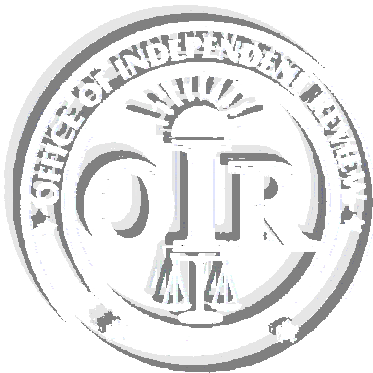


Use of Force Audit
of the
San Diego County
Sheriff's Department

June 25, 2007

[EXECUTIVE SUMMARY]



By OIR Group
Michael J. Gennaco
Stephen J. Connolly
Robert Miller
(323) 890-5425
www.laoir.com

Executive Summary

I. Introduction

The audit project that ends with the issuance of this Report is one that began in July of 2006. Our goal in the intervening months has been to provide the San Diego County Sheriff's Department with an independent assessment of how the Department uses and reviews force, with a special emphasis on shooting cases and other "critical incidents." In turn, that assessment was intended to place the Department's current practices into a larger context, to inform a judgment about the Department's relative strengths and weaknesses, and to provide the basis for reform recommendations that, in our view, should be considered.

The primary subject matter of our audit was actual incidents that occurred between January 1, 2003 and December 31, 2005. We reviewed the investigation files from all 25 deputy-involved shootings that took place in those three years. We also looked at official reports describing over 500 other force incidents from that period, covering a wide range of techniques, circumstances, and consequences.

As invaluable as those materials were in providing us with direct evidence of deputy activity on patrol and in the jails, the actual cases were a means to an end. The County did not seek, and we did not attempt to provide, our specific conclusions about the legal, administrative, or tactical legitimacy of any particular incident that we reviewed. We have not made, and do not imply, any judgments relating to individual officer accountability. Instead, we looked back in order to have a foundation from which to help the Department look ahead

Our Report has three major components, all of which are intertwined throughout the various sections. One is the description of what we learned, one is our analysis of that material, and the last is the numerous recommendations in response to those first two elements.

II. Deputy-Involved Shootings

A. Overview of Findings

The initial focus of our efforts was on deputy-involved shootings that occurred within the audit period. The 25 shootings that occurred in those three years included the three shootings in the Vista patrol area that took place within five days, and prompted the concerns and additional scrutiny were part of the impetus for this project. By reviewing the investigation files and related materials from all 25 cases, we developed a detailed grasp of these incidents in relation to a few different key concepts.

In terms of its deadly-force policy, the Department adheres to the legal standard and compares closely to other jurisdictions. It requires the officer who uses deadly force against a suspect to have a reasonable belief that such force is needed to stop an imminent threat of death or bodily injury to himself or others. We also looked at the Department's policies with regard to "fleeing felons" and "shooting at vehicles," and we offer recommendations intended to clarify and define the Department's sound philosophy regarding both of these issues.

During the audit period of 2003 through 2005, 25 "hit" shootings involving the Department's officers occurred according to the Department's records. The Department's statistics in terms of number of shooting incidents are below the average of most other major law enforcement jurisdictions in Southern California.

All of the cases we reviewed were investigated and presented to the District Attorney's Office, and in all 25 instances, the D.A. determined that the use of deadly force was legally justified.

B. Homicide Investigation Protocols

Our cumulative impression of the Homicide "books" that we reviewed for the cases in the audit period was that they were professional, well-organized, thorough, and in some respects exemplary. However, we identified several practices, procedures, or potential issues that the Department, and Homicide Bureau officials in particular, may wish to revise or at least reexamine.

To cite one major example, we noticed several cases in which deputy *witnesses* to shooting incidents were not formally interviewed as part of the investigation. We saw other instances in which language barriers impeded the Department's ability to obtain statements from civilian witnesses, at the expense of completeness in the evidence-gathering process. We also saw situations in which respect for the rights of witnesses and uninvolved residents were not sufficiently considered during the investigative process.

Others of our suggestions relate to procedural adjustments that are intended to promote greater efficiency, or to enhance the completeness of the files (such as by adding information, where relevant, about related criminal charges against the suspects and/or transcriptions of radio traffic connected to the incident).

C. Holistic Review of Shooting Incidents

Though the Homicide Bureau investigations are creditable in many respects, they are consciously limited in their scope. The goal is to collect facts and evidence necessary for the District Attorney to determine whether each deputy's use of deadly force was legally justified. As important as that question is, it represents only one dimension of the Department's proper interest in each shooting incident.

We believe strongly that officer-involved shootings merit one of the highest and

most comprehensive levels of self-scrutiny that a law enforcement agency has to offer. These critical incidents all raise internal issues of tactics, training, supervision, risk management, equipment, and policy that the Department should seize as opportunities for self-examination and, where indicated, reform.

Certainly, such issues emerged to at least some extent in each of the 25 shooting cases we reviewed. This reality, by itself, was neither surprising nor troubling – by their very nature, these critical incidents put tremendous demands on the involved officers and test the Department’s procedures and training in ways that routine events simply do not. We did come to believe, however, that many of the issues we identified seemed to warrant more rigorous attention from the Department than what they received.

During the audit period, the Department did have a protocol for the administrative consideration of shootings, in-custody deaths, and other significant events. It was an entity called the Critical Incident Review Board (“CIRB”). CIRB was comprised of Department executives of different ranks who gathered at Sheriff’s Headquarters to hear a presentation about the incident, identify issues, and discuss potential approaches to remediation.

We did find examples of useful initiatives arising from the CIRB meetings, such as training bulletins and “tactical tips” that offered reminders and shared lessons from the incidents. Nonetheless, the CIRB process had deficiencies as well.

In terms of *content*, the Board relied extensively on the Homicide investigations. In our view, the narrow focus of those investigations left gaps in the Department’s ability to conduct a full and comprehensive review. We noted many instances within the 25 shooting cases in which issues that should have relevant to the Board’s consideration had not been pursued during the Homicide investigation, and may not even have been identified.

Additionally, “non-hit” shootings – which are not investigated by Homicide – were not ever presented to the CIRB. This was in spite of the fact that, even though the suspect was not struck, the deputies used deadly force, and the same potential issues and opportunities for necessary and beneficial review clearly presented themselves.

In terms of its *structure*, the CIRB’s high number of attendees had its benefits, but it also tended to diffuse responsibility to the point where loose consensus seemed to take the place of concrete decision-making. Board members rarely saw the Homicide file or had the chance to develop a thorough familiarity with the cases ahead of time, thus contributing to the inconsistency in addressing all potentially relevant issues.

We also found that CIRB’s *outcomes* did not fully exploit the potential of the process as a review mechanism. In our view, the CIRB process should force Department supervisors to make decisions about deputy performance and to address issues of accountability, policy, supervision, equipment, and training through a concrete action

plan.

With these factors in mind, one of our central recommendations is a major revamping of the Critical Incident Review Board.

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

We recommend appointing a small panel of Commanders to review the investigative reports, hear a presentation by the administrative shooting review investigators, and make decisions on each case, as advised by legal counsel, Training, and the unit commander of the station of origin for the incident.

We advocate a heightened willingness to promote officer safety and sound policing practice by holding deputies accountable when policy violations or performance issues influence shooting incidents.

Finally, we recommend that the Department expand the jurisdiction of the Critical Incident Review Board to address a range of other matters that warrant this heightened level of scrutiny. These include deaths incident to arrest by Department deputies, non-hit shootings, a selection of serious force incidents, and bites by the Department's K-9 unit.

III. Other Uses of Force

A. Overview and Reporting Procedures

The Department's Training Division impressed us in several ways as we assessed the range of other force options in use by the deputies. We had great regard for the professionalism, thoughtfulness and thoroughness of the instructors and Training supervisors whom we met. Moreover, the actual programs offered to the recruits and the deputies as continuing professional development reflected those qualities, and reflected an admirable commitment by the Department to preparing its people as effectively as possible.

In our review of hundreds of arrest and incident reports, we noted that the deputies' uses of force were well-documented and appeared to be reasonable in the overwhelming majority of cases. We did, however, develop some concerns about the *process* by which force is reported and reviewed. Those concerns stemmed from limitations in the Department's protocols, and its failure to assess individual incidents in a systemic way – not from shortcomings on the part of deputies in terms of meeting their obligations.

Because the force reporting is currently subsumed in the overall arrest report,

rather than treated as a separate focus of inquiry and documentation, we believe the Department's gathering and assessment of useful information is inevitably weakened. The question is one of focus – for example, we noted cases in which civilian witnesses to force were not interviewed regarding their observations, even though they did offer statements relating to the criminal activity that prompted the arrest. At other points, we saw gaps in documentation of injuries, and places where potentially useful suspect statements acknowledging culpability were noted but not taped or otherwise confirmed.

Because of this lack of a separate process, cases also are not reviewed for policy and training and performance issues that force incidents can often create. For this and other reasons, we advocate the creation of a new protocol involving separate “force packages” for incidents that rise above a certain level of significance, and for all cases in which the suspect is injured or complains of injury. This new approach would involve an active role for supervisors in gathering information, and would provide a formalized means of ensuring the holistic review of each case. In addition, we offer other observations and recommendations designed to enhance the fact-gathering and documentation in force cases.

B. Other Force Issues

We encountered several other potential issues in our review of cases, some related to specific types of force taught to the deputies and deployed in the field or in the jails. For example, the Report assesses the Department's K-9 program, which makes ambitious, varied, and often effective use of more than thirty police service dogs. Though we recognize the potential value of the dogs as an aid to law enforcement and a boon to officer safety, we are also aware of the inherent risks involved in their use. A rigorous commitment to training is essential for the continued success of a large program like the Department's. We developed concerns as to whether the current structure of the unit and the distribution of the dogs throughout the county put excessive strain on the ability to meet those training demands. Accordingly, we make recommendations as to attainable ways the Department can potentially alleviate those dynamics.

The Report also discusses three particular force options – the sap, nunchakus, and the carotid restraint – that in our view pose special challenges in terms of training and safe use. Though our review of cases and our discussions with Training personnel persuaded us of their potential effectiveness, we continue to have reservations that we discuss and address through recommendations.

The Department's responsibility for the thousands of inmates in the county jail system has numerous distinct implications regarding force, its documentation, and its internal review. The Report includes our general impressions about force training and reporting in the jails, many of which are quite favorable. We also offer several specific ideas for tightening existing procedure for documentation and for enhancing the review of certain large scale incidents, such as inmate riots.

IV. Additional Systemic Issues

In the course of our review, we took an interest in several topics that related to our audit of force and shootings, but also had wider applicability to the Department. One example of this is the Department’s ongoing efforts to implement a computer-driven “Early Intervention System.” Collecting information about deputy activity and behavior in a central repository and updating it continuously on a flexible and accessible database has proven utility at many law enforcement agencies. We enthusiastically endorse the Department’s efforts in this direction. We also encourage them to prioritize the implementation – and creative, comprehensive use – of the system they have long been designing.

Our review of force incidents resulting in Internal Affairs Bureau investigations for deputy misconduct gave us a valuable insight into the Department’s disciplinary system. We were impressed by several cases in which serious allegations against deputies were proven, with significant consequences. Though the underlying behavior is far from ideal, the Department’s commitment to addressing the problems reflected well on it. Even more impressive were the numerous instances in which deputies either acknowledged their own wrongdoing or belied popular beliefs about the “code of silence” by testifying truthfully about the actions of their peers.

At the same time, we noted a slight inconsistency in the discipline that the Department meted out in the founded cases. The Department does not have a set of formal guidelines or “matrix” for determining the appropriate “sentence” in a given case. The Department has refrained from creating such an instrument, preferring instead the flexibility of tailoring appropriate outcomes to the circumstances of each investigation. While we understand this rationale, we nonetheless urge the Department to consider the benefits of a matrix and reconsider its approach.

We also found that, while the Department’s Manual calls for a rigorous “Risk Management Unit” to “enhance professionalism, prevent/reduce liability costs, and increase operational efficiency by identifying, assessing, and controlling high level exposures to risk,” the actual practices fell well short of the ambitious and detailed vision that the Manual sets forth. This gap did not necessarily reflect a large substantive shortcoming. We found that certain worthwhile Risk Management activities did occur at times within the audit period; moreover, the laborious structures and protocols the Manual set forth were not all, in our view, equally worthwhile. Still, the relevant parts of the Manual speak to a significant and admirable commitment to Risk Management that the Department should be sure to honor.

V. Conclusion

From the beginning of our interactions with the Department in July of 2006, we have been struck by the patience, cooperation, and receptivity that we encountered at every point. We appreciate the treatment we received on its own considerable merits. However, we also hope that it is part of larger dynamic in which the Department seeks to improve upon a long and proud tradition.

A greater commitment to community outreach has been evident in recent months, with the new “Sheriff’s Advisory Committee” in the Vista patrol area as one significant example. We hope it will continue. We strongly believe in the benefits of increased communication between law enforcement and the public it serves – a dynamic that benefits both sides.

The Department’s release of this Report to the public will ideally contribute to that process. It should, at the very least, enhance people’s understanding of how the Department works. This, by itself, is no guarantee of enhanced appreciation, but an increase in knowledge will add to the potential value of criticisms by ensuring that they are informed ones.

We found much to praise in the Department, and much reason to believe that its members have the will to grapple productively with the recommendations we offer. We look forward to seeing what the coming months will bring in that regard.

**Use of Force Audit of the
San Diego County Sheriff’s Department
by OIR Group:
Audit Recommendations**

Recommendation Number	Recommendation Text
1.	We recommend, with regard to the Department’s use of deadly force policy involving fleeing felons, that it reconcile potentially inconsistent language in the Policy and Procedures sections of the Manual in order to provide clarity to its deputies, and, in doing so, adopt the more restrictive calculus set out in the Procedures section.
2.	We recommend that the Department revise its “shooting at vehicles” policy to provide more guidance to deputies regarding the decision to shoot. We further recommend that the Department revise the policy to address related tactical decisions – such as the advisability and effectiveness of moving into the real or potential path of a moving vehicle.
3.	We recommend that the Department create a foot pursuit policy that states that deputies will be expected to: <ul style="list-style-type: none"><li data-bbox="540 1654 1312 1738">✓ broadcast the pursuit and their position as soon as possible<li data-bbox="540 1759 1287 1791">✓ reassess the pursuit if the suspect enters a structure<li data-bbox="540 1812 1312 1843">✓ desist pursuing if the deputy loses sight of the suspect<li data-bbox="540 1864 971 1896">✓ not split from their partners

- 4. We recommend that the Department adopt a standard practice of interviewing all deputy witnesses to the shooting and/or events leading up to the shooting.**
- 5. We recommend that the Department consider adopting a practice of conducting a brief “walk-through” of the scene for all investigators prior to conducting any interview of involved personnel.**
- 6. We recommend that the Department adopt a practice of documenting the comments made by the deputy shooters during the walk through. We also recommend that the Department consider adopting a practice of consistently documenting how deputies were transported and separated when performing these “walk-throughs”.**
- 7. We recommend that the Department consider ways in which the Medical Examiner can be afforded access in a more timely fashion without compromising the integrity of the scene.**
- 8. We recommend that the Department not be deterred by language-related obstacles to information gathering, and that it continue its recent emphasis on bolstering the relevant foreign-language skills of its officers.**
- 9. We recommend that the Department formalize its protocols for promoting the cooperation of witnesses and acknowledging**

their rights under the prevailing circumstances. One option is to promulgate a form and waiver system that clarifies the status of witnesses and their options about traveling to the station to be interviewed.

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

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

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

13. We recommend that the Department explore ways to provide Risk Management personnel with a limited authority to

respond to shooting scenes and immediately provide appropriate compensation to innocent parties who have suffered damage as a result of Department actions.

14. We recommend that the Department revamp its Critical Incident Review Process in the following ways:

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

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

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

14 d. By requiring timely investigations and review presentations.

15. We also recommend that the jurisdiction of the re-designed CIRB be expanded to include a protocol for the automatic review of additional categories of incident, as itemized and explained below:

- Deaths incident to arrest by Department deputies**
- Non-hit shootings**
- A selection of serious force incidents**
- Bites by the Department's K-9 Unit**

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

- 17. We recommend that the Department develop a separate team of investigators that can respond to a selection of critical force cases (based on extent of injury and other pre-determined standard) and assume responsibility for compiling the facts and information needed for a a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.**
- 18. We recommend that the Department create a separate “force package” protocol to document significant force in a thorough and comprehensive fashion, and an accompanying review process at the supervisory level to address attendant issues of policy, training, officer performance, and risk management.**
- 19. We recommend that the Department require per policy that deputies who witness force deployed by fellow deputies report and document those observations in a timely manner.**
- 20. We recommend that the Department encourage responding supervisors and/or handling deputies to interview civilian witnesses to force incidents, especially those that appear likely to engender controversy.**

21. We recommend that the Department to standardize and improve its attention to collecting evidence in force incidents as follows:

- by photographing suspect injuries**
- by obtaining records of medical treatment of arrestee**
- by documenting where applicable the suspect's refusal of medical treatment.**

22. We recommend that the Department explore the restructuring of the K-9 unit. While centralization may not prove to be preferable, the Department could nonetheless take constructive lesser steps to mitigate existing weak points:

- by commitment of necessary time and resources for more meaningful regular training.**
- by assigning a high-ranking supervisor to head the unit, so as to strengthen its internal workings and reduce friction with various patrol supervisors**
- by better integrating the K-9's with regular patrol functions, through training bulletins, video presentations, recurrent briefings, and other relevant techniques.**

- 23. We recommend that the Department modify its carotid restraint policy to require that suspects exhibit assaultive behavior or “aggravated active resistance or aggression” [SDSD Use of Force Options Chart] before deputies are justified in using the technique. We further recommend that the carotid restraint be viewed as an important perishable skill that merits frequent refresher training at mandatory periodic training.**
- 24. We recommend the Training Division develop and promote a teaching scenario which guides deputies on the best range of options for dealing with unruly suspects in the back of patrol cars.**
- 25. We recommend that the Department implement a requirement for deputies who wish to continue to carry saps and nunchakus that they receive recurrent training and remain proficient in their use. The Department should also maintain documentation of this recurrent training. If those requirements prove to be impracticable, the Department should consider eliminating saps and nunchakus as authorized force options.**

- 26. We recommend a revision of the Taser policy to clarify the threshold for use as being assaultive behavior on the part of the suspect, and we encourage the Department to review and adapt its relevant Training and practices as more information about actual Taser deployment in the field becomes available.**
- 27. We recommend that significant force incidents in the jails should be handled as separate force investigations, similar to the protocols we recommend for investigating force in the patrol setting.**
- 28. We recommend that Detentions incidents involving injuries requiring hospital care, or recognizable significant failures in equipment or procedures be subject to the Department's CIRB review process.**
- 29. We recommend that inmate assaults that are criminal in nature and result in injury should be referred to the District Attorney when sufficient evidence exists, regardless of the stated preference of a deputy victim or inmate victim.**

- 30. We recommend that the Department prioritize the design and implementation of its proposed Early Intervention System, and that it maximize that system's effectiveness by promoting its varied and widespread use among Department managers.**
- 31. We recommend that the Department explore means of regularly sharing information with the public about numbers of shooting and force incidents, types of uses of force, numbers and types of internal affairs investigations and the number of times in which investigations were sustained.**
- 32. We recommend that the Department develop a set of disciplinary guidelines that set out penalty ranges for particular policy violations and assist the decision maker in considering how aggravating and mitigating factors are to be applied. At the very least, it should articulate principles that would help promote consistency and reduce arbitrary penalties.**
- 33. We recommend that the Department reexamine its Manual in relation to Risk Management issues, and create and memorialize a feasible action plan and structure that will achieve the objectives behind the ambitious current language.**

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

- 35. We recommend that the reference in the Department's policy Manual to an advisory requiring complainants to acknowledge that it is a crime to make a false statement against peace officers be removed.**