which LASD management identified as a possible factor “in inciting assaults.” The use of profanity or a disrespectful directive to an inmate at times led to conflict that could have been avoided with professional communications.

The investigation also revealed that some deputies showed disrespect to inmates in other daily interactions. One inmate witness reported that deputies occasionally shut off hot water and/or heat at MCJ. Another observed that deputies who wanted to pick on an inmate would subject that inmate to multiple searches, throw away his possessions, or arbitrarily take away blankets or clothes. This lack of respect was reflected in the graffiti found in 2007 in a control booth at MCJ, which included the derogatory statement “don’t feed the animals.”

As with the use of force generally, peer pressure contributed to the adoption of an “us versus them” mentality. One outside observer noted that many deputies begin their tenure at MCJ as respectful and courteous, but their approach shifts after exposure to both the negative jail culture and the pressure of fellow deputies. One example of this dynamic arose when a deputy was chastised and given the label “Deputy Love” after deputies concluded that he was too

respectful of inmates. The deputies who challenged his behavior said he needed to yell at inmates and use less respectful language; the deputy eventually asked to be transferred from his assigned floor to escape pressure from his peers.

Most troubling are the reports received by the Commission of gratuitous and unprovoked violence (or encouragement of violence) against inmates. One witness spoke of the practice of “racking the gates,” in which a deputy would unlock the cells of inmates to facilitate inmate “gladiator” fights. Another spoke of deputies intentionally placing inmates of different races or gangs together to provoke violence. Incidents such as these were documented by the Department as early as 2004.

The Sheriff has attempted to address these culture issues through Town Hall meetings and his Education Based Initiative. But as the recent ALADS report reflects, many of the 453 Custody deputies who responded to the ALADS survey (approximately 22% of Custody deputies) seemingly question the Sheriff’s approach to improving inmate-deputy relations. For example, 70% of the deputies who responded (313 deputies) believe that “[i]nmates’ respect for deputies has declined because they feel ‘empowered.’” It is particularly telling that ALADS has approached the recent reforms as a zero-sum proposition in which any attempt to engage and listen to inmates is viewed as a threat to deputy authority. Yet, while ALADS criticized the recently implemented Town Halls and the perceived undue demands of the Sheriff’s Education-Based Incarceration program, these efforts are viewed by the Sheriff and outside experts as demonstrating an interest in and respect for inmate contributions and rehabilitation that has helped reduce the tension in the jails. Moreover, contrary to ALADS’ claim that the jails have become more dangerous for deputies over the past year, the number of force incidents and inmate assaults on Department personnel has dropped significantly during that period.

Although the Sheriff has memorialized in the Custody Division Manual the importance of treating inmates with “respect and dignity,” it is less clear that all of the top leaders and managers in the Department share the Sheriff’s commitment to these principles. It will be important for deputy training, supervisory oversight, and the discipline process to reinforce an unambiguous message that deputies serving in the jails are custodians of the inmate population, and to emphasize that the Department is committed -- at all levels -- to promoting efforts to engage and rehabilitate inmates while also ensuring a safe Custody environment for all.

**3. The Department's tolerance of deputy cliques contributed to the excessive use of force in the jails.**

The Department has a long history of deputy cliques -- groups of deputies who self-associate and self-identify, often because of a particular posting or assignment, to the exclusion of those outside the group. These named cliques have included the "Little Devils," the "Vikings," the "Regulators," and others. In addition to their names, they have self-identified through logos and in some cases tattoos. Although work-related groups and associations are natural and can be healthy, these subcultures within the Department contributed to acts of insubordination, aggressive behavior, and excessive force in the jails for many years.

Problems associated with deputy cliques have long been known to the Department. The 1992 Kolts Report discussed the problems associated with the "Vikings" clique at the Lynwood Station, which gave rise to an excessive force lawsuit against the Department that resulted in a \$9 million settlement. The Kolts Report found that the "Vikings" clique was comprised of "an inner group of deputies with peculiar and unique hard attitudes" that "manifested themselves in the form of excessive force and disciplinary problems between deputies and their supervisors." Kolts recommended that the Department "identify, root out, and punish severely any lingering gang-like behavior by its deputies," and that "[u]nit commanders [] aggressively break up deputy groups which manifest any of the conduct which signifies gang-related activity."

Despite the Kolts Report's recommendations nearly two decades ago, deputy cliques have continued to exist within the Department with the knowledge and tacit approval of Department leaders. One noteworthy example, the "Regulators," was reported to have formed at Century Station as early as 1999 and continued to exist at that Station until at least 2007, when Department leaders informed the Sheriff that the group had "semi-infiltrated the Department and its Core Values and daily functions." The group was found to have controlled overtime assignments and promotions at the Century Station and "boldly used" the Station's facilities "for their meetings, with no regard for supervision." The group "did not respect rank," and "would run the station as a subculture fraction." The Department report recommended enhanced training, including training of all Captains about "Sub-Cultures and Cultures of the stations and how they can undermine the Management."

The presence of deputy cliques has not been limited to Patrol assignments. At MCJ, aggressive cliques have been long-known to Department management. Beginning at least as early as 2003, supervising deputies observed groups of deputies, primarily from the 2000 and 3000 floors at MCJ, engaging in aggressive, cliquish behavior. Among other things, these deputies were observed associating together while on duty, leaving their posts *en masse* at the end of their shifts and refusing to commingle with other deputies. They were highly resistant to supervision, committed acts of open insubordination, and sought to intimidate, bully and undermine supervisors whose policies they did not like. Many such deputies had been serving together for several years in the same Custody assignment and younger deputies who joined the group were susceptible to their negative influences. The cliques from the 2000 and 3000 blocks at MCJ became known as the “2000 Boys” and “3000 Boys,” respectively; some purportedly had tattoos with Roman numerals in their calf areas to identify their membership in the clique. According to retired Commander Olmsted, a deputy reportedly fractured the orbital bone of a non-combative inmate to “earn his ink” -- a tattoo with the Roman numeral “II” -- signifying his membership in the 2000 Boys clique.

The existence of such cliques can erode a deputy’s moral compass and make the deputy more resistant to supervisory oversight. As one outside jail leader observed, “[w]here informal power groups provide the true day-to-day leadership, it is common for jail employees to develop an ‘us-them’ mentality both about organizational leaders and inmates. This may cause staff to form stronger horizontal alliances with each other in a way that overshadows good decision making about what is right and wrong.” Most significant for present purposes, the aggressive nature of these cliques and their resistance to supervision likely contributed to a significant increase in the use of force against inmates on the 2000 and 3000 floors at MCJ.

Recognizing the corrosive nature of these groups, beginning as early as 2003, some MCJ supervisors sought to break up the core groups of deputy participants in the cliques. In early 2003, a Lieutenant tried to rotate deputies off the 2000 and 3000 floors, but was informed by his supervisor that he should handle the problem deputies on those floors “without sending his problems elsewhere.” Another Lieutenant tried to assign 2000 and 3000 deputies working overtime to a different section of the jail, only to later learn that the deputies were ignoring their new assignments and working their regular posts. A Sergeant on the 2000 floor in 2003 did

manage to rotate problem deputies off the floor for a few weeks, during which time he observed the use of force incidents on the floor dramatically decrease. Thereafter, however, management ordered that the deputies be returned to the 2000 floor, and use of force incidents returned to their pre-rotations levels. A short time later, a small inmate riot took place on the 2000 floor. The Sergeant who had attempted to implement the rotation policy was told by a deputy that the riot was instigated by another deputy to bury the Sergeant in paperwork so he would not be able to walk the floor and supervise.

Problems with the deputy cliques on the 2000 and 3000 floors continued at MCJ over the years. In February 2006, Captain Clark implemented a policy to rotate deputies among assignments, but it was vetoed by then-Assistant Sheriff Tanaka. (See the Management Chapter for a discussion of these events.) This incident was widely perceived by MCJ supervisors as undermining their authority and eliminating any ability they had to break up cliques on the 2000 and 3000 floors. It is all the more remarkable in light of the Department's well known history and longstanding problems with deputy cliques. Indeed, the Kolts Report recommended that "[u]nit commanders [] aggressively break up deputy groups which manifest any of the conduct which signifies gang-related activity." A rotation policy is an accepted and appropriate response to address and prevent the formation of cliques and the disrespect of authority that cliquish behavior foments. Yet, then-Assistant Sheriff Tanaka, who himself had been a member of the Vikings group that had been the subject of the Kolts Report, rescinded the policy, undermined the authority of unit leaders and emboldened complaining deputies.

Predictably, the problematic and aggressive cliques on the 2000 and 3000 floors at MCJ continued after 2006, contributing to use of force incidents in the jail. Indeed, according to Department records, a significant spike in the number of force incidents in MCJ occurred within a few months after the Clark rotation plan was vetoed by Tanaka and force was particularly high on the 2000 and 3000 floors.

The problems with MCJ deputy cliques culminated at a Christmas party in December 2010, at which 3000 floor deputies engaged in a brawl with other MCJ deputies. The matter received significant media attention and became a high profile embarrassment to the Department. In the wake of this incident, OIR urged the Department to consider whether the fight "could be traced in part to the tolerance of floor cliques among deputies." OIR additionally noted that its

investigation revealed "troubling signs of such a culture" and "evidence that jail supervisors apparently knew about the use of 'gang-like' signs and other troubling behavior well before the eruption of violence at the Christmas party." More recently, in discussing the incident and a photograph of "the involved deputies prior to the incident holding up three fingers in a way that that could be interpreted as throwing 'gang signs,'" OIR expressed its concerns about the "apparent formation of a group by some deputies who apparently identified more with their floor assignment than their unit assignment or with the Sheriff's Department."

In early 2011, to help break up the MCJ deputy cliques, the Department implemented a rotation policy at MCJ similar to the one proposed by Captain Clark five years earlier. This rotation policy continues to exist today, albeit in a modified form.

Despite the longstanding problems that have been created by deputy cliques within the Department, some within the Department continue to minimize the issues created by these groups. One Commander told the Commission that he thought the allegations of deputy cliques were overblown; that one had to understand "kids" today; and that the MCJ deputies who resisted rotations were good deputies who simply wanted to continue working with their friends. This same Commander likened deputy clique tattoos to other tattoos displayed by members of the armed forces, such as the 101<sup>st</sup> Airborne. The President of ALADS similarly downplayed concerns about cliques and testified that he did not believe that deputy cliques existed in the jails.

Although camaraderie and friendly competition among units can be a natural and healthy aspect of any institution, cliques of deputies that resist or undermine supervision, violate Department policies, exert negative influences over other deputies, use frequent and excessive force against inmates, and engage in other violent behavior against members of the public and other deputies represent threats to the very integrity, ethics, and mission of the Department.

**4. The Department's tolerance of a code of silence impeded its ability to prevent, detect, and discipline the use of excessive force.**

A "code of silence," by which officers fail to report or misreport improper or unlawful conduct by other officers, is not an unknown problem in law enforcement agencies. Law enforcement officers are trained to protect one another, creating a natural resistance to coming forward with information that could be detrimental to the career of a colleague. As a retired

LASD Commander stated, “we all know there is a code of silence in law enforcement. [It is] culturally imbued into the profession.” He added that it is especially problematic in Custody, where deputies face a “host of ethical dilemmas” during the day to day performance of their duties.

To adequately identify, investigate and respond to alleged violations of Department policy, including allegations of excessive use of force, it is imperative that the Department foster a culture that promotes the honest reporting of violations of law and Department rules, and in particular the excessive use of force, by Custody deputies. Yet several current and former Department witnesses stated that use of force incidents at MCJ were often not reported, and allegations of excessive use of force were at times extremely difficult to investigate, because deputies would not truthfully recount what they had witnessed. Use-of-force packages often contained boilerplate descriptions of the events giving rise to the use of force and in some incidents deputies were not truthful about use of force.

Particularly troubling, this “code of silence” appears to have been tacitly or even expressly encouraged by certain Department leaders. When Lieutenant Bornman was attempting to investigate a 2009 bar fight involving four deputies from the MCJ 2000 floor, he reported to MCJ Captain Cruz that the identified participants in the fight were less than forthcoming about what had happened. In response, Cruz instructed, “don’t look too hard.” Tanaka, an Assistant Sheriff at the time, similarly told deputies and supervisors at Century Station in 2007 that Captains should not “put ‘cases’ on deputies” for misconduct and that “he would be checking to see which Captains were putting the most cases on deputies” and he would be “putting a case on them.”

Experts report that the most effective way to address a code of silence is to implement a “zero tolerance” policy that aggressively punishes the failure to report and the misreporting of use of force incidents. Indeed, corrections leaders who have sought to address an imbedded code of silence underscored the need for harsh and visible consequences for failure to report or misreporting, starting with a presumption of *termination* when personnel are dishonest about excessive force. Two corrections leaders touted the use of criminal prosecutions against dishonest officers, and one even walked deputies “out in handcuffs” to send a strong message

that complicity in a code of silence would not be tolerated. Another expert stressed the dangers created when supervisors “give a blind eye to a blind report.”

Matthew Cate, the Secretary of the California Department of Corrections and Rehabilitation (“CDCR”), echoed these messages in his testimony before the Commission. During his tenure as Inspector General at CDCR, high profile prison violence and code of silence problems were addressed through various strategies, including a discipline policy that imposed termination as the base punishment for falsely reporting or, in egregious cases, failing to report the excessive use of force. CDCR extensively trains its officers on the potential career-ending consequences of adhering to the code of silence and the need to truthfully report use of force incidents, and management sent a clear message that false or non-reporting of use of force incidents would not be tolerated. As Cate explained, while he was willing to rehabilitate jail personnel who engaged in excessive force, employees who were untruthful could not remain in his agency.

Although the Sheriff has articulated a strong disapproval of dishonesty, LASD has been lax in ferreting out or disciplining acts of dishonesty. As discussed in greater detail in the Discipline Chapter, the Department rarely finds employees to have engaged in false reporting of use of force. In addition, there have been documented incidents of false statements that resulted in light penalties and no finding of a violation reflecting the deputy’s dishonesty. Moreover, the LASD discipline matrix for false statements, in sharp contrast to that of CDCR, starts with a base penalty of only 10 or 15 days. This lenient approach to dishonesty is insufficient to address a code of silence that has been part of the County’s jail culture.

**5. Off duty deputy misconduct reflects a confrontational and aggressive culture among some in the jails.**

Various witnesses before the Commission recounted a number of incidents reflecting aggressive off duty misconduct by MCJ jail deputies, some of which resulted in arrests of deputies. In one incident in 2003, a deputy who was arrested by the West Covina Police Department for DUI was verbally abusive to the arresting officers, stating that he was a 3000 floor deputy and the police should “not mess with” him. In another incident, four deputies were arrested by the Fullerton Police Department after jointly assaulting a patron at a bar. There was

also a fight at BJ's restaurant where a deputy punched a woman patron. Those issues came to a head with the 2010 Christmas party fight among Custody deputies.

Both OIR and Special Counsel have expressed concerns over the Department's failure to vigorously scrutinize or adequately punish off duty misconduct. In the wake of those events, OIR observed, "[o]ne way in which the disciplinary system can ... maintain vigilance over the development of young deputies and jail culture is to scrutinize off-duty misconduct."

**6. The Department has lacked sufficient training and guidance on ethical behavior and de-escalation techniques.**

Department personnel have underscored the need for greater focus on deputies' ethical training and guidance. A retired Commander expressed the view that the Department's training needs to do more to: (1) instill integrity in deputies; (2) train deputies about the LASD's discipline process and the consequences of misconduct; (3) train deputies to talk to inmates and de-escalate situations; and (4) train deputies to involve supervisors and managers in decisions that can lead to the use of force.

One former supervisor emphatically pointed out that the LASD needs to teach deputies "right and wrong from the get go." Similarly, the retired Commander told the Commission that there is little, if any, ethical training offered to deputies. He added that deputies need to be aware of the discipline process and know the consequences of their actions, including lying or covering up force incidents. The retired Commander also said that deputies need more training in dealing with inmates and learning to "talk their way" out of confrontations and de-escalate tense situations. He said deputies need to be trained in "role playing" exercises that teach them what to do when their authority is challenged.

In order to enhance its existing training on these issues, the Department reports that it is adding additional academy training in Nobility Policing, Respect-Based Leadership and Respect-Based Communication to address these deficiencies.

Troubling incidents in the jails underscore the need for a stronger emphasis on the Department's Core Values as well as a concerted effort to instill those principles in its personnel to promote a more positive jail culture. At least one witness has observed that there is a dissonance between those values and the actual attitudes and conduct of deputies.

## **7. Poor leadership has contributed to the troubling culture in the jails.**

For LASD management to properly emphasize and demand ethical behavior, Sergeants and Lieutenants must subscribe to and model those ethical principles and proactively supervise the deputies under their charge. Without genuine supervision, deputies will not be held accountable for their mistakes and will feel free to engage in unethical behavior. Unfortunately, there has been a lack of sufficiently trained or adequately supported Sergeants and Lieutenants in the jails. As one retired supervisor commented, “the problem [is] not so much ‘resistance’ to supervision as the ‘absence’ thereof.” Another retired Commander explained that new deputies are a “blank slate” when they come into the jails; they need to be mentored by Sergeants and Lieutenants who instill in them that their actions have consequences and will not go unpunished. He said that he blamed supervisors more than deputies for the problems in the jails.

Individuals interviewed by the Commission emphasized that management often did not seek to discipline deputies involved in excessive force incidents at MCJ. One supervisor stated that when incidents involving use of force against an inmate occur, management fails to ask fundamental questions that would expose abuse. Instead, management at times has simply transferred high use of force deputies to other assignments. If the problem relates to a specific inmate, the inmate may be moved to another facility. Many believe this method of addressing problems explains why poor performance or excessive use of force by deputies goes unnoticed throughout the jail system. This approach reinforces the lack of consequences for deputies, or for their supervisors, for unnecessary or excessive force. Often no one is held accountable for excessive use of force and improper behavior goes unchecked.

As discussed in the Management Chapter, many witnesses attributed the culture problems in the jail to conduct by Undersheriff Tanaka, who encouraged deputies to “work in the ‘grey’ area” and told them to “function right on the edge of the line.” These remarks promoted a culture and mindset among deputies that they could act with impunity because they had Undersheriff Tanaka’s protection and, therefore, did not face the risk of discipline. Moreover, Tanaka’s intervention in decisions in the jail reinforced a culture of deputies unreceptive to the chain of command and resistant to supervisors’ efforts to control misbehavior. Commander Olmsted described how Tanaka responded with indifference even after use of force issues were forcefully brought to his attention.

Witnesses identified Captain Cruz as contributing to the troubling MCJ jail culture. They described how Captain Cruz would listen and pay “lip service” to the need for discipline, but would ultimately take no action. For example:

- Former Commander Olmsted testified how, after he retired, he began receiving numerous phone calls about uses of force at MCJ. He communicated those concerns to Captain Cruz, who downplayed the severity of the force used and instead attempted to ascertain the identity of the informant.
- Lieutenant Bornman reported that Captain Cruz responded to a surveillance video of several deputies severely beating an inmate by saying that he saw “nothing wrong” with the level of force used.
- During an investigation of several off duty deputies fighting with patrons at a local restaurant, Lieutenant Bornman told Captain Cruz that he was having trouble identifying the individuals involved. Captain Cruz discouraged Bornman from thoroughly investigating the matter or determining the identities of the deputies involved.
- An ACLU monitor described how Captain Cruz and other jail leaders rationalized the excessive level of force used in a cell extraction that the monitor witnessed. Captain Cruz informed the monitor that the deputies “did what they needed to do,” and that this was the level of force required with this “type of inmate population who has a group mentality and won’t negotiate.” Captain Cruz went on to say that the results of throwing a 160 pound inmate onto cement were “just sort of about physics. This is going to happen.”
- During a speech at a 2009 Christmas party attended by deputies working the 2000 floor at MCJ, Captain Cruz asked the deputies what he always told them and they responded with laughter and in unison, “not in the face!”
- According to one witness, Captain Cruz told deputies involved in a force incident that that they should have kicked or punched the complaining inmates a little harder.

These persistent and unfortunate comments by senior managers Tanaka and Cruz contributed to a troubling culture in the jails.

Further exacerbating this problem was the reluctance of supervisors to find use of force by deputies to be out of policy. Commander Olmsted testified that, after an independent analysis, he discovered 18 of the 40 use of force reports he reviewed were clearly “out of policy,” yet all had been approved by Sergeants, Lieutenants, or Captains as appropriate uses of force. Moreover, as reported elsewhere in this Report, Department supervisors rarely found uses

of force in the jails to be unreasonable or out of policy. As a consequence, the culture in the jails was one where deputies considered themselves free to use force and supervisors were ineffective in controlling them.

**8. The Department's failure to appropriately value Custody positions contributed to a negative and unprofessional culture in the jails.**

Within LASD, Custody is widely perceived to be a less important and less desirable assignment. As discussed in more detail in the Personnel Chapter, there is a pervasive view in the Department that time spent in Custody results in "lost years." In addition, some Patrol deputies have been transferred to Custody as punishment or because they were unable to handle their Patrol assignments. These perceptions foster a negative and at times unprofessional environment in the jails.

Most deputies join the Department seeking to become Patrol deputies, but many find themselves spending their early years in Custody, creating widespread feelings of discontent and frustration. One retired LASD manager opined that 95-99% of deputies did not want to be working in the jails; another supervisor believed that as many as two-thirds of the deputies in Custody were unhappy. These feelings of discontent are exacerbated by the fact that many deputies who want to go to Patrol have to remain in Custody for what most consider to be too long, sometimes as many as seven or eight years or even longer.

In contrast to the lengthy Custody assignments for new deputies, Sergeants have, until recently, remained in Custody for only a short period of time, an average of approximately one year. This has resulted in disgruntled and frustrated deputies, managed by Sergeants who do not have a vested interest in the effective management of the jails. Although one recent reform extends the length of supervisory assignments in the jails to two years, there is still a significant imbalance between the time that most deputies are assigned to Custody and the time that supervisors will remain there, and it is not clear that this change will be sufficient to address this problem.

The failure to value the Custody assignment, the lengthy periods in Custody for deputies, and the short assignments in Custody for Sergeants all have contributed to the cultural problems discussed in this Report. Although a career Custody track (discussed in the Personnel Chapter)

can ameliorate some of these concerns, that will not happen overnight. Deputies who want to be in Patrol will still be in Custody for some time. At a fundamental level only the engagement of high level leadership can enhance the perception of Custody and address these cultural concerns

**9. ALADS response to the Sheriff’s reforms reflects an entrenched and problematic culture.**

The response of the deputies’ union to the Sheriff’s reforms suggest that it will not be easy for the Sheriff to “transform the culture” of the jails. Based upon survey responses from approximately 22% of the deputies in Custody, ALADS reports that Custody deputies believe that the “new policies and procedures implemented in response to allegations of abuse have had unintentional consequences on inmate behavior and deputies’ ability to control inmates without incident.” According to the survey, 70% of responding Custody deputies believe that, as a result of Town Hall meetings and other reforms put in place by the Sheriff in recent months, inmates’ respect for deputies has declined, and 50.1% believe that inmates have become more aggressive. ALADS goes on to conclude, without citing any evidence, statistical or otherwise, that “[t]his lack of respect has led inmates to be significantly more hostile toward deputies and resistant to their directives,” even though Department statistics show that both force incidents and inmate assaults on deputies have decreased significantly. ALADS further reports that “deputies feel that they have largely ‘lost control’ of the jails, with a sense that ‘the inmates are running the jails.’”

ALADS’ vision appears to favor less outreach to inmates and the use of more force to control inmate behavior. If so, it will be very difficult for the Sheriff to complete the implementation of his reforms and to change permanently the culture in the jails from one based upon confrontation to one based upon respect, communication and reduced violence.

**Recommendations**

**5.1 The Department must continue to implement reforms that emphasize respect for, engagement of, and communication with inmates.**

The reforms that the Sheriff has initiated -- including Town Hall meetings and Education Based Incarceration -- reflect an approach that is based upon respect for inmates and that seeks to improve communication by affording inmates a constructive (and nonviolent) outlet for their concerns and frustrations. Not surprisingly, since the Sheriff’s reforms have been instituted,

there has been a reduction in both force incidents and assault on the deputies. Although ALADS has questioned these changes, the Commission urges the Sheriff to maintain these more progressive approaches and to affirmatively combat the mindset that promotes confrontation and aggression as a vehicle for control within the jails.

**5.2 The Department's Force Prevention Policy should be stressed in Academy training and reiterated in continuing Custody Division training.**

The fundamental principles of the Department's Force Prevention Policy -- force is a last resort and deputies should use only the minimum amount of force necessary -- as well as concrete practices for implementation of that policy, should be stressed at the Academy and at every ongoing opportunity for on-the-job training. The Department's formal and informal training of Custody deputies should remind deputies that in many instances time is on their side, they should enlist the support of a supervisor whenever possible, they should use their communication skills to defuse situations, and -- as one Captain told the Commission -- they should "leave [their] ego[s] at the door" to avoid escalating a minor infraction into an incident that will require the use of force. There will be, without doubt, times in which deputies will need to use force to gain compliance with a lawful and proper directive (as well as to break-up fights), but the goal of the Force Prevention Policy is to use force as a last resort and only when necessary. These fundamental principles must become ingrained in jail culture.

**5.3 The Department should enhance its ethics training and guidance in the Academy as well as in continuing Custody Division training.**

It is vitally important that new impressionable deputies receive the necessary ethics training and guidance in both the Academy and thereafter. They must understand the repercussions to their careers if they adhere to a code of silence, protect other deputies, fail to report uses of force, or mislead or provide false information to investigators, their supervisors, or other Department personnel. New deputies are subject to the pressures of their peers, particularly where many of their peers will have been in the jails for several years and often longer than the supervisors. They must come to the job with the proper ethical framework, which must be reinforced by the Department at every opportunity. The Department should enhance its ethics training and guidance and stress the importance of ethical behavior and adherence to the Department's Core Values.

#### **5.4 The Department must make Custody a valued and respected assignment and career.**

As discussed in more detail in the Personnel Chapter, the Department should adopt a dual-track career system whereby deputies would be recruited separately for Custody and Patrol and would have the opportunity to have a career in Custody. This would eventually lead to a separate Custody Division staffed with deputies and Custody Assistants with personalities and skills better suited to a Custody assignment. It also would reduce the number of, and eventually eliminate, deputies rotating through Custody on the way to their desired Patrol assignments. Patrol deputies would no longer find themselves “marking time” in an assignment they do not want. These changes will result in an improved morale and culture in the jails.

In the interim, as this new system is being implemented, Department leaders must take proactive steps -- through valuing jail service in promotion decisions, assignment of quality personnel to the jails, and affirmative recognition of the importance of Custody -- to demonstrate that Custody is a valued and respected assignment. As one Sheriff opined: “all sworn personnel should be treated as equals and the message between the police function and the jail function should be, ‘One job is not better or worse than the other. They’re just different.’”

#### **5.5 Senior leaders must be more visible in the jails.**

Senior Department leaders must regularly visit the jails and meet with deputies to hear any concerns they may have. Along with Custody supervisors, especially jail Captains, the Department’s most visible and highest level leaders must walk the halls and participate in Town Hall meetings and the Sheriff’s Education Based Initiative to show their commitment to these programs. This direct engagement and physical presence by high level leadership in the jails will go far to underscore the value the Department places on Custody work and help to set the tone at the top.

#### **5.6 LASD must have a firm policy and practice of zero tolerance for acts of dishonesty that is clearly communicated and enforced.**

The most effective antidote to a code of silence is the implementation of clear, timely and harsh discipline for acts of dishonesty or failure to report uses of force. Yet LASD’s recommended disciplinary range for, as well as its handling of, these cases has signaled lax attention within the Department to acts of dishonesty that undermine the discovery and

investigation of use of force. As discussed in greater detail in the Discipline Chapter, the Department needs to modify its disciplinary matrix and fortify its approach to, and the timeliness of, these investigations of dishonesty. There must be a clear message to deputies from their first day on the job -- and reinforced throughout their tenure in the Department -- that there will be zero tolerance for dishonesty.

**5.7 The Department should have a sensible rotation policy to protect against the development of troubling cliques.**

The Department should continue to rotate deputies among job assignments and also rotate them among proximate facilities. To the extent that there are meet and confer issues that require consultation with ALADS, the Department should seek to negotiate greater flexibility on the assignments of deputies to jobs, shifts or facilities, consistent with the needs of the Department.

The rotation policy should take into consideration the practicalities and realities of running a jail system, including the nature of particular assignments that may require more experience or skills (e.g., K-10 inmates or inmates with mental health issues), and should not necessarily rotate all of the deputies in one location at the same time. The Commission is concerned, however, that the Department has reduced its commitment to the rotation of deputies based on articulated concerns that in some circumstances it may be necessary to leave some deputies in an assignment for longer periods of time and not rotate all deputies at the same time. Indeed, the Commission has already heard that exceptions to the recent rotation policy are being made on an *ad hoc* basis without a clear articulation of the rationale for exceptions. The Commission believes that there should be a sensible and firm rotation policy, implemented in a common sense way (where not all deputies are moved at once) that will reduce the risk of deputy cliques while at the same time meeting the needs of the Department. If exceptions are to be made, they should be rare, clearly documented and based on articulated and specific reasons. Moreover, the Commission believes that there is merit to the recommendation by Special Counsel that deputies rotate among facilities and believes that this can be accomplished with minimal disruption by movement of deputies among proximate facilities (such as MCJ, Twin Towers, and IRC).

## **5.8 LASD should discourage participation in destructive cliques.**

Deputy cliques have been a longstanding problem in the Department and have had a particularly troubling impact on force issues in the jails. While the Department cannot prohibit discretionary decisions by deputies to associate with each other, it should discourage membership and participation in identifiable cliques or subgroups and prohibit use of Department resources and time to further the activities of these groups. In particular, high level Department leaders should actively discourage membership in deputy cliques and avoid promoting or condoning a culture of allegiance to a subpart of the Department.

The Department should also adopt policies that prohibit visible tattoos associated with deputy cliques that can undermine a sense of camaraderie and loyalty to the Department as a whole and that have also in some instances been used as a reward for aggressive behavior.



## CHAPTER SIX PERSONNEL AND TRAINING

### Introduction

The Department's personnel and training policies and practices do not adequately address the needs of the Custody Division and the safe, sound and effective operation of its jails. There is a strong consensus among deputies that the Department views its primary role as law enforcement and Patrol operations, and that Custody is perceived to be of secondary importance. That mindset is reinforced by the Department's stated Mission, which makes no mention of Custody or the operation of the jails.<sup>1</sup> Deputies are recruited and hired largely for Patrol, resulting in a mindset from the outset that Patrol is the primary work of the Department. Deputies interviewed by the Commission often referred to the Custody Division as a "step child," and repeatedly articulated the view that Custody work experience is not respected, years in Custody are viewed as "lost time," and only Patrol experience counts towards promotion and advancement. The Department's personnel and training policies and practices both reflect and reinforce the second class status of Custody.

Among the policies and practices that communicate and perpetuate this view that Custody is not the "real" work of the Department are the following examples:

- The Department's Academy for new recruits spends a total of only *two hours* out of a total of 18 weeks of instruction on Custody specific training;
- The Department's Leadership & Training Division does not oversee any training for Custody beyond the two hours in the Academy and a newly-added 10 days of "Nobility Policing" post-Academy that includes some Custody-related scenarios;
- Custody has been used as a place for the Department to place deputies who have encountered problems in their Patrol assignments or are under investigation for misconduct;
- Deputies cannot be promoted without Patrol experience and, while technically a Sergeant could be promoted to Lieutenant while assigned to Custody, in practice it virtually never occurs; and

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<sup>1</sup> The Department's stated mission is to: "Lead the fight to prevent crime and injustice . . . [and] Partner with the people we serve to secure and promote safety in our communities."

- According to the long-standing supervisory assignment practices, Custody has historically received “who’s left” after the highest rated new supervisors are chosen by Patrol and specialty units.

The Commission believes that there needs to be an organization-wide recognition of the importance of the work of the Custody Division in the Department’s overall mission. In particular, there should be a re-thinking of the Department’s mission, training, personnel policies and practices to reflect Custody’s valued function and address the needs of Custody with a long-term goal of establishing a stand-alone Custody Division.

### **Findings**

**1. While the Department’s hiring policies and procedures are generally consistent with industry standards, application of these policies has at times been problematic.**

Although the Commission heard concerns about a perceived decrease in the Department’s hiring standards that some believed resulted in the hiring of less qualified deputies, the Department’s hiring practices and policies are consistent with industry standards. The concerns arise from the large swings in hiring, which can result in the Department hiring *lesser* qualified candidates who nevertheless still meet the Department’s standards. There have also been some concerns about whether the Department, over time, has acted in full accordance with its articulated hiring policies.

In its broad outlines, the hiring process has remained constant over the last decade. Hiring and recruitment are overseen by the Department’s Personnel Administration Unit, which is under the oversight of the Administrative Services Division. The primary components of the process are application; written and oral exam; detailed background investigation; polygraph testing; and psychological evaluation. Applicants are eliminated from consideration at each stage of this process.

If an applicant makes it through all of these stages, the background investigator prepares a report detailing his or her concerns about the candidate, if any. The report is then subjected to three levels of review: by the Background Investigation Unit (“BIU”) Sergeant; by the Pre-Employment Operations Sergeant; and by the unit Lieutenant. All three check the thoroughness of the investigation, which is not complete until all three agree that it was adequate. The Lieutenant is responsible for final approval of the recommendation.

Since October 2008, marginal candidates have also been reviewed by the Commanders' Review Panel, which is tasked with reviewing the files and making the final determination about their suitability for employment.<sup>2</sup> The Department then selects the best candidates from the pool of qualified applicants. The final hiring decision is made by senior staff in the Department's Personnel Administration Unit taking into account the candidate's level of education, skills, maturity, and expressed dedication to a career in law enforcement.

The California State Commission on Peace Officer Standards and Training ("POST") conducts annual compliance inspections of all participating agencies' background investigations. Prior to 2009, POST consistently found LASD to be in compliance with its minimum requirements. POST did not complete an audit of the background investigations process in 2010 or 2011, due to budgetary constraints. The next scheduled audit is in 2012.

In 2009, OIR conducted a review of LASD's background investigations. It similarly found that, in the great majority of cases, the Department's background investigations were "objective and thorough." OIR found, however, that in a small number of cases the BIU failed adequately to investigate certain elements of an applicant's personal history and/or failed to take heed of negative information in an applicant's file.<sup>3</sup> OIR identified some specific areas of improvement in the Department's policies and procedures and the Department has implemented the vast majority of these recommendations.<sup>4</sup>

A number of witnesses attributed current difficulties in the jails to the progressive relaxation of drug-use standards for new deputies over the last two decades. The Department, like virtually all other law enforcement agencies, has changed its standards regarding drug use

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<sup>2</sup> The Department conducts its own internal reviews of its hiring standards, but it has not sought an independent audit. According to the CMTF, the Department is inquiring into the use of the Audit Controller to conduct bi-annual audits of the background investigations process.

<sup>3</sup> OIR's Tenth Annual report also includes concerns about the hiring process arising from its investigation of the Department's hiring of officers from the Maywood Police Department when that department was disbanded and LASD took over the peace officer duties for the city. OIR found that some of the 11 hires were questionable and that the nature of this particular hiring situation (hiring existing peace officers that would otherwise lose their jobs) may have resulted in less rigorous identification of issues and concerns and lapses in implementation of protocol. See OIR Tenth Annual Report at 124-38.

<sup>4</sup> The two recommendations that have not been completed are: (1) to arrange for a neutral audit of the work of the contract psychologists; and (2) to arrange for internal reviews of the background investigations of deputies who are involuntarily separated from the Department in order to find ways of improving the process.

over the years to reflect changing public mores, and the Commission has been unable to identify a link between these changes and violence in the jails.<sup>5</sup>

Other witnesses also expressed the view that the Department's hiring standards had fallen generally in recent years, which may have something to do with the hiring of lesser qualified deputies during upswings in hiring (as discussed below). Some witnesses believed that new deputies were less respectful of authority, less dedicated to the job, and less willing to work hard. Some suggested that new recruits were younger and had less military experience. Others suggested that new recruits were more likely to have gang affiliations and quasi-criminal backgrounds. While it may be that new deputies are of a different make-up or mindset than deputies of past generations, these are common complaints found in many organizations reflecting a widely recognized generation gap and do not appear to be the result of the Department's hiring policies and practices.

The Commission did find some evidence of favoritism in the hiring process, but these incidents appear to be isolated and not widespread. Some interviewees recounted incidents where Department executives intervened in the screening process to benefit a preferred candidate. For example, one witness told the Commission that, after a background investigator decided to disqualify a candidate with personal connections to an executive, the file was reassigned to a different investigator. The second investigator cleared the candidate and the candidate was hired. These incidents are troubling, but the Commission has found little evidence to suggest that such incidents are systemic or that such actions resulted in the widespread hiring of unqualified candidates.

In sum, LASD's hiring standards remain compliant with POST guidelines and, when hiring proceeds at a reasonable pace, the current system is capable of selecting well-qualified individuals for the Department. While some concerns exist in regard to the application of these standards, these problems have not been pervasive.

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<sup>5</sup> The Department's drug policy continues to exclude those who have engaged in regular or heavy drug use.

**2. The Department’s cyclical hiring has resulted in the hiring of lesser qualified deputies.**

The Department’s pattern of hiring impacts the quality of the deputies that the Department hires and results in the hiring of some less qualified deputies. The Department’s hiring is entirely dependent on budgetary considerations, and its hiring practices have followed a classic boom-and-bust pattern. For example, in 2003, the Department hired only 75 new deputies. In 2007, that number swelled to over 1,200. Hiring numbers again plunged in 2009 to just 194 and then to a single hire in 2010. The Department’s hiring numbers in recent years are as follows:

<b>Year</b>	<b>Hires</b>
2003	75
2004	190
2005	582
2006	1047
2007	1271
2008	455
2009	194
2010	1
2011	120

As these numbers reflect, in the “bust” years, there were partial or complete hiring freezes in which few deputies were hired. In the “boom” years, the Department aggressively filled all of the positions for which funding was available. This pattern has repeated itself several times over the last two decades. The Department experienced partial or complete hiring freezes from 1991 to 1994, from 2002 to 2005, and from 2008 to 2011, corresponding to periods of economic contraction. Each hiring freeze has historically been followed by a hiring boom.

The task of hiring large numbers of new deputies in boom years means that the Department must both (1) expand the applicant pool through recruiting efforts, thus drawing in candidates who may not be as dedicated to, or well suited for, a law enforcement career; and (2) reach deeper into the qualified applicant pool, taking candidates who may be less qualified for any number of reasons. Because these hiring booms tend to be correlated with economic swings, they generally occur when other law enforcement agencies and the private sector are expanding their own hiring. This increased competition pushes the Department still deeper into the

applicant pool and makes it more difficult to hire well-qualified applicants. To illustrate, in fiscal year 2004/2005, the Department could fill only 75% of the authorized positions.

Other corrections leaders have underscored the concerns that can arise when hiring standards are relaxed to accommodate cyclical needs. The head of one large metropolitan jail observed that this can lead to problems in both quality and professionalism. He noted, “there is a tendency for organizations to just hire. You must have a good selection process. Failure to do that will lead to lots of discipline problems.”

The impact of the hiring swings is also illustrated by OIR’s 2009 report examining background investigations. OIR found that, during the 2005 to 2007 hiring boom, the Department relaxed hiring standards, applying a “holistic” review standard that permitted investigators to ignore factors that would previously have been disqualifying. In addition, OIR found that psychiatric personnel felt additional pressure during this period to rate applicants qualified. OIR’s 2009 review of the hiring patterns suggests that the Department was hiring a much larger percentage of the applicant pool in 2005 to 2007 than in prior years. Witnesses we spoke with confirmed that, historically, approximately 10% of applicants ultimately were hired. But during the hiring boom of 2005 to 2007, the Department hired more than 20% of the applicants.<sup>6</sup>

To the extent that these cycles result in the hiring of less qualified deputies, who are less mature, have weaker communication skills, or fewer demonstrated leadership abilities, it necessarily impacts the Department’s capabilities to handle the myriad of challenges presented in a custodial environment.

### **3. Department training for Custody is far below both industry best practices and training standards in other corrections systems.**

Experts interviewed by the Commission repeatedly emphasized that, while careful hiring is important, diligent background investigations and hiring standards will not solve use of force problems. As important is training, leadership, and support given to employees who are hired.

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<sup>6</sup> Another side effect of the boom-and-bust hiring pattern is the need to dismantle and rebuild the BIU and the Academy staff with each swing, further challenging the effectiveness of the hiring and training process.

A well qualified deputy may fail if given poor support, training, and supervision. A lesser qualified deputy can still succeed in an environment that provides guidance and support.

In training (and supervision discussed below), the Department falls far short. The training provided to deputies to prepare them for their position in the jails is well below the minimum levels expected. Currently, LASD deputies beginning a Custody position receive the following training:

- 18 weeks of Academy training with only two hours dedicated specifically to Custody;
- Two weeks of Nobility Policing Training after the Academy (added at the end of 2011), some of which deals with Custody specific situations; and
- Two weeks of practical Custody Division training at the assigned facility.

Once on the job, the Deputies are assigned a Custody Training Officer for 12 weeks and must complete a training checklist on various topics relating to the Custody position. Thereafter, deputies are expected to participate in 24 hours of continuing training each year, some of which is Custody specific.

Not only does Custody training get short shrift, it is not considered a responsibility of the Department's Leadership & Training Division. As currently structured, the Department's Leadership & Training Division oversees the Academy, with its two hours of Custody specific training, and the two week, post-Academy, Nobility Policing training. It does not oversee any other training for Custody, which is handled by the Custody Division itself. This means that the division of the Department dedicated to the training of deputies in accordance with the industry's best practices has little oversight or management of most of the Department's Custody training. Even if Custody managers are able to identify training voids and craft curriculum for Custody, the Leadership & Training Division can offer valuable added insights. This also sends a strong message that training for Custody is not a part of the Department's primary mission or significant enough to be part of the Department's training division.

Moreover, the limited amount of Custody specific training is far below industry best practices. Experts agree that comprehensive Custody specific training before individuals begin work in the jails is vitally important. Many systems have robust Custody-only training programs

well in excess of 10 weeks. The head of the Department of Corrections in New York believes 15 to 17 weeks of training should be standard for Custody assignments; that department provides 16 weeks of corrections training -- the same length of training for Custody deputies in San Diego. And Miami has a 22 week corrections training academy, after which Custody deputies are tested and “certified” to work in the jails. LASD’s training falls well-short of these best practices standards.

There is further uniform agreement among deputies, Department leaders, and experts that special training in dealing with mentally ill inmates is essential. The Department does not, however, provide sufficient training in this area. Currently deputies receive the following training relating to mental illness: two hours in the Academy regarding mental illness generally but not specific to Custody or inmates; four hours of training on mental illness and inmates during the two weeks of Custody Division specific training, and two hours of training every year of their assignment to the Custody Division as part of their 24 hours of ongoing education. This Custody Division training on mental illness was instituted in July 2010 as part of a directive to enhance mental illness training. These efforts are an improvement, but still insufficient.

The Department further does not adequately train supervisors for Custody. Prior to 2010, a Sergeant assigned to Custody only had the limited training he or she received at the two week “Super School” that all new Sergeants and Lieutenants attend, which did not and still does not address Custody specific issues. Beginning in 2010, the Custody Division began implementing an eight hour course on leadership in the jails, which accounts for the totality of Custody specific training provided to a Sergeant or Lieutenant serving in Custody. As one corrections head noted, the “weak link” in jail systems is often the result of promoting people without providing proper and necessary training. Another expert recommended that supervisors receive at least 40 hours of training before beginning a Custody assignment, as well as 40 hours of ongoing training.

The Department’s failure to provide adequate training for Custody generally, and mental health issues in particular, most obviously means that deputies and supervisors are not adequately prepared for their assignments. Moreover, this failure reinforces the message that work in Custody is not important to the Department.

**4. The Department's promotion and supervisorial assignment process reinforce the second class nature of Custody service.**

According to several managers, deputies believe that they will not advance in the Department working on the corrections side of LASD. There is a widespread belief that Custody work is "lost time" in one's career -- often described as a "dead end job" -- in comparison to working Patrol where, in the same amount of time, a deputy can be promoted to Sergeant or Lieutenant. Many interviewees expressed the notion that deputies seeking promotion believe they are better off working *any other assignment* outside of Custody.

The Department's promotion policies and procedures reinforce the message that Custody is not the "real work" of the Department. Most significantly: (1) a deputy cannot be promoted to Sergeant from the Custody Division without Patrol experience; (2) a Sergeant is rarely, if ever, promoted to Lieutenant while in the Custody Division; and (3) the Custody Division is generally assigned the Sergeants and Lieutenants who are left over once the Patrol and specialty division supervisorial positions are filled.

In order for deputies to promote to the rank of Sergeant, they must be serving or have served in a Patrol division and pass a Sergeant's exam, which consists of three parts: (1) a written exam; (2) an oral exam; and (3) an "Appraisal of Promotability" (the "AP"). The written exam tests a deputy's knowledge of various codes and regulations. The oral exam presents scenarios that the deputy must analyze before a two-person panel (either two Lieutenants or a Lieutenant and a Captain). Lastly, the AP is calculated by the deputy's direct superior (a Sergeant with at least six months of supervision over the deputy) and reviewed by officers in the two ranks above the superior (Lieutenant and Captain), who can amend or revise the initial appraisal. The AP is a score given to the deputy based on certain criteria out of 100 point total.

To be eligible for a promotion to Lieutenant, a Sergeant similarly must have successfully completed a Patrol (or specialty) assignment. While it is technically possible under current policy to promote from Sergeant to Lieutenant from a custodial assignment, it almost never happens. Promotions to Lieutenant follow the same process as promotions to Sergeant.

Once a deputy has been promoted to Sergeant or Lieutenant, the Department's process for placement of these supervisors further de-values Custody. Sergeants and Lieutenants

actively lobby with Captains for positions in various Patrol and specialty divisions. The Captains then tell Personnel Administration whom they want to serve with them. Once the Sergeant/Lieutenant placements are made for the Patrol and specialty divisions (including movement of Sergeants and Lieutenants within the Department as well as placement of newly promoted deputies), the remainder of the Sergeants/Lieutenants are placed in the Custody Division. The Department candidly acknowledged in interviews that Custody generally gets “who’s left” in terms of supervisor placement. While the Commission heard some examples where Custody Captains lobbied for top Sergeants and Lieutenants, this was not the norm.

Even more troubling were the reports from various witnesses interviewed by the Commission that a Custody supervisory assignment is used as retribution for supervisors who are out of favor with the Department leaders. It was commonly understood among these witnesses that Sergeants, Lieutenants and Captains who were not in favor with senior leadership would get Custody assignments.

#### **5. Custody has a history of deficient supervisory performance.**

As one jail head aptly noted, when examining the quality of jail supervision it is helpful to ask if supervisors are “correcting the problem or part of the problem.” LASD personnel and outside experts agree that many of the challenges encountered in the County jails can be attributed to inadequate supervision. Numerous witnesses noted that, putting aside the number of supervisors, supervision was inadequate. Complaints ranged from Sergeants “chit chatting” away from their assigned floors, to Sergeants afraid to discipline or talk to the deputies they supervised, to so-called “deputy-fives” (officers with a Sergeant’s pay grade and title who nonetheless still think and act like a deputy). In addition, because of the steep learning curve for new Sergeants and Lieutenants in Men’s Central Jail, we were told that some supervisors relied on more senior floor deputies to suggest deputy assignments. Part of the problem is that supervisors rotate through Custody faster than do the deputies whom they supervise. As a result, deputies and Sergeants alike know that the deputies will probably outlast their new boss. Certain individuals interviewed also indicated that even well-meaning supervisors are burdened with significant paper work, which takes their attention away from walking the halls and providing an active and energized presence on the floors they supervise.

Sergeants, too, view correctional assignments negatively. One retired manager told the Commission that Sergeants have the impression that correctional work is where one “parks” his or her career until being reassigned or promoted. Because there is no tie between promotions and successful Custody correctional work, there is little incentive for a Sergeant to effectively manage by taking on hard problems or proactively address underperforming deputies.

**6. The ratio of supervisors to deputies in Custody is inadequate.**

An additional reason for the lack of adequate supervision is that there are not enough supervisors. As of June 2012, the ratio of Sergeants to supervisees in the Custody Division was approximately 14:1.<sup>7</sup> Excluding the recent addition of 19 additional Sergeants to MCJ, the ratio is more than 15:1. These supervisory ratios are far higher than appropriate for the safe operation of the jails. Indeed, last October, the Sheriff asked the County’s Chief Executive Officer for “the addition of 101 Sergeant and 10 Lieutenant positions in the amount of \$21.4 million” for the Custody Division.

In further recognition of this problem, and as an interim step, beginning in late 2011 the Commander Management Task Force “borrowed” 19 Sergeants and 2 Lieutenants from other divisions and moved them into MCJ. This move, along with other steps taken by the Task Force, has contributed to the decrease in incidents of violence. Unfortunately, the Commission was told that these borrowed supervisors are only on loan and the Department plans to return them to the other divisions at some point, leaving the Custody Division again with significantly inadequate supervision ratios.

**7. Staffing the jails primarily with inexperienced deputies, and keeping them in Custody for a lengthy time period, has a host of negative consequences.**

It has been LASD’s longstanding policy that deputies begin their career with the Department, post-Academy, in the Custody Division. Prior to 1983, deputies were permitted to remain in Custody assignments for their entire career. However, in the early 1980s the Department found too many deputies were remaining in Custody assignments. In response, the Department adopted what is now known as the “214 Rule.” Under the rule, deputies who

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<sup>7</sup> According to statistics provided by the Department, as of June 2012, there were 226 Sergeants supervising 207 bonus deputies, 1873 Deputy Sheriffs, and 1093 Custody Assistants. If one uses budgeted positions instead of filled positions, the ratio increases to approximately 16:1.

graduated with or after Academy class 214 must transfer to a Patrol assignment at some point and cannot stay in Custody indefinitely.

The process for deputies to move out of Custody is fairly complicated. Once a deputy joins the Department and is working in an assigned Custody facility, he or she must submit a transfer request form identifying no less than three (and up to six) Patrol Stations to which he or she would like to be transferred. The Department maintains a list of individuals desiring a transfer to each Station. When a spot at a Station opens up, the vacancy goes to the most senior person on the transfer list. The transfer list may include deputies already assigned to Patrol assignments, so assignments to the most coveted Stations may be monopolized by more senior deputies. Notably, a deputy in Custody will not necessarily be able to transfer to Patrol when his or her name rises to the top of the transfer list. With limited exception, the deputy will be permitted to transfer only when there is a new academy graduate (or other deputy seeking a Custody assignment) who can take his or her place.

Currently, deputies are permitted to request extensions of their assignment to Custody. Though most deputies are eager to transfer to Patrol, some desire to remain in Custody assignments for various reasons. Deputies may have become accustomed to the Custody environment. Others may be wary of the challenges of Patrol. Still others may stay because of the opportunities for overtime afforded by custodial assignments or because their relative seniority in the jails gives them better assignments and schedules. Historically, deputies were limited to submitting a certain number of requests to extend their time in Custody. Recently, however, the Department has, on a *de facto* basis, permitted an unlimited number. This year, the Department granted approximately 350 requests to remain in Custody. This is up substantially from 2005 when 35-40 such requests were granted.

Once a deputy is transferred to Patrol, he or she completes a two-week Patrol school and then must successfully complete a six-phase probationary assignment on Patrol (usually lasting six months). If the deputy fails, he or she is sent back to Custody for six months with instructions to improve on whatever skill deficiency resulted in the deputy's disqualification. The deputy is then given a second chance to complete Patrol school and a probationary assignment. Those who fail generally are discharged, though we have heard anecdotal accounts of such individuals being reassigned as Custody Assistants.

Ultimately, the length of a deputy's stay in Custody is determined almost exclusively by two factors: (1) the deputy's choice of Station; and (2) the rate at which the Department is hiring new deputies. Deputies who select "faster" Stations may transfer out quickly. "Fast" Stations are those that are regarded as less desirable, have higher turnover, and often are concentrated in outlying areas.

The Department does not track the length of deputies' stays in Custody so the Commission does not have specific data on this issue. However, anecdotal evidence suggests that the average length of stay is now between five and seven years. Some deputies stay in Custody even longer -- as long as 14 years -- before they are transferred to a Patrol assignment.

To the extent the length of stay can be estimated from the data we have been given, it suggests that this estimate is correct. In 2007, more than 1,000 deputies graduated from the Academy. In the years since then, only 800 additional deputies have graduated from the Academy. With a jail staff of approximately 2,100 deputies, this suggests that most if not all of the class of 2007 remains in custodial facilities. Much of the blame for this lies in the budget process. Lengthy hiring freezes mean that deputies hired during boom times must wait a long period of time before they can rotate out of Custody assignments.

The boom and bust hiring patterns, however, are not the only causes. As noted, there are currently approximately 2,100 deputies assigned to the Custody Division at any given time. The Department's annual attrition rate averages about 367. Simple mathematics dictates that it will take a number of years for a deputy to move to a Patrol assignment even when the Department is hiring at replacement rates.

There is no generally accepted standard for how long a deputy should remain in a Custody assignment before transferring to Patrol. Many of the experts said that any time in Custody was too long. Even those jail heads who believed that Custody might potentially be beneficial to the development of a new deputy agreed that five years was far too long for a Custody assignments to last.

Staffing the jails with brand new deputies for lengthy periods has a number of deleterious consequences. First, it means that the Department is staffing the jails with employees who -- by and large -- recently applied for and were trained for a different job: Patrol. Witness after

witness emphasized that the great majority of deputies assigned to custodial positions do not want to work there and are just “marking time” waiting for their opportunity to leave.

Second, it is bad for morale, recruitment, and retention. The consensus view of the witnesses with whom we spoke was that extended assignments in Custody have created serious morale problems in the jails. In a recent ALADS poll, more than 80% of Custody deputies who responded stated that the low morale in the jails had negatively impacted productivity. The Commission also heard evidence that lengthy jail assignments had caused high-quality deputies to leave and join other departments (or to join other departments right out of the Academy).

Third, it impacts preparation for Patrol. Experts emphasized that the skills taught in the Academy -- like all skills -- are perishable and can be lost during an extended Custody assignment. It makes little sense to invest six months training a new deputy for a Patrol responsibility only to let those skills perish during a five- to seven-year Custody assignment.

Fourth, the jails may be a counterproductive assignment for the youngest and most inexperienced deputies. As several witnesses suggested, training Patrol officers to deal with ordinary citizens by exposing them to some of the most violent offenders early in their career may be counter-productive.

With these concerns in mind, one expert labeled the LASD approach to staffing Custody the “worst possible system for running jails,” noting that new deputies go through training with a focus on being a street cop and are sent to the jails for a period of years where they often learn bad habits and aggressive approaches to dealing with people and suffer from plummeting morale. He noted that by the time deputies surface to Patrol, years later, they have forgotten much of what they learned in the Academy about being an effective Patrol deputy.

In testimony before the Commission, representatives from ALADS espoused a contrary view. The ALADS President insisted that the time deputies spend in Custody is important for their training and development as Patrol officers in that the jails teach young deputies how to interact with criminals and provide them with insights on criminal conduct. Many other law enforcement agencies, however, successfully run Patrol operations without first sending deputies or officers through an assignment in a jail system. Given the other downsides to extended

Custody assignments for new deputies, the Commission finds that the benefits of the Department's Custody staffing approach is outweighed by its many inherent costs.

**8. Some of the newest Custody deputies have been assigned to the most difficult floors or modules.**

The Commission also has concerns about how assignments within the jails have been made. In many cases, some of the newest deputies were assigned to take on some of the most challenging assignments. For example, at MCJ the "2000" and "3000" floors have the most dangerous inmates. We found evidence that some of the newest deputies have been assigned to these floors. Similarly, we found that new deputies have been assigned to the "5150" floor that houses mentally ill inmates, who are among the most challenging to work with. We understand that the Department is ending this practice, but have seen no written policy memorializing this change.

**9. The Department fails adequately to monitor the performance of deputies in Custody assignments.**

All deputies in LASD undergo two probationary periods in their career. First, a deputy is on probation for the first 12 months of his career, no matter what assignment he or she is in. Second, consistent with the understanding that Patrol is the Department's primary work, a deputy's "real" probationary period does not occur until he or she is assigned to Patrol. At this point, the deputy is assigned a training officer for six months and must establish his or her ability to handle the Patrol duties. Deputies who cannot complete the field training for Patrol must return to Custody for six months, retake the Patrol school, and complete field training.

In 2009, OIR found that the Department was not taking advantage of the initial probationary period to monitor deputies' performance. Following the OIR Report, the Department took steps to ensure that the Department capitalized on the probationary period in Custody to screen new deputies.<sup>8</sup> Department policy now requires that, within 90 days of a probationary employee undertaking an assignment, the relevant Unit Commander must review the employee's "work habits, performance, and training records." Probationary employees who

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<sup>8</sup> This is additionally important because deputies do not have civil service protection during the first probationary period and can be fired for any reason.

are the subject of administrative or other investigations will also be reviewed by their Unit Commander to determine whether the employee should be retained.

The Commission is concerned that the Department may still not be taking adequate advantage of the probationary period to weed out deputies who may present disciplinary problems. The Department's own statistics bear this out: since 2000, only 205 Deputy Sheriffs (out of a more than 4500) have failed to complete their probationary period (less than 5%).<sup>9</sup>

Experts confirm that these low numbers suggest that the Department is not taking adequate steps to monitor the performance of the newest deputies during their probationary periods in Custody. While experts acknowledged that it is impossible to say with precision what percentage of new deputies should fail during a probationary period, one expert said that he would expect close to a 10% fail-rate during the probationary period. In one well regarded jail system, nearly 25% of recruits are fired within the first year. The Department's persistently low failure rates suggest that careful attention to this issue remains necessary.

**10. The Department's lack of a rotation policy contributed to the growth of cliques, a culture of silence, and problems of insubordination.**

Prior to 2011, the Department had no formal rotation policy governing deputies assigned to Custody. As a result, deputies often spent years working the same floor with the same small cadre of deputies. The lack of rotation has been a significant contributor to the Department's problems with use-of-force, resistance to supervision, and the development of a culture of silence.

The experts who consulted with the Commission repeatedly and consistently emphasized the importance of regular rotation of assignments -- both between floors as well as among proximate facilities -- as a mechanism to address these problems. As they explained, when deputies work together for long periods on the same floor, they may develop their own internal hierarchy and a problematic sense of ownership over the physical space. In addition, personal relationships between the deputies may discourage reporting of inappropriate behavior, a

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<sup>9</sup> Indeed, the first probationary period, when the deputy is assigned to Custody, is of so little consequence that the Department's Personnel Administration Unit could not recall any deputy having ever failed this period when asked about this issue.

problem that is compounded when deputies expect to continue working together for an extended period. As one current sheriff explained:

Complacency is further entrenched when personal relationships between people cause a reluctance to take corrective action .... In a setting like a jail this issue can be particularly prevalent because employees are sometimes dependent upon each other for their personal safety. Some of the greatest contributors to a 'code of silence' are fears that future aid may be delayed in retaliation for reporting a coworker's misconduct or omission.

Moreover, work within a single facility can lead to stagnation and a lack of exposure to other jail environments. Experts particularly emphasized the importance of regular rotation as part of the process of changing a problematic jail culture. In addition, rotation has the side benefit of reducing the development of inappropriate relationships -- friendly or hostile -- between inmates and jail staff.

Recognizing the need for rotation, in January 2011 the Department began rotating floor assignments at MCJ. In October 2011, the Custody Division issued a policy directive requiring that personnel in Custody be rotated no less than every six months. The policy does not, however, go as far as some have recommended and mandate the rotation of deputies between nearby facilities.

The 2011 rotation policy ensures that there are no changes to deputies' days off or shift assignments and there is no requirement that all deputies in a unit be rotated at the same time. Of concern to the Commission, however, is the vaguely defined opportunity for variances from this policy; the policy gives Unit Commanders -- with the concurrence of the Chief of the Custody Division -- the discretion to exempt deputies in "key positions" from the rotation policy. The Commission has been told that *ad hoc* exemptions to the policy are being made. OIR's recent 2012 annual report confirms these concerns; OIR reported that "a commander designated entire sections of MCJ as key positions, in effect making the rotation policy far less robust than initially envisioned."<sup>10</sup>

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<sup>10</sup> OIR Tenth Annual Report, p. 39.

The Commission recognizes that there are potential challenges to a rotation policy. Deputies who work together for long periods may form effective teams. Long tenure in a particular assignment creates expertise, both about the job functions and about the inmates. Thus, a rotation policy may have some costs. There is no generally accepted way to strike a balance. Indeed, some of the experts we have spoken to recommended more frequent rotations -- as frequently as every four months. The Commission believes, however, that the Department's six month rotation plan strikes a reasonable balance between the need for job familiarity and the need to prevent the formation of cliques, minimize stagnation, and avoid other resulting downsides.

#### **11. The Department has used Custody as a place to assign problem deputies.**

Prior to 2011, the Department regularly assigned deputies who had trouble in Patrol assignments to the Custody Division. For example, those subjected to citizen complaints who could not be -- or were not -- terminated were removed from their Patrol assignments and sent to Custody. This practice was confirmed by numerous witnesses with whom the Commission spoke and acknowledged by the Department.

This practice had three effects on the jails. First, and most obviously, it meant that the more problematic deputies were assigned to the jails. Second, it reinforced the message that Custody was a second-class assignment and that the Department did not view Custody as the "real" work of the Department. Third, it had a direct and damaging effect on the Custody culture. The problematic deputies re-assigned to Custody were older and more experienced than the bulk of the deputies in Custody, most of whom are fresh from the Academy. As a result, these deputies were often looked up to by younger deputies and seen as models and floor leaders. One jail head succinctly noted that when jail leadership uses Custody as a disciplinary transfer "you're going to end up reading about yourself."

The Department has informed the Commission that it has ended the practice of punitive transfers to Custody. But no written policy memorializes this decision and ensures that the practice will not arise in the future.

## **12. The Department underutilizes Custody Assistants.**

The Custody Division is currently staffed with approximately 2,100 deputies and 1,100 Custody Assistants. Pursuant to the MOU between ALADS and the Department, Custody Assistants may comprise no more than 35% of the staff of the jails.

Custody Assistants are significantly less expensive than Deputy Sheriffs. Base salaries for Custody Assistants range between \$42,450 and \$55,600. Base starting salaries for a Deputy Sheriff range between \$56,400 and \$70,100. Benefit costs for deputies are also higher. A study by the Professional Police Officers' Association ("PPOA") concluded that, all else being equal, replacing a Deputy Sheriff with a Custody Assistant would save the Department more than \$46,000 per employee, meaning that a Deputy Sheriff is 50% more expensive than a Custody Assistant.

Deputy Sheriffs certainly perform duties that a Custody Assistant cannot. Yet witnesses confirmed that Custody Assistants are capable of performing most of the tasks performed by a Custody deputy, particularly since there are no firearms in the jails. Further, though their formal duties are limited, in practice, Custody Assistants perform a wide variety of tasks in the jails. Moreover, Custody Assistants are specifically trained for work in Custody, completing an eight week Academy training program focused solely on Custody work. Accordingly, utilizing more Custody Assistants would save the Department funds (that can be used for important expenditures like increasing the number of supervisors in the jails) and creates a larger proportion of the jail workforce trained and focused on Custody as a profession, with the benefits of such a professionalized workforce.

### **Recommendations**

#### **6.1 The Department should review and revise its personnel and training policies and procedures to reflect Custody's status as a valued and important part of the Department.**

A fundamental change in the mindset of the Department is required to insure the proper and effective functioning of the jails. Specifically, the Department must consider Custody part of its core mission and revise and implement its personnel and training procedures and policies

accordingly. Along with the other recommendations discussed below, this includes but is not limited to:

- Not assigning “who’s left” to Custody supervisory positions and instead striving to assign the best individuals for the positions to those jobs;
- Not using assignment to Custody as discipline or retribution for deputies or supervisors; and
- Allowing promotion from Sergeant to Lieutenant from a Custody position.

**6.2 The Department should develop and implement a long-range and steady hiring plan based upon normal attrition.**

Consistent implementation of the POST-approved hiring policies and procedures should result in the hiring of well-qualified deputies. Yet hiring gluts and freezes compromise this process. Instead of following the boom and bust cycles of the economy, the Department should work with the Board of Supervisors and the Chief Executive Officer to create, budget for, and implement a consistent hiring plan that accounts for regular attrition and modest growth when possible. The Department should resist the temptation to hire deputies in large hiring bursts. Although law enforcement agencies can almost always benefit from having more personnel, the negative consequences of hiring less-qualified deputies, the effectiveness of the training, and the extended stay of deputies in Custody outweigh the short-term benefits of having additional personnel sooner rather than later.

**6.3 Deputies and supervisors should receive significantly more Custody specific training overseen by the Department’s Leadership & Training division.**

The Department must increase the amount of Custody specific training that deputies receive before beginning their assignment in Custody. Deputies should receive at least an additional six to eight weeks of Custody training, in addition to the two weeks of training in the jails, before beginning their jail assignments. Some meaningful portion of this training should focus on dealing with inmates who suffer from mental illness. Likewise, supervisors should receive more than eight hours of Custody training before assuming a supervisory role in the jails. All of this training should be implemented and monitored by the Department’s Leadership & Training Division.

**6.4 There should be a meaningful probationary period for new deputies in Custody.**

New deputies should have a meaningful probationary period during their first twelve months in Custody. The Department must rigorously assess each new deputy's abilities and fitness for service and terminate deputies who cannot meet the requisite standards.

**6.5 The number of supervisors to deputies should be increased and the administrative burdens on Custody supervisors should be minimized.**

The Department should make supervision in Custody a high priority and make all efforts to increase significantly the number of Sergeants and Lieutenants. Likewise, the Department should review and reduce administrative burdens on supervisors in Custody that significantly diminish the supervisor's ability to walk the halls on a regular basis. Well-trained and active supervisors in the appropriate ratios can make a significant impact on incidents of jail violence.

**6.6 The Department should allow deputies to have a career in Custody and take steps in the interim to decrease the length of new deputy assignments to Custody.**

The Department is in the process of studying a proposal by the CMTF for a Dual Track Career Path, which would allow deputies to remain in Custody and promote up to the level of Captain. The Commission agrees that there should be such a system, which would allow deputies with the skills and desire to have a career in Custody and reduce the time that other deputies would have to spend in Custody. This would have a positive impact on morale in the jails and increase the percentage of deputies in Custody who want to be there.

In the interim, the Department should take steps to reduce the time spent by new deputies in Custody. Increasing the number of Custody Assistants and allowing deputies to choose to remain in Custody long term can help achieve this objective.

**6.7 The Department should utilize more Custody Assistants.**

The Department should negotiate with ALADS and PPOA to increase the use of Custody Assistants in the jails. This would provide an increased workforce of individuals working in the jails specifically trained for Custody, with the added benefit of saving funds for other important measures including increasing the number of supervisors.

## **6.8 Rotations within and among proximate facilities should be implemented.**

The Department should implement a sensible but steadfast policy that ensures rotation of deputies within Custody without vaguely defined exceptions. This rotation policy should include movement of deputies among proximate facilities as well as rotation among floors.

## **6.9 The Department's Mission Statement should be changed to reflect the importance of Custody.**

The Department's Mission Statement should be changed to recognize the importance of the Department's operation of the jail. Specifically, it should reflect that one of the Department's main responsibilities is to manage the jails in a humane, fair, and professional manner that maintains a safe and secure environment for inmates in the Department's custody as well as for Department personnel.

## **6.10 The Department should create a separate Custody Division with a professional jail workforce.**

Most of the recommendations in this Chapter contemplate the Department continuing with its existing structure where sworn deputies serve in Custody for some initial period and then go out to Patrol, with some deputies returning over the course of their career for a variety of individual reasons (abilities, schedule) and upon promotion. These recommendations are, however, short-term fixes. In the long-term, the Commission recommends that the Department establish a professionalized jail staff composed of Deputy Sheriffs specifically recruited, hired and trained for Custody assignments, supplemented by an increased use of Custody Assistants, with supervisors promoted from within Custody.

Experts uniformly agree that a key to successful jail management is having a core workforce of professionals dedicated to the Custody profession -- individuals who are suited to corrections work with a mindset of a "keeper" and not a law enforcement "catcher," want to work in the jails, and are well-trained for this career. As one jail head stressed, corrections is its own separate profession and should not be simply an "afterthought" or a "stepping stone for patrol." Another corrections leader noted, "I want people who want to be correctional employees, not people who want to use it as a stop off." Others underscored that Patrol and jail

work are “two very different disciplines” and a good correctional officer needs to have a firm set of beliefs about the treatment of inmates and an accompanying set of skills for that job.

The Department’s current structure is in conflict with these fundamental principles. Young deputies hired and trained to be Patrol officers are stuck in Custody for a lengthy period waiting to get out on Patrol. A change in the structure -- and the creation of a career Custody Deputy Sheriff position -- would address these concerns. Pursuant to this new model, individuals interested in a career in Custody would be hired into that Division and would be taught in a separate academy lasting at least 16 weeks and dedicated to corrections.

Such a model will work only with a full commitment by the Department leadership to ensure that Custody Deputy Sheriffs are treated with respect and to avoid the development of a “caste” system within the jails. This will require concerted efforts by upper management to inculcate the belief that Custody Deputy Sheriffs are “real” deputies. Other steps that would reinforce this commitment might also include: (1) pay parity at the position of Sergeant and above; (2) use of identical uniforms; and (3) the elimination of other distinctions between these two assignments.

Moreover, supervisory promotions should come from within Custody. This will not only signal the value of expertise developed in this assignment, but also -- as noted by leadership in another large Sheriff’s department -- ensure that jail supervisors have credibility among senior staff and in depth knowledge of the personnel and facility under their supervision. All of these steps can help avoid distinctions or restrictions on Custody Deputy Sheriffs that might promote a stigma.

Such a structure would create a professional cadre of jail staff who are invested in the operation and performance of the jails; it would eliminate the morale, recruitment, retention, and training costs of requiring new Deputy Sheriffs to spend multiple years in an undesirable assignment; and it will permit the Department to save money, increase supervision in the jails, and increase the inmate-to-staff ratio.

A number of departments have had success with this type of model, but there have also been serious stumbles in implementing such an approach. The Department must learn from these experiences. For example, San Diego County switched to a similar model in the 1980s;

over the course of the last 30 years they have learned important lessons about how to make this structure work, including the importance of leadership and avoiding policies that denigrate the new Custody position. Kern County also switched to this model in early 2000s, but has just switched back. In interviews with this department, it was apparent that at least one reason for its failure was a lack of real commitment from department leadership to the changed model.

It is true that within the Department there are some with strong feelings and firmly held positions against such a change. Some have argued that using Custody Deputy Sheriffs in the jails undermines the Department's ability to adequately respond in an emergency, such as a riot or a fire. But some Custody Deputy Sheriffs would be available and able to assist in emergency response. Further, there is no instance under the current structure where a substantial portion of the deputies currently in the jail could be removed without risking the safety of the inmates or the safety of the staff left behind. And the Department has other sources of personnel -- those who ordinarily would be off-duty, those in administrative and other assignments -- who could respond in an emergency without risking citizen safety. Finally, there has been no instance in which the Department needed a substantial number of jail deputies to be able to respond in an emergency such as a riot or an earthquake. In short, it is a hypothetical risk that has never happened and Los Angeles County has no shortage of other law enforcement agencies that have mutual aid agreements to help each other.

Others have argued that it is important to have a single class of deputy to avoid creating a "caste" system in the Department. The Department's less than successful experiment with creating a modified deputy position to staff the jails in the 1990s reinforces this view for many. In hindsight, the failure of this model appears to be the result of a lack of leadership and Department commitment, as well as a deficient program design, rather than a problem fundamental to the concept of a professional Custody workforce. Experts the Commission spoke with emphasized that a strong message from leadership can blunt significantly the problem of a jail stigma. The San Diego Sheriff's Department successfully has implemented a dual track system and has reduced considerably problems with the "caste" system through consistent messaging from leadership.

The Commission has also heard arguments that individuals interested in careers in Custody are less qualified and less capable than people interested in becoming Patrol deputies.

This view appears more to reflect the biases of current Deputy Sheriffs than it does a reasoned and objective view. The success of other Sheriff's departments and correctional agencies with these systems suggest otherwise, as does the consensus of experts with whom we spoke.

In sum, creating a specific Custody Deputy Sheriff designation and career path within Custody with strong and dedicated commitment from Department leadership would eliminate Patrol deputies languishing in Custody for years, improve morale, and make important strides toward ensuring that Custody is staffed with a well-trained, dedicated and experienced individuals, addressing many of the concerns raised by the current structure.



## **CHAPTER SEVEN DISCIPLINE**

### **Introduction**

Timely investigations and discipline commensurate with the nature of the misconduct are essential to sustaining a reduction in the use of excessive and unnecessary force and ameliorating a code of silence in the jails. So too is a discipline system that severely punishes false reports and failures to report such incidents. There are, however, many impediments to the swift and certain imposition of appropriate discipline for the improper use of force and dishonesty in the Los Angeles Sheriff's Department. Some of these impediments are structural. They arise from the unduly complex, multi-layered, and at times disjointed system the Department employs to review force incidents, investigate policy violations, and impose discipline, as well as from the appeals process from misconduct findings by the Department. This system gives rise to poorly performed investigations and long delays between the use of force incident and the ultimate discipline determination. It has resulted in missed opportunities to remediate deputy misconduct at the first sign of trouble, instead allowing problems in some cases to go unaddressed and deputy misbehavior to reach more serious levels before action results. Further, the system does not assure that inmate grievances are sufficiently addressed or that inmates are able to submit their grievances without fear of retaliation.

Other impediments are cultural. There is evidence of the Department's failure to acknowledge the problem of inappropriate use of force in the jails and to take the necessary steps to ensure that the disciplinary system actually addresses this problem. Although the punishment for excessive force is often severe, some force incidents appear to be underreported and not addressed through the discipline process. The Department has found very few force incidents overall to be unreasonable, it has been too lenient about imposing discipline for dishonesty or omissions in reporting the use of force, and there have been well-documented lapses in the processing of use of force packages, lengthy lags in completing pending investigations, and delays in disciplining problematic personnel.

Further, senior LASD officials have undermined the discipline system, which has led to the perception that improper use of force in the jails will not always be subject to punishment.

There is a need for strong leadership dedicated to ensuring that the Department thoroughly investigates any improper uses of force as well as dishonesty about these incidents and that the Department timely imposes appropriate discipline for any misconduct.

### **Findings**

#### **1. There have been well-documented lapses in reporting, investigating and disciplining use of force in the jails.**

There have been critical failures over time by supervisors in the jails to thoroughly and timely investigate use of force and, where appropriate, impose discipline. These failings are evidenced in internal LASD memoranda as well as testimony before the Commission.

In the fall of 2009, Lieutenant Mark McCorkle was asked by Commander Robert Olmsted to take a critical look at the use of force at MCJ. McCorkle reviewed 154 use of force packages from 2005 through 2009. Of those, 36 concerned IAB investigations, 100 involved significant use of force packages from the Personnel Performance Index database, and 18 were “randomly selected force incidents” with “possible policy and/or tactical issues.” In each of these incidents, the supervisors had concluded that the force did not warrant the imposition of discipline. Nevertheless, McCorkle found problems with the force and deficiencies in the packages, including the following:

- Use of force packages often provided “dramatized” narratives of force incidents “to justify outcome;”
- A “[I]ack of radio traffic in deputy involved fights,” which suggested that deputies were “[i]ntentionally not broadcasting event to avoid supervisor intervention;”
- “Failure to immediately notify a supervisor of a hostile or uncooperative inmate;”
- “Failure to properly secure inmates during cursory searches;”
- “Repeated blows to the head of inmates, causing injury to deputies;”
- “Unavailability, or failure to use appropriate equipment, such as tasers, OC spray and hobble restraints;”
- “Other options purposely delayed in order to dispense appropriate jailhouse ‘justice’;” and

- “Very few of the packages reviewed identified potential policy violations and none were found that recommended any type of disciplinary action, even Performance Log Entries.”

McCorkle’s assessment of these reports reveals a deficient investigatory and disciplinary process.

In late 2009, Stephen Johnson, Commander of Custody Operations Division, asked Gregory Johnson, then-Captain of the North County Correctional Facility, to review a sample of seven use of force packages obtained from MCJ, all of which had been determined to reflect “in policy” use of force. In a memorandum dated January 23, 2010, Captain Johnson identified numerous flaws in these force reviews, as well as potential policy violations, including the following:

- “inmate [] alleged that he was slapped by a deputy, yet, this is not investigated by a supervisor;”
- “no radio traffic by any involved personnel;”
- “deputies did not account for bruises to the left side of inmates’ head in their documentation;”
- “no medical account for bruises to the right side of inmates head which are identified in Supervisor’s Report of Use of Force;”
- “Report claims the contact occurred for the safety of teachers? This is questionable, as the teachers had walked past the incident;”
- “Significant injuries to the inmates right cheek can be seen on a videotaped interview, however, no questions were asked by supervisor as to how the inmate sustained the injuries;”
- “The Inmate alleged there were other inmates looking through a window who probably saw this incident . . . There was no follow up regarding these potential witnesses;”
- “‘Contempt of Cop’ – Deputy stared down by inmate;” and
- “The Watch Commander’s review misstates that the inmate’s injuries were consistent with the force reported. It does not explain how the inmate sustained injuries to his forehead, ankles, and right knee.”

These findings paint a disturbing picture of the investigative process and use of force policy violations.

Captain Michael Bornman described an equally disturbing state of affairs in testimony before the Commission. In October 2009, Bornman started working as a Lieutenant at MCJ in a unit called “Special Projects.” During that assignment, Bornman discovered large numbers of uncompleted force- and discipline-related paperwork that had languished for months, if not years.

First, Bornman received from MCJ Captain Dan Cruz a computer printout indicating approximately 100 use of force reports that had never been acted on, some of which dated as far back as 2005. Many of the force cases had never been entered into the PPI system and even those that had been entered initially remained incomplete so that there was no way to ensure that problem deputies could be identified. According to OIR, some of the cases “had never been completed by the assigned sergeant and/or lieutenant.”<sup>1</sup> Compounding that problem, many of the Sergeants who should have filled out the reports had left for other assignments. By the time Bornman sought to investigate these incidents, the underlying files were missing, witness interviews and tapes could not be located, and there were no medical records to examine. As a result, after consultation with high level Department leaders, it was determined that Bornman would deem these force incidents to be unfounded and close the files with a determination that there were “no issues related to performance by any personnel involved in the use of force.” That conclusion was not based on any true assessment of the underlying facts or the propriety of the force at issue; it was simply an administrative decision in the face of missing information.

Failure to complete force reports in a timely manner is problematic for a number of reasons. First, the statute of limitations for punishment is one year. If a force package is not acted upon within that year, the deputy’s conduct may go unpunished, even if it is later found to be outside policy. Furthermore, if the information is not entered into PPI, the Department cannot accurately track the use of force on a per-deputy basis, thereby missing opportunities for intervention, mentoring, and discipline. Likewise, if such information is not reported, inmates who are seeking to defend themselves against criminal charges for assault on a deputy -- or for

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<sup>1</sup> OIR Tenth Annual Report (September 2012), p. 30.

that matter other defendants -- may be denied information they are entitled to under *Pitchess v. Superior Court*, 11 Cal. 3d 531 (1974) (holding that a defendant in a criminal action is entitled to access information in the personnel file of an arresting police officer).

Bornman also discovered in a desk drawer 32 uncompleted requests for Employee Performance Reviews that were generated because deputies had reached a certain number of use of force incidents in PPI. LASD policy requires prompt processing of these employee reviews (generally within 30 days) to ensure that performance problems are caught and remediated in a timely manner for the benefit of both the Department and the employee. In this case, however, some of the reports Bornman found were more than 18 months old, and many included Custody deputies who had used force 15 or more times over a three year period, had used Significant Force, or had used force that triggered IAB roll outs. Based on directions from MCJ Captain Cruz, Bornman did not recommend performance mentoring in any case.

Finally, Bornman uncovered 50 unprocessed Commander Service Comment Reports, which are generated when citizens complain or comment about jail conditions. He was also asked by Captain Cruz to process dozens of unattended to and untimely administrative investigations, a number of which involved off duty Custody deputy fights or aggressive behavior.

Through these endeavors, Bornman testified that he observed a dysfunctional system of accountability that had resulted in lax attention to discipline unparalleled in his years at the Department. Indeed, as OIR observed, “[w]hen the data in the Department’s tracking system is neither current nor complete, it calls into question the integrity of the whole system and makes less effective any supervisory use of the data.”<sup>2</sup>

## **2. The Department has a multi-layered, complicated and at times ineffective process for reviewing and investigating force incidents.**

The investigation of use of force by Custody deputies involves a multi-layered, confusing process. LASD differentiates between a “review” of a force incident and an “administrative investigation” of such an incident. A “review” occurs whenever there is a use of force. Where it

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<sup>2</sup> OIR Tenth Annual Report (September 2012), p. 31.

appears that the use of force implicates a policy violation, a “review” may transform into, or be followed by, an “administrative investigation” or a “criminal investigation.”

Depending on the severity of the inmate’s injury and the nature of the force involved, either a force review or an administrative investigation may be undertaken by a supervising Sergeant, a Watch Commander, the Custody Force Response Team (“CFRT”), or IAB; in the case of a criminal investigation, ICIB will also be involved. Moreover, again depending on the severity of force at issue, the results of a force review or administrative investigation may be reviewed (more than once) by the Unit Commander, the Custody Force Review Committee (“CFRC”), or the Executive Force Review Committee (“EFRC”). Criminal investigations are reviewed by the District Attorney’s Office.

**a. Less Significant Force**

When a supervising Sergeant receives a use of force report, he or she is charged with investigating the incident as the first step of a force review. The Sergeant must assess the severity of the inmate’s injury and determine whether the use of force was significant. If it involves Less Significant Force -- for instance, where the force results in no injury or only in redness, swelling, or bruising (unless to the head, neck or spine) -- the Sergeant conducts a unit level review. During this process, the Sergeant may interview witnesses and visit the scene of the incident. Ultimately, the Sergeant compiles all of the information gathered into a force packet, which he or she submits to the Lieutenant serving as the Watch Commander for review.

The Watch Commander then reviews the force package for completeness and forwards it to the Unit Commander (the Captain) for a final review and a determination of whether an administrative investigation of a policy violation should be pursued.<sup>3</sup> The administrative investigation may be conducted by either the unit level or by IAB.

**b. Significant injuries and head strikes**

If a “significant injury” resulted from the use of force or a head strike was involved, the Sergeant must immediately contact the Watch Commander, who must first ensure that the inmate’s medical needs are met. The Watch Commander’s next concern is to determine which

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<sup>3</sup>All use of force packages are subject to post-hoc review by OIR.

level of review is appropriate. In doing so, the Watch Commander interviews the inmate, on tape, to determine the circumstances of the incident, any injuries, and what level of medical care was necessary.

The Watch Commander uses various criteria to determine whether an IAB “roll out” is necessary. These criteria include: hospitalizations; skeletal fractures; a large number of deputies or inmates involved in the force incident; any injury (or complaint of injury) to an inmate’s head or neck that results from the inmate’s head hitting a hard object; head strikes with impact weapons; or deliberate kicks with a shod foot or knee strikes to an inmate’s head while the inmate is on the ground. If a Watch Commander determines at any point in a force review that any of these criteria are present, he or she must call IAB, who decides to either initiate an IAB roll out or to delegate the review to the unit under the guidance of CFRT, a body recently superimposed on the investigative and disciplinary process in Custody.

If the Watch Commander determines that an incident involving a significant injury or a head strike does not meet the criteria for an IAB roll out, or if IAB declines to roll out, the Watch Commander must notify CFRT. CFRT includes a Lieutenant and eight Sergeants who are charged with providing guidance to the unit level investigators and recommendations with respect to the conduct of force reviews. CFRT also has the authority to assume responsibility for force reviews involving significant injuries or head strikes. If CFRT decides to take over the review, it is then responsible for conducting the review and preparing the force package. If neither CFRT nor IAB takes over the review of the incident, the Sergeant who originally initiated the review then continues the force review in the same manner as described above, with guidance from CFRT. The Sergeant then submits the force package to the Watch Commander. The Watch Commander in turn reviews the force package for completeness and passes it along to the Unit Commander, who must submit it to CFRT for review within 14 days of the incident.

After CFRT comments, it submits the completed package back to the Unit Commander, who reviews CFRT’s comments and submits it to the CFRT Lieutenant with his additional comments for submission to CFRC, which consists of three Commanders from the Custody Division. The Unit Commander must submit the force package to CFRC for evaluation, with input from OIR, within 30 days of the incident.

After reviewing the report, CFRC meets (with OIR in attendance) to discuss the force package. Ultimately, CFRC delivers to the Unit Commander findings as to whether: (a) the force was in policy and no additional review is necessary; (b) additional training is appropriate; or (c) an administrative investigation is necessary to determine if a policy violation occurred. The Unit Commander has 30 days to respond to CFRC's findings.

If it is determined that there may be a policy violation, an investigation is then opened and "assigned to the appropriate unit." After the investigation is completed, it returns to the Unit Commander for a final disposition. The Unit Commander reports his decision to CFRC, and the disposition is submitted to the Chief of the Custody Division for final approval. All of this occurs before the deputy is even notified of an intent to impose discipline.

**c. IAB roll outs**

IAB consists of sworn personnel assigned to conduct internal investigations; it may become involved at any stage of the force review process, whenever the criteria referenced above warrant its involvement.<sup>4</sup> An IAB roll out typically involves two IAB Sergeants, an OIR attorney, and sometimes a member of CFRT (depending on the severity of the force). When an IAB roll out proceeds, it supersedes the unit level review, and the Watch Commander will halt the unit level review and assist IAB in facilitating the interview process. Even where witnesses have already been reviewed during the unit review process, IAB will start anew and conduct its own interviews. Despite the suspension of the unit level review as a result of an IAB roll out, however, the supervising Sergeant is still expected to prepare a force packet.

After IAB investigates the scene and conducts interviews, one of the IAB Sergeants prepares and submits a report to an IAB Lieutenant, who signs off on the report as complete. At the conclusion of the IAB investigation, the case is submitted to EFRC. EFRC reviews the report and convenes a panel discussion attended by EFRC, OIR, the Unit Commander, and others. After discussion, EFRC determines whether the force was in policy. If EFRC determines the force was in policy, no further investigation or disciplinary action occurs. If EFRC

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<sup>4</sup>According to LASD Administrative Investigations Handbook, any investigation involving the possibility of a discharge must be performed by IAB. Although an improper custodial use of force investigation carries with it the potential for discharge, most custodial use of force investigations that are likely to result in less than 15 days suspension are conducted at the unit level.

determines the force was out of policy, EFRC may recommend either an additional administrative investigation or, if the evidence from the IAB review is sufficient, the immediate leveling of disciplinary charges. The discipline is thereafter imposed by the Unit Commander after a *Skelly* hearing (discussed below), with review by the Division Chief.

**d. The Internal Criminal Investigations Bureau**

ICIB is composed of sworn personnel who investigate potentially criminal conduct of Department personnel. If a deputy's alleged conduct is criminal in nature, the Unit Commander is required to notify the Division Chief, who determines whether a criminal investigation is warranted. If during an administrative investigation, the investigator determines that the subject's conduct may have been criminal, the investigator is supposed to discuss the possibility of a criminal investigation with the Unit Commander.

Historically, once a criminal investigation was initiated, any administrative investigation was put on hold to protect the integrity of the criminal investigation. More recently, LASD has opted to determine on a case-by-case basis whether to perform concurrent administrative and criminal investigations.

After ICIB completes its investigation, it presents the case to the District Attorney to determine whether criminal charges are appropriate. The District Attorney has rarely prosecuted LASD deputies for excessive use of force or dishonesty in connection with use of force.

As this account makes clear, LASD's investigative process involves multiple layers, multiple Commanders and multiple entities with roles that vary and at times are overlapping and with engagement triggered by determinations that are not always clearly defined. It is perhaps not surprising, as discussed below, that cases have been lost in the system, investigations take too long, and discipline is not always timely imposed.

**3. The investigative process often takes too long to complete.**

The Department requires deputies to make an immediate verbal notification to their supervisor after exercising or witnessing reportable force. Once this verbal notification is complete, LASD reporting and investigation provisions fail to clearly specify timelines and deadlines for the report and investigations process.

The force reporting and investigation provisions do not specify (1) when a written report by a deputy must be submitted; (2) when the supervisor must complete the “Supervisor’s Report, Use of Force”; (3) when witness interviews must occur; (4) when the force review package must be completed by the Watch Commander; or (5) when the Unit Commander must evaluate the use of force review package.<sup>5</sup>

Experts stress the importance of prompt reporting of all use of force incidents. In particular, experts advocate requiring personnel to complete use of force reports before the end of the shift when the use of force incident occurred. By failing to require reporting to occur within delineated time periods, LASD policies may lead to less accurate reporting.

A force review should take three to four months and, if EFRC is involved, EFRC should reach a decision within four to six months after the decision. Administrative investigations are also supposed to be timely conducted; any investigator who has not completed an administrative investigation within 90 days (60 days if the deputy has been relieved of duty) must seek an extension of time. A disposition of charges is supposed to be drafted within 30 days of the completion of an investigation (20 days if the deputy has been relieved of duty). Despite these timelines, in practice, many administrative investigations often approach the one year statute of limitation period for the imposition of discipline for misconduct. As OIR recently observed, the Department must “establish reasonable internal deadlines [for force investigations] and find ways to meet those deadlines.”<sup>6</sup>

Unlike a force review, in which a deputy has not yet been accused of wrongdoing, an administrative investigation carries with it the possibility of discipline. As such, LASD personnel have the right to representation. According to LASD written policy, a subject deputy is generally only supposed to be given ten days or less to secure representation and prepare for an interview. In practice, however, subject interviews often do not take place until six or seven months after the incident. Even if deputies refrain from intentional collaboration, the more time that elapses and the greater opportunities a deputy has to discuss a use of force incident with others, the more likely that deputy’s recollection of the incident will be tainted.

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<sup>5</sup> As noted above, however, in the case of a force incident that is subject to CFRC review, the Unit Commander must submit the review package to CFRC within 30 days of the incident.

<sup>6</sup> OIR Tenth Annual Report (September 2012), p. 23.

In addition, criminal investigations can further impede timely administrative investigations and Departmental discipline. If LASD does not perform an administrative investigation concurrently with the criminal investigation, the administrative investigation proceeds after the conclusion of the criminal investigation, which can take years. While the one year limitations period for the imposition of discipline for misconduct is tolled during the pendency of the ICIB investigation and any eventual prosecution, this delay hinders discipline in other ways. Evidence may be lost; victims may have been released from Custody; memories may have faded; and the subject deputy may have a new supervisor who does not have any investment in pursuing discipline for incidents that happened years ago and under a prior supervisor.

#### **4. There are multiple deficiencies in LASD's investigatory process.**

There are gaps in the Department's investigatory processes that can jeopardize the reliability of the results. In evaluating the Department's initial investigations of the allegations of excessive force in 78 declarations that the ACLU previously submitted to the Department, OIR commented that the challenges of investigating the allegations after the fact "would be less acute had LASD done a better job in the reported force cases of identifying and interviewing potential inmate witnesses at the time of the force incident." OIR went on to criticize the original investigations, stating that "in too many cases, the initial investigative response was underwhelming and there was no consistent practice of identifying and interviewing potential inmate witnesses."<sup>7</sup>

The force reporting and investigation provisions for Less Significant Force only require the Sergeant or immediate supervisor to interview the inmate "if practical" and to complete and distribute a "Supervisor's Report, Use of Force" for each member who used force. The provisions do not, however, require any interviews of inmates or deputy witnesses. This means that for many Less Significant Force incidents, the Sergeant or immediate supervisor may make a decision that no additional review is required based only on the statement of the deputy who used the force.

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<sup>7</sup> OIR Tenth Annual Report (September 2012), p. 13, fn. 2.

Except in compelling circumstances, LASD bars personnel involved in a Significant Force incident from being present while the interview of the inmate on whom force was used is conducted. The provisions do not, however, prohibit those involved in the force incident from participating in interviews of other witnesses.

Under the Department's policies, the Sergeant who supervised or directed the force may be tasked with interviewing inmates and witnesses, or determining if there is misconduct. Even a recently proposed amended policy that seeks to improve investigative practices permits the Sergeant to conduct the investigation in some circumstances, when another supervisor is not "available." Allowing personnel who participated in or supervised a use of force incident to participate in the investigation can interject bias into the process and also intimidate inmate and employee witnesses who may fear retaliation or being shunned from speaking truthfully.

There is no formal policy that requires a review of supervisory performance in the event of directed or supervised force.<sup>8</sup> The supervisor writes the "Supervisor's Report, Use of Force" for each member who used force, but is not required to prepare a report regarding his or her own decisions with respect to directing and supervising the force. The Watch Commander and Unit Commander thus can only judge the supervisor's performance by evaluating what the supervisor has to say about the force used by the deputies.

There is nothing in the use of force provisions that requires deputies involved in a force incident involving injuries to inmates to be interviewed promptly by investigators or to refrain from speaking about the incident with each other before providing statements to their supervisors or providing written statements in their use of force reports. Nor is there any provision that requires deputies involved in the most serious force incidents that are subject to an IAB roll out or CFRT review to be separated until such time as they can be interviewed by an investigator. The provisions also do not require that deputies write their use of force reports separately or prohibit them from sharing computers. When multiple deputies involved in a use of force incident speak with each other before providing their statements or writing their reports, they may taint their recollections of the use of force incident.

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<sup>8</sup> OIR has noted, however, that the performance of Sergeants and Captains has been "highly scrutinized" by CFRC.

**5. The Department's unit level investigations are not always rigorous or thorough.**

Investigations performed by unit level personnel are often incomplete, poorly documented and less rigorous than IAB investigations. As stated by OIR in its most recent report: “we continue to note problems,” including the “failure to identify all relevant witnesses, deputy reports that apparently were copied and pasted from another deputy’s report; biased interviews of witnesses, interviews of inmates conducted at inappropriate times, and a failure to gather complete medical information regarding an inmate’s injuries.”<sup>9</sup> Mistakes or inadequate investigations by unit level personnel can create obstacles to the discipline of a subject deputy, especially with respect to collection of the evidence necessary to prove a charge in an administrative proceeding.

The shortcomings of unit level investigators are likely a result of poor training. When deputies are first promoted to Sergeant, the training they receive on the investigation process is not organized and relies heavily on anecdotes. As a result, Sergeants learn most of what they know about investigations on the job, from other Sergeants who were also inadequately trained. Further, unlike with IAB, conducting investigations is not the primary responsibility of Sergeants in Custody. Although unit level investigators have been receiving some training, the Department “is still working on a more comprehensive curriculum.”

Another problem is that the investigations are usually conducted by the deputy’s supervisor, who may not have an interest in rigorously investigating force incidents by his or her subordinates either because of personal relationships with the deputy or out of a concern that out of policy force incidents may reflect poorly on the supervisor’s leadership. Further, inmates are less likely to be comfortable talking to a deputy’s supervisor even if the deputy is not present for the interview.

Compounding the problem with the Department’s investigation of Less Significant Force is that, as discussed in the Use of Force Chapter, such force may be underreported in the first place. Because Less Significant Force incidents often do not generate evidence of the use of force event itself -- such as hospital forms, medical records, or inmate complaints -- failure to report Less Significant Force bears less risk of being detected. It appears that the trend against

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<sup>9</sup> OIR Tenth Annual Report (September 2012), p. 18.

reporting Less Significant force has increased in recent years even though it might be expected that Less Significant Force would be more common than Significant Force if deputies are adhering to the principles in the Department's Force Prevention Policy. Nevertheless, from 2006 to 2011, Less Significant Force accounts for far less than half (only 38%) of the force reported during this time period.

It has been reported that some Less Significant Force incidents, which by definition do not result in serious injuries, involve retaliation by deputies against inmates for complaints or the infliction of discipline for perceived misconduct. If such force is not reported, it cannot be reviewed or investigated, and it never becomes a part of the disciplinary system.

**6. The Department is considering a new policy regarding deputies' reviews of video tapes before writing reports or submitting to formal interviews.**

With the installation of additional cameras in the jails, more force incidents are likely to be caught on video tape, which raises the issue of when during the investigative process deputies should be allowed to view the tape.

While the Department has yet to formalize its policy regarding this issue, in testimony before the Commission the Sheriff suggested that the Department intended to require a deputy involved in a force incident to make an initial verbal statement prior to viewing the tape; under this approach, deputies would be allowed to view the tape before submitting a final written account.

Both OIR and Special Counsel are opposed to allowing deputies to review video footage of an incident before deputies submit a written statement because it allows them to craft their statements to conform to the tape. While requiring deputies to make a statement before viewing the tape helps alleviate concerns about tainted statements, concerns still remain if the deputies are permitted to review the footage before submitting a final written statement. OIR recently expressed the view that the Department's proposed policy "potentially could have hampered the ability to investigate possible policy violations." It believes that this proposed approach "will not sufficiently protect the integrity of the investigation because it provides too much unguided discretion to supervisors and because statements to supervisors would not be recorded in any

way.”<sup>10</sup> OIR now reports that the Sheriff apparently has “concluded that, consistent with OIR’s view, Department personnel should be required to write reports prior to viewing the video evidence of an incident. The details of the video policy are still being finalized.”<sup>11</sup>

**7. The exceedingly low number of unreasonable force incidents casts doubt on the integrity of the investigatory process.**

Unreasonable force is defined by the Department as any force that is excessive *or unnecessary* given the circumstances. Between 2006 and 2011, only thirty-six incidents -- 0.6% of the 5,630 total force incidents reported during that time -- were found to be unreasonable. Further, the Department reports that only six Deputy Sheriffs or Custody Assistants were discharged for unreasonable force, with another three deputies retiring.<sup>12</sup> By way of comparison, according to the PPI data, 18 inmates suffered fractures during the period from 2007 through 2010 in MCJ alone and twelve inmates suffered fractures as a result of a force incident in all Custody facilities in 2011 alone. These statistics raise serious concerns about whether force is adequately investigated and appropriately disciplined.

**8. The cumbersome and time consuming discipline and appeal procedure undermines the effectiveness of the discipline system.**

Once the Department decides that discipline is warranted, the Advocacy Unit prepares a notice to impose discipline, which is served on the subject deputy. Within 15 days of issuing the notice, a so-called “*Skelly*”<sup>13</sup> hearing must occur. At that hearing, the Advocacy Unit will present the investigative report to the subject deputy, who is given an opportunity to respond to the charges. If the proposed discipline is a suspension of 15 days or less, the deputy’s Captain will preside over the hearing. If the proposed discipline is a suspension of 16 days or more, or discharge, a Division Chief will preside over the hearing, and the Captain recommending the discipline will ordinarily attend the hearing to observe.

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<sup>10</sup> OIR Tenth Annual Report (September 2012), p. 28.

<sup>11</sup> *Id.*, p. 30.

<sup>12</sup> In contrast, OIR reports that in the “year or two” before October 2011, at least 10 deputies or custody assistants were discharged for excessive force and 3 resigned as a result of force investigations. OIR 2011 Violence in the Jails Report.

<sup>13</sup> In *Skelly v. State Personnel Board*, 15 Cal.3d 194 (1975) (en banc), the California Supreme Court held that certain of the punitive action (now called adverse action) provisions of the Government Code were unconstitutional because they did not provide an opportunity for the employee to respond to charges prior to the effective date of the adverse action. The so-called “*Skelly*” hearing was devised in response to this ruling.

After the *Skelly* hearing, a letter of imposition of discipline will issue if the Department concludes that discipline is still warranted. If the discipline is a suspension of five days or less, the deputy may seek review of his case before the Los Angeles County Employees' Relations Committee ("ERCOM"). If the discipline is a suspension of six days or more, or discharge, the respondent may seek review before the Civil Service Commission.

The Advocacy Unit prepares and presents LASD cases in matters appealed to the Civil Service Commission and ERCOM.<sup>14</sup> Subject to the Captain's prerogative to settle a case where a proposed discipline of a suspension of less than 15 days is at issue, the Advocacy Unit also handles settlement negotiations.

The Civil Service Commission consists of five Commissioners, who are appointed by the Los Angeles County Board of Supervisors. Civil Service Commission appeals are heard by a single Hearing Officer, who considers a case and presents a final decision to the Commission for review. Hearing Officers are attorneys in private practice retained by the Civil Service Commission. Either LASD or the employee may challenge the Commission's decision in Superior Court.

ERCOM consists of three Commissioners and a Director. Cases can be assigned to a mediator, fact finder, or arbitrator who attempts to resolve the dispute. These individuals are not required to be attorneys. In contrast to proceedings before the Civil Service Commission, there is generally no right to appeal an ERCOM ruling.

Proceedings before the Civil Service Commission or ERCOM may take a year or more to complete, which is in addition to the months of investigation that preceded the decision to impose discipline. These delays favor the deputy, as witnesses' memories may fade and evidence may be lost or forgotten. Further, leadership changes that occur within LASD during the pendency of an administrative proceeding may impact its outcome. For example, the Captain who made the decision to impose discipline may retire or be replaced, and the new Captain may not have as much invested in the discipline process, which may lead to settlements that otherwise would not have occurred. The longer the process, the less effective the discipline will be in

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<sup>14</sup> Due to an increase in its workload, the Advocacy Unit has come to increasingly rely upon outside counsel to handle disciplinary proceedings, and approximately 50% of proceedings where LASD seeks to discharge an employee are now handled by outside counsel.

detering and punishing misconduct by deputies.

Compounding the problem, LASD members charged with disciplinary violations involving a punishment of suspension of five days or more have started to bring appeals before ERCOM, even though it lacks jurisdiction over such appeals. As a result, a disciplinary matter may be pending before ERCOM for a year or more before an ERCOM hearing officer determines that ERCOM lacks jurisdiction, at which point the administrative process must “re-start” before the Civil Service Commission.

LASD officials also have raised concerns about the qualifications and perceived bias of the hearing officers selected by Civil Service Commission and ERCOM. One witness told the Commission that it is a common refrain among those charged with making and defending disciplinary decisions that “if we go to ERCOM, we’re going to lose.” In recent years, the Advocacy Unit has achieved some success before the Civil Service Commission, which has stopped retaining certain problematic attorneys to preside over hearings, but the problems with ERCOM hearings persist.

**9. The inmate grievance procedure does not ensure that inmate grievances are addressed or that inmates may submit grievances without fear of retaliation.**

Any inmate in Custody may submit a complaint relating to any “condition of confinement”<sup>15</sup> using the Inmate Complaint/Service Request Form. The complaint must be submitted on the proper form within 15 calendar days of the event upon which the complaint is based, or it will be denied. OIR recently noted “on-going problems at MCJ with the lack of availability of inmate complaint forms.”<sup>16</sup>

Some of the Custody housing areas have locked boxes accessible to inmates in which they may deposit their completed form. Assigned floor supervisors collect the completed forms from the locked boxes or from the inmates themselves and document the collection of the forms in a daily log. The complaint is assigned to someone ranked Sergeant or above for investigation. This investigation is supposed to be conducted and the complaint resolved within 10 business

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<sup>15</sup> “Conditions of Confinement” include those relating to “medical/mental health services; complaints against staff; classification actions; disciplinary actions; program participation; chaplain services; telephone; mail; visiting procedures; food, clothing, and bedding; facility conditions; inmate money accounts; inmate property issues; and commissary.”

<sup>16</sup> OIR Tenth Annual Report (September 2012), p. 39.

days, or as soon as reasonably possible.

The ensuing investigation results in a finding of: founded, unfounded, unresolved, or a designation that the complaint will be forwarded on to the unit, IAB or ICIB for further investigation. After the investigation is completed, the supervisor completes the “Disposition” section of the complaint form and delivers a response to the inmate within ten business days of submission of the complaint; the inmate then signs the response. Inmates can appeal those determinations.

The disposition of the complaint is provided to the inmate, but includes only (1) acknowledgment of the complaint; (2) a statement that the investigation was completed; and (3) assurance that the appropriate administrative action was taken. If the complaint was unfounded or unresolved, the response simply states: “[y]our complaint has been thoroughly investigated; however, we were unable to substantiate that (employee’s name) violated any of our Department policies and procedures.” If the complaint results in the initiation of a unit level or IAB administrative investigation, this is reported on the form.

Special Counsel has also made a number of recommendations relating to the inmate complaint process that, until recently, were largely ignored by the Department. In his 26th Semiannual Report in 2009, he recommended that the Department respond to inmate complaints even if the complaint was submitted more than 15 days after an incident -- the Department’s imposed deadline for inmate complaints. He noted that a large percentage of inmates continued to allege that they never received a response from the Department regarding their complaints. He expressed “serious concerns” regarding the Department’s policy of refusing to investigate inmate complaints submitted more than 15 days after an event, and recommended that the Department remove the time limit on accepting and investigating inmate complaints.<sup>17</sup>

The Department has only recently moved to implement this recommendation. Under the current (and recently enacted) inmate complaint policy, all “[c]omplaints submitted 15 calendar days after the event upon which the complaint is based shall be considered late and denied.” The only exception is for so-called “personnel” complaints which (while deemed denied) will be investigated even if submitted more than 15 days after the event.

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<sup>17</sup> Special Counsel 26<sup>th</sup> Semiannual Report (February 2009), pp. 48-50.

The Department is considering revising this policy yet again. Under a draft policy currently under consideration, complaints submitted more than 15 calendar days “after the event upon which the complaint is based” will be automatically denied but “thoroughly investigated.”

In practice, inmates appear to be hesitant to file grievances due to their concerns about Department apathy and fear of retaliation. As reported by the ACLU, “[w]hen inmates complain about mistreatment, deputies respond with punishment: strip searches, body cavity searches, destructive cell shake-downs, or confiscations of their belongings.”<sup>18</sup> In sworn declarations, several MCJ inmates and former inmates expressed a perception that nothing would be gained from filing grievances concerning use of force.

One inmate described a complaint that was torn up by deputies. Another inmate recounted that after an assault by a deputy he expressed a desire to file a complaint, but was told by a Sergeant that he should “forget about it, let it go,” and that “things would be a lot better for [the inmate] if [he] did not file a complaint.” Another inmate reported that, after an assault by two deputies, he asked for a complaint form and was told “[g]o to your [expletive] cell. You can’t have one.” According to this inmate, deputies on his module “are constantly refusing to give us complaint forms,” and Sergeants do nothing to remedy the situation.

A fourth inmate reported that after he was subjected to excessive use of force by deputies, he was interviewed within hearing distance of the deputies involved in the incident. He filed a formal complaint and reported that thereafter he was visited in his cell by a Sergeant who “seemed to be upset and annoyed by the complaint,” and told the inmate that “[w]hen you start complaining about things, you only make the situation worse.” He reported that this Sergeant pressured him into signing the portion of the form that is supposed to be signed only *after* LASD fills out the “disposition” section, even though the section “was completely blank.” This inmate was also re-classified as a K-10, which he testified was “a form of retaliation for not staying silent” about the assault.

It is impossible to say how many incidents escape detection and investigation because of

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<sup>18</sup> “Cruel and Unusual Punishment: How a Savage Gang of Deputies Controls LA County Jails: A report by the ACLU National Prison Project and the ACLU of Southern California” (September 2011), p. 21; *see also* pp. 19-20 (listing multiple incidents involving retaliation by deputies against inmates who complained about excessive use of force, or threats of retaliation if grievances were filed).

inmate fears of retaliation. While the Commission recognizes that there are inherent credibility issues with inmate testimony, there is a notable consistency across these declarations by inmates who had no contact with one another and who were housed in different parts of MCJ. Taken together these declarations suggest troubling practices that undermine the inmate grievance and reporting process.

A 2011 expert report prepared by Jeffrey Schwartz in connection with litigation against the Department stressed the impact of these reporting deficiencies on the detection of force incidents:

If staff do not report inmate injuries, and if inmates then do not grieve or complain or otherwise bring attention to the situations that created their injuries, then an inmate injury at the hands of staff may be a tree falling in the forest: if no one sees it or later hears of it, did it happen? ... [i]f inmates can be kept quiet, then for all intents and purposes nothing happened.

Compounding the problem, “there are significant tracking issues with respect to inmate complaints and the Department’s responses.”<sup>19</sup> Neither the current PPI tracking system nor the Department’s other “bewildering number of databases and various ways of tracking” events and issues (FAST, e-LOTS, and CARTS) document inmate complaints that do not involve use of force,<sup>20</sup> and inmate complaints of force incidents that are tracked in FAST have not been tracked by deputies’ names. OIR recently reported that the Department has now “developed in FAST the capability” to track force complaints by deputy name<sup>21</sup> and the CMTF told Commission staff that this change to FAST has been implemented. Such an added field in FAST, however, still does not provide a tracking mechanism for this information in the personnel-focused PPI system. Tracking these reports by personnel is important because these events can presage subsequent use of force incidents. They may also be a good indicator of the deputies’ abilities to manage their responsibilities and respectfully interact with inmates in the jail.

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<sup>19</sup> OIR Tenth Annual Report (September 2012), p. 39.

<sup>20</sup> *Id.*, p. 40.

<sup>21</sup> *Id.*

**10. The Department does not adequately pursue or impose discipline for false statements about use of force.**

The Department has not imposed significant discipline on deputies for making false statements about use of force. The Commission has noted troubling examples in which Custody deputies who made false statements received *de minimis* punishment or had part of the discipline imposed held in abeyance. Moreover, the designated policy violation that serves as a predicate for the ultimate discipline imposed in these cases fails to reflect the underlying acts of dishonesty. This lax treatment of dishonesty can create the impression that the Department does not take seriously the making of false statements about use of force, and undermine any effort to combat a code of silence in the jails.

Captains have the authority to reduce the charged disciplinary violation to a less serious Policy Section violation. Moreover, even after a final discipline determination is made, a Captain may choose to hold some or all of the discipline imposed in abeyance. The use of these methods to reduce discipline for false statements in regard to use of force sends the wrong message about the importance of honesty in reporting the use of force.

One case, described by OIR in its October 2011 report on violence in the jails, exemplifies the problem of down charging. In its report, OIR described the following discipline incident:

A deputy searched the property of an inmate who was seated on the floor nearby. The deputy thought the inmate mumbled something disrespectful at him and his partner and began punching the inmate in the head and neck. A Sergeant saw the unprovoked attack from a distance and yelled at the deputy to stop, an order the deputy ignored until the Sergeant got much closer. After an investigation and based largely on the statements provided by the Sergeant, the Department fired the deputy and suspended his partner for failing to tell the truth about the incident.

OIR cited the case as an example of LASD holding deputies accountable for unreasonable use of force and dishonesty.<sup>22</sup>

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<sup>22</sup> OIR 2011 Violence in the Jails Report, p. 13.

Although the deputy who used unreasonable force was discharged, the Commission's investigation determined that the second deputy -- who made false statements -- received only a five day suspension. Moreover, the final discipline of the second deputy was imposed only for a violation of the Manual of Policy and Procedure ("MPP") Sections on "obedience to laws, regulations and orders" and "performance to standards." There was no finding of a violation for "fail[ing] to make statements and/or making a false statement during department internal investigations," notwithstanding that the deputy had plainly stated in her account that she "did not know what actions [the other deputy] took against [the] inmate... when [she] [was] within inches of [the assaulting] deputy's unnecessary and unreasonable use of force on inmate."

Another example arose in connection with the fight involving Custody deputies at BJ's Brewery. In that case, the letter of intent to impose discipline on a deputy who struck a female patron in the head and later made false statements during the investigation recommended a 15 day suspension "for failure to make statements and/or making a false statement during a department investigation," noting that the deputy made multiple "false and/or misleading statements to investigators." The final discipline imposed, however, was ten days, with five days held in abeyance and that letter made no reference to the false statement Policy Section. Instead, the discipline was based solely on the MPP Sections for "professional conduct and disorderly conduct."

In a third case, discussed in OIR's recent 2012 report and labeled the "see no evil" problem, a deputy denied having observed a fight in a bar that involved numerous deputies including some assigned to Custody. In support of deputy's claim that she "had not seen anything," the deputy explained that liquid food had gotten into her eyes and that she was rubbing them throughout the key events. When interviewed, she replied "I don't know" or "I didn't see" to many questions. In fact, according to OIR, review of the video tape contradicted her account and showed that she had been looking directly at the fight throughout and was seen laughing as it began. She gave no valid explanation for this contradiction. OIR noted that this deputy was charged with failing to give full and complete statements and "given a significant suspension."<sup>23</sup> Commission staff was told that the deputy received a 15 day suspension but, after

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<sup>23</sup> OIR Tenth Annual Report (September 2012), p. 55.

grievance, the 15 days were reduced to 8 days, all of which was to be done by education-based discipline.<sup>24</sup>

The concerns evidenced in these incidents were reinforced by data that reflects a dearth of cases where deputies were disciplined for making false statements regarding use of force. As part of its investigation, the Commission requested from LASD “all PPI records showing discipline imposed on Custody personnel in the past 5 years for dishonesty, false statements and/or filing false reports in regard to use of force.” LASD’s response identified only *two* cases with findings of false statements. IAB identified a total of *five* cases where discipline was imposed in connection with “founded investigations for discipline imposed on personnel assigned to Custody in the five years between 2007 through 2011 for . . . MPP section 3-01/040.70: False Statements.”<sup>25</sup> By way of comparison, Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation (“CDCR”), testified that the CDCR has terminated 291 employees in the last four years for making false statements in a department with 30,000 sworn personnel.

Severe punishment for false reports and false statements with respect to use of force is critical to overcoming the code of silence and ensuring that problems of violence in the jails are identified, investigated, and punished. Jail heads repeatedly underscored the importance of starting with a presumption of *termination* for this type of dishonesty. Reducing charges diminishes the deterrent value of punishment for dishonesty and may encourage the perception that LASD will tolerate -- within certain limits -- covering up an improper use of force. As expert Jeffrey Schwartz explained, when the Department fails to adequately punish these acts, “the wrong message gets out and, believe me, it gets out fast, it gets to everyone.”

#### **11. The Department has missed opportunities to remediate problematic force concerns.**

Even with limited access to personnel records, the Commission has noted troubling examples in which Custody deputies engaged in escalating acts of violence before they were ever found to have engaged in misconduct warranting punishment. In so doing, the Department

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<sup>24</sup> Education-based discipline is an alternative to suspension, by which the deputy forgoes the suspension by agreeing to take certain classes.

<sup>25</sup> This inconsistency between the Department’s PPI-generated data and the data provided by IAB reinforces the finding, as set forth in the Use of Force Chapter, that the Department’s statistics are unreliable.

missed opportunities to remediate deputy misconduct at the first sign of trouble (or in some cases the second, third, or fourth signs of trouble), thereby allowing violence to go unaddressed and deputy misbehavior to reach more serious levels before any action was taken.

One deputy identified in records produced by the Department demonstrated escalating violence over a period of two years, without Performance Mentoring, imposition of discipline, or any other remediation by the Department. This deputy's uses of force tended to be exceptionally violent, and he often began by immediately punching the inmate in the face. Even more troubling, in multiple instances his use of force seemed to have been motivated by something other than concern over the safety of inmates or LASD personnel. For example, in one instance the deputy pepper sprayed an inmate who looked like he might spit on the deputy. In another instance, the deputy and two others severely beat an inmate, reportedly because he had swung first at the deputy. It appears, however, that the force may have been in retaliation for the inmate's sending a sexually explicit letter to a Custody Assistant.

This deputy's multiple uses of force continued to escalate from the fall of 2008 until October 20, 2010. On that date, several deputies from MCJ learned that an inmate possessed a shank secreted in his rectum. The inmate was escorted to the clinic, where the deputies planned to conduct an X-ray to determine whether the inmate possessed a shank in his rectum. Once there, the inmate refused to submit to an X-ray. The deputies called the Sergeant to determine how to proceed. After the Sergeant spoke with the Watch Sergeant and discussed various options, the Sergeant ordered the deputies to take the inmate back to the 2000 floor and secure him to a bench until he arrived.

The deputies instead took the inmate to the mini-clinic of the jail. Once there, the deputies removed the inmate's handcuffs. The deputies claim that once the inmate's hands were free, the inmate turned toward the deputies and punched a deputy in the face. The deputy in question punched the inmate in the face several times and used his knee to strike the inmate in the back and torso area. Three other deputies punched the inmate in the face and rib cage and kned the inmate in the back and torso. The inmate suffered lacerations to his head and ear, multiple bruises, Taser puncture marks, and a fracture to his rib. The deputy in question received a 30 day suspension, which was reduced to 25 days. Of that, 20 days were held in abeyance by his Captain until March 22, 2013.

A second deputy involved in the mini-clinic incident was also engaged in a similar pattern of use of force, albeit to a lesser degree. This deputy frequently responded to noncompliant inmates by punching them in the face. Disturbingly, this deputy was repeatedly commended for his quick action in resolving potential altercations. He was also involved in the off-duty fight at BJ's restaurant and made false statements about that incident. It took nearly *two years* for the BJ's case to be resolved (from the time of the incident to the time of the final letter of imposition). In that intervening period of time, this deputy was involved in the mini-clinic inmate beating, for which he was ultimately discharged.

In these cases, the Department missed opportunities to address escalating use of force that caused serious injuries to inmates and ultimately led to career ending consequences for one of the deputies and discipline largely held in abeyance for the second.

**12. LASD's disciplinary guidelines for both use of force and dishonesty are too broad, overly lenient, and at times ignored.**

LASD promulgated disciplinary guidelines in the 1990s to promote the uniform discipline of misconduct in the Department. These guidelines reflect a proposed range of discipline, from five days to discharge, for the "use of unreasonable force." The guidelines provide no further guidance and, according to one witness interviewed by the Commission, most penalties for unreasonable use of force tend to result in discipline at one or the other extreme -- either a five day suspension or discharge. There are very few "in between" cases.

The guidelines also set forth a recommended minimum punishment for making false statements in connection with use of force. The base punishment for making a false statement to a supervisor is ten days; for making untruthful statements during internal investigations, the base recommended discipline is 15 days. In contrast, CDCR's guidelines have a base penalty for both infractions of termination. According to CDCR Secretary Cate, this starting point reflects CDCR's zero tolerance for acts of dishonesty.

LASD's guidelines do not adequately address problems of dishonesty. As Jeffrey Schwartz noted in testimony before the Commission, LASD's standards are "inadequate," and "will not turn around a dysfunctional organizational culture . . . that is deeply embedded."

Finally, the guidelines establish a recommended minimum punishment of five days for failure to report either the use of force or witnessed force. The Department, however, ignored these guidelines and imposed lesser penalties ranging from a written reprimand to a four-day suspension in more than half of the cases identified by LASD as involving a finding that personnel failed to report the use of force.

**13. Leadership in the Department has undermined the efficacy of the disciplinary process.**

Undersheriff Tanaka and former MCJ Captain Cruz have made statements and taken actions that have undermined the effectiveness of the disciplinary system in the Department generally and at MCJ in particular. As recounted in more detail in the Management and Culture Chapters, the Undersheriff has repeatedly told deputies that “he didn’t like Internal Affairs Bureau and the way they worked;” suggested that he would investigate Captains for investigating (“putting cases” on) too many deputies; vetoed Captain Clark’s rotation plan; and berated supervisors for attempting to hold deputies accountable for their conduct.

The implicit and explicit message that Tanaka sent to MCJ deputies was that if they “had any problems” with MCJ leadership, they could circumvent the chain of command and go directly to him for redress of their problems. As a result, he undermined the ability of MCJ supervisors to discipline deputies for misconduct. He also called into question the reputation and credibility of IAB personnel who already find themselves in a challenging and sensitive assignment.

Captain Cruz also made comments showing his disdain for the disciplinary process. He told then-Lieutenant Bornman that “Tanaka wants us to take care of our guys,” and “don’t look too hard” to investigate deputies for misconduct and dishonesty. He also was seemingly unconcerned if the statute of limitations ran before disciplinary charges could be brought, and failed to ensure timely review of a large number of use of force packages and administrative investigations.

The comments and actions of Tanaka and Cruz contributed to a perception that the disciplinary process was anything but rigorous and, as a result, deputies would not be held accountable for using excessive force against inmates in the jails.

**14. The Sheriff has taken steps to remove the Undersheriff from oversight of internal investigations and discipline for misconduct.**

Until earlier this year, ICIB and IAB (through Leadership & Training) reported to Undersheriff Tanaka. In addition, Tanaka along with Assistant Sheriffs Cavanaugh and Rhambo comprised the Case Review Committee, which was charged with receiving recommendations and imposing discipline in the most serious cases.

Significantly, both IAB and ICIB now report to the Sheriff, although the Undersheriff continues to monitor their investigations in his capacity as the second-in-command in the Department.<sup>26</sup> The Sheriff also recently reconstituted the Case Review Committee after he concluded that the discipline imposed in a case of serious misconduct was too lenient. He formed a new committee comprised of three Commanders who report directly to him.

Given the Undersheriff's negative remarks about IAB and his other comments and actions that undermined the disciplinary process, the Commission is concerned about his continued involvement in, or oversight of, the Department's investigation and discipline of allegations of deputy misconduct. His actions and statements have compromised his ability to oversee any aspect of the disciplinary system.

### **Recommendations**

**7.1 The investigative and disciplinary system should be revamped.**

The Commission believes that the Department's system for investigating and disciplining cases involving use of excessive force is unduly complicated with too many layers. All of the cases that are subject to a response by CFRT and review by CFRC, which involve serious injuries and Significant Force, should be both reviewed and, if appropriate, investigated by an expanded IAB (or ICIB if there is an indication of criminal conduct). That would mean that all uses of force that result in any injuries more than "redness, swelling or bruising," complaints of pain regarding the "head, neck or spine" would be reviewed -- and if necessary investigated -- by the more skilled IAB (or ICIB) investigators. All other uses of force would be reviewed and if

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<sup>26</sup> Based on the Commission's interviews, this change in the IAB and ICIB reporting is not well known to high level leaders within the Department. Indeed, several high-ranking LASD officials interviewed by the Commission were unaware of this recent reporting change and could not correctly identify the current chain of command for IAB and ICIB.

necessary investigated at the unit level. Even those cases should be spot checked by both IAB and OIR (or the new Office of Inspector General discussed in the Oversight Chapter) as an added layer of oversight.

The results of the IAB investigations should be reviewed by the Unit Commander or EFRC, depending on the severity of injuries or other circumstances that would currently justify an IAB roll out. Thus, the Unit Commander (the Captain in charge of the jail) would still be responsible for deciding whether their deputy's conduct was out of policy and, if so, what discipline should be imposed in all but the most serious cases, which would be reviewed by EFRC. The Captain's decision would be subject to review up through the chain of command by the Commander and Division Chief.

Although the oversight by CFRT and CFRC has served to improve the quality of unit level investigations, the Commission believes that CFRT should be disbanded and IAB's jurisdiction expanded to encompass all cases involving serious injuries.

Having IAB review and investigate all force incidents involving serious injuries will result in more objective, consistent, and higher quality investigations, eliminate a layer of complexity to the investigative process, expedite the decision to investigate (as opposed to just review) force incidents, and reduce the investigatory demands on unit level supervisors. This will free them to focus on the supervision of deputies and spend more time walking the halls. OIR has commented favorably about the quality of the IAB investigations, while expressing concern about the unit level investigations, and this proposed change will result in more cases investigated by IAB and fewer cases handled at the unit level. It will also simplify the disciplinary system into two, rather than three, categories subject to different investigations or oversight, and hold the Unit Commanders responsible for properly determining the reasonableness of the force in all but the most serious force cases.

Further, in all cases involving injuries, IAB investigators should seek out evidence from medical staff, including medical records, statements from personnel who witnessed injuries and photographs of injuries. Medical personnel should also be asked to document that information in their own records.

We recognize the additional investigations will require additional IAB investigators and

support personnel. IAB should be afforded sufficient resources and personnel to perform these additional investigations. This can be achieved, at least in part, by eliminating the CFRT investigative function and redirecting those resources to IAB. Additional resources should be provided by the Board of Supervisors, as needed.

**7.2 CFRC should monitor Force Packages for trends and concerns and the performance of supervisors.**

CFRC's role should be limited to reviewing the determinations by Unit Commander regarding force incidents and the performance of supervisors in force incidents. If IAB investigates all cases involving serious injuries, there will be less need for CFRC to review unit level investigations, which would be limited to the Less Significant Force incidents. The back and forth between the Unit Commander and CFRC noted above is cumbersome and unnecessary for these cases. The Commission believes, however, that having a Commander from CFRC with a fresh set of eyes review the results of all force investigations, whether conducted by the unit or IAB, for trends, tactical issues, training deficiencies, and any areas of concern would be beneficial and serve as an additional "early warning" system for the Department. Further, CFRC should continue to scrutinize the performance of supervisors in the force incident to hold them accountable for their actions.

**7.3 Deputies should be required to provide a timely written report of force incidents and not be allowed to review video tape footage prior to completion of that report or any interviews.**

To ensure the integrity of the force review and investigation processes, Department policies and practices should make clear that a deputy involved in a use of force incident is required to provide a written statement detailing the use of force as soon as possible, and no later than the end of his or her shift. These policies and practices should also make clear that deputies are not permitted to review video footage of the incident before submitting a written statement or being interviewed by the investigators.

**7.4 Deputies involved in Significant Force incidents should be separated and not permitted to talk to each other until they have provided a written statement or been interviewed by investigators.**

Deputies who are involved in use of force incidents that result in injuries to inmates

should be immediately separated and not be permitted to discuss the incident with any other deputies until they have provided a written statement or been interviewed by an investigator. Further, they should not share computers in the preparation of the use of force reports or written statements.

**7.5 IAB and ICIB should be part of an Investigations Division under a Chief who would report directly to the Sheriff.**

The Commission recommends that both IAB, which is under the Leadership & Training Division, and ICIB, which is headed by a Captain, be placed into a newly created Investigations Division under a Chief who would report directly to the Sheriff. This would create a single division responsible for all significant internal investigations under the leadership of a high ranking Department official, and would facilitate parallel investigations where appropriate with ICIB criminal investigations taking precedence over IAB administrative investigations. Having the Chief report directly to the Sheriff would send a clear message that the investigation of allegations of misconduct is a top priority for the Department.

The Commission encourages the Sheriff to consider appointing a sworn or non-sworn Chief of Investigations from outside the Department and with expertise in prosecutive or investigatory work. Other systems, including New York's Department of Corrections, have found it useful to have civilian and/or permanent specialized staff who can bring a qualified, dispassionate and unbiased eye to this process with new approaches to the investigation of these matters.

The Sheriff has, in the past, shown a willingness to seek outside assistance by, for example, urging the creation of OIR. Appointing someone from outside the Department would reflect the Sheriff's determination to ensure that internal investigations will be thorough and unbiased.

**7.6 IAB should be appropriately valued and staffed by personnel that can effectively carry out the sensitive and important work of that bureau.**

The Department's attitude towards IAB is a significant factor affecting the efficacy of that bureau in its investigations of alleged policy violations. If IAB is devalued by management, qualified officers will seek to avoid working in IAB, and IAB investigators will not receive the

support from other units that is necessary to serve their important role. Thus, senior Department leadership should make clear that IAB personnel are valued and that IAB is considered to be a vitally important and career enhancing assignment. Officers in IAB should be afforded opportunities for choice assignments and promotions after serving in IAB.

Some experts have questioned the wisdom of staffing IAB with deputies who have worked with or been supervised by, or who may in the future work with or be supervised by, the very individuals they are charged with investigating. The Sheriff should consider hiring into IAB qualified civilians with law enforcement or investigative experience to become a permanent part of that division.

#### **7.7 The Discipline Guidelines should be revised to establish increased penalties for excessive force and dishonesty.**

The Discipline Guidelines for the use of unreasonable force permit a broad range of discipline, from five days suspension to discharge. The penalty for making a false statement to a supervisor ranges from 10 days to discharge, and for lying to an investigator ranges from 15 days to discharge. And the penalty for failing to report the use of force is five to 25 days suspension.

The discretion permitted by these ranges is excessive and fails to convey the message that the use of excessive force and the failure to honestly report force will be punished severely by the Department. The Commission recommends that the Department create new penalty ranges for unreasonable force, with (1) a range from 15 days to 30 days suspension for unreasonable Less Significant Force and for any force that was not used as a last resort or was more than necessary, in violation of the Department's Force Prevention Policy, and (2) a significantly higher range, from 30 days to discharge, for unreasonable Significant Force.

There is no justification for failure to report force or for dishonesty during a force review or investigation. The Commission recommends that any Department personnel suspected of failure to report force or dishonesty in connection with a force review or investigation be subject to an administrative investigation by IAB. The Commission also recommends higher penalty ranges for a first offense and termination for a second offense.

**7.8 Each jail should have a Risk Manager to track and monitor use of force investigations.**

The timeliness and thoroughness of force investigations is necessary to ensure proper discipline. Further, increases in use of force have been overlooked by the Department in the past. A “risk management” supervisor should be assigned to each jail facility to help ensure quality control of force reviews and investigations, track their timeliness, and monitor use of force trends in the jail.

**7.9 Force investigations should not be conducted by deputies’ supervisors.**

Unit level investigations of force by deputies should not be conducted by their immediate supervisors.

**7.10 Captains should not reduce charges or hold penalties in abeyance for use of force, dishonesty, or failure to report force incidents.**

Allowing Captain to reduce penalties has had a negative impact on the seriousness with which the Department imposes discipline. To ensure a reliable record of a deputy’s past conduct and consistent implementation of punishment throughout the Department, Captains should not be given discretion to reduce charges, reduce discipline, or hold penalties in abeyance when the underlying conduct involves use of force, dishonesty, or failure to report use of force.

**7.11 The Department should vigorously investigate and discipline off-duty misconduct.**

Off-duty misconduct reflects poorly on the Department and can bleed into the workplace. The Department should vigorously investigate and discipline personnel for off-duty misconduct. To the extent the conduct does not warrant discharge, Performance Mentoring should be utilized as a means to remediate the problematic behavior and closely monitor deputies who may need further guidance and direction.

**7.12 The Department should implement an enhanced and comprehensive system to track force reviews and investigations.**

While current Department policies require the completion of force reviews and administrative investigations in an appropriate time frame, the Department has not adequately enforced those policies. The Commission recommends that enforcement be accomplished by

more careful tracking of the progression of these matters and by imposition of consequences for all personnel, including supervisors, who fail to meet appropriate timelines.

All administrative investigations, use of force reviews, and requests for employee performance reviews should be logged as soon as they are initiated. The log should include the name and contact information of the person or persons responsible for completing the investigation or review, as well as the appropriate supervisor. An automated system should raise red flags as critical deadlines approach or pass so that both the person responsible for completing the investigation or review and the supervisor are informed. Should an individual fail to meet deadlines, that person should either be subject to a negative evaluation, performance mentoring, or discipline, depending on the severity, frequency, and reasons for failing to meet the deadlines.

#### **7.13 Inmate complaints should be tracked by deputies' names in PPI.**

Inmate complaints received by the Department should be tracked by deputies' names in PPI, regardless of final disposition, and should be one factor that is examined when PPIs are reviewed for possible personnel issues or concerns. While this information should be examined with due caution, it nonetheless can allow possible trends to be identified early, even where the complaints initially were determined to be unfounded or lacking sufficient evidence to proceed.

#### **7.14 The inmate grievance process should be improved and include added checks and oversight.**

Inmate complaint forms should bear sequential serial numbers to allow tracking and identification of forms. After completion of the complaints by inmates, copies should be placed in two separate lockboxes, one of which is accessed by LASD and the other by either the ACLU or preferably the Inspector General, if the Board of Supervisors adopts the Commission's recommendation to create that office.

In investigating inmate grievances, inmate interviews should not be conducted by, or in the presence of, the deputy involved in the complaint or that deputy's supervising Sergeant.

The threat of retaliation against inmates for submitting a grievance can silence inmates and hinder the investigatory and disciplinary processes. Harsh penalties should be imposed for any substantiated acts of retaliation. All complaints of retaliation should be investigated by IAB,

reviewed by the proposed Chief of the Investigations Division, and subject to penalties as severe as the penalties for false statements.

**7.15 The use of lapel cameras as an investigative tool should be broadened.**

The Department should implement additional lapel cameras. We are aware of the Department's recent pilot program and attempts to gain union acceptance of these cameras and encourage continued efforts in this regard. Use of these cameras is not simply an invaluable evidentiary tool, but it can also deter aggressive acts and quickly absolve deputies of frivolous claims by inmates that might otherwise take time to resolve.

## **CHAPTER EIGHT OVERSIGHT**

### **Introduction**

Effective oversight is critical to any ongoing effort to address excessive force issues in the County jail system. Although the County has multiple oversight entities with different mandates, force issues in the jail have continued to plague the Department over time and the Department has taken too long to implement needed reforms and ignored critical recommendations.

The Department has multiple oversight mechanisms, staffed by numerous dedicated public servants, for providing civilian review: Special Counsel, the Office of Independent Review and the Office of the Ombudsman. Their efficacy, as well as the limits and barriers they face, necessarily has a significant impact on the issues and proposed reforms addressed throughout this Report. Over the course of many years, these watchdogs have identified numerous problems in the jails, investigated force incidents, monitored the integrity of Department investigations into use of force, responded to inmate and citizen complaints, and issued dozens of reports calling for important reforms.

For all their contributions, each of the existing oversight bodies has significant limitations on what it monitors and what it does with the information it receives. Special Counsel has repeatedly identified critical issues related to use of force, yet it lacks the resources to timely follow up on its recommendations. The Office of Independent Review scrutinizes major force incidents on a micro level, but exercises little oversight over unit level investigations and lacks a mandate to oversee macro policy issues. There is also a gap between the policy level review by Special Counsel and the case review by OIR with respect to the review and identification of trends, tactical issues, and overlapping problems. And the Ombudsman, despite serving as the clearinghouse for public complaints, does not regularly review the totality of inmate complaints to identify systemic patterns and problems or evaluate the Department's progress in resolving these issues.

Even when each entity performs its own functions effectively, the overall result is undermined by the lack of an overarching, consolidated strategy that marshals and leverages

their collective strengths. As separate units, with different mandates and different protocols, these oversight bodies suffer from too many gaps among them to be able to effectuate comprehensive and lasting changes in the Department.

Although all three oversight bodies monitor some aspects of the county jails, the Department has relied on the American Civil Liberties Union to monitor jail conditions. It has done so even though the ACLU is an adversary in litigation, responsible only to its clients, and is not a full-time, publicly appointed jail monitor.

Too often the Department has paid lip service to recommendations of these oversight bodies knowing that there has not been sustained follow-up to ensure that their recommendations are carried out. Indeed, as discussed in Chapter Two, some of the reforms suggested in this Report were recommended for over a decade by the Special Counsel or repeatedly referenced in OIR reports. That disconnect is underscored by the Department's recent decision to create a matrix of some of Special Counsel's hundred-plus recommendations since 1993 -- a welcome, if belated, effort that nonetheless revealed recommendations that have never been implemented or are still work in progress.

To ensure that there is an effective mechanism for overseeing the Department, the Commission recommends the formation of a single watchdog entity that would streamline and strengthen civilian oversight. This centralized body would subsume and consolidate all of the existing important oversight functions of Special Counsel, OIR and the Ombudsman's office and utilize their existing expertise and knowledge of the Department. It would also monitor conditions in county jails; review use of force investigations and the disciplinary process; conduct its own investigations in particularly sensitive cases; and both review and conduct audits and inspections. It would ensure that the Board of Supervisors and the public are kept informed of conditions in the jails, that problems are identified promptly and visibly, and that necessary reforms are implemented in a timely and transparent manner.

Finally, the Sheriff should be required to respond publicly -- both in person and in writing -- to the recommendations in this Report, as well as the future recommendations propounded by the new oversight entity, and submit regular reports to the Board of Supervisors on the implementation of all of these recommendations.

## Findings

### 1. **There is no single entity that provides comprehensive monitoring of the Los Angeles County Sheriff's Department and its jails.**

#### **a. Special Counsel**

After the Kolts Report was issued in July 1992, the Board of Supervisors, in recognition of the need for ongoing civilian oversight, appointed Merrick Bobb to serve as Special Counsel. Over time, Special Counsel's role has extended beyond implementing the Kolts recommendations to include risk management liability assessments. That focus has involved reporting on a wide range of issues and policies relating to the entire Department, including Patrol, special units (e.g., detectives), and Custody operations. Special Counsel describes his role as "assist[ing] the Board of Supervisors in its ongoing responsibilities regarding the operations and activities of the LASD by identifying areas in which reforms may be advisable or could be undertaken."<sup>1</sup>

To date, Special Counsel has issued 31 Semiannual Reports. Concerns relating to Custody generally, and excessive use of force in particular, have been a consistent and recurring topic in these reports. Custody issues have featured prominently in over half of Special Counsel's reports.

Special Counsel currently has a staff of two assistants, each of whom has a background in public administration and public policy. Although he and his staff have a broad mandate and full access to all Sheriff Department records, his sustained impact on Custody has been limited by his modest staff size and resources. He is only able to address a few issues at a time and often is unable to expeditiously follow up on recommendations that he makes. In some cases, it has been several years between reviews of Custody operations before Special Counsel can evaluate whether his recommendations have been implemented and the issues identified have been resolved. As a result, there has been a tendency over time for his reports to reiterate past recommendations and note -- sometimes with increasing levels of frustration -- the Department's repeated failure to address longstanding concerns.

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<sup>1</sup> Special Counsel 16<sup>th</sup> Semiannual Report, p. 103.

**b. The Office of Independent Review**

OIR was created over a decade ago to oversee the Department's internal investigations. According to the Sheriff, OIR's attorneys "are a second set of eyes and minds" who "basically are ensuring we are getting the job done correctly and that we are not culturally seeing things from our own point of view."

Today, OIR consists of eight attorneys, six of whom monitor and review the Department's internal investigations pursuant to his or her own contract with the Board of Supervisors. OIR's offices are one floor above the offices of IAB, whose investigations OIR monitors. OIR shares email systems with the Department, is on the Department's computer server, and employs staff who are LASD personnel. Under their contracts, OIR attorneys are supposed to have full access to Department records. In some instances, however, OIR has not received -- or been informed about -- pertinent LASD memoranda, data and analyses that could have enlightened their thinking in regard to force trends and concerns and enhanced their ability to advocate for needed reforms.<sup>2</sup> Indeed, OIR's recent report noted that it was "disturb[ed]" to learn of the Department's failure to inform OIR about key memoranda and findings reflecting concerns with force investigations in Custody and observed: "While we have touted our unfettered access to records, we cannot access those records if we are not aware of their existence."<sup>3</sup>

Unlike Special Counsel, which has a broad mandate, OIR is responsible for scrutinizing ongoing investigations to ensure that LASD investigations are thorough, objective, and fair. OIR does not have the authority to conduct its own investigations into alleged individual acts of misconduct. Instead, OIR attorneys review transcripts and recordings of the interviews that IAB conducts; they also have access to other Department documents and information. OIR reviews the quality of these investigations and provides the Department with independent input on the appropriate discipline to impose in a given case. They are not, however, always notified of or consulted about reductions in discipline. Indeed, OIR staff have complained that they "have

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<sup>2</sup> OIR Tenth Annual Report, p. 18 ("OIR learned for the first time through media coverage at the end of October 2011 that supervisors in the Sheriff's Department has performed analyses and audits of MCJ unit level force packages in 2009 and 2010 ... From our perspective, what is perhaps most disturbing is that no one in the Department shares these memos or findings with OIR.")

<sup>3</sup> *Id.*

been chagrined to learn that a Department executive has modified a disciplinary decision without engaging in dialogue [with OIR].”<sup>4</sup>

In addition to reviewing individual investigations, OIR also has prepared a number of reports on specific issues facing the Department, including concerns about Custody. For example, in its Sixth Annual Report, OIR addressed the circumstances surrounding an inmate who died while at Men’s Central Jail. The report highlighted what OIR perceived to be shortcomings in the Department’s investigation and addressed the efficacy of changes in the LASD inmate death investigation and review process.

OIR has provided the Department with valuable input that has enhanced the quality of the Department’s investigations of Significant Force and the appropriate discipline for instances of misconduct. OIR’s recommendations tend, however, to be at a micro level. Unlike Special Counsel, OIR’s role is not primarily focused on systemic problems or reforms.

Notwithstanding that OIR has a contract with the Board of Supervisors, over time OIR has functioned as a close advisor to the Sheriff on the investigative and disciplinary process -- a role that the Sheriff has welcomed. Given the nature of that relationship, and the access to the LASD investigative process upon which OIR relies to do its job effectively, there is a perception among some the Commission interviewed that OIR is not sufficiently independent of the Department.

Finally, we note that OIR attorneys (like Special Counsel) have done work for other law enforcement agencies, including the Fullerton and Pasadena police departments. While OIR has tremendously talented and hardworking staff who manage a large volume of work, these outside projects can raise concerns regarding OIR’s ability to devote its full time and attention to comprehensive oversight of the Department and its jail facilities.

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<sup>4</sup> OIR has noted that the LASD is in the process of developing a written policy that requires the Department to consult with OIR prior to making important investigative or disciplinary decisions. OIR Tenth Annual Report, p. 19, fn 8.

**c. The Office of the Ombudsman**

Like Special Counsel, the Ombudsman was created in the aftermath of the Kolts Report. The Ombudsman is a product of local ordinance<sup>5</sup> and charged with reviewing the Department's response to citizen and inmate complaints. The Ombudsman is selected by the Sheriff and the Board of Supervisors and the office includes three Assistant Ombudsmen, one of whom handles all complaints about the Sheriff's Department.

The Ombudsman does not investigate complaints in the first instance. Indeed, by ordinance the Ombudsman and panel judges "shall not have independent investigative authority and are not empowered to initiate or conduct investigations or interview witnesses." Rather, inmates and citizens must first complain to the Department directly. If they are dissatisfied with the Department's response, they may ask the Ombudsman to follow up and advocate on their behalf. The complaints can range from medical and mental health issues to service complaints (e.g., lack of hot water, lost property, improper searches) to allegations of excessive force.

The Ombudsman internally logs complaints it receives in a database and tracks the complaints through completion. However, out of concern for confidentiality, the Ombudsman does not generate reports, either to the Department or to the Board of Supervisors.

The Ombudsman must determine whether Department investigations are sufficient and the findings appropriate in a given case. If the Ombudsman believes the investigation or findings are deficient, it must provide a written explanation to the Sheriff's Department describing the investigation's deficiencies. The decision as to whether additional investigation or modification of findings is needed rests with the Sheriff. Without the authority to re-investigate the case, interview witnesses, or otherwise delve into the facts of a case, the Ombudsman is limited to reviewing the reports and witness interviews that were completed during the Department's investigation.

**2. The Department has failed to address critical issues or implement key recommendations that have been identified over time by Special Counsel and OIR.**

As discussed in Chapter Two, for many years both Special Counsel and OIR have identified a wide array of problems in the jails that have contributed to the excessive use of force.

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<sup>5</sup> Los Angeles County Ordinance, 2.37.020(A).

They have also identified concrete and practical reforms and delineated a series of recommendations aimed at addressing this problem. Yet a number of these recommendations have met with little or no response from the Department and, as a result, concerns identified for more than a decade have persisted. Moreover, no mechanism exists for holding the Department accountable or ensuring that these reforms are implemented. Until recently, these issues have also drawn inadequate scrutiny by the Board of Supervisors and the public, further reducing the Department's incentive to make suggested changes.

**3. There is insufficient oversight of LASD force incidents handled at the unit level.**

Although OIR closely monitors the Department's internal investigations of Significant Force incidents, OIR has little involvement in reviewing Less Significant Force incidents that are handled at the unit level. This gap leaves some unit level cases susceptible to weak and potentially compromised investigation.

The bulk of OIR's work in Custody arises from reviewing IAB administrative investigations of incidents involving Significant Force. When criminal conduct is suspected, ICIB conducts the investigation. Although OIR will review ICIB investigations, the responsibility for evaluating the thoroughness and fairness of criminal investigations lies with the District Attorney's office. Moreover, OIR lacks the resources to conduct a robust review of ICIB cases. OIR staff have noted cases in which ICIB summaries were not a fair representation of what was contained in the audio recording of the investigation. However, OIR does not have the resources to listen to every ICIB recording to evaluate the summaries for accuracy.

Department policy requires deputies to immediately report any use of force to their supervisor for possible investigation. Under current guidelines, force incidents are categorized into one of three categories for purposes of conducting reviews and investigations. Incidents that do not involve serious injuries are reviewed at the facility (the unit level); incidents with significant injuries require CFRT notification; and incidents that result in injuries to the head, fractures, or a hospitalization require IAB notification. OIR provides input regarding whether the IAB investigation was thorough and fair and if the appropriate level of discipline was recommended. If, at the conclusion of the investigation, it appears that the force was out of policy, a disciplinary recommendation is made, with OIR's input.

Other Significant Force incidents -- ones that result in significant injuries, such as use of a carotid restraint or firing a Taser -- now trigger a roll out by CFRT. OIR has advocated for a “separate team of investigators” to enhance review of force incidents that result in significant injuries; CFRT was created in December 2011 as a partial response to this recommendation.<sup>6</sup> Before CFRT was created, the cases it handles were addressed only at the unit level. Completed investigations subject to a CFRT roll out are submitted for review to CFRC. As it does with IAB investigations, OIR reviews CFRT investigations for thoroughness and provides input on CFRC’s disciplinary recommendations.

Force incidents that do not rise to the IAB or CFRT level are handled by personnel at the jail in which the incident occurred. These unit level force reviews are conducted by a Sergeant who is responsible for interviewing the inmate, deputies, and any additional witnesses. The Watch Commander takes this information and assembles a “force packet” that is then reviewed by the Unit Commander.

As discussed in the Discipline Chapter, incidents that are not investigated by IAB are susceptible to a weak investigation. The Sergeant investigating the incident may not have investigative experience and often is tasked with reviewing the conduct of a deputy who is under his or her command and whose misconduct, if deemed founded, could reflect poorly on that Sergeant. While unit level incidents by definition do not involve the most serious force, such cases can nonetheless involve injuries to inmates and result in significant Department liability, and they can serve as an early indicator of problematic deputy behavior. OIR has consistently expressed concern about the quality of unit level reviews of lower-level force incidents and has noted that there continue to be problems with the quality of force packages OIR attorneys have reviewed. Indeed, OIR has recommended that “sergeants and lieutenants not assigned to the involved jail facility” complete the force packages “to add a degree of professionalism and neutrality [it] saw as lacking in this process.”<sup>7</sup>

Unless a case is referred to IAB for further investigation or is investigated by CFRT, OIR will have no involvement in reviewing force that is investigated at the unit level. OIR has access

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<sup>6</sup> In its 10th Annual Report, OIR notes that it is “premature” to tell whether the CFRT approach has been successful or whether “OIR will revert to its initial recommendation to have a separate team of investigators conduct these investigations.” OIR Tenth Annual Report, p. 20.

<sup>7</sup> OIR Tenth Annual Report, p. 20.

to the force reports and, if prompted by a complainant, may look into them. OIR has also suggested that some particularly sensitive cases might warrant independent investigation by OIR. This authority to independently investigate select cases is one that Inspectors General in other corrections systems -- including New York and California's state prison system -- have deemed important and exercised over time.

OIR has recommended changes to the force review process for non-EFRC cases, including suggesting that Sergeants who were involved in using or directing a use of force should not interview the inmate or prepare the force package and that deputies who used force should not be present during interviews of involved inmates.<sup>8</sup> In addition, OIR has acknowledged that it would be valuable to have OIR attorneys regularly involved in reviewing these force packages for thoroughness and fairness; this would be a natural extension of how OIR currently operates in response to IAB and CFRT investigations. However, OIR currently does not have the resources to carefully review the large volume of force packets that are generated by the Department.

**4. There is insufficient oversight of the Department's inmate complaint process and the Office of the Ombudsman lacks the authority and resources to adequately oversee it.**

There is no oversight body that regularly conducts a systematic review of inmate complaints to determine whether the Department is responding to them in a timely and adequate manner. Nor does the Department itself regularly track the number of inmate complaints or its progress in responding to them. The ACLU recently alleged in its lawsuit against the Sheriff and other Department officials that inmate complaints relating to force are not adequately investigated and are often "brushe[d] aside." OIR staff have also noted concerns with the inmate complaint process and deemed it to be an "antiquated" system.

Inmate complaints cover a wide spectrum: everything from so-called service complaints, such as lack of access to showers, food, or the law library, to the use of force by deputies. Sergeants are responsible for reviewing inmate complaints. Service complaints that can easily be dealt with are usually referred to deputies for resolution. When an inmate complains about a use of force by a deputy, a Sergeant at the facility will investigate the complaint.

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<sup>8</sup> In OIR's Tenth Annual Report, it noted that these changes are still under consideration by the Department.

In early 2011, at the behest of the federal judge presiding over *Rutherford v. Baca*,<sup>9</sup> representatives from the ACLU and the LASD met to discuss improvements to the inmate complaint process and forms. The Department appears to have implemented some, but not all, of the changes that were discussed at these meetings.

None of the existing oversight mechanisms are well equipped to provide sufficient oversight of the inmate complaint process. When an inmate or a member of the public is dissatisfied with the Department's response to a complaint, they may ask the Ombudsman to review that decision. But the Ombudsman lacks the authority and resources to independently investigate complaints and does not track the performance of the complaint process as a whole (e.g., the time it takes to process complaints, and the number of complaints that are not responded to). In addition, historically, the Ombudsman has not used the full array of its powers to address the most serious of inmate complaints. For example, the Ombudsman has authority to appoint an independent judge to adjudicate complaints involving certain Significant Force incidents, but that process has rarely been invoked.

#### **5. None of the existing oversight entities regularly reviews force statistics.**

The Department has numerous systems in place to collect and track a wide range of statistical data, but the systems are not integrated or cross-referenced and thereby impede the ability of the Department and oversight entities to use the data as an effective monitoring tool. Each system captures significant data related to use of force, but these systems do so in occasionally incongruous ways (as discussed in the Use of Force Chapter).

The Special Counsel has, from time to time, asked the Department to run reports from these databases to identify potential trends or spikes in use of force. For example, in the 29th Semiannual Report, issued in July 2010, Special Counsel reported an increase in the total number of Department-wide force incidents based on statistics obtained from the electronic databases. But these data-based analyses are not prepared on a regular basis.

The same is true of OIR. OIR maintains its own electronic database of cases that it reviews, but OIR has not been tasked with reviewing Department force statistics and it has not

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<sup>9</sup> *Rutherford v. Baca* is a class action lawsuit brought by the ACLU that challenged conditions in Los Angeles County's Central Jail.

regularly undertaken statistical analyses of force incidents. Moreover, OIR has in some instances failed to receive key LASD force data and numerical information. As noted in their recent report, “we were dismayed to learn that we had been shut out of some of those analyses over the years that we have provided oversight for the Sheriff’s Department.”

The Ombudsman also does not generate any reports relating to the complaints it receives or monitor any other data compilations. The Assistant Ombudsman in charge of responding to complaints in the jails keeps an internal log of complaints, but the log is not accessible to the public or the Department. The Ombudsman also does not prepare any reports based on that data beyond totaling the number of complaints received and processed.

Regularly reviewing data related to force incidents in the jails with the goal of identifying trends and patterns can provide valuable insights for management and oversight bodies. For example, shortly after the 2010 Christmas Brawl at the Quiet Cannon banquet facility in Montebello, OIR reviewed use of force statistics pertaining to the deputies involved. Even from the limited set of data that was assembled, OIR noted two key trends: (1) there was a marked increase in force incidents involving these deputies in 2009, and (2) the same supervisors were on duty for many of these incidents. The absence of an independent oversight body regularly engaging in data reviews and analyses can leave the problem of troubling trends undiscovered as well as unaddressed for a lengthy period of time.

**6. The Department has relied on the ACLU, an adversary in litigation, to act as a *de facto* jail monitor and has no independent monitor responsible for Custody.**

In the United States, there are a number of correctional systems that have monitors with responsibility for overseeing jail conditions. Others have civilian commissions or other bodies specifically charged with monitoring and reporting on conditions in their jails, including use of force and the ongoing treatment of inmates. These monitors or commissions take many forms and have varying duties and authority. The Texas Commission on Jail Standards is an independent body that sets and monitors standards applicable to jail facilities and can sanction or even de-certify jails that are not in compliance. In Ohio, a legislative-based entity, the Correctional Institution Inspection Committee, conducts unannounced inspections of all Ohio correctional facilities and publishes reports with findings to help legislators make decisions relating to the corrections system. The New York City Board of Correction is an independent

civilian body, appointed by government officials, that “monitors conditions in the City’s jails, investigates serious incidents . . . reviews inmate and employee grievances, and makes recommendations in critical areas of correctional planning.” In all of these instances, independence, routine monitoring, investigatory responsibilities in particularly important or sensitive cases, and transparency are vital elements of the external oversight mechanism.

LASD has neither a permanent jail monitor nor a civilian commission responsible for overseeing jail conditions. Instead, for many years, the Department has relied on the ACLU of Southern California to act as a *de facto* jail monitor through its administration of court ordered monitoring under *Rutherford*. In conjunction with this court-appointed role, the ACLU has been granted access to monitor the conditions in the County jails. The ACLU is authorized to enter the jails, walk the rows, and speak with inmates. The ACLU has one representative assigned to visit the County’s many and geographically distant jail facilities and spends most of its time monitoring MCJ and the Twin Towers Correctional Facility -- the two facilities that generate the largest number of complaints. Although the ACLU has sparingly been granted access to logbooks and headcounts, it has significantly less access to Department documents than a court-appointed or legislatively-mandated monitor or civilian oversight body would normally have.

Even though it has responded to inmate complaints, the ACLU is not a true jail monitor. While for many years, the ACLU worked cooperatively with the LASD to identify and respond to issues that affected individual inmates in the jails, a few years ago the ACLU shifted its focus to litigating systemic issues in the jails and has taken on a more adversarial relationship with the Department. In adopting this different approach, the ACLU began conducting most of its inmate interviews in attorney rooms rather than walking the jail rows to observe conditions and conducting on-the-spot impromptu “cell front” interviews. This approach necessarily results in more limited insight into conditions in the jails because the ACLU generally only interviews those inmates who choose to come to the attorney room.

The ACLU’s change has been significant enough that OIR launched a pilot program this past summer to serve as a temporary substitute. The program provided OIR with “valuable feedback,” but without additional resources OIR has not been able to maintain it. As such, individual issues that may only be identified through an on-site presence and direct interaction with inmates will again be overlooked.

Los Angeles also lacks a civilian commission that can bring the community's voice to bear in efforts to bring about enhanced accountability and implementation of suggested reforms. Other jurisdictions have found that a civilian oversight body can play a valuable role in placing questions of jail conditions prominently before the public and engaging the community's voice in implementing needed reforms; vigilance on the part of the Board of Supervisors can also ensure that conditions in the jails remain in the spotlight.

In sum, the LASD lacks a permanent jail monitor like those in other corrections systems throughout the country. The ACLU's recent shift in focus has highlighted the need for a permanent jail monitor focused on responding to inmate complaints and serving as the public's "eyes and ears" in the jails.

**7. The Board of Supervisors has recently become more engaged in oversight of the jails, which has helped propel reforms and maintain visibility of jail issues.**

Although the Board of Supervisors has received numerous reports from Special Counsel and OIR over time, in the past year the Board of Supervisors has taken a more active role in scrutinizing the Department's policies and practices in Custody. In response to reports by the ACLU and the media recounting concerns in regard to violence in the jails, last fall the Board created this Commission and tasked it with reviewing the "nature, depth and cause of the inappropriate use of force in the County jails and to recommend corrective action as necessary."

Over the past few months, the Board has also endeavored to hold the Sheriff accountable and ensure that recommendations made by OIR and Special Counsel are implemented. In particular, it has requested monthly reports from the Sheriff on his progress in implementing a series of recommendations stemming from past Special Counsel reports. As a result, the Sheriff and senior Department leaders have testified before the Board and provided reports that track the force incidents and detail the status of these recommendations and the progress made. Some recommendations that had taken over a decade to implement have now been implemented in the span of a few months. These recent developments underscore the central role that the Board can play in helping to forge an agenda for much-needed reform.

## **8. The Board has oversight and budgetary authority over LASD.**

Under state law, the Board of Supervisors has both the authority and the obligation to supervise LASD's budget and how the Department disburses public funds. While the Sheriff maintains operational autonomy over his Department, the Board of Supervisors approves the Department's annual budget and also makes certain personnel determinations. The Board allocates funds annually, as part of the yearly budget cycle, and also midstream, as requests or needs arise.

The Board has the authority to monitor how the money it allocates is used and can ask the Sheriff to report back on the status of allocations made for specific purposes. That authority can enable the Board to keep a watchful eye on new reforms or initiatives that it opts to fund.

### **Recommendations**

#### **8.1 The Board of Supervisors should create an independent Inspector General's Office to provide comprehensive oversight and monitoring of the Department and its jails.**

"Prison oversight is absolutely essential to the safe operation of prisons," according to corrections expert Michele Deitch. In distinguishing internal accountability measures from external scrutiny, Deitch explained that the "goal of [external oversight] is to shine a light on what happens in correctional institutions" and through the resulting transparency provide both protection "from harm and an assurance that rights will be vindicated." As former New York Corrections head Martin Horn observed, external oversight "makes [a corrections system] better; ... it forces us to question what, why, and how things are done."

To further these goals, the Commission recommends the appointment of an independent Inspector General and the creation of an Office of the Inspector General ("OIG") with broad authority as well as adequate staffing and funding to review Custody issues and concerns. While the Commission realizes that other parts of the Department are not part of its mandate, similar reasoning -- and economies that would result from full consolidation of the roles of OIR and Special Counsel -- would suggest that the OIG should provide the same independent civilian oversight to review all of the Department's operations. The OIG can help ensure that problems and needed reforms come to light and do not languish for years before they are addressed.

The Inspector General should be appointed by the Board of Supervisors for a set term of years and be subject to removal only for cause. The Inspector General should report directly to the Board of Supervisors, but have sufficient job security guarantees and autonomy to ensure that he or she operates independently. The Board should create a committee consisting of representatives of the Board, the Department, and the public to oversee the selection process and recommend an Inspector General candidate to the Board. The OIG should also be fully independent of the Department -- it should independently contract with the Board, have its own budget separate from that of the Department, and not share facilities, computer systems or employees with the Department.

The OIG should have unfettered access to Department records, witness interviews, video footage, data, personnel, and facilities. This access, of course, should be subject to existing legal limitations of nondisclosure under state law, which should address any concerns that ALADS or other LASD personnel might have. The OIG should have the right to conduct regular and unannounced inspections of jail facilities and have the authority, in select cases, to conduct its own independent investigations. It should make regular reports to the Board that should be public except as they relate to privileged or individual personnel matters.

The OIG should have three primary functions with respect to Custody: (1) monitoring conditions in the jails and the Department's response to inmate and public complaints; (2) periodically reviewing the Department's use of force statistics, the Department's investigations of force incidents and allegations of misconduct, and the Department's disciplinary decisions; and (3) reviewing the quality of audits and inspections conducted by the Department and conducting its own periodic audits and inspections. Moreover, recognizing that some cases may be sufficiently sensitive or important to warrant independent investigation, the OIG should have authority in select cases -- as it deems necessary -- to conduct its own independent investigations, with qualified staff and sufficient resources to do so.

One branch of the newly created OIG would serve as a jail monitor, thereby obviating the need for the Department to rely on the ACLU for this function. This branch would regularly visit and inspect (both scheduled and unannounced) the Department's Custody facilities and oversee the inmate complaint process. This will include ensuring inmate access to the complaint process, following up on inmate complaints as appropriate to ensure they are resolved promptly

and fairly, and monitoring the timeliness and efficacy of the Department's responses. The OIG should be a co-recipient of all inmate complaints and independently track complaints as they move through the Department to ensure they are resolved in a timely manner. It should have the right to interview inmates and staff if it believes a complaint has not been adequately addressed. By engaging in all of these activities, and reporting on its findings, the OIG would expand upon the Ombudsman's limited role in following up on inmate complaints and consolidate these functions into a single oversight body.

Special Counsel should also be subsumed within the OIG. As Special Counsel does now, the OIG should be tasked with identifying problematic issues in Custody and in the individual facilities. It should also promptly receive from the Department all force statistics (and other data) from all the Custody facilities on a monthly basis. The OIG should regularly review this data for trends.

Finally, OIR should become a branch within the OIG.<sup>10</sup> As such, external oversight of the investigatory and disciplinary system would be consolidated within the OIG. As noted in the Management Chapter, the Commission recommends that the Department establish an Internal Audit and Inspections Division to evaluate compliance with laws, regulations and Department policies; assess performance of Custody staff; and review areas in need of improvement. The OIG would review the Department's audits and inspections for thoroughness and quality in accordance with generally accepted government auditing standards. On a limited basis, it would also conduct its own periodic audits and inspections of Custody operations.

The Commission recognizes that a truly effective OIG requires the support of both the Board of Supervisors and the Sheriff. As noted throughout this Report, accountability for ongoing problems in the jails and effective enforcement mechanisms for ensuring action on recommended reforms has been lacking. Thus, an OIG that regularly reports to the Board, coupled with the Sheriff's regular reports to the Board during public hearings, will ensure that problems in the jails are identified publicly and not ignored. Moreover, the OIG should meet regularly with the Sheriff and the Assistant Sheriff for Custody to discuss ongoing issues,

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<sup>10</sup> On a limited basis, the OIG would continue to maintain the privilege OIR currently has with the Department with respect to its advice on individual cases; that privilege has proven valuable to OIR in ensuring access and enabling it to assess the quality of investigations and appropriateness of the discipline imposed.

concerns and recommendations. The OIG can only be truly effective, however, if the Sheriff provides full access to the OIG and embraces this reform just as he has embraced oversight by OIR, and has “welcome[d] input and critique.”

While the Commission considered a civilian commission comprised of community leaders as an additional oversight body, such a commission is not necessary if the Board of Supervisors continues to put a spotlight on conditions in the jails and establishes a well-structured and adequately staffed OIG.

## **8.2 The Department should report regularly to the Board of Supervisors on use of force and the status of Custody reform recommendations.**

As the Department has done recently, it should continue to report to the Board of Supervisors on the number of force incidents in Custody facilities, broken down by the number of Significant Force and Less Significant Force incidents for each facility. In addition, the Department should report monthly on the number of force incidents found to be “unreasonable” and out of policy.

The Department should also be asked by the Board of Supervisors to promptly respond to each of the recommendations set forth in this Commission’s Report in a written report to the Board. The Sheriff should personally present that written response to the Board in a public meeting and then report monthly to the Board on the ongoing status of the Department’s implementation of these recommendations (to be accompanied by a monthly written submission with supporting documentation reflecting implementation steps and status).

The Sheriff and Assistant Sheriff for Custody should also make regular reports to the Board on the status of any pending or future recommendations from the OIG (when it is created and staffed) and in the interim from Special Counsel and OIR.

Finally, the Board of Supervisors should use its budgetary and oversight authority to ensure that any funds allocated by the Board to LASD to implement recommendations and reforms contained in this Report are used for their intended purposes.

### **8.3 OIR should review unit level investigations for fairness and accuracy.**

In the absence of an OIG, or until one is created, OIR should be given the resources necessary to add a staff position to ensure that the procedures and dispositions of all force incidents handled at the unit level are fair and thorough. OIR currently does not have the resources it needs to oversee such cases. OIR should report on patterns and trends it observes based on those unit level reviews.

### **8.4 The OIG should review the Department's data for trends, spikes, and patterns in the jails.**

As discussed in the Use of Force Chapter, the technical barriers that make it difficult, if not impossible, to cross-reference data from the Department's various data systems need to be resolved and force and personnel data should be captured in a unified database. In the interim, the OIG should be tasked with regularly reviewing all force statistics in the various existing data bases and reporting on a regular basis to the Sheriff, Assistant Sheriff for Custody, and the Board on trends, spikes, and patterns in the jails.

